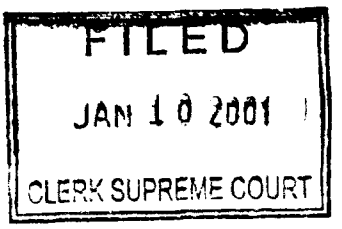
IN THE COURT OF APPEALS OF IOWA

No. 0-473 / 99-1292
Filed January 10, 2001



ASHWORTH FARM PARTNERSHIP,
Appellant,

vs.

CITY OF WEST DES MOINES, IOWA,
Appellee.

Appeal from the Iowa District Court for Dallas County, Gary G. Kimes, Judge.

On appeal from the district court's ruling affirming a special assessment imposed by the city, the plaintiff argues the assessment exceeds the special benefit conferred, the trial court erred in not considering impact fee analysis evidence, and the assessment was unconstitutional. **AFFIRMED.**

Stanley J. Thompson of Davis, Brown, Koehn, Shors & Roberts, P.C., Des Moines, for appellant.

Ivan T. Webber of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, P.C., Des Moines, for appellee.

Heard by Streit, P.J., and Vogel and Miller, JJ.

MILLER, J.

Plaintiff, Ashworth Farm Partnership ("Ashworth"), appeals the district court's ruling, following bench trial, affirming a special assessment imposed by the defendant, the City of West Des Moines ("City"). Ashworth argues the assessment exceeds the special benefit conferred, that the trial court erred in not considering the impact fees analysis evidence, and that the assessment was unconstitutional. We affirm.

I. BACKGROUND FACTS AND PRIOR PROCEEDINGS

Ashworth is a partnership of three individuals who own farmland located on the south side of Ashworth Road in the city of West Des Moines, Iowa. The tract of land is not entirely within the assessment district. Ashworth Road between 60th and 74th Street, the area in dispute here, was a two-lane road built by Dallas County in 1959. The City annexed the road and Ashworth farm in 1992. The City initiated special assessments for the paving and complete reconstruction of this portion of Ashworth Road in 1997. The district included 346 tracts of land, including the Ashworth property. The project involved the widening of Ashworth Road from two lanes to four lanes and other related work between 60th and 74th streets.

A hearing on the resolution of necessity for the project was held and a resolution subsequently adopted by the City in October of 1997. To specially assess property owners in the area of the project the City created assessment benefit areas. The total assessment on the Ashworth land, after all reductions by the City, was $238,187.01. This is the amount challenged by Ashworth here.

The parties agree that the value of the Ashworth property, after being developed and with the improvements in place, is $810,000. Pursuant to Iowa Code section 384.62 (1997) the actual assessment may not exceed twenty-five percent of the total value of the lot, here $202,500. Therefore, it is agreed there exists a conditional deficiency of $35,687.01 on the Ashworth tract.

Ashworth filed an action challenging the assessment district and the amount of its assessment in particular. Following a trial to the bench the district court ruled in favor of the City. Ashworth filed a timely appeal from the trial court's adverse ruling arguing the assessment was unfair, inequitable, and excessive because the project primarily provides benefit for the general citizenry rather than conferring special benefit on its property. It contends the trial court erroneously concluded it could not consider impact fee analysis evidence Ashworth presented because Iowa does not have a statutory provision allowing for this type of assessment allocation method. Finally, Ashworth contends the special assessment was unconstitutional because the City arbitrarily and irrationally excluded property from the assessment district and relied on too small a district to pay for the assessment.

II. STANDARD OF REVIEW

Our review of a trial court's decision on a challenge to a city's assessment of special benefits is de novo; although we give weight to the findings of the trial court we are not bound by them. *Goodell v. City of Clinton*, 193 N.W.2d 91, 95 (Iowa 1971); *Freeman v. City of Waverly*, 581 N.W.2d 194, 196 (Iowa App. 1998).

III. GENERAL LEGAL PRINCIPLES

Before considering the merits of Ashworth's claims, we set forth several governing principles for assessment cases which have been repeatedly announced by our courts.

> There is a presumption that assessments made by a city for improvements are correct; the burden rests on the protesting property owner to prove otherwise. It is included in this presumption that there is some benefit and that the assessment does not exceed the special benefit accruing from the improvement. Thus, where there is no evidence to support a finding contrary to that of the city council its determination must stand.

Mulford v. City of Iowa Falls, 221 N.W.2d 261, 268 (Iowa 1974) (citations omitted). Iowa Code section 384.61 permits a municipality to assess the costs of most public improvements against property within the assessment district in an amount not in excess of the special benefits conferred upon the property. *See Milton O. and Phyllis A. Thorson Revocable Estate Trust v. City of West Des Moines*, 531 N.W.2d 647, 649 (Iowa App. 1995). This provision is designed to implement the general theory that property owners who receive some special benefit from a project should pay their share for it. *City of Clive v. Iowa Concrete Block & Material Co.*, 298 N.W.2d 585, 592 (Iowa 1980) (citing *Goodell*, 193 N.W.2d at 94).

> Under our statute, the true rule, while prohibiting an assessment in excess of the benefits to the property [also] requires that the burdens be distributed ratably and proportionately upon all of the abutting property in the taxing or assessment district. Both requirements must be satisfied before a just and equitable assessment can be had.

> Thus, it appears an assessment may fail the "just and equitable" test even though it is not excessive when measured against the benefits conferred.

Knudsen v. City of Des Moines, 254 N.W.2d 1, 4 (Iowa 1977) (quoting *Early v. City of Ft. Dodge*, 136 Iowa 187, 189-191, 113 N.W. 766, 767 (1907)).

Determining how much an improvement specially benefits individual property owners rather than generally benefits others is difficult and cannot be done with mathematical precision. *Iowa Concrete Block*, 298 N.W.2d at 592. Approximation is the best we can do. *Id.* "The ultimate question is whether the amount levied on a tract constitutes its fair proportion of the total cost." *Freeman*, 581 N.W.2d at 196.

> [I]n street paving cases we ordinarily must determine what portion of the improvement represents the special benefit to the property owners and what portion represents general benefit to the city. This is because street paving projects usually confer both general and special benefits, and the abutting property owners are not required to pay for the general benefits accruing to the community at large. The finished street is available for all in the community to use; and all, including the abutting land owners, contribute to the cost through general taxation. The abutting property owners, however, obtain additional benefits for which they must separately pay. It is these benefits which we must extract and determine.

Milton O. and Phyllis A. Thorson Revocable Estate Trust, 531 N.W.2d at 650 (citations omitted). "In considering the benefits flowing from a special improvement, it is proper to consider future uses and expectations as well as present use to which the property is put." *Goodell*, 193 N.W.2d at 93.

With these general principles in mind we address the merits of Ashworth's claim.

IV. MERITS

As stated above, the Ashworth land is currently being used as farmland. The trial court found that all parties agreed the Ashworth property will not remain a farm but will become a residential subdivision. We do not believe this broad finding to be supported by the record based on testimony at trial.[1] However, a preponderance of the evidence in the record shows there is a strong likelihood the land will, at some point in the not distant future, be developed as residential property and thus the trial court did not err in basing its decision in part on such a finding. We also find that residential development will in all likelihood occur in the near future.

Ashworth's first argument on appeal is that the assessment levied by the City exceeded the special benefits conferred upon it as well as being unfair and inequitable, thus failing both portions of the two part inquiry as set forth above. *See Knudsen*, 254 N.W.2d at 4. Again, our review is de novo, *id.*, and we must determine if Ashworth has sustained its burden of proof given the presumption we must give the City that the assessment amount was correct and not in excess of the special benefit derived from the improvement. *See Goodell*, 193 N.W.2d at 93.

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[1] We note the trial court adopted verbatim the proposed finding of fact submitted by the City. This broadly overstated finding as to agreement regarding the future use of the Ashworth land demonstrates why this practice has been criticized by our supreme court time and again. *See Matter of Integrated Resources Life Ins Co..*, 562 N.W.2d 179, 181 n.2 (Iowa 1997); *Care Initiatives v. Bd. of Review*, 500 N.W.2d 14, 16 (Iowa 1993); *Kroblin v. RDR Motels, Inc.*, 347 N.W.2d 430, 434-36 (Iowa 1984). We again point out that it is not in the interest of fairness and justice for a trial court to abdicate its duty to make its own findings and conclusions. Adopting one party's findings "obscures the independent and disinterested insight of the trial judge whose decision is on review." *Integrated Resources*, 562 N.W.2d at 181 n.2.

Ashworth argues that the old two-lane street was satisfactory and adequately served its needs, both for the land's present agricultural use and any projected developed residential use. It further asserts that once developed the property would not need an improved roadway to accommodate the traffic flow. Thus, any special benefit to Ashworth was negligible and minimal at best. One of Ashworth's experts testified that any increased traffic in the region would be primarily generated by neighboring and proposed developments as opposed to the assessed areas near Ashworth Road. Ashworth claims the improvement provides no special benefit to it but instead would generally benefit the community as a whole. Therefore, it should not have to pay for benefits accruing to the community at-large and requiring it to do so is not only contrary to the principles upon which special assessments are based but is unfair and inequitable.

The City, on the other hand, argues the old street was inadequate, in a state of disrepair, and was in dire need of replacement. Furthermore, the City argues there was an actual increase in the potential sales value and usefulness of the Ashworth land because of the improved road. The City alleges Ashworth Farms has realized several real and substantial benefits from the improvement of this road, including, among others, replacing a deteriorating street which was beyond its structural life-span with a street which meets modern design standards, making the land "open and ripe" for residential development, and improving the esthetics, drainage, safety of travel, and marketability of the land.

The engineering evidence in the record supports the City's claim that the road was failing beyond repair and needed to be replaced completely. In fact, the City had originally planned to replace Ashworth Road in 1994, however due to budget constraints, was only able to place a "slurry seal" on it in 1995. We agree with the trial court's findings that the road was in need of total replacement and the City acted properly in replacing its paving and subgrade. The question then becomes whether it specially benefited Ashworth to replace it with a four-lane rather than a two-lane road, that is, whether the larger four-lane road only generally benefited the community as a whole.

Based on the evidence in the record, we agree with Ashworth that a two-lane road would have served its needs adequately whether the area is developed for residential use or remains in its present agricultural state. However we, like the trial court, cannot find the improvement and widening of the road did not confer any special benefit on the Ashworth property. The expert testimony in the record clearly demonstrates that development in this and the surrounding areas has been spurred by modern streets. Thus, the crucial question becomes to what extent the development specifically benefits and aids the Ashworth property as opposed to the community as a whole, as Ashworth should not be required to pay for the benefits to the general citizenry, however it must pay its fair share of any special benefit received. *See Goodell*, 193 N.W.2d at 94.

In making a determination between special and general benefits, many factors help us delineate between the two.

> These include: the present and further use of the abutting property, the increase in the market value of the affected property, the size

> and shape of the abutting property, the proximity of the property to the improvement, the amount of property fronting the improvement, the needs of the property owners served by the improvement, and the primary purpose behind the construction of the improvement. Some benefits may even be derived from intangible, aesthetic factors. Clearly, actual value embraces much more than market value.
>
> Expert testimony and accepted formulas can be useful in determining actual value, as long as all relevant factors are considered. On the other hand, a practical overview of all the surrounding circumstances must be considered.

Milton O. and Phyllis A. Thorson Revocable Estate Trust, 531 N.W.2d at 650. (internal citations omitted). Further, we reiterate that in determining the correctness of an assessment it is proper for us to consider future potential uses of the property. *See Spring Valley Apts., Inc. v. City of Cedar Falls*, 225 N.W.2d 129, 131-32 (Iowa 1975); *Goodell*, 193 N.W.2d at 93. We have already determined the evidence here demonstrates it is highly probable that the Ashworth land will be developed for residential use in the future. Thus, it is necessary and proper to consider such use in making our determination.

According to expert testimony admitted at trial, lots in the area of the Ashworth property, sold for uses such as those proposed for this property, sell for between $35,000 and $41,000. The assessment per lot in Rockingham Ridge, the subdivision directly north of Ashworth Farms, was between $1646 and $2824. A developer with more than forty years experience in the Des Moines area testified that the lots on the Ashworth property can be expected to sell for $2000 to $3000 more than the lots in Rockingham Ridge due to the new four-lane road. The trial court found this testimony to be credible, as do we.

It is estimated that the Ashworth land will be divided into approximately seventy-one lots for single-family homes and forty-nine townhomes, a total of 120 units. Spreading the assessment over 120 units yields an assessment averaging less than $2000 per unit. This is in line with the special assessments levied upon other lots in the assessment district and is less than the increase in per lot value found above. Therefore, the Ashworth property did in fact receive a special benefit, the increased net value of the lots, which is above and beyond the benefits to the general public. This is one of the facts we must consider in distinguishing between general and specific benefits. We therefore determine this is a special benefit conferred upon the Ashworth property for which it must pay its fair share. Further, the amount assessed by the City is in accord with the amounts assessed other lots in the area and the amount assessed per lot is no more than about ten percent of the value of the least expensive lots in the area, well below the twenty-five percent statutory limit. There are also additional intangible benefits, such as improved aesthetics, that are in addition to the increases in market value. For all of these reasons we find the assessment was not in excess of the special benefit provided to the Ashworth property and such assessment did not result in an unfair or inequitable allocation of the cost of the improvement to Ashworth.

As set forth above, when challenging the amount of a special assessment the property owner must show that the "assessment is excessive by evidence which includes proof of the actual benefit to his property. In the absence of such evidence, the assessment must stand." *Goodell*, 193 N.W.2d at 94. The

majority of the evidence offered by Ashworth in support of its argument as to the excessive nature of the assessment was based on an impact fee analysis it had prepared. Ashworth argues that had the City used this analysis to calculate the special assessment a different, more equitable, distribution would have resulted and that the trial court erred in concluding it could not consider this evidence.

While it is agreed by all parties that using an impact fee analysis may be appropriate under some circumstances, such an approach is not provided for by law in Iowa. The crux of Ashworth's argument is that a specific provision allowing for this type of analysis is not necessary under Code section 384.61, as it is merely one method for analyzing what "special benefits" have accrued to the property owner as required by the statute. The trial court was correct in pointing out that some states which allow impact fee analysis do so on the basis of specific statutory provisions. *See e.g. Northern Illinois Home Builders Ass'n, Inc. v. County of DuPage*, 649 N.E.2d 384 (Ill. 1995); *Home Builders Ass'n of Central Arizona v. City of Scottsdale*, 930 P.2d 993 (Ariz. 1997).

Without deciding whether such an analysis must be specifically authorized by statute in Iowa, we determine that an impact fee analysis would not have been appropriate under the specific circumstances of the case at hand. Impact fees are used in conjunction with much larger areas than the district involved in the present assessment. Such a system refers to large areas and not single projects. Further, the determination made by an impact fee analysis is what impact improvements on the property owner's land have on the public infrastructure whereas a special benefits determination, as called for in our

statute, asks what benefit the public improvement project provides to the assessed property. Moreover, impact fees are generally a development tool and are not administered, nor do they function, like a special assessment. *See* 8 Eugene McQuillin, *The Law of Municipal Corporations* § 25.118.50 (3d ed. 2000 rev.); Martin Leitner & Susan Schoettle, *A Survey of State Impact Fee Enabling Legislation*, 25 Urb. Law. 491 (1993); Julian Juengensmeyer & Robert Blake, *Impact Fees: An Answer to Local Governments' Capital Funding Dilemma,* 9 Fla. St. U. L. Rev. 415 (1981).

Therefore, we conclude Ashworth has failed to meet its burden to overcome the presumption that the assessment was correct and does not exceed the special benefit accruing to its property from the improvement. Further, reviewing the evidence in the record de novo and taking into consideration all of the surrounding circumstances, we find the allocation of this amount to Ashworth was not unfair or inequitable. An impact fee analysis was not appropriate here, whether specific statutory authority must exist to allow for such an analysis or not. The trial court did not err in reaching the same conclusions.

The final issue raised on appeal by Ashworth is the constitutionality of the boundaries used by the City for the assessment district. Ashworth claims the City acted arbitrarily in excluding from the access and/or proximity districts property south of the railroad lines and north of Ashworth Road. It urges that this resulted in too small of a district to pay for the assessment. Therefore, it argues the assessment district drawn by the City is in violation of the Iowa Code and is

inequitable and confiscatory in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sections 1, 6, 9, and 18 of the Iowa Constitution.

> It is well established that the legislative determination of the boundaries of the assessment district is not subject to constitutional attack as a violation of due process or equal protection unless the action is palpably arbitrary or irrational. . . . Courts have no authority to decide whether the council acted wisely in adopting the resolution of necessity "merely because it is or is not to our liking." Section 384.51 limits courts to a review of the constitutionality of the council's decision and precludes courts from asking whether, if they were city council members, they would have drawn the same boundaries.

Iowa Concrete Block, 298 N.W.2d at 591-92 (internal citations omitted).

The evidence in the record establishes that the City gave careful consideration to the boundaries of the assessment district and established the boundary in accord with the City's written assessment policy. There were several hearings held, and during the process the City adjusted the district boundaries to make small increases in the size of the assessment district. The trial testimony of the city engineer shows the railroad track was used as the southern boundary of the district because the rail line there does not have any public crossings, it is thus a physical barrier, and those south of the railroad do not have access to Ashworth Road. Further, he testified in detail regarding the lengthy and involved process the City employed in determining and amending the boundaries, and how the district fits into the general assessment plans of the city as a whole.

We conclude the City did not act in a palpably arbitrary or irrational manner in determining the boundaries for the special assessment district. The boundaries of the district were determined in a rational way in accordance with

the proper procedures previously established by the City. As this was a legislative determination by the City, and its action was not arbitrary or irrational, this ends the question. *See Iowa Concrete* Block, 298 N.W.2d at 591-92.

V. CONCLUSION

Based on our de novo review of the record we agree with the trial court that there are special benefits provided to Ashworth Farms from the improvements of Ashworth Road. The assessment levied by the City on the property in question was not in excess of these special benefits nor is the amount assessed unfair or inequitable. We also agree with the trial court in finding that use of an impact fee analysis would not have been appropriate based on the circumstances presented by this case. However, we make no determination here as to whether there must be specific statutory authority for such an analysis under Iowa law. Furthermore, we conclude the boundaries of the special assessment district drawn by the City were not palpably arbitrary or irrational and thus were not in violation of Ashworth's due process or equal protection rights under the Iowa and United States Constitutions. The trial court is affirmed.

AFFIRMED.