

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Paul W. Berglund, Individually and as
Personal Representative and successor in
interest to Betty M. Berglund, Estate of
Betty M. Berglund, Margaret Ellen
Haggerty, and Kathleen Susan Haley,

File No. 62-CV-09-12325

Plaintiffs,

ORDER

v.

City of Maplewood,

Defendant.

This matter came before the Honorable Dale B. Lindman on May 11, 2011. Diana Longrie, Esq., appeared on behalf of the Plaintiffs Margaret Haggerty and Kathleen Haley. Alan Kantrud, Esq., appeared on behalf of the Defendant.

Based on the arguments of counsel and all of the files, records and proceedings herein, and for the reasons set forth in the record, the Court makes the following,

ORDER:

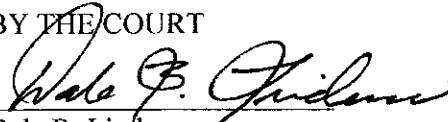
- 1) The Court hereby sets aside the assessment levied by the City of Maplewood against the real property of Plaintiffs Haggerty and Haley, which property is the subject of this proceeding.
- 2) The City of Maplewood is ordered to conduct a reassessment of the property in question utilizing a method consistent with that set forth in this Court's previous

Order dated September 27, 2010 regarding the property of Paul Berglund. A copy of that Order is attached hereto as Exhibit A and made a part hereof by reference.

THERE BEING NO JUST REASON FOR DELAY,
LET JUDGMENT BE RENDERED ACCORDINGLY

DATED: 5/12/11

BY THE COURT


Dale B. Lindman
Judge of District Court

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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT
~~Court Administrator~~

Paul W. Berglund, in his individual capacity and
As personal representative and successor in interest to
Betty M. Berglund, Estate of Betty M. Berglund;
Margaret Ellen Haggerty and Kathleen Susan Haley,

SEP 27 2010

By BH Deputy

Petitioners,

Court File 62-CV-09-12325

VS

City of Maplewood, a Minnesota
Municipal Corporation,

Respondent.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER FOR JUDGMENT**

The above-entitled matter was reached for a court trial commencing on July 30, 2010. Plaintiff Berglund was represented by Diana Longrie, Esquire. The Defendant was represented by H. Alan Kantrud, Esq.

PRELIMINARY STATEMENT OF CASE

Paul W. Berglund is the owner and occupant of property located at 1929 Kingston Avenue in the City of Maplewood, State of Minnesota. In June of 2010 the City of Maplewood undertook a reconstruction project for the road in front of the Mr. Berglund's home. The project in question was completed at a cost of \$3,870,000.00. Homeowners abutting the project were assessed a total of \$718,633.30, which approximates 20% of the total cost of the project. 20% is the minimum amount required to be paid by property owners to qualify for city and county funding

The balance of the project was paid for from general funds of the City of Maplewood and the County of Ramsey.¹ Mr. Berglund's property was assessed \$6,990 for this project.

A preliminary assessment role is set forth in trial Exhibit 7 and the resolution of the City of Maplewood adopting the assessment role is dated September 28, 2009 and set forth as trial Exhibit 6. By this action, Mr. Berglund challenges the assessment levied against his property and claims the same to be unconstitutional.²

APPLICABLE LAW

When the City entered its assessment role into evidence it established a prima facie case with respect to the validity of the assessment. It then became the burden of the property owner to overcome the presumption of validity by a showing that the assessment exceeds the special benefit realized by the property. This is accomplished when the property owner is able to present competent and credible evidence that the amount of the assessment exceeds the increase in market value of the property as a result of the improvement. *Bisbee v. City of Fairmont*, 593 N.W.2d 714 (Minn. Ct. App. 1999). The property owner does not have to prove that the assessment exceeds the increase in market value by a substantial amount. All that is required is a showing that

¹ The 20% assessed to property owners was not determined by a market value analysis of the benefit to the property owner, but instead resulted from the City's determination of the minimum amount required to be paid by property owners to allow the City and County to receive funding for the balance of the project.

² Also appearing as plaintiffs in the caption of this case were Mr. Berglund's neighbors, Margaret Ellen Hagerty and Kathleen Susan Haley. However, the claims of Hagerty and Haley were dismissed with prejudice at trial when it became clear that they had no evidence to offer regarding the before and after market value of their properties, and were simply relying on the evidence presented by Mr. Berglund. The Court, as will appear in the findings set forth below, believes it is incumbent that a property owner challenging an assessment present evidence of the value of the assessed property before and after the construction project has been completed to determine the benefit accorded to the property as a result of the improvement. Reliance on the valuation of a neighbor's property is insufficient to sustain the property owner's burden to present before and after valuation evidence of the market value of their separate properties.

the assessment exceeds the increase in market value by some amount. *Carlson-Lange Realty Co. v. Windom*, 240 N.W.2d 517 (Minn. 1976). Because the basis for a special assessment is the increased market value realized as a result of the improvement, any method of assessment that approximates a market value analysis is valid. Conversely, an assessment is void on its face if it fails to approximate a market value analysis, and adoption by the City council does not make it valid. *Continental Sales and Equipment Co. v. Stuntz*, 257 N.W.2d 546 (Minn. 1977). In order for a special assessment to be constitutional, the assessment may not exceed the special benefit, which is measured by the increase in the market value of the land owing to the improvement. *Tri-State Land Co. v. City of Shoreview*, 290 N.W.2d 775 (Minn. 1980). A "special benefit" as referenced in M.S. §429.051 is measured by the increase in market value of the affected property as a result of the improvement. *Carlson-Lange Realty Co. v. City of Windom*, 240 N.W.2d 517, 521 (1976). Thus, it is important that a person challenging a special assessment produce evidence of the market value of the property before and after construction of the improvement. The increase in market value due to a public improvement, for purposes of the statute allowing for apportionment of cost of public improvements based upon the benefits received, is the difference between what a willing buyer would pay a willing seller for the property before the public improvement and after the improvement. *Eagle Creek Townhomes, LLP v. City of Shakopee*, 614 N.W.2d 246 (Minn. App. Ct. 2000).

The permissible scope of review of a special assessment as provided by M.S. §429.081 is clarified in *Buettner v. St. Cloud*, 277 N.W.2d 199 (Minn. 1979). The purpose of the court's factual determination is not to take the place of the elected

officials by ordering what the assessment should be. Rather pursuant to that statute, the trial court either affirms the assessment or sets it aside and orders a reassessment as provided in M.S. §429.071. *Id.*

FINDINGS OF FACT

In this case the assessment charged to the abutting property property owners was a result of the resolution adopted by the City council on September 28, 2009. That resolution set forth the following formula for determining the amount of the assessment:

- (a) Properties deemed as single family dwelling use will be assessed at \$6,000 per unit for Full Street Reconstruction (new concrete curb and gutter).
- (b) Properties deemed as single family dwelling use will be assessed at \$4,500 per unit for Partial Street Reconstruction (existing concrete curb and gutter).
- (c) Properties deemed as single-family dwelling use will be assessed at \$2,230 per unit for Street Mill and Overlay.
- (d) Properties deemed, as double-or-multiple-dwelling use will be assessed at \$90.00 per front foot for Partial Street Reconstruction (existing concrete curb and gutter). Assessment rates for each of the townhome units within the Holloway Ponds Association will be based on the front-footage of the Association's common property divided by the number of townhome units within the development that have driveway access to Holloway Avenue.
- (e) Properties deemed as double-or-multiple-dwelling use will be assessed at \$44.60 per front foot for Street Mill and Overlay. Assessment rates for each of the town home units with the Holloway Ponds Association will be based on the front-footage of the Association's common property divided by the number of town home units within the development that have driveway access to Holloway Avenue.
- (f) Properties deemed as single-family dwelling use that have not been previously assessed for storm sewer will be assessed at \$990.00 for Storm Sewer.
- (g) Properties deemed as double-or-multiple-dwelling use that have not been previously assessed for storm sewer will be assessed at \$19.80 per front foot for Storm Sewer. Assessment rates for each of the townhome units with the Holloway Ponds Association will be based on the front-footage of the

Association's common property divided by the number of townhome units within the development that have driveway access to Holloway Avenue.

As is apparent by an examination of this formula, the market value of the properties abutting the improvement played little or no role in the determination of the assessment to each property. Instead, the assessment is based upon a formula that considered only costs, financing requirements, front footage, double or multiple dwelling use of the property, and other considerations not related to the market value.

Defendant argues that the salient market value consideration has only to do with the alleged increased value of the land without consideration of the structural improvements on the land. The court does not agree. The case law is replete with support for plaintiff's position that the method for calculating special assessments must approximate a market value analysis. Instead, the city attempts to apply the market value requirement to the land only. Further, the failure of the City to assess on the basis of market value is evident by the fact that the basic role of the assessment as imposed by the City was to meet the 20% threshold required to obtain financing for the balance of the cost of the project.

Contrary to the City's approach, Berglund has presented "before" and "after" evidence of the effect of the improvement on the market value of his property. A "before" appraisal of Berglund's property was conducted by Berglund's appraiser, Brian P. Krech, on April 5, 2010. Mr. Krech also performed an "after" appraisal on June 30, 2010 as the construction project was being completed. Mr. Krech utilized comparables, a well accepted tool, in reaching his opinions for each appraisal. The result of these appraisals was an opinion that the market value of the property was \$120,000 both before and after the improvements. At trial Krech reaffirmed his market valuations and testified that in his opinion the assessed improvements provided no appreciable market value

benefit to Berglund's property. The court finds Mr. Krech's testimony to be credible and hereby adopts the same as its finding.

In further support of its finding, the court notes that the alleged improvements were, for the most part, not new to Berglund's property. The city cites as assessed improvements a paved roadway, concrete curbs and gutters, and sewer and water utilities. However, Berglund argues that these improvements added nothing to the market value of his property. He already had sewer and water utilities, a paved roadway between 26 and 32 feet in width, and adequate storm water drainage. The only new improvement was a concrete curb which both Mr. Krech and Mr. Berglund testified added little or nothing to the property value.

Finally, the court finds the testimony of the defendant's appraisal expert, Daniel Dwyer, unpersuasive. Dwyer's benefit analysis is cost based and founded on the premise that the benefit to the land alone and not the property as a whole is the proper benefit measure. Such an analysis has little relation to a true market value assessment of the property. For these and the other reasons set forth above this Court finds that Dwyer's analysis does not provide a valid basis for determination of the assessment to Berglund's property.

Based on the Court's findings and the applicable law, this Court makes the following:

CONCLUSIONS OF LAW

1. That the City of Maplewood properly entered its assessment role into evidence and established a prima facie case that the special assessment of \$6,990 levied against Berglund's property is valid.
2. That Plaintiff Berglund overcame the City's prima facie case by presenting competent before and after market value evidence, using comparables, which demonstrated that the special assessment exceeded any increase in the market value and resulted in no special benefit to the Plaintiff's property.
3. That the special assessment should be set aside and the matter should be referred back to the City of Maplewood for reassessment.
4. That the Plaintiff is entitled to recover his costs and disbursements herein.

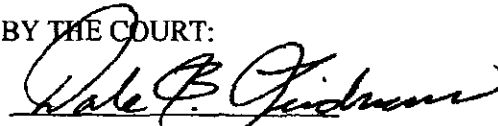
ORDER FOR JUDGMENT

1. The Court hereby sets aside the assessment against Berglund's premise.
2. That Reassessment is hereby ordered as provided in Minn. Stat. §429.071, subd. 2.
3. Berglund is awarded his costs and disbursements herein.

LET JUDGMENT BE ENTERED ACCORDINGLY

DATED: September 27, 2010

BY THE COURT:



Dale B. Lindman
Judge of District Court