IN THE COURT OF APPEALS OF IOWA

No. 7-577 / 06-0631
Filed November 15, 2007

JOSEPH A. HAPPE and ELIZABETH B. HAPPE,
Plaintiffs-Appellants,

vs.

CITY OF URBANDALE, IOWA,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Donald C. Nickerson, Judge.

Residential property owners appeal a ruling affirming a city's special assessment. **REVERSED AND REMANDED.**

Joseph A. Happe and Elizabeth B. Happe, West Des Moines, pro se.

Ivan T. Webber of Ahlers & Cooney, P.C., Des Moines, for appellee.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

VAITHESWARAN, J.

Residential property owners appeal a ruling affirming a city's special assessment. We reverse and remand.

I. Background Facts and Proceedings

Joseph and Elizabeth Happe owned 4.48 acres of land in Urbandale. A portion of their land abutted 142nd Street. The City of Urbandale (City) determined it would need to acquire approximately 15.5% of the Happes' property for the repaving, relocation, and eventual expansion of 142nd Street. The City also notified the Happes that the remaining 3.79 acres, valued at $281,720, was subject to a preliminary special assessment of $37,092.09.[1]

The Happes challenged the amount of the City's special assessment. *See* Iowa Code § 384.66(2). Following trial, the district court concluded the Happes failed to establish that the assessment was excessive. This appeal followed.

II. Amount of Assessment

Iowa Code section 384.61 (2003) governs this appeal. That provision states in pertinent part:

> The total cost of a public improvement, except for paving that portion of a street lying between railroad tracks and one foot outside of the tracks, or which is to be otherwise paid, must be assessed against all lots within the assessment district in accordance with the special benefits conferred upon the property, and not in excess of such benefits.

[1] At trial, Urbandale's City Engineer testified the final assessment would be 7 1/2 percent less, or "$34,000 and some odd change." He also testified that, if the Happes chose to pay that sum within thirty days, they would receive an additional ten percent reduction, making the final payment about $30,000. He emphasized, however, that the final assessment had yet to be completed. Therefore, we will refer to the preliminary assessment figure.

The key question is whether the special assessment was "in accordance with the special benefits conferred upon the property." *Id.* While the Happes concede some special benefit from the road project, they characterize the benefit as "miniscule." In their view, they rebutted the presumption of correctness with which the special assessment was cloaked by presenting "overwhelming evidence" of the "minimal benefits to their property." *See Goodell v. City of Clinton*, 193 N.W.2d 91, 93 (Iowa 1971) (setting forth standards governing challenges to assessment amounts).

In evaluating this argument, we are guided by the following general principles:

> [S]treet 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 costs 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.

Thorson Revocable Estate Trust v. City of West Des Moines, 531 N.W.2d 647, 650 (Iowa 1995) (citations omitted). Factors to consider in distinguishing special benefits from general benefits include the following:

> [T]he present and future 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.

Id. Reviewing the record de novo in light of these principles and factors, we are convinced the Happes satisfied their burden.

Elizabeth Happe was asked about several potential benefits of the new roadway. She discounted them. For example, she testified she and her husband experienced no problems with drainage or standing water that the repaving project would correct. She testified they did not have problems with snow removal prior to installation of the new road. She stated the old roadway provided sufficient access to their property and the new road in fact limited their access by reducing visibility. She explained that the relocation of the new roadway closer to their house created the potential for more noise with the increased traffic volume.

Finally, Elizabeth Happe rejected the City's assertion that the new roadway would enhance the development potential of the property. She explained that, at the time the property was purchased, it came with covenants restricting subdivision. Although there was some question as to whether those covenants remained in effect, she noted that one potential developer backed away from a project in the vicinity based on possible litigation over the covenants.[2] As for enhanced property values based on the development potential, she stated the new road did not affect that potential and, therefore, did not enhance the property's value.

The Happes' expert bolstered this testimony. He opined that the Happes had "an existing serviceable roadway that was adequate for [their] use" and they "received no additional benefit from the new pavement." With respect to noise reduction, he stated noise was not previously a problem, but it would be with the

[2] Urbandale's City Engineer testified that the issue was not so much the enforceability of the covenants but the objection of other neighbors to this particular development plan adjacent to their acreages.

increased traffic on the newly paved parkway. He also disagreed that dust would be reduced, as asserted by the City Engineer.

The Happes' expert cited several additional problems that, in his view, minimized the special benefits of the project. He noted that the relocation of the road would initially "leave a large part of the city right-of-way on" the Happes' side of the roadway, leaving maintenance of that right-of-way to them. He also noted that median access might be more difficult depending on which direction the Happes were traveling, and one access point to their property might be eliminated.

The Happes' expert next challenged the City's assertion that the Happes' special assessment was only a fraction of the total cost of the project. He stated that the total $3,338,000 cost of the repaving and expansion project "included some storm sewer and a bridge, and a lot of other things," which "were all city obligations." His testimony is consistent with the principle that, because paving projects confer general benefits on the public, "only part of the cost is assessed against the abutting property owners." *Goodell*, 193 N.W.2d at 94.

On the question of the development potential of the Happe property, the Happes' expert acknowledged that the ability to develop property could be considered a special benefit to that property. He testified, however, that redevelopment of this property, assuming that the land continued to be zoned agricultural and used as for residential purposes, would not be "very practical." He explained that an appraisal report prepared for the City in connection with its acquisition of part of the Happe property indicated that "the highest and best use of this particular property is as it is, an acreage, and that the covenants prevent

any subdividing or any further dividing up that parcel." *Cf. Beh v. City of West Des Moines*, 257 Iowa 211, 221, 131 N.W.2d 488, 494 (1965) (noting witnesses, including those called by plaintiff, agreed the highest and best use of dairy farm was for subdivision purposes).

This testimony concerning the development potential of the Happe property was consistent with the testimony of Urbandale's community development director. He acknowledged that the Happes' property was not slated for any sort of retail, commercial, or industrial use.

The testimony of the Happes' expert was also supported by assessments on the west side of 142nd Street. Most of the property on that side received preliminary special assessments of less than $10,000. Although one similar property across the street was assessed at more than $30,000, the Happes' expert testified that, as far as he knew, this property was not subject to covenants that restricted development. Later, he opined that the property was "fully developed," whereas the four parcels on the east side of the street contained homes and no vacant parcels. Urbandale's City Engineer agreed, stating the owners of that property "made an agreement with the Hubbell development company that they would divide their property, basically take care of all the cost of doing the engineering to divide their property into their house, plus two more lots." While he also stated this agreement was "in limbo", the fact that the owners were engaged in negotiations to develop their property differentiates that assessment from the assessment on the Happe property.

On the question of development potential, we are not unmindful of the testimony of Urbandale's community development director that it would be

physically possible to subdivide the Happe property for development purposes. However, he also stated this would require rezoning of the property. And, he conceded that development "would be possible" with the pre-existing roadway. This concession lends credence to the Happes' assertion that development of their property was not a special benefit of the road project. *See Goodell*, 193 N.W.2d at 94-95 (noting parties were "poles apart," but stating that project undertaken "for reasons of more importance to the city as a whole than to the plaintiffs individually").

In assessing the record on special benefits, we recognize that Urbandale's City Engineer and others disputed many assertions made by the Happes and their expert. While we do not have the benefit of credibility findings to resolve this conflict in testimony, we do have before us the City's comprehensive urban renewal plan. That plan clearly envisioned that a repaved, relocated, and expanded 142nd Street would serve as a conduit to a new retail and commercial establishment known as the Village Center. Urbandale's community development director conceded as much, stating the road was relocated "to be able to bear the future traffic volumes that are anticipated with full development of the entire area. And plaintiffs' property is a contributor, a very minor contributor, to that overall traffic." The Happes neither requested nor acquiesced in this reconstruction of 142nd Street. These facts lead us to resolve the conflict on special benefits in favor of the Happes. *See Thorson*, 531 N.W.2d at 651 (finding a street "designed as part of an important future alternative access to a nearby planned regional park" was of general benefit to the City, not special benefit to the land owners).

We conclude the Happes established that the City's preliminary special assessment of $37,092.09 was excessive. *Goodell*, 193 N.W.2d at 95 ("[P]laintiffs should not pay for those benefits accruing to the community at large.").

III. Disposition

Having concluded the $37,092.09 assessment was excessive, the question remains as to what amount is appropriate. The Happes maintain we should adopt the assessment figures of similar properties with similar valuations on the west side of 142nd Street. They point to the following testimony of their expert:

> [W]hen you look at the City not participating in the cost of this pavement, and doing away with the maintenance obligation that they have, and not sharing in some part of that construction cost, I don't think your benefit exceeds that of your neighbors across the street. And I don't think your assessment should exceed the assessment that has been computed by the City of Urbandale for those particular properties.

The expert opined that a fair and equitable assessment would be "no more than comparable single family residences on the west side of the street which are in the range of $6,118 to $6,806."

On our de novo review, we note that lot twelve, located in the City of Urbandale and abutting the west side of 142nd Street, was valued at $307,860 and subjected to a preliminary special assessment of $6,118.51. The City did not counter the assertion of the Happes' expert that this lot enjoyed comparable special benefits as the Happe property. Accordingly, we adopt that figure as the appropriate preliminary special assessment amount for the Happe property. *See*

Chicago, R.I. & P. RY. Co. v. Town of Reinbeck, 201 Iowa 126, 206 N.W. 664 (1926) (reducing assessments on appeal).

We find it unnecessary to address the Happes' challenge to the formula used by the City or the City's assessment for a default fund. Costs are taxed to the City of Urbandale.

We reverse and remand for entry of a decree and judgment consistent with this opinion.

REVERSED AND REMANDED.