

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 2, 2001

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 00-1802

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN THE MATTER OF SPECIAL ASSESSMENT
#R-98-32 OF THE CITY OF CHIPPEWA FALLS,
WISCONSIN OF JUNE 16, 1998:**

EDWIN D. MOEHAGEN AND KATHY J. MOEHAGEN,

PETITIONERS-RESPONDENTS,

v.

CITY OF CHIPPEWA FALLS,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Chippewa County:
FREDERICK A. HENDERSON, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. The City of Chippewa Falls appeals that part of a judgment setting aside a special assessment against residential property owned by

Edwin and Kathy Moehagen. The City argues that the circuit court erred by concluding that the method used to determine the special assessment was unreasonably applied. We reject the City's argument and affirm the judgment.

BACKGROUND

¶2 In 1998, the City undertook a project to realign a portion of Bridgewater Avenue, including reconfiguration of the intersection of Bridgewater and Jefferson Avenues. As part of the project, the City installed a new water supply line from the existing water main on Bridgewater Avenue to the Moehagens' property. Prior to installation of the new supply line, both the Moehagens' property and a neighboring property were served with water from a single, long lateral connection to the Jefferson Avenue water main. It is undisputed that although the Bridgewater Avenue water main had been installed in 1968, no assessment for that water main was ever levied or paid on behalf of the Moehagens' property. As there had never been a previous special assessment for the Bridgewater Avenue water main, the City charged an assessment based on a city-wide formula—the lineal front-foot method.

¶3 Under the lineal front-foot method, the City first determined the frontage of the property and multiplied that frontage by the current rate for water main construction. The rate for water main construction is determined annually and applies for any given construction year. Further, the same formula is applied regardless of whether a new water main is installed.

¶4 In June 1998, the Moehagens were assessed \$1,872.00 in water main connection charges and \$273.43 for curb and gutter work. In September 1998, the Moehagens filed suit in circuit court, appealing the final resolution levying special assessments. The circuit court granted the City's subsequent motion for summary

judgment, concluding that the Moehagens' claim was time barred. On appeal, this court reversed the judgment and remanded the matter to the circuit court. *See Moehagen v. City of Chippewa Falls*, No. 99-0823, unpublished slip op. (Wis. Ct. App. October 19, 1999).

¶5 On remand, the circuit court set aside the assessment for water main connection charges concluding that the method used to determine the special assessment was unreasonably applied. This appeal followed.¹

ANALYSIS

¶6 The City argues that the circuit court erred by setting aside the special assessment as unreasonable. We are not persuaded.

¶7 A municipality may exercise its police power to make special assessments. *Peterson v. City of New Berlin*, 154 Wis. 2d 365, 370, 453 N.W.2d 177 (Ct. App. 1990). Courts may intercede only when the exercise of that power is clearly unreasonable. *Id.* In levying special assessments, two requirements must be satisfied: (1) the property must be benefited, and (2) the assessment must have a reasonable basis. *Id.* at 371. An assessment is reasonable “if it is fair and equitable and in proportion to the benefits accruing.” *Id.* Further, “not only must the exercise of the police power be reasonable, but the result of that exercise must be reasonable as well.” *Lac La Belle Golf Club v. Village of Lac La Belle*, 187 Wis. 2d 274, 283, 522 N.W.2d 277 (Ct. App. 1994). A circuit court’s determination that an assessment was unreasonable requires factual and legal

¹ The circuit court upheld the assessment for curb and gutter work. The Moehagens do not challenge that assessment on appeal.

determinations. *See Peterson*, 154 Wis. 2d at 370. A circuit court's factual findings will be upheld unless they are clearly erroneous. *Id.* Whether those facts fulfill the legal standard of reasonableness presents a question of law that we determine independently. *Id.*

¶8 Here, the trial court determined that the Moehagens' property was benefited by the water main work and that the project as a whole was a reasonable exercise of the City's police power.² The court concluded, however, that the City's application of the lineal front-foot method of assessment was unreasonable as the Moehagens were charged at the 1998 rate for connection to a thirty-year old water main. It is implicit in the circuit court's ruling that the Moehagens met their burden of overcoming the presumption that the City proceeded regularly. *See id.* at 371. Having established a prima facie case, the burden shifted to the City to show that the assessment method comported with the statutory requirement that it be reasonable. *See id.*

¶9 The City argued that the assessment was proportional to the work done on the entire project, and further, that the Moehagens were assessed pursuant to a city-wide policy that treated the Moehagens the same as any other property owner. The City stressed the benefits that had accrued to the property and emphasized the fact that the Moehagens had never been assessed for the Bridgewater Avenue water main.

² The circuit court noted the following benefits to the Moehagens' property: (1) the Moehagens' water service was brought into compliance with Public Service Commission standards regarding shared water services; (2) a new, shorter supply line connected the property to the Bridgewater Avenue water main; and (3) the new connection increased fire protection of the property. The circuit court additionally recognized that the new street configuration resulted in a safer intersection to the public in general.

¶10 Although uniformity may sometimes answer a reasonableness challenge, it does not do so where, as here, the challenger claims that any benefit accrued to the subject property is wholly out of proportion to the cost of reaping that benefit. See *Lac La Belle Golf Club*, 187 Wis. 2d at 186. “This type of challenge rests on the uniqueness, not the similarity, of the subject property to the other affected properties.” *Id.* Further, “it is unreasonable to use the same method to assess a group of property owners when it results in an entirely disproportionate distribution of costs which easily could be avoided by using another basis for assessment.” *Peterson*, 154 Wis. 2d at 373.

¶11 Because the Moehagens were assessed at 1998 rates for a water main installed in 1968, we conclude that the benefits accrued were disproportionate to the cost of reaping those benefits and thus, application of the lineal front-foot method of assessment was unreasonable. We therefore affirm the circuit court’s judgment setting aside the assessment levied for water main connection.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

