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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

JOHN VAN MAANEN, JR., and EUNICE NADINE VAN MAANEN,

Appellants,

vs.

CITY OF OSKALOOSA, IOWA,

Appellee.

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2-58455

Appeal from Mahaska District Court - L. R. Carson, Judge

Appeal from district court judgment upholding assessment for sanitary sewer installation.

AFFIRMED.

Joe P. Crookham Law Offices, of Oskaloosa, for appellants.

James P. Rielly, City Attorney of Oskaloosa, of Spayde and Rielly Law Office, of Oskaloosa, for appellee.

Heard by Allbee, C.J., Donielson, Snell, Oxberger and Carter, JJ.

CARTER, J.

The plaintiffs, John and Eunice Van Maanen, owners of property subject to assessment for a sanitary sewer installation, appeal judgment of the district court upholding the assessment levied by the Oskaloosa city council.

The grounds upon which plaintiffs rely for reversal are the following: (1) that the trial court applied an improper standard for valuation of agricultural land; (2) that the trial court's finding that the assessments did not exceed 25% of the actual value of plaintiffs' property is contrary to the evidence; (3) that the trial court's finding that the assessments did not exceed the special benefits conferred upon the property is contrary to the evidence; and (4) that the assessments improperly relied on a linear front foot factor as the sole measure for apportioning the costs of the project among affected property holders.

I. We consider the first three contentions to be inter-related and discuss them concurrently. Any issue concerning special limitations on the valuation of agricultural properties under the holding in Heins v. City of Cedar Rapids, 231 N.W.2d 16 (Iowa 1975) was not raised in the trial court and cannot be considered on appeal. Brown v. City of Des Moines, 245 N.W.2d 533, 540 (Iowa 1976). Thus, we may apply the ordinary rule that future benefits, reasonably to be anticipated, may be considered. If the record is examined according to this standard there is ample evidence to support the trial court's findings that (a) the assessments against plaintiffs' property did not exceed the special benefits conferred upon said property and (b) said assessments did not exceed 25% of the actual value of the property. On our de novo we would credit such evidence and do not disturb the trial court's findings.

II. Nor do we agree that the assessments are invalid because the city used front footage as the only criteria in apportioning the cost of the sewer to the properties involved. There is no inflexible rule forbidding an apportionment based upon linear front feet of abutting lots. See section 391.42, The Code (1973); Rood v. City of Ames, 244 Iowa 1138, 1160-61, 60 N.W.2d 227, 240 (1953). As stated in Spencer Shopping Center, Inc. v. City of Spencer, 200 N.W.2d 513, 515-16 (Iowa 1972);

> A front-foot factor may be employed in ascertaining benefits from storm sewers, but it must not be applied arbitrarily. Fairness may require that the size and shape of parcels and actual proximity to the sewer be considered within the frontage factor itself. Moreover, if factors other than frontage affect benefits, they must be given weight.

Section 391.42, The Code (1973), authorizes the apportioning of sewer assessments among abutting properties in proportion to linear front feet of each lot. We believe that analysis of the limitations which the supreme court has placed on linear front footage as an assessment factor shows that such limitations are merely a corollary of the requirement of section 391.48, The Code (1973), that the assessment "shall be in proportion to the special benefits conferred upon the property." Thus, if it appears that other significant factors were not considered by the municipality then the trial court in a proceeding under section 391.90, The Code (1973), may ignore the usual presumption that the assessment is correct. This is the extent of the court's holding in Wharton v. City of Oskaloosa, 158 N.W.2d 834, 836-37 (Iowa 1968).

In the present case we are not reviewing the actions of the municipality in apportioning the assessment. We are reviewing the determination of the district court, de novo, under section 391.90, The Code (1973), that the assessments were correct. There is nothing to indicate that the trial court's independent findings on the benefits conferred were induced by giving disproportionate weight to a front linear foot factor or ignored other significant factors. Such findings are supported by ample competent evidence which we credit on our de novo review.

The judgment of the trial court is affirmed.

ALLBEE, C.J., and OXBERGER, J., concur; DONIELSON, J., and SNELL, J., dissent.

DONIELSON, J. (dissenting)

I dissent. Although I agree with the majority that any issue regarding the valuation of agricultural property cannot be considered here since it was not raised below, I do not feel that the majority correctly evaluated this record regarding the criteria utilized as the basis for assessment.

The testimony indicates that the Van Maanens were subject to an assessment of $840 for a platted lot and $7430 for unplatted property. The plaintiffs claim that the assessment was improper and contrary to law because the city used the front footage as the only criteria in making the assessment. The Iowa Supreme Court has held that the front footage method is a proper method of assessment for municipal improvements, but it cannot be the sole method of valuation. Mulford v. City of Iowa Falls, 221 N.W.2d 261, 267 (Iowa 1974); Wharton v. City of Oskaloosa, 158 N.W.2d 834, 835 (Iowa 1968); § 391.42, The Code (1973).

The plaintiffs' contention is supported by testimony of John Steddom, consulting engineer for the city:

> "Q. And your letter last paragraph says 'The council has elected to assess a maximum of $10 per front foot for a total of $26,059.50 for this project' is that in general what finally occurred? A. Yes.
> Q. And the entire assessment from beginning to end was made on a $10 per front foot basis? A. Yes.
> Q. Was there any other criteria used other than that manner? A. Didn't need to be because all of the depths are exactly the same and also there was no adjacent properties.
> Q. So it was not necessary to use anything other than the straight footage valuation? That's right." (emphasis added)

Mr. Steddom also stated that because the assessed area was symmetrical, the assessment was basically an area assessment. He also testified that the city calculated the total cost of running the sewer and that this cost would be $17 per foot. The rationale for a $10 per front foot assessment by the city was explained by Mr. Steddom:

> "A. . . . and we had talked to some of the property owners which would amount to an assessment of $1700 and the council felt that probably that was a little heavy. Probably in a neighborhood of a thousand dollars a lot would be more acceptable. And so that is what the city would go for.
> Q. How much did they end up assessing? A. $10 front foot or a $1000 for a 100 foot lot." (emphasis added)

A review of this record convinces me that no criteria other than the front

foot calculation was utilized in this sewer assessment. I feel, as did the court in **Mulford v. City of Iowa Falls**, supra, at 266, that the fatal flaw in the city's logic is demonstrated by the fact that the final assessment utilized was exactly the same figure as that derived from the use of the front footage calculation. Consequently, I dissent.

SNELL, J., joins in this dissent.