COURT OF APPEALS
DECISION
DATED AND FILED

October 18, 2001

Cornelia G. Clark
Clerk of Court of Appeals

No. 01-1501-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

DENNIS TAFF, MANSION REALTY, INC., AND DANIEL GARTNER,

PLAINTIFFS-APPELLANTS,

V.

TOWN OF BURKE,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Dane County: MARYANN SUMI, Judge. *Affirmed*.

Before Vergeront, P.J., Dykman and Roggensack, JJ.

¶1 PER CURIAM. Dennis Taff, Daniel Gartner, and Mansion Realty appeal a summary judgment that dismissed their appeal from a special assessment levied against them by the Town of Burke for water mains installed along their respective properties in the Taff Subdivision. They claim that the notice of the

town board's hearing was defective and that the method used for the assessment was arbitrary and unreasonable. We disagree and affirm for the reasons discussed below.

¶2 We first note that the parties filed cross-motions for summary judgment in the trial court and that they agree that the material facts are undisputed. The appeal therefore presents only questions of law, which we decide *de novo*. ***Lucas v. Godfrey***, 161 Wis. 2d 51, 57, 467 N.W.2d 180 (Ct. App. 1991).

¶3 The Town of Burke decided to install a new water main system in the Taff Subdivision to replace an older water distribution system, and resolved to levy a special assessment on the adjoining property owners. On September 16, 1999, it issued notice to the affected property owners that a public hearing would be held on September 29 to discuss the proposed assessment.

¶4 At the hearing, the town engineer and financial analyst explained that the preliminary assessment figures were based on the front footage of each lot (using the shorter of two measurements for corner lots), multiplied first by the number of units on the property and then by the construction cost per foot. A number of people objected to the proposed calculations, suggesting that it would be more fair to base the assessments on the respective value of the properties, or the actual water usage, or the number of units on each property. The board agreed to recess the hearing until October 6 so that alternate proposals could be formulated and discussed.

¶5 Calculations based on property valuations and on simply dividing the assessment total by the number of parcels were prepared and mailed out to the property owners the following day, along with notice of the continued hearing date. At the hearing on October 6, the board polled all of the residents who were

present, and the original calculation based on lot frontage and unit numbers prevailed over the property valuation calculation by a vote of seven to six. The board then approved the original assessment plan.

¶6 The appellants first claim that the assessment was invalid because the Town did not give sufficient notice of the October 6 hearing under WIS. STAT. § 66.60(7) (1997-98).[1] They concede that notice of the initial hearing on September 29 was properly published and mailed to the affected owners, but claim that notice of the subsequent hearing also should have been published and mailed to the affected owners at least ten days in advance.

¶7 We see nothing in the plain language of the statute, however, which would have required the Town to publish and mail additional notice for the adjourned hearing. The statute required only that the Town provide interested persons, through publication and mailing, information about the proposed improvement, the boundary lines of the assessment district, where and when the assessment report could be inspected, and a place and time to be heard regarding the preliminary resolution and the report. WIS. STAT. § 66.60(7) and (8) (1997-98). The Town did so, and the affected property owners were given an opportunity to comment on the assessment on September 29.

¶8 The fact that the statute referred to giving notice of the "preliminary" resolution, and the fact that a subsequent subsection made additional provision for the Town to make modifications after the hearing or to refer the report to a designated officer with directions to accomplish a fair and equitable assessment,

[1] The statute was renumbered as WIS. STAT. § 66.0703(7)(a) by 1999 Wis. Act 150 § 531. There were some minor amendments made at that time which are not relevant here.

show that the statutory scheme contemplated the possibility of further action following the initial hearing before the adoption of a final resolution. Therefore, contrary to the appellants' position, we see nothing in the statute which would bar the Town from holding additional meetings or hearings on the issue.

¶9 Furthermore, if the legislature had intended each possible modification to be discussed at another noticed public hearing, it could have included such a requirement in the statute. It did not do so. Because the Town was not required to hold a subsequent hearing on proposed modifications before adopting its final resolution, it was not required to follow the special notice procedure set out in WIS. STAT. § 66.60(7) (1997-98) a second time. We conclude the Town properly followed the general public notice requirements of WIS. STAT. § 19.84 (1999-2000) to announce the October 6 meeting.

¶10 The appellants next contend that the assessment was arbitrary and unreasonable because it was disproportionate to the accrued benefits. They contend that the assessment imposed 47.4% of the total cost of the project upon only 12% of the affected landowners, who owned 12.9% of the value of the affected property. They also argue that Wisconsin courts have in the past cast some suspicion on the front footage method of apportioning an assessment. *See, e.g.,* ***Area Bd. of Vocational, Tech. & Adult Educ., Dist. 4 v. Town of Burke***, 151 Wis. 2d 392, 399, 444 N.W.2d 733 (Ct. App. 1989) (wherein front footage calculation was deemed unreasonable as applied to an improvement which did not abut the assessed property).

¶11 However, as the trial court aptly recognized, no single method of assessment is *per se* reasonable or unreasonable. Rather, each case must be examined on its own facts. Here, the Town provided affidavits explaining that

construction costs for water main projects are determined on a per-foot basis and that there is a greater cost associated with meeting a greater usage demand for additional units. The Town thus provided a rational basis for considering both the front footage and the number of units on each parcel of property.

¶12 The appellants contend there is nothing in the record to show that the number of units on each property corresponds with the actual amount of water being used. However, it was their burden to show that the Town's action was unreasonable, and they have provided no information showing that the assessment was disproportionate either to the amount of material needed to provide the benefit to each lot or to actual water usage. We conclude that summary judgment was properly entered.

By the Court.—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).