2013 IL App (2d) 120086-U
No. 2-12-0086
Order filed March 7, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

TEAM BARRY MARKETING, GRAND INVESTMENTS, AAA COOPER TRANSPORTATION, L.V., INC., DURABLE MANUFACTURING COMPANY, LIVINGSTON INTERNATIONAL, LIBERTY FASTENER COMPANY, J.M. DIE COMPANY, INC., FLORENCE MORGAN TRUST, KECO LEASING, KCK INVESTMENTS, LTD., QUALITY TOOLS, 789 BUILDING PARTNERSHIP, ABILITY WELDING SERVICE, SCHOLASTIC TESTING SERVICES, INC., FTS, LISA A. ODDO, HUTCHISON TOOL SALES, ADVANCED MANUFACTURING SYSTEMS, INC., DAVID HEIDNER, QUALITY PLASTIC PRODUCTS, INC., SCHLESINGER MACHINERY, INC., BRADFORD COMPACT, TONY ODDO, COMPLETE FLASHINGS, INC., HORST J. HELLER, MPZ MASONRY, MARK SIGNS, and POM TRUCK REPAIR., Plaintiffs-Appellants. v. VILLAGE OF BENSENVILLE, Defendant-Appellee.	)	Appeal from the Circuit Court of Du Page County. No. 99-CF-9999 Honorable Terrence M. Sheen, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly entered summary judgment against plaintiffs on their complaint challenging the legality of a special service area created by defendant, the Village of Bensenville, pursuant to the Special Service Area Tax Law (35 ILCS 200/27-5 *et seq.* (West 2010)).

¶ 2 Plaintiffs, Team Barry Marketing *et al.*, appeal from the judgment of the trial court granting summary judgment in favor of defendant, the Village of Bensenville, on plaintiffs' four-count complaint challenging the validity of an ordinance establishing a special service area within defendant's boundaries pursuant to the Special Service Area Tax Law (Special Service Law) (35 ILCS 200/27-5 *et seq.* (West 2010)). For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 28, 2010, defendant's president and board of trustees adopted an ordinance (SSA ordinance) establishing "Special Service Area Number 9" (SSA Nine). SSA Nine would be located in "an industrial, office[,] and commercial area" within defendant's boundaries. The SSA ordinance stated that its purpose was

> "to provide special municipal services to the properties within [SSA Nine] in addition to services provided *** generally. Included in said services shall be street reconstruction, sanitary sewer improvements[,] and street lighting conduit improvements."

To finance the improvements, the SSA ordinance directed the issuance of "bonds or other debt instruments," to be "retired by the levy of a direct annual tax *** upon all taxable property within

[Service Area Nine] at a maximum rate not to exceed the rate necessary to pay the debt service on the *** bonds or other debt instruments."

¶ 5 Defendant scheduled a public hearing on the SSA ordinance and, pursuant to the terms of section 27-30 of the Special Service Law, gave "[n]otice by publication" as well as served by mail "the person or persons in whose name the general taxes for the last preceding year were paid on each property lying within the special service area" (35 ILCS 200/27-30 (West 2010)). Subsequently, on October 14, 2010, defendant held the public hearing on the SSA ordinance. On December 7, defendant received an "objection petition" filed by plaintiffs pursuant to section 27-55 of the Special Service Law (35 ILCS 200/27-55 (West 2010)). Defendant determined that the petition did not comply with section 27-55's requirement that it bear the signatures of "at least 51% of the electors residing within the special service area and *** at least 51% of the owners of record of the land included within the boundaries of the special service area" (35 ILCS 200/27-55 (West 2010)). Thus, while section 27-30 of the Special Service Law singles out payers of taxes on properties within the special service area by entitling them alone to notice by mail, the only valid signatures on a section 27-55 objection petition are of electors or property owners.

¶ 6 After striking the objection petition, defendant formally adopted the SSA ordinance on March 11, 2011. In the final version of the SSA ordinance, defendant included a detailed analysis of the signatures on the objection petition. Defendant noted, first, that there were "no registered voters (electors) within [SSA Nine]." Defendant then turned to whether the requisite percentage of owners of property within SSA Nine signed the petition. Here defendant employed two different counting methods. First, defendant counted each owner once no matter how many parcels he owned. Alternatively, defendant counted each owner once for every parcel he owned. Defendant determined

that there were insufficient property owners under either counting method. (We note that there is no indication in the signature analysis that defendant determined whether any taxpayers of record signed the petition.)

¶ 7 Plaintiffs subsequently filed a four-count complaint for a declaratory judgment that the SSA ordinance was invalid. Plaintiffs alleged that each of them owned property within SSA Nine. Plaintiffs' count I alleged that the Special Service Law did not authorize the projects defendant planned in the SSA ordinance, because (1) street reconstruction, sanitary sewer improvements, and street lighting improvements are "basic municipal functions, and are not allowed to be funded via a special service area"; and (2) "sanitary sewer improvements are to be funded exclusively through utility charges" imposed under section 11-139-8 of the Illinois Municipal Code (Code) (65 ILCS 5/11-139-8 (West 2010)). Count II alleged, first, that defendant "issued notice [of the public hearing on the SSA ordinance], but failed to do so in conformance with the statutory provisions." Plaintiffs asserted that, despite the "defective notice," they were able to gather enough signatures for an objection petition. Plaintiffs further alleged that defendant misapplied the signature requirements of section 27-55 of the Special Service Law, in that, while "there were numerous property owners who owned two, three or four properties," defendant "would only count those owners as one[,] in contravention of the express language and obvious intent of [the Special Service Law]." Count III asserted a claim under *Monell v. Department of Social Services*, 436 U.S. 658 (1978), specifically, (1) that plaintiffs "were property owners within the Village of Bensenville but are not registered voters within said Village"; (2) that defendant "targeted those property owners who do not vote, and have no franchise rights to replace the policy makers who have implemented this unequal policy"; and (3) that defendant, "[b]y implementing [SSA Nine] upon property owners who do not have the

ability to vote, *** has violated [p]laintiffs' equal protection rights and due process rights, and treated [p]laintiffs differently than [all of defendant's other residents]." In count IV, entitled "Intent of Statute," plaintiffs asserted that the legislature could not have expected that property owners would sign an objection petition where section 27-30 of the Special Service Law did not require them to receive personal notice of the ordinance establishing a special service area. Plaintiffs asserted that the objection petition filed against the SSA ordinance was valid and effective because "the people who received notice of [the SSA ordinance] (taxpayers of record) overwhelmingly rejected [SSA Nine] by signing the objection petition."

¶ 8 Defendant subsequently moved for summary judgment. Plaintiffs filed a response, and defendant submitted a reply in support of the motion. Attached to the pleadings were copies of the final version of the SSA ordinance, including defendant's signature analysis.

¶ 9 The trial court granted summary judgment on all four counts of plaintiffs' complaint. Plaintiffs filed this timely appeal.

¶ 10 II. ANALYSIS

¶ 11 A. Standard of Review

¶ 12 Summary judgment is proper only where the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2010). In determining whether a genuine issue of material fact exists, the pleadings, depositions, admissions, and affidavits must be construed strictly against the movant and liberally in favor of the opponent. *Mashal v. City of Chicago*, 2012 IL 112341, ¶ 49. A genuine issue of material fact precluding summary judgment exists where the material facts are disputed or, if the material facts are

undisputed, reasonable persons might draw different inferences from the undisputed facts. *Id.* Summary judgment is a drastic means of disposing of litigation and, therefore, should be granted only when the right of the moving party is clear and free from doubt. *Id.* We review a grant of summary judgment *de novo*. *Millennium Joint Venture, LCC v. Houlihan*, 241 Ill. 2d 281, 309 (2010).

¶ 13 B. The Notice and Objection Provisions of the Special Service Law

¶ 14 We address first plaintiffs' argument directed at the notice and objection provisions of the Special Service Law. Section 27-5 of the Special Service Law (35 ILCS 200/27-5 (West 2010)) defines a "special service area" as

> "a contiguous area within a municipality or county in which special governmental services are provided in addition to those services provided generally throughout the municipality or county, the cost of the special services to be paid from revenues collected from taxes levied or imposed upon property within that area." 35 ILCS 200/27-5 (West 2010).

¶ 15 Section 27-25 of the Special Service Law provides that, "[p]rior to the first levy of taxes in the special service area, notice shall be given and a hearing shall be held under the provisions of Sections 27-30 and 27-35 [35 ILCS 200/27-30, 27-35 (West 2010)]." The notice shall include, *inter alia*, "[a] notification that all interested persons, including all persons owning taxable real property located within the special service area, will be given an opportunity to be heard at the hearing regarding the tax levy and an opportunity to file objections to the amount of the tax levy if the tax is a tax upon property." 35 ILCS 200/27-25 (West 2010). Section 27-30 prescribes the "[m]anner of notice" as follows:

"Prior to or within 60 days after the adoption of the ordinance proposing the establishment of a special service area the municipality or county shall fix a time and a place for a public hearing. The public hearing shall be held not less than 60 days after the adoption of the ordinance proposing the establishment of a special service area. *Notice of the hearing shall be given by publication and mailing*, except that notice of a public hearing to propose the establishment of a special service area for weather modification purposes may be given by publication only. *Notice by publication shall be given by publication at least once not less than 15 days prior to the hearing in a newspaper of general circulation within the municipality or county. Notice by mailing shall be given by depositing the notice in the United States mails addressed to the person or persons in whose name the general taxes for the last preceding year were paid on each property lying within the special service area.* A notice shall be mailed not less than 10 days prior to the time set for the public hearing. In the event taxes for the last preceding year were not paid, the notice shall be sent to the person last listed on the tax rolls prior to that year as the owner of the property." (Emphases added.) 35 ILCS 200/27-30 (West 2010).

¶ 16 Section 27-35 (35 ILCS 200/27-35 (West 2010)) prescribes the procedure for the public hearing:

"At the public hearing, any interested person, including all persons owning taxable property located within the proposed special service area, may file with the municipal clerk or county clerk, as the case may be, written objections to and may be heard orally in respect to any issues embodied in the notice. The municipality or county shall hear and determine all protests and objections at the hearing and the hearing may be adjourned to another date

without further notice other than motion to be upon the minutes fixing the time and place it will reconvene."

¶ 17 Section 27-55 of the Special Service Law addresses the content of an objection petition, which is due within a certain time after the public hearing is finally adjourned:

> "*If a petition signed by at least 51% of the electors residing within the special service area and by at least 51% of the owners of record of the land included within the boundaries of the special service area* is filed with the municipal clerk or county clerk, as the case may be, within 60 days following the final adjournment of the public hearing, objecting to the creation of the special service district ***, the district shall not be created ***. *** Each resident of the special service area registered to vote at the time of the public hearing held with regard to the special service area shall be considered an elector. *Each person in whose name legal title to land included within the boundaries of the special service area is held according to the records of the county in which the land is located shall be considered an owner of record*. Owners of record shall be determined at the time of the public hearing held with regard to a special service area. Land owned in the name of a land trust, corporation, estate or partnership shall be considered to have a single owner of record." (Emphasis added.) 35 ILCS 200/27-55 (West 2010).

The supreme court has described section 27-55 as a "veto procedure." See *Coryn v. City of Moline*, 71 Ill. 2d 194, 202-03 (1978).

¶ 18 The parties appear to agree that there were no electors residing in SSA Nine and, necessarily, no signatures of electors that had to be gathered pursuant to section 27-55. Plaintiffs, moreover, do not dispute that the objection petition was signed by an insufficient number of "owners of record,"

as that term is defined in section 27-55. See 35 ILCS 200/27-55 (West 2010) ("Each person in whose name legal title to land included within the boundaries of the special service area is held according to the records of the county in which the land is located shall be considered an owner of record."). Plaintiffs, rather, argue that we should not enforce the distinction in these provisions between taxpayers, who alone are required to receive notice by mail of the public hearing on the proposed special service area (see 35 ILCS 200/27-30 (West 2010)),[1] and property owners, who, though they need not receive mailed notice, must sign the objection petition in order for it to be valid (see 35 ILCS 200/27-55 (West 2010)). Plaintiffs propose, first, that the distinction does not accord with the reality that property taxes are almost always paid by the property owner. Second, they argue that, to the extent the distinction is real, it leads to the inequity that the parties whose signatures are required for an objection petition (namely, property owners) are not the parties who must receive service by mail (namely, taxpayers). Plaintiffs propose that parties "cannot veto something they are not aware of." They elaborate:

> "The purpose of the [Special Service Law] is to have a group of taxpayers/owners assent to higher *ad volem* [*sic*] taxes for what they perceive to be a benefit. Yet, notice goes to the taxpayers personally, and the taxpayers have no veto power. The owners, on the other hand, possess veto power, but receive no personal notice. This incongruity is both counter-intuitive and patently unjust. Theoretically, every single taxpayer could be noticed, show up at the public hearing, and object. Yet, those objections carry no weight. Those who can object and

[1] Except where "taxes for the last preceding year were not paid," in which case personal notice shall be sent to "the person last listed on the tax rolls prior to that year as the owner of the property." 35 ILCS 200/27-30 (West 2010).

veto the additional taxes, the record owners, receive no notice under the [Special Service Law]. Under the best of circumstances, this remains difficult to explain."

¶ 19 Plaintiffs' argument fails. First, we clarify that, though plaintiffs occasionally refer to "due process," they cite neither a constitutional provision nor a decision applying any such provision. Therefore, they have forfeited any constitutional attack on the notice or objection provisions of the Special Service Law. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) ("Argument" shall consist of "the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on."); *Rankin ex rel. Heidlebaugh v. Heidlebaugh*, 321 Ill. App. 3d 255, 268 (2001) ("On appeal, a contention that is supported by some argument but absolutely no legal authority does not meet the requirements for consideration."). Stripped of the occasional references to "due process," plaintiffs' argument is strictly one of statutory interpretation.

¶ 20 Second, though plaintiffs suggest that the Special Service Act is flawed because property owners are not required to receive personal notice under section 27-30, plaintiffs do not claim before us that they themselves failed to receive personal notice. Plaintiffs, we recognize, alleged in count II of their complaint that the notice provided by defendant failed to comply with section 27-30, and that, notwithstanding the "defective notice," plaintiffs were able to obtain enough signatures for an objection petition. In their briefs to us, however, plaintiffs assert that they "[a]ll *** received notice of [SSA Nine] by virtue of being taxpayers" (in accord with section 27-30). While plaintiffs may possibly be read to complain before us that they did not receive notice *as property owners*, their concession that they were, in fact, given notice *as taxpayers* (pursuant to section 27-30) entirely undermines any attack on the Special Service Law premised on allegedly improper notice. See *Ciacco v. City of Elgin*, 85 Ill. App. 3d 507, 511 (1980) (challenge to notice provision of the Special

Service Law failed where the plaintiffs "d[id] not assert that no notice was given to them"); *City of Mattoon v. Stump*, 414 Ill. 319, 321 (1953) (rejecting the plaintiffs' claim that not all property owners were served notice of a public hearing on a proposed special assessment as required by section 84-7 of the Local Improvement Act (Ill. Rev. Stat. 1951, ch. 24, ¶ 84-7); the plaintiffs "do not contend that they did not receive notice nor that they were prevented from being heard at the public hearing," and so, "[n]ot having suffered injury themselves," they "cannot be heard to complain on this ground").

¶ 21 We proceed to plaintiffs' argument that defendant should have accepted their objection petition signed by "taxpayers" (but, as plaintiffs do not dispute, by an insufficient number of "owners of record" as defined by section 27-55). Plaintiffs urge us to expand section 27-55 to recognize the signatures of "taxpayers" as valid for an objection petition. Evidently, the definition of "taxpayer" that plaintiffs would have us incorporate into section 27-55 is that contained in the notice provision, section 27-30, which requires personal notice to "the person or persons in whose name the general taxes for the last preceding year were paid on each property lying within the special service area" (35 ILCS 200/27-30 (West 2010)). Plaintiffs, however, do not dispute that there is a true semantic distinction between (1) an "owner of record," defined in section 27-55 as the "person in whose name legal title to land included within the boundaries of the special service area is held according to the records of the county in which the land is located" (35 ILCS 200/27-55 (West 2010)); and (2) the "person or persons in whose name the general taxes for the last preceding year were paid on each property lying within the special service area" (35 ILCS 200/27-30 (West 2010)). Rather, plaintiffs' assertion is that in practice there is no distinction, as "[v]ery rarely do non-owners pay taxes on a parcel of real estate they do not own, unless they are in the business of obtaining properties via tax

sales." The legislature, however, made a deliberate linguistic distinction, and the practical, statistical soundness of that distinction does not concern us.

¶ 22 Plaintiffs further argue that it would be "unfair" for the legislature to deny veto power to payers of taxes on property within the special service area, where those taxpayers have a manifest interest in controlling the amount of property taxes in the special service area. As plaintiffs acknowledge, this court in *Ciacco* addressed the same essential argument. The plaintiffs in *Ciacco* challenged the trial court's determination that trust beneficiaries and contract purchasers did not qualify as "owners of record" under the predecessor of section 27-55 (Ill. Rev. Stat. 1977, ch. 120, ¶ 1309). The version of 27-55 then in effect lacked a definition of "owner of record." The current definition, according to which an "owner of record" is the "person in whose name legal title to land *** is held ***," was added by Public Act 82-640 (eff. Jan. 1, 1982). Lacking a definition of "owner of record" to apply, the trial court utilized concepts of possession and control to determine what the legislature intended. *Ciacco*, 85 Ill. App. 3d at 515. We agreed with the trial court's analysis. *Id.* at 515-16. The plaintiffs, however, argued that

> " 'the intent of the statute *** when read as a whole must be interpreted to mean that those persons who shall ultimately be liable for the tax, the taxpayers, have the right to object to the special service area and levy.' " *Id.* at 515-16.

In answer to this, we simply restated that we agreed with the trial court's analysis of the statutory language. *Id.* at 516.

¶ 23 Plaintiffs ask us to depart from *Ciacco*, whose holding, they claim was "devoid of analysis." Whether our reasoning in *Ciacco* was sound is a moot question now that the legislature has provided a definition of "owner of record," which, again, plaintiffs do not contest is distinct from the

definition of taxpayer in section 27-30. We do acknowledge that "[a] court *** is not bound by the literal language of a statute that produces a result inconsistent with clearly expressed legislative intent, or that yields absurd or unjust consequences not contemplated by the legislature." *In re D.F.*, 208 Ill. 2d 223, 230 (2003). Plaintiffs make no showing that even approaches this standard. Taxpayers have substantial protections under the Special Service Act. Section 27-30 affords them personal notice of the public hearing on the proposed special service area (35 ILCS 200/27-30 (West 2010)), and section 27-35 allows them to file written objections to the proposal and to make an oral presentation at the public hearing (35 ILCS 200/27-35 (West 2010)). Given these considerations, we cannot condemn as unjust or absurd the legislature's decision in section 27-55 to vest the veto power in "owners of record" and "electors" alone. Moreover, if, as plaintiffs repeatedly insist, taxes on real property are "very rarely" paid except by the owner, then taxpayers effectively have the veto power under section 27-55.

¶ 24 We note that plaintiffs also suggest that defendant deliberately drew the boundaries of SSA Nine so that there would be no electors therein and, hence, the landowners would be "disenfranchised." Assuming, *arguendo*, that defendant was so devious, plaintiffs have not convinced us that the absence of electors compromised the ability of landowners to challenge the SSA ordinance. A valid objection petition requires the signatures of landowners, if they exist, and the signatures of electors, if they exist. See 35 ILCS 200/27-55 (West 2010). In a special service area where no electors reside, the signatures of owners are sufficient to support an objection petition. If electors resided in SSA Nine, plaintiffs would simply have another signature requirement to meet.

¶ 25 Plaintiffs, we conclude, have provided us no reason to ignore the clear demarcation in the Special Service Law between owners of record and taxpayers.

¶ 26 C. The Manner of Services to be Provided in SSA Nine

¶ 27 Plaintiffs' next argument is that the services instituted by the SSA Ordinance are not authorized by the Special Service Law. According to the SSA ordinance, its purpose is

> "to provide special municipal services to the properties within [SSA Nine] in addition to services provided *** generally. Included in said services shall be street reconstruction, sanitary sewer improvements[,] and street lighting conduit improvements."

¶ 28 Section 27-5 of the Special Service Law defines "special services" to include

> "all forms of services pertaining to the government and affairs of the municipality or county, including but not limited to weather modification and improvements permissible under Article 9 of the Illinois Municipal Code [65 ILCS 5/9-1-1 *et seq.* (West 2010)] and contracts for the supply of water as described in section 11-124-1 of the Illinois Municipal Code [65 ILCS 5/11-124-1 (West 2010)] which may be entered into by the municipality or by the county on behalf of a county service area." 35 ILCS 200/27-5 (West 2010).

Section 9-3-2 of the Code states:

> " 'Local improvements' means and includes the improving, widening or extending of any street, avenue, lane, alley or other public place by grading, paving, repaving, resurfacing, and constructing curbs, gutters, storm sewers, sanitary sewers, water mains, walks, gas mains, street lights and all necessary appurtenances thereto and otherwise improving the same, or repairing of curbs, gutters, storm sewers, sanitary sewers, water mains, walks, gas mains, street lights and all necessary appurtenances thereto and otherwise improving the same." 65 ILCS 5/9-3-2 (West 2010).

¶ 29 Plaintiffs' argument meanders. As best we can interpret it, their challenge is exclusively to the "sanitary sewer improvements" called for by the SSA Ordinance. Arranging their loosely organized points by logical priority, we address first their contention that the sanitary sewer improvements are not a "special service" as defined in section 27-5 of the Special Service Law, which incorporates the definition of "improvements" in 9-3-2 of the Code. Plaintiffs, we note, develop no argument based on the text of sections 27-5 or 9-3-2. In fact, in their opening brief, they do not even acknowledge the text. In their reply brief, they devote a handful of words to the language of section 9-3-2:

> "Admittedly, the definition of 'local improvements' within [section 9-3-2] is somewhat expansive. However, the [defendant] reads its interpretation without, apparently, taking into consideration any of the punctuation."

Plaintiffs do not elaborate on this matter of "punctuation." Rather, they concentrate on case law, specifically, *Coryn*, *Grais v. City of Chicago*, 151 Ill. 2d 197 (1992), and *Andrews v. Madison County*, 54 Ill. App. 3d 343 (1977). The special services at issue in these cases consisted of a new shopping mall (*Coryn*, 71 Ill. 2d at 198), a "new public transportation system for central Chicago," *i.e.*, " a light rail or trolley system, a bus system, or a combination of the two" (*Grais*, 151 Ill. 2d at 201-03), and a new sanitary sewer system in an area that was partly served by an existing "lagoon" sewer system, which the new system would replace, and partly by a city sewer system that the new system apparently would run alongside (*Andrews*, 54 Ill. App. 3d at 348, 353-54). The courts in all three cases rejected various challenges to the ordinances that authorized these services. See *Coryn*, 71 Ill. 2d at 200-03; *Grais*, 151 Ill. 2d at 207-27; *Andrews*, 54 Ill. App. 3d at 348-57.

¶ 30 The trial court relied on these cases, and plaintiffs attempt to distinguish them on the ground that they all involved "new municipal infrastructure." Plaintiffs point to nothing in those decisions, however, to suggest that the courts considered it relevant that the infrastructure was "new." Our own review of the analyses in these cases confirms that, to the extent that the courts even addressed the fundamental question of whether the service at issue fell within the ambit of the Special Service Law (only *Coryn* and *Andrews* did), the courts were concerned with the nature of the service, and gave no weight to whether the service would add something "new." See *Coryn*, 71 Ill. 2d at 200 ("the power to establish special service areas is broad enough to encompass the proposed shopping mall at issue in this case"); *Andrews*, 54 Ill. App. 3d at 351 ("the definition of 'special services' [in section 27-5] *** is very broad ***. *** Since it has long been held that sewerage systems are local improvements authorized under precursors of [the Code] [citations], we believe that the provision of sewers is a service approved by the Act.").

¶ 31 Plaintiffs supplement their discussion of *Coryn*, *Grais*, and *Andrews* with a discussion of legislative history. They conclude that "[a]ll of the legislative history with regard to [the Special Service Law] involves new construction, not replacing infrastructure which currently exists." This invocation of legislative history is premature. We will not consider the legislative history of a statute, or other extrinsic aids, unless we are convinced that its text is ambiguous. See *Land v. Board of Education*, 202 Ill. 2d 414, 426 (2002). Plaintiffs offer no analysis of the pertinent statutory language and, therefore, fail to justify their reliance on an extrinsic source.

¶ 32 We add that plaintiffs' argument would fail even if they attempted to ground it in the text of section 27-5 of the Special Service Law and section 9-3-2 of the Code. Given the breadth of the definition of "special services" in section 27-5 (as contoured by the broad definition of

"improvement" in section 9-3-2), we cannot see how the sewer work upheld by the court in *Andrews*, 54 Ill. App. 3d at 351, could qualify as a special service but the "sanitary sewer improvements" authorized by the SSA ordinance could not.

¶ 33 Plaintiffs' next contention is that section 11-139-8 of the Code provides the exclusive source of funding for services such as the "sanitary sewer improvements" authorized by the SSA ordinance. Division 139, generally, authorizes municipalities to construct, maintain, and repair water and sewer systems. The foundational provision is section 11-139-2 of the Code (65 ILCS 5/11-139-2 (West 2010)), which states:

> "Any municipality may acquire, or construct, and maintain and operate a combined waterworks and sewerage system either within or without the corporate limits thereof. *** A municipality owning, acquiring, or constructing and providing for the operation of a combined waterworks and sewerage system may improve and extend that system*, and may impose and collect charges or rates for the use of that system as provided in this Division 139*." (Emphasis added.)

¶ 34 Section 11-139-8 provides:

> "The corporate authorities of any municipality availing itself of this Division 139 may (1) make, enact, and enforce all needful rules and regulations for the acquisition, construction, extension, improvement, management, and maintenance of the combined waterworks and sewerage system of the municipality and for the use thereof, (2) make, enact, and enforce all needful rules, regulations, and ordinances for the care and protection of such a system, which may be conducive to the preservation of the public health, comfort, and convenience and to rendering the water supply of the municipality pure and the sewerage

harmless insofar as it is reasonably possible to do so, and (3) *charge the inhabitants thereof a reasonable compensation for the use and service of the combined waterworks and sewerage system and to establish rates for that purpose.* Separate rates may be fixed for the water and sewer services respectively or single rates may be fixed for the combined water and sewer services. Separate rates may be fixed for any water services to any other municipality and separate sewer rates to any industrial establishment for the purposes set forth in Section 11-139-2 [65 ILCS 5/11-139-2 (West 2010)]. *These rates, whether separate or combined, shall be sufficient at all times to (1) pay the cost of operation and maintenance of the combined waterworks and sewerage system, (2) provide an adequate depreciation fund, and (3) pay the principal of and interest upon all revenue bonds issued under this Division. Rates shall be established, revised, and maintained by ordinance and become payable as the corporate authorities may determine by ordinance.*

Whenever a municipality shall issue revenue bonds as provided by this Division to pay the cost of the extension or improvement of its combined waterworks and sewerage system or any part thereof to serve a particular area of the municipality, the municipality may vary its rates to be charged for the water and sewer services of the system or for either of them effective upon the issuance of bonds as provided by this division to pay the cost of the extension or improvement of its combined waterworks or sewerage system or any part thereof to serve a particular area of a municipality so that the rates to be charged for services in the particular area to be served by such extension or improvement shall be calculated to produce, in addition to the revenues generally to be produced by such rates, sufficient funds to pay the principal of and interest upon the revenue bonds issued to pay the cost of such

extension or improvement for that particular area." (Emphases added.) 65 ILCS 5/11-139-8 (West 2010).

¶ 35 Plaintiffs stress that the rates imposed under section 11-139-8 "shall be sufficient at all times to *** pay the cost of operation and maintenance of the combined waterworks and sewerage system." This language, they claim, reflects an intent that rates imposed under 11-139-8 be the sole source for funding the expense of the "operation and maintenance" of sewer and water facilities. Plaintiffs, however, overlook the introductory language of section 11-139-8: "The corporate authorities of any municipality *availing itself* of this Division 139 may ***" (emphasis added). We cannot ignore this language, but must accord the text its plain and ordinary meaning. *In re Detention of Stanbridge*, 2012 IL 112337, ¶ 70. The implication of this prefatory language is that the requirements of section 11-139-8 apply only to municipalities that undertake water and sewer work pursuant to Division 139. Hence, the provisions on rates that plaintiffs cite apply only to those municipalities who take advantage of the authority, vested by section 11-139-2, to impose rates to offset the cost of water and sewer work.

¶ 36 The *Andrews* court faced a similar issue, namely whether a non-home-rule county could employ the Special Service Law to fund the construction of a new sewer system, or instead had to proceed under section 3111 of the Counties Code (Ill. Rev. Stat. 1975, ch. 34 ¶ 3111 (now codified at 55 ILCS 5/5-15010 (West 2010)), by which a county was "authorized to construct or purchase and operate a waterworks system or a sewerage system or a combined waterworks and sewerage system and to improve or extend any such system so acquired from time to time, as provided in this Act." The court held that the phrase "as provided in this Act," had "no limiting effect on alternative

financial powers given to counties *** to assist them in combating local problems." *Andrews*, 54 Ill. App. 3d at 350. The court went on:

> "The mere fact that an act sets out a means by which to meet the costs of acting under it does not indicate an intent to prevent the legislature from creating other means of financing in the future, especially for projects benefitting an area smaller than the whole governmental unit. We therefore find that the methods for financing a sewerage system under [Ill. Rev. Stat. 1975, ch. 34, ¶ 3101 *et seq.*] are not limited solely to those provided in that Act and that Madison County could properly provide a sewerage system under that statute yet pay for its construction and maintenance under the Special Services Act." *Id.*

Likewise, section 11-139-8 does not purport to embody the only method for funding water or sewer work, including the "sanitary sewer improvements" contemplated in the SSA ordinance.

¶ 37 Finally, we note that plaintiffs complain that owners of property within SSA Nine will be "double-taxed" because of the SSA ordinance. "Double taxation exists where both taxes are imposed for the same period of time, for the same purpose, upon the same taxpayer, and by the same taxing authority." *People ex rel. Bernardi v. Bethune Plaza, Inc.*, 124 Ill. App. 3d 791, 793 (1984). "Although not constitutionally forbidden, double taxation is never presumed and is valid only where the legislature has unequivocally intended to impose such taxation." *Id.*

¶ 38 Presumably, plaintiffs mean that the property taxes to be imposed pursuant to the SSA ordinance will charge for the same services that their utility rates either now, or will, fund. Plaintiffs, however, cite no information in the record about their current or prospective utility rates. Accordingly, this argument is forfeited.

¶ 39 We conclude, for the foregoing reasons, that plaintiffs have identified no issue of material fact regarding defendant's ability to fund, pursuant to the Special Service Law, the "sanitary sewer improvements" contemplated in the SSA ordinance.

¶ 40 D. The *Monell* Claim

¶ 41 Finally, plaintiffs contend that the trial court erred in granting summary judgment on count III, which asserted a *Monell* claim based on the allegation that defendant violated plaintiffs' rights to due process and equal protection by "target[ing]" them because they are not voters within SSA Nine.

¶ 42 For their argument, plaintiffs reiterate the allegations of count III and then state:

> "These allegation are denied [by defendant.] [Citation.] These are well–plead facts which must be taken as true. Moreover, these well-pled facts sustain a *Monell* claim. For this reason alone, issues of material fact exist, and summary judgment remains inappropriate."

Plaintiffs stress that their well-pleaded facts have been denied by defendants, but they cite no legal authority to explain how this is relevant to our review. We may indeed find a material issue of fact based upon the complaint and answer alone where the party moving for summary judgment fails to support the motion with evidentiary facts. See *South Side Trust and Savings Bank of Peoria v. Mitsubishi Heavy Industries, Ltd.*, 401 Ill. App. 3d 424, 435-36 (2010). Though we have researched and found for plaintiffs the overarching authority that would authorize a court to find a material fact question in a procedural setting like the present, we will not also search out for them the additional authority necessary for us to determine the propriety of the conduct alleged in count III. We cannot judge the materiality of a conflict in allegations or evidence without a governing standard of law.

Plaintiffs' argument on count III is forfeited for failure to cite legal authority. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *Heidlebaugh*, 321 Ill. App. 3d at 268.

¶ 43 III. CONCLUSION

¶ 44 For the foregoing reasons, we find no issue of material fact precluding summary judgment. Accordingly, we affirm the judgment of the trial court.

¶ 45 Affirmed.