

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0895**

Roger Aspengren,
Respondent,

vs.

City of Eagle Bend,
Appellant.

**Filed March 1, 2021
Affirmed in part, reversed in part, and remanded
Smith, Tracy M., Judge**

Todd County District Court
File No. 77-CV-18-281

Michael J. Cass, Swenson Lervick Syverson Trosvig Jacobson Cass, P.A., Alexandria,
Minnesota (for respondent)

Joseph A. Krueger, Franz J. Vancura, Brown, Krueger & Vancura, P.A., Long Prairie,
Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Hooten, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Following a court trial in this special-assessment appeal, appellant City of Eagle Bend challenges the district court's order setting aside the assessments of respondent Roger Aspengren's properties and ordering reassessment. The city argues that the district court erred by (1) determining that the cost-to-cure methodology employed by the city's expert

witness was not appropriate to value the special benefit and (2) failing to make factual findings on the special benefit conferred by the project. We conclude that the district court did not err by finding that the cost-to-cure method was not appropriate here because none of the improvements was necessary for the continued legal use of Aspengren's properties. But we agree with the city that the district court erred by not making factual findings on the special benefit conferred by the project. We therefore affirm in part, reverse in part, and remand for the district court to make factual findings regarding the value, if any, of the special benefit.

FACTS

The following facts were established at trial. Over the past several years, the city has been replacing and upgrading its aging and deficient roads and utilities. The costs of the project were partially funded by special assessments levied against affected property owners. Under city policy, affected property owners were responsible for 40% of the cost of street, sewer, and water improvements, although the property owners' responsibility for road improvements was reduced to 15.25% after the city obtained additional funding in that category. The city calculated the special assessments for the street, sewer, and water main on the basis of linear footage and the special assessments for the sidewalk on square footage. It also assessed specific sums for new sewer service lines and water service lines.

Aspengren owned five parcels of land affected by the city's project. Aspengren's parcels consist of two adjacent lots that have no structures on them except for a single billboard (the billboard lots) and three lots used for Aspengren's business (collectively, the business lots). The business lots include a lot with a store, an adjacent parking lot, and a

lot with a warehouse located a block from the store and parking lot. One billboard lot is encumbered by a highway right-of-way, and the other is encumbered by an easement. After the city completed the improvements, Aspengren sold the business lots for \$80,000.¹ He continues to own the billboard lots.

Aspengren challenged the amount of special assessments levied against his five properties, and a court trial was held on the sole issue of whether the amount of the special assessments exceeded the special benefit to Aspengren's properties.

At trial, Aspengren testified that his parcels did not receive a special benefit from the improvements. He testified that he did not notice any problems with the water or sewer services at the store before the improvements, nor did he notice any difference to the store's services after the improvements. Aspengren testified that neither the parking lot nor the warehouse lot used sewer or water services and therefore they received no benefit from the improvements. As to the billboard lots, Aspengren stated that the lots still flooded after the improvements were made to the property and the city implemented flood-mitigation efforts. For that reason, he believes the billboard lots also received no benefit.

Aspengren also called a real-estate agent to testify about the use of Aspengren's properties and his knowledge about their market values. The real-estate agent is not a licensed appraiser but has worked in real estate in and around the city for the past 30 years. He explained that, in his experience, street, curb, gutter, or sewer special assessments do not increase the value of the property unless the property did not have existing water or

¹ Under the contract for land sale's terms, Aspengren is still responsible for the special assessments.

sewer services. The real-estate agent further explained that special assessments often reduce the value of a property by acting like a lien against it. As to Aspengren's properties, he stated that the store lot is worth around \$40,000 no matter the improvements and that the adjacent parking lot did not receive a special benefit because it does not use water or sewer services. He also stated that the billboard lots are unbuildable because they are subject to flooding; because of this, he concluded that whether they have water and sewer access is irrelevant to their value.

On cross-examination, the real-estate agent was asked a hypothetical question about the value of two properties, identical except for the fact that one was serviced by new infrastructure and one by aging infrastructure. The hypothetical question asked whether the properties would have equal value. The real-estate agent changed his answer several times. Because of his confused answer to the hypothetical, the district court had reservations about his credibility. Even so, it did not reject his testimony.

The city called three witnesses: the city administrator, a licensed professional engineer, and, relevant here, a certified commercial real-estate appraiser. The appraiser described three methods used to appraise commercial real estate: the income approach, the sales-comparison approach, and the cost approach. The income approach values real estate based on a property's income-producing ability. The sales-comparison approach values property by looking at comparable sales in the same market and determining an appropriate value for the subject property. The cost approach values the improvements on the property by considering the cost to make the improvements and the current depreciation of those improvements.

The city's appraiser explained that an income approach was not appropriate here because none of the properties was income-producing. Instead, he employed a sales-comparison approach to determine the land value of the property and a cost approach to determine the increase in value to the land from the improvements. Regarding the cost approach, the appraiser used a "cost to cure" method on the basis that the city's infrastructure was functionally obsolescent. He compared the total actual cost to replace the infrastructure serving Aspengren's parcels—the "cost to cure"—with the cost assessed to Aspengren and determined that the difference between the actual cost and the assessed cost represented the increase in value—or special benefit—that Aspengren received. The appraiser did not conduct any appraisals of the parcels before the improvements.

The appraiser based his property evaluation on the highest and best use of each property. The highest and best use of property will consider the total value of adjacent properties under common ownership. The appraiser thus considered the store and parking lots together and the two billboard lots together. While the appraiser accounted for the billboard lots' encumbrances, he did not account for the continued flooding, and he testified that the flooding would reduce the value of his appraisal.

The district court determined that Aspengren had rebutted the prima facie presumption that the special assessments on his properties were legal. In the accompanying memorandum, the district court further explained that the city had failed to present evidence showing that the improvements increased the value of Aspengren's properties more than the cost of the assessments because the cost-to-cure method was an inappropriate

method in this case. The district court did not make any factual findings on the value of the special benefit. Instead, it ordered the city to reassess the properties.

The city appeals.

DECISION

I. The district court did not clearly err by determining that a cost-to-cure methodology was inappropriate to value the special benefit.

The city argues that the district court erred by determining that a cost-to-cure methodology was not appropriate to value the special benefit conferred to Aspengren's properties. It cites caselaw permitting any valuation method to calculate the value of a special benefit so long as it is a fair approximation of the increase in market value, *see DeSutter v. Township of Helena*, 489 N.W.2d 236, 238 (Minn. App. 1992), *review denied* (Minn. Sept. 30, 1992), and contends that the cost-to-cure method fairly approximates the increase here.

In the special-assessment context, an appellate court reviews whether the district court's factual findings support its legal conclusions and decision. *Carlson-Lang Realty Co. v. City of Windom*, 240 N.W.2d 517, 521 (Minn. 1976). To justify reversal, the evidence must contradict the district court's findings. *Dosedel v. City of Ham Lake*, 414 N.W.2d 751, 756 (Minn. App. 1987).

A special assessment is a tax aimed at imposing local improvement costs on those who benefit from the improvement. *Buettner v. City of St. Cloud*, 277 N.W.2d 199, 201 (Minn. 1979). State law grants municipalities the power to impose these assessments, Minn. Stat. § 429.051 (2020); however, three conditions limit a municipality's assessment

power: “(1) the land must receive a special benefit from the improvement being constructed; (2) the assessment must be uniform upon the same class of property; and (3) the assessment may not exceed the special benefit.” *David E. McNally Dev. Corp. v. City of Winona*, 686 N.W.2d 553, 558 (Minn. App. 2004) (citing *Carlson-Lang Realty Co.*, 240 N.W.2d at 519). The special benefit is measured by the increase in the market value of the land caused by the improvement. *Carlson-Lang Realty Co.*, 240 N.W.2d at 519 (citation omitted). This difference in market value should be computed by determining “what a willing buyer would pay a willing seller for the property before, and then after, the improvement has been constructed. . . . If the assessment is set higher than the special benefit conferred, it is a taking without compensation to the extent of the excess.” *Id.*

The legislative nature of special assessments entitles them to a presumption of validity. *Am. Oil Co. v. City of St. Cloud*, 206 N.W.2d 31, 36 (Minn. 1973). But a property owner can overcome a special assessment’s presumption of validity by submitting competent evidence that the property did not benefit from the improvement, *see Buettner*, 277 N.W.2d at 204, or by submitting competent evidence that the assessment exceeds the property’s market-value increase from the improvement, *Tri-State Land Co. v. City of Shoreview*, 290 N.W.2d 775, 777 (Minn. 1980). If the landowner submits evidence overcoming the assessment’s presumptive validity, and the assessing municipality also submits evidence that the assessment is less than or equal to the market-value increase, the district court must independently weigh the parties’ conflicting evidence and make a factual determination regarding the special benefit received. *Carlson-Lang Realty Co.*, 240 N.W.2d at 519-20; *see Tri-State Land Co.*, 290 N.W.2d at 778; *In re Meyer*, 223 N.W. 135,

136 (Minn. 1929) (stating that evidence rebutting the presumption of validity “raises an issue of fact upon which normally the decision of the trier of fact will be final”).

The city does not challenge the district court’s determination that Aspengren presented competent evidence sufficient to overcome the special assessment’s presumption of validity. Rather, the city argues that it introduced competent evidence that the assessments did not exceed the property’s market-value increase from the improvements and that the district court erred by finding that the city’s evidence was not competent simply because the district court disagreed with the city’s valuation method. The city maintains that its evidence is sufficient to meet its burden.

The city relies on our decision in *Lunderberg v. City of St. Peter*, in which we accepted the district court’s decision to use a cost-to-cure method in the special-assessment context. 398 N.W.2d 579, 583-84 (Minn. App. 1986), *review dismissed* (Minn. Jan. 29, 1988). But *Lunderberg* does not compel the determination that the district court clearly erred here. In *Lunderberg*, the City of St. Peter completed a sewer-improvement project, and, through special assessments, adjacent property owners were held responsible for the “cost to inspect, repair and replace the service lines” that connected the main sewer line to their individual properties. *Id.* at 580-81. It was undisputed that the replacement of service lines was necessary for the continued legal use of the properties. *Id.* at 583.

Here, in contrast, the city failed to show that the improvements were necessary for the continued legal use of Aspengren’s properties. The record includes evidence that three of the five properties do not use sewer and water services. And even if the two billboard lots were to receive sewer and water services, there is evidence that the services confer no

special benefit to the lots because they are unbuildable due to flooding. As to the two properties that use sewer and water services, the record contains evidence that those services did not need to be replaced and that the properties could be legally used absent the improvements. The record thus supports the district court's finding that the city did not establish that the cost-to-cure method used by the city's appraiser was appropriate in this case.

II. The district court erred by failing to make factual findings on the value of the special benefit.

The city argues that the district court erred by ordering reassessment of Aspengren's properties without determining the value of the special benefit conferred by the improvements.

If a special assessment exceeds the special benefit, a taking has occurred. *Ewert v. City of Winthrop*, 278 N.W.2d 545, 548 (Minn. 1979). If a district court determines that a taking has occurred, it must set aside the assessment and order a reassessment. *See* Minn. Stat. 429.081 (2020); *Buettner*, 277 N.W.2d at 204-05 (stating that the district court must order a reassessment if it finds that a reduction is appropriate). Here, the district court ordered a reassessment without first determining whether a taking occurred. This was error.

Instead, the district court should have made a factual determination as to whether the amount of the assessments exceeded the special benefit to Aspengren's properties. *See First Baptist Church of St. Paul v. City of St. Paul*, 884 N.W.2d 355, 366-67 (Minn. 2016) (citing *Ewert*, 278 N.W.2d at 548, 552 (stating that, after both parties present evidence on whether a property's market value has changed, "the district court [must] make a factual

determination”)); *Nyquist v. Town of Center, Crow Wing Cty.*, 251 N.W.2d 695, 697 (Minn. 1977), *overruled on other grounds by Downtown Dev. Project, Marshall City Council Resolution No. 57 v. City of Marshall*, 281 N.W.2d 161, 163 n.3 (Minn. 1979); *In re Village of Burnsville Assessments*, 245 N.W.2d 445, 451 (Minn. 1976). To do so, the district court should have determined the value of the special benefit, as the city argues. On remand, the district court must determine the value of the special benefit to determine whether the assessments exceeded the special benefit and thus whether a taking occurred.

Affirmed in part, reversed in part, and remanded.