STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

In re the matter of:

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,

Petitioners,

v.

City of Maplewood, a Minnesota Municipal Corporation,

Respondent.

Court file: 62-CV-11-10468

ORDER

This matter came on before the undersigned on the 13th day of March 2013 pursuant to the motions of the Petitioners for summary judgment and for dismissal as well as Appeal of Assessment and Petition for Relief. Diana Longrie, Esq. appeared on behalf of the Petitioners; Alan Kantrud, Esq. appeared on behalf of the Respondent.

Based upon all the files, records and proceedings herein, and upon the argument of counsel, the Court makes the following:

ORDER:

1. Plaintiffs'/Petitioners' motion for summary judgment is granted.

2. The reassessment is set aside, and Respondent is ordered to reassess the properties in compliance with the Orders of the Honorable Dale Lindman dated September 20, 2010 and May 16, 2011. Failure to comply with those Orders will result in sanctions by the Court.

3. Within thirty days of this Order, Plaintiffs/Petitioners shall serve and file an affidavit specifying their costs in bringing this motion.

4. The attached Memorandum is made a part hereof and incorporated by reference.

10 April 2013

BY THE COURT:

Margaret M. Marrinan
Judge of District Court

Memorandum

The parcels of property in question are located along Kingston Avenue East in the city of Maplewood and owned by Petitioners. In June 2010 the city undertook a reconstruction project for the road fronting these properties, and homeowners abutting the project were assessed a total of more than $718,000, i.e. approximately 20% of the total cost for the project. That 20% is the minimum amount required to be paid by property owners to qualify for city and county funding.

A formula for determining the amount of each assessment was adopted by resolution of the Maplewood City Council on September 29, 2009. In the case of single family dwellings, such as those in this case, the assessment per unit for full street reconstruction (new concrete curb and gutter) was to be $6000. The special assessment levied by the City against the Berglund property was $6990.

As reflected in the earlier order of this Court of September 27, 2010 (Hon. Dale Lindman), Mr. Berglund overcame the City's *prima facie* case of assessment validity by presenting competent before and after market value evidence that demonstrated that the special assessment exceeded any increase in the market value and resulted in no special benefit to the Plaintiff's property.[1] In his Findings, Judge Lindman was clear that the assessment approach of the City was not valid:

[1] Judge Lindman also noted that the claims of Petitioners Haggerty and Haley had been dismissed with prejudice at trial since they had not submitted evidence regarding the before and after value of their properties and were just relying on the evidence presented by Berglund. However, in his Order of May 16, 2011, the judge amended the earlier order, including within it both the Haggerty and Haley properties and requiring that the city use an appraisal method consistent with that of the earlier order.

> **"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** (emphasis supplied). 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."

Judge Lindman also found that the appraisal submitted by the City was "cost based and founded on the premise that the benefit to the land alone and not the property as a whole" was the proper benefit measure, but "had little relation to a true market value assessment of the property" and thus was not a proper basis for determination of the assessment to Berglund's property.

As a consequence, the Court set aside the special assessment and ordered reassessment as provided in M.S. Sec. 429.071, subd. 2. That statute allows the city, "upon notice and hearing as provided for the original assessment, [to] make a reassessment or a new assessment" regarding the parcel. This order was not appealed by the city.

On August 31, 2011, the appraiser for the city reviewed the three properties in question, basing its benefit appraisal upon the" valuation of the subject land component only".[2] On November 14, 2011, the city conducted a hearing under this statute and once more set the special assessment at $6990, despite the explicit findings of Judge Lindman that the valuation is to be based upon market value analysis rather than the market value as it pertains to the land alone.

Petitioners filed a timely Notice of Appeal and Petition regarding that newer assessment. They allege that the assessment is arbitrary and/or unreasonable, is greater than the benefit conferred upon the property, and that they have incurred additional attorney's fees and costs because the city willfully disregarded the direction of Judge Lindman.

M.S. Sec. 429.081 explicitly limits the authority of the court: it shall either affirm the assessment or set it aside and order a reassessment as provided in section 429.071, subd. 2. The latter provides that when an assessment has been set aside by the court, the council may make a reassessment of the property.

Given the posture of this case and the deliberate failure of the city council to follow the explicit directions of Judge Lindman's orders, attorneys' fees and costs are appropriate.

4-10-13 MMM

[2] August 31, 2011 Summary Appraisal Reports by BRKW Appraisals, Inc. regarding the properties in question.