

IN THE COURT OF APPEALS OF IOWA

No. 5-199 / 93-1728

LILA BRELSFORD, MILDRED E. HUNT, PHYLLIS LORAINNE GANNON, RICK J. GANNON, JOHN M. GANNON, JACKIE BLANSHAN, MARY J. SWEEKER, KATHY KIRCHBOUM, MARK GANNON, HUGH GANNON, MONICA TENORIA, JERRY BOSTON, RALPH HENERY, MARILYN HENERY, RAYMOND C. HENERY, MILLICENT HENERY, MICHAEL M. HENERY, JANE A. HENERY, STEPHEN C. HENERY, PATRICIA A. HENERY, GARY HIGGINS, JANE HIGGINS, MARCIA ANN LACOX, WAYNE S. LACOX, MARLENE KAY LOONAN, GREGORY LOONAN, MARGIE LOU PICK, DONALD VINCENT PICK, JR., MARIAN RUETER GODWIN, THOMAS A. GODWIN, JOHN McCONNELL TRUST, NED WILLIS, Trustee, RUTH DIEHL TRUST, NED WILLIS, Trustee, SUE ANN BROWN, ALAN M. MAJOR, LORAINNE L. MAJOR, LINDA K. PETERSON, MARIE RADEBAUGH, HAROLD RADEBAUGH, BILL RADEBAUGH, ETHEL RHOADES, MARILYN ROWLES, LYNN HAVLICEK, PEG FAGEN, TOM ROWLES, ROSE RICORDONO, WILMA H. SNOOK, EDMUND F. SNOOK, CHARLES ROSS KLUVER, MARY LOUISE KLUVER, ANNA LOUISE KLUVER, SHEILA G. SNOOK, CAROLYN D. ENQUIST, JAMES D. ENQUIST, GLADYS BLANSHAN, HAROLD BLANSHAN, EUGENE BLANSHAN, THOMAS E. SNOOK, KRISTOPHER ROSS KLUVER, KRISTINA LOUISE KLUVER, and RICHARD BLANSHAN,

Appellants,

vs.

GREENE COUNTY BOARD OF SUPERVISORS, BOARD OF TRUSTEES, DRAINAGE DRISTRICT NO. 5, GREENE COUNTY, IOWA, ROYAL HOLZ II, LOWELL COLLOGAN, and DENTON WENGER, Trustees,

Appellees.

Appeal from the Iowa District Court for Greene County, Louie F. Beisser, Judge.

Plaintiffs appeal a district court ruling dismissing their actions against the defendants opposing the county's reclassification of the drainage district and resulting assessments. **AFFIRMED.**

C. Joseph Coleman, Jr., of the Coleman Law Offices, Fort Dodge, for appellants.

James W. Hudson of the Hudson Law Firm, Pocahontas, for appellees.

Heard by Donielson, C.J., Huitink, J., and Schlegel, S.J.*

*Senior Judge from the Iowa Court of Appeals serving by order of the Iowa Supreme Court.

HUITINK, J.

Plaintiff landowners appeal a district court ruling dismissing their action challenging the county's reclassification of the drainage district and resulting assessments. We affirm.

Drainage District No. 5 was established in Greene County in 1906 and consisted of 4359 acres. The drainage facility consisted of a main tile line, branches, and lateral tiles. In 1990 landowners petitioned the Greene County Board of Supervisors, pursuant to Iowa Code section 468.126 (1989), to update the system. The board appointed an engineer to investigate and make recommendations for improvements.

In 1991 the engineer filed his report and recommended an open drainage ditch and the straightening of No Name Creek. The board approved the report. Notice was served upon all landowners in the district setting the time, date, and place for hearing on the proposed improvements and reclassification of benefits. The notices were sent pursuant to Iowa Code sections 468.14 - 18 (1991).

At the hearing some landowners filed written objections, but not enough to stop the project. The board subsequently approved the open ditch improvement project. The board appointed a commission consisting of an engineer and two landowners to undertake the required reclassification of the district. See Iowa Code § 468.38.

Landowners petitioned the county auditor and board to call a special election for the purpose of electing trustees to assume administration of the district. Three trustees were elected.

The reclassification commission filed its report with the trustees in early 1992. The commission reclassified the district using three co-equal factors: (1) wetness of the ground (either wet, swamp, low, or high); (2) distance proximity (distance of the parcel from the ditch); and (3) outlet proximity (distance the water travels down the ditch to the outlet). The report listed each forty-acre tract in the district, its description, owner, benefit acres on each tract, and total assessment. See Iowa Code § 468.44. Notice was served to the owners of record by mail and publication. Iowa Code § 468.45. Landowners filed objections to the plan, but these were overruled by the trustees. The trustees then approved the reclassification of the district.

Prior to the start of construction in July 1992, the board, in an attempt to reduce costs, eliminated segment I which was located at the north end near the outlet to No Name Creek. When this occurred, the open ditch increased 690 feet in length. This change resulted in water from Iowa Department of Natural Resources wetlands, located south of the district, to back up into the system.

Landowners filed suit against the board and trustees, protesting the abandonment of segment I and the increased assessments based on the original plan. They also alleged a failure to follow the notice requirements of Iowa Code chapter 468.

In October 1993 the district court dismissed the actions, concluding the board and trustees followed all requirements of chapter 468.

Our review of this equity action is de novo. Iowa R. App. P. 4.

Plaintiffs contend notice of the reclassification hearing was insufficient. They claim Iowa Code section 468.184 requires the reclassification methodology be contained in the notice. We disagree.

The notice provisions as to drainage districts are set forth in sections 468.14-.21 and 468.45. Notice for a hearing on a proposed drainage district must inform affected parties of each of the following: (1) the nature of the project; (2) that the affected parties' land is involved; (3) their right to object or file claims for damages and the consequences of their failure to do so; and (4) the time and place of any required hearing. *Mammel v. M & P Missouri River Levee Dist.*, 326 N.W.2d 299, 302 (Iowa 1982)(citations omitted). Substantial compliance with statutory requirements is required when a repair or improvement to an existing drainage district is proposed. *Hicks v. Franklin County Auditor*, 514 N.W.2d 431, 436 (Iowa 1994) (citations omitted).

We conclude the notice provided the landowners in this case contained each of the above items. With this notice, plaintiffs were put on notice inquiry if they wanted more specific information. The notice more than substantially complied with statutory requirements. We reject as overly technical plaintiffs' suggestion that section 468.184

imposes a duty to include a description of the methodology in the statutory notice. This would only serve to paralyze the efficiency and purpose of the requirements. *See Hicks*, 514 N.W.2d at 436. The district court is affirmed on this issue.

Next plaintiffs contend the reclassification was inequitable because it failed to take sufficient factors into consideration. We also disagree with this contention.

A drainage assessment is presumed correct and equitable and the burden is on the party appealing to show otherwise. *Martin v. Board of Supervisors of Polk County*, 100 N.W.2d 652, 655 (Iowa 1960). The presumption can be overcome only by a showing of fraud, prejudice, gross error or evident mistake. *Id.* (citations omitted).

Each assessment must represent a fair proportional part of the total cost of the improvements. *Rood v. City of Ames*, 244 Iowa 1138, 1158, 60 N.W.2d 227, 238 (1953) (citations omitted). To determine whether the apportioned cost is equitable, there must be a comparison of appellant's land with all, or at least a determining portion of the other land in the district. *Fulton v. Sherman*, 212 Iowa 1218, 1223, 238 N.W. 88, 90 (1931).

Factors used in the comparison are: (1) the relative productiveness received by each tract from the improvement; (2) the relative drainage enjoyed by the lands before the drain is constructed, including the nature of the drain, whether artificial or natural, and its extent, permanency, and adequacy; and (3) the relative outlet advantages afforded by the drain, that is whether the drain gives an immediate outlet for drainage

to one tract and only the opportunity for such outlet to another tract, and if the latter, the distance the drainage must travel to reach the outlet. *See Theilen v. Board of Supervisors*, 179 Iowa 248, 160 N.W. 915 (1917); *see also* Iowa Code § 468.40. Those lands receiving the greatest benefit shall be assessed at one hundred percent, with all others assessed proportionally according to benefits derived. Iowa Code § 468.67.

Plaintiffs have provided no comparison evidence as required by *Fulton*. Plaintiffs merely point to the difference that would have resulted had the reclassification been redone after segment I was dropped from the improvement project.

The record shows the distance proximity factor contained in the formula would have changed for approximately 250 acres of land. The engineer testified the change in the distance proximity for those 250 acres would have resulted in a thirty-five dollar change in assessment. This change is nominal and does not affect the relative or comparative benefits of these 250 acres or any other tract in the district. Accordingly, we affirm the district court on this issue.

Finally, plaintiffs contend the reclassification was erroneous because it failed to take into account the drainage from the department of natural resources wetlands. We disagree.

The reclassification commission has no statutory authority to assess unorganized land or to determine the boundaries of the drainage district. *Schwarz Farm Corp. v. Board of Supervisors*, 196 N.W.2d 571, 577 (Iowa 1972). The commission assesses

benefits and classifies land affected by the improvements. Iowa Code § 468.38. Problems relating to drainage from unannexed land outside the district must be addressed by the board of supervisors, not the reclassification commission. Iowa Code § 468.119.

Furthermore, the evidence does not support plaintiffs' contention that the reclassification commission considered the possible construction of a levee on the southern border of the district contrary to section 468.40. The board of supervisors merely explored this option. It was not taken into consideration in the reclassification. The district court is affirmed on this issue as well.

We determine any other issues the parties may have raised are either covered by this opinion or are without merit. The decision of the district court is affirmed in its entirety. Costs of this appeal are assessed to the plaintiffs.

AFFIRMED.