STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1624

James M. Carlson,
Appellant,

vs.

City of Brainerd,
Respondent.

Filed October 30, 2023
Affirmed
Bratvold, Judge

Crow Wing County District Court
File No. 18-CV-20-3817

James M. Carlson, Brainerd, Minnesota (pro se appellant)

Joseph J. Langel, Brainerd City Attorney, Ratwik, Roszak & Maloney, P.A., Brainerd, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Reyes, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this appeal from the district court's judgment affirming respondent city's special assessment against appellant's property, appellant argues that the district court erred because (1) the presumption that a special assessment is valid did not apply here; (2) even if the presumption applied, appellant rebutted it; and (3) the special assessment was not

uniform across the same class of property. We conclude, first, that the district court did not err by determining the presumption of validity applied and, second, that appellant failed to rebut the presumption and overcome the city's prima facie proof. Third, we conclude that appellant forfeited any challenge to the uniformity of the special assessment because he failed to raise the issue in district court; alternatively, we discern no error. Thus, we affirm.

FACTS

In 2019, respondent City of Brainerd authorized a project to reconstruct Buffalo Hills Lane (the street) and, in 2020, issued a special assessment against more than 200 affected properties, one of which is owned by appellant James M. Carlson. Carlson's property is located on a cul-de-sac that "connects to" the street. "There is no way to reach" Carlson's cul-de-sac "without driving on" the street. The city imposed a special assessment of $1,700 against Carlson's property.

In November 2020, Carlson filed a complaint seeking judicial review of the assessment against his property. The complaint asserted that Carlson's property "should not be specially assessed in an amount any greater than $250" and that the city's special assessment procedure "fail[ed] to properly calculate the benefit provided to" Carlson's property. During a bench trial in June 2022, three witnesses testified: a former city engineer; Carlson; and an employee from the consulting firm Nagell Appraisal Incorporated who conducted an appraisal of Carlson's property on behalf of the city. The following summarizes the district court's factual findings and is supplemented by record evidence when helpful to understand the issues on appeal.

The former city engineer testified that the street "had a lot of signs of distress" such as "cracking" and "potholing" and had needed repair "for upwards of 20 years." The engineer also testified that the street needed reconstruction because it lacked adequate width, the pavement "completely failed" back in 2003, and the street was unsafe for pedestrians.

The city hired Nagell to "assist with the assessment procedure." In February 2019, Nagell issued a report that "outlined market benefit" from the street improvements for "several classes of properties" that had direct and indirect access to the street. The city council approved the property classes.

Later in 2019, the city finished reconstructing the street. The cost of project totaled $1,854,910. After improvements, the street is "wider, straighter," has a "full curb and gutter for stormwater," and includes "a new trail."

On October 19, 2020, the city adopted an assessment roll with a total tax assessment of $381,817 applied against 243 properties. The city used "three primary assessment categories": (1) properties with direct access to the street were assessed at $4,200; (2) properties with indirect access to the street and "that still required the use of" the street were assessed at $1,700; and (3) properties that "have another or other points of access" than the street were assessed at $850. Carlson's property was in the second category.

After Carlson filed his complaint, the city asked Nagell to appraise Carlson's property; Nagell prepared a December 2021 appraisal report with an "effective date" of October 19, 2020. The appraisal report used four comparable properties and stated that the market value of Carlson's property increased by $5,000 after the city completed

improvements to the street. At trial, Carlson questioned the Nagell employee who conducted the appraisal. The Nagell employee testified that "not every single detail on the underlying calculation" went into his report, his calculations were correct, and he could have included more information about how he did his calculations.

Carlson testified that, though he did not retain an expert, he believed his property did not increase in value due to the improved street. According to the district court's decision, Carlson argued that the appraisal report was incorrect for several reasons: Nagell did not uniformly use a "market condition adjustment" for three of the four comparable properties; Nagell used "different calculations for each comparable property"; and the report showed other "major inconsistencies."

On September 14, 2022, the district court issued its findings of fact, conclusions of law, and order for judgment. Quoting caselaw, the district court noted that an assessment roll "is presumed to be legal and introduction of the assessment roll into evidence constitutes prima facie proof that the assessment is valid." *See First Baptist Church of St. Paul v. City of St. Paul*, 884 N.W.2d 355, 366 (Minn. 2016). The district court concluded that Carlson did not meet his burden to rebut the presumption of the special assessment's validity because Carlson did not "introduce competent evidence that the assessment is greater than the increase in market value of [his] property due to the [street] improvement." The district court also determined that Carlson's property "benefits from having a well-constructed and improved roadway to and from" it. Based on its factual findings and legal conclusions, the district court affirmed the $1,700 assessment against Carlson's property.

Carlson appeals.

DECISION

Minnesota law authorizes a city to assess property owners for certain improvements and provides that "[t]he cost of any improvement, or any part thereof, may be assessed upon property benefited by the improvement, based upon the benefits received, whether or not the property abuts on the improvement." Minn. Stat. § 429.051 (2022). An assessment under section 429.051 is known as a "special assessment," meaning "a tax, intended to offset the cost of local improvements such as sewer, water and streets, which is selectively imposed on the beneficiaries of such products." *Buettner v. City of St. Cloud*, 277 N.W.2d 199, 201 (Minn. 1979). "Special assessments for local improvements are levied under a municipality's taxing power." *First Baptist Church*, 884 N.W.2d at 359.

The Minnesota Supreme Court has recognized that a city's authority to impose a special assessment is subject to three conditions: "(a) The land must receive a special benefit from the improvement being constructed, (b) the assessment must be uniform upon the same class of property, and (c) the assessment may not exceed the special benefit." *Carlson-Lang Realty Co. v. City of Windom*, 240 N.W.2d 517, 519 (Minn. 1976); *see also First Baptist Church*, 884 N.W.2d at 359 ("The amount of the special benefit is determined by the increase in the market value of the property attributable to the improvement.").

On appeal of a district court decision affirming a special assessment, an appellate court's review "is a careful examination of the record to ascertain whether the evidence as a whole fairly supports the findings of the district court and whether these in turn support its conclusions of law and judgment." *Carlson-Lang*, 240 N.W.2d at 521. "The evidence

must be against the [district court's] findings to justify a reversal." *Dosedel v. City of Ham Lake*, 414 N.W.2d 751, 756 (Minn. App. 1987).

Carlson presents eight issues in his brief to this court. Some of the eight issues overlap and some lack legal authority.[1] We reorganize the issues and address them in turn.

A. The district court did not err by determining that the city's special assessment was presumptively valid.

Carlson argues that the city's assessment for the improved street was not presumptively valid. "[A] special assessment by a municipality, constituting as it does an exercise of the legislative and executive functions of local government, is entitled to a presumption of validity." *Buettner*, 277 N.W.2d at 202 (quotation omitted). Thus, "[a] city is presumed to have legally assessed its property until proven to the contrary, and the introduction of its assessment roll into evidence constitutes prima facie proof that the assessment does not exceed the special benefit." *David E. McNally Dev. Corp. v. City of Winona*, 686 N.W.2d 553, 559 (Minn. App. 2004) (citing *Carlson-Lang*, 240 N.W.2d at 519); *accord Tri-State Land Co. v. City of Shoreview*, 290 N.W.2d 775, 777 (Minn. 1980).

Carlson contends that for this presumption to apply, the city needed to determine "prior to the assessment that [Carlson's] property increased in value to the extent of $1,700." Carlson appears to challenge Nagell's 2021 appraisal of his property, which had an effective date as of the day that the city adopted the assessment roll. On appeal, the city

[1] We decline to address issues that lack legal authority. "[O]n appeal error is never presumed," and "the burden of showing error rests upon the one who relies upon it." *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944). Carlson cited at least some legal authority in support of the three issues discussed in this opinion.

argues that "the introduction of the assessment roll is the only condition precedent for the presumption of validity" and that "[b]oth Carlson and the City introduced the assessment roll into evidence at trial."

We agree with the city. Carlson relies on *Tri-State Land Co.*[2] and argues that an appraisal of his property was "a pre-condition that must be met before the presumption applies." Carlson argues that the appraisal of his property was "retroactive" and "of no effect." Carlson points out that in *Tri-State Land Co.*, "the appraisers made their value determinations after the project was completed but before the vote to assess was made."

Carlson is correct about the timing of the appraisal in *Tri-State Land Co*. But the supreme court in *Tri-State Land Co.* did not state or imply that for the presumption of validity to apply, an appraisal is *required* before an assessment is imposed. To the contrary, the supreme court stated that "introduction of the assessment roll into evidence constitutes prima facie proof that the assessment does not exceed [the] special benefit." 290 N.W.2d at 777 (quotation omitted).

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[2] *Tri-State Land Co.* involved a special assessment for a storm-sewer project. 290 N.W.2d at 776. "As the storm sewer neared completion, the city began to consider the assessment of project costs," and "a professional real estate appraiser was hired to advise the city of the expected benefits to the parcels served by the storm sewer." *Id.* After receiving the appraiser's report, the city prepared an assessment roll based on the report and imposed a special assessment against Tri-State. *Id.* Tri-State challenged the assessment in district court and, at trial, offered testimony from professional real-estate appraisers challenging the city's assessment. *Id.* at 777. The supreme court determined that "the testimony of Tri-State's professional real estate appraisers was more than sufficient to overcome the city's prima facie case that the assessment did not exceed the special benefit." *Id.* at 778. The supreme court reversed the special assessment and remanded after concluding that the district court erred by deferring to the city and failing to "independently weigh the conflicting evidence presented by the parties on the benefit to Tri-State's property from the storm sewer." *Id.*

The record shows that the city introduced the assessment roll into evidence. We therefore conclude that the district court did not err by determining that the special assessment was presumptively valid and further that the city made a prima facie case that the special assessment did not exceed the special benefit.

B. The district court did not err by determining that Carlson failed to rebut the presumption of validity.

Carlson next argues that the district court erred because it did not recognize that he "rebutted the presumption" that the city's special assessment was valid. A property owner may "overcome the presumption [of validity] by introducing competent evidence that the assessment is greater than the increase in market value of the property due to the improvement." *Carlson-Lang*, 240 N.W.2d at 519. "If the city then presents evidence that the amount of the assessment is equal to or less than the increase in the market value of the property, the district court must weigh the parties' evidence and make a factual determination." *McNally Dev. Corp.*, 686 N.W.2d at 559. "An assessment that exceeds the benefit constitutes a taking of property without fair compensation in violation of the Fourteenth Amendment." *Id.* at 558.

Carlson contends that he rebutted the presumptive validity of the city's special assessment based on his own testimony about the "errors" in Nagell's appraisal of the change to his property's market value. In its brief to this court, the city argues that Carlson's opinion that "there was no increase in value . . . to his property from the City rebuilding [the street] was not based on any competent evidence and the trial court was entitled to discount it."

We consider whether the record supports the district court's determination that Carlson did not meet his burden to introduce competent evidence rebutting the presumption of validity. We begin by noting that Carlson offered his own lay testimony during trial and that expert testimony is not required to rebut the presumption of validity. *McNally Dev. Corp.*, 686 N.W.2d at 559. "If the experience and background of the property owner warrants, the district court can give substantial weight to the property owner's testimony," and "such testimony alone is sufficient to rebut the presumption." *Id.*

For example, we consider *E.H. Willmus Properties, Inc. v. Village of New Brighton (In re Village of New Brighton Resolution 862)*, in which the appellant testified during district court proceedings that, "based on his 15 years' experience in the property-development field, he did not believe the properties in question have received any special benefits." 199 N.W.2d 435, 436 (Minn. 1972). The supreme court concluded that the "prima facie case of the village was effectively met by the testimony" of the appellant, who was "the owner of one of the assessed parcels and president of the corporation owning the other two parcels" and "had an extensive background in real estate and industrial development." *Id.* at 437-38.

Still, we are not persuaded by Carlson's argument for two reasons. First, Carlson's experience and background differ from the appellant who testified in the *Village of New Brighton* case. Carlson testified that he was "a former practicing corporate attorney" and had a "brokerage license" from 1975 to 1979. In response to questioning by the city's attorney, Carlson agreed that he was not a real-estate professional, had no formal appraisal training, did not buy and sell land on a regular basis, and was not an expert. And the district

court's factual findings indicate that the Nagell employee's testimony responded to Carlson's criticisms of the appraisal report.[3] Thus, even though Carlson testified and contradicted the Nagell appraisal report, the district court did not err by determining that Carlson failed to "introduce competent evidence" that the special assessment exceeded the increase in his property's market value.

Second, even if we assume that Carlson's testimony rebutted the presumption of validity, any error was harmless because the district court also weighed the evidence. *See* Minn. R. Civ. P. 61 (requiring courts to ignore harmless error). This court will "not reweigh the evidence on appeal." *Landmark Cmty. Bank, N.A. v. Klingelhutz*, 927 N.W.2d 748, 757 (Minn. App. 2019). The district court found that Carlson's "property benefits from having a well-constructed and improved roadway to and from his property." The Nagell appraisal report fully supports this factual finding, which is not clearly erroneous. *See In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) ("[F]indings are clearly erroneous when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." (quotation omitted)).

[3] In Carlson's brief to this court, he presents his own calculations of the market value of his property and argues "there were major errors in the [Nagell] appraisal report." Our review is limited to the evidence in the record. *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988) ("An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below."). Here, the relevant record evidence includes the assessment roll, Nagell's appraisal report, the Nagell employee's testimony, and Carlson's testimony.

C. Carlson forfeited his challenge to the uniformity of the city's assessment, and alternatively, this challenge fails on the merits.

Finally, Carlson challenges the "difference in categories of properties to be assessed," arguing that the special assessment was not uniform across the same class of property. Carlson contends that the properties that had "another or other points of access" than the street should not have been assessed differently from those that "required the use of" the street. We understand Carlson to argue that the second and third categories should have been assessed in the same amount, yielding a lower assessment for his property. The city argues that Carlson "did not raise this as a basis for relief at trial" and thus "forfeits the argument on appeal."

We agree that Carlson forfeited his challenge to the uniformity of the city's assessment categories. "A reviewing court must generally consider only those issues that the record shows were presented [to] and considered by the trial court in deciding the matter before it." *Thiele*, 425 N.W.2d at 582 (quotation omitted); *see also Doe 175 by Doe 175 v. Columbia Heights Sch. Dist.*, 842 N.W.2d 38, 43 n.1 (Minn. App. 2014) (noting that "the preservation requirement prevents litigants from suffering unfair surprise at the appellate level if they had no opportunity to address the issue in the district court"). During district court proceedings, Carlson did not challenge the uniformity of the city's three primary categories of assessed properties; therefore, the district court did not evaluate uniformity.

Accordingly, we need not address Carlson's challenge to the uniformity of the assessment for the first time on appeal.[4]

Even if we were to consider Carlson's uniformity argument, we would reject it. The city's special assessment "must be uniform upon the same class of property." *Carlson-Lang*, 240 N.W.2d at 519. "The principle that the apportionment of assessments is a legislative function is to be given effect." *In re Concord St. Assessment*, 181 N.W. 859, 860 (Minn. 1921). Thus, "where the issue presented to the trial court is the regularity of the assessment process or determinations made within the range of the municipality's legislative discretion, such as what property is benefited and a prorated division of the cost, the city's conclusions may not be upset unless clearly erroneous." *Buettner*, 277 N.W.2d at 203. This court has "recognize[d] that a city has broad discretion in classifying property." *McNally Dev. Corp.*, 686 N.W.2d at 560.

The supreme court's analysis in a similar case, *Hughes v. Farnsworth (In re Marshall Ave.)*, guides us. 163 N.W. 525 (Minn. 1917). There, the appellant challenged a city's special assessment in which "lots abutting on portions of street where there were no [street-car] tracks were assessed for a larger amount than lots abutting on the portion of the

[4] In Carlson's brief to this court, he argues that "[t]here was an unconstitutional taking" because his property was "assessed $1700 whereas other similar properties were assessed only $850." To the extent that Carlson is arguing the special assessment exceeded the benefit to his property from the improved street, we addressed this argument above. We also observe that Carlson appears to argue that an unconstitutional taking occurs when an assessment is not uniform across the same class of property. Carlson cites no caselaw supporting this argument, and thus, we decline to consider his uniformity argument as an unconstitutional-taking challenge. *See Carlson-Lang*, 240 N.W.2d at 519 (stating that an unconstitutional taking occurs if "the assessment is set higher than the special benefit conferred").

street where there were tracks." *Id.* at 525. The appellant argued that "the assessment should have been at a uniform rate from end to end of the street." *Id.* at 526. The supreme court stated that "[i]f the question of what property is benefited is a matter upon which reasonable [persons] may differ, then there is no ground for the application of the rule that the [city] proceeded upon an illegal principle or an erroneous rule of law." *Id.* The supreme court affirmed the special assessment, determining that "[i]t may well be said that a different method of taxation may be predicated on these differences in facts" regarding the street-car tracks, which "narrow the street so far as general travel is concerned." *Id.* at 526.

Here, the city hired Nagell to assist with the assessment process. Relying on Nagell's 2019 report, the city "formulated a new assessment amount for each of the subject properties based upon a base assessment rate and upon multipliers that reflect location, habitation, and lots given the existing plats." The city assessed "properties that have another or other points of access other than" the street "at $850.00," while the city assessed properties with indirect access "that still required the use of" the street and those with "direct access to" the street at $1,700 and $4,200, respectively. Like the assessment affirmed in *Marshall Ave.*, the assessment imposed by the city differentiated among properties based on their access to the improved street and imposed different levels of assessment consistent with those differentiations. *See id.* at 526.

Because the city provided a reasonable explanation for how it determined the special assessments for different property categories, the city did not abuse its broad discretion in classifying Carlson's property. *See McNally Dev. Corp.*, 686 N.W.2d at 561 ("As long as the city provides a reasonable analysis as to how it exercised its discretion in allocating the

benefits, that determination is for the city, not the courts."). We thus reject Carlson's argument that the city's special assessment against his property was not uniform across the same class of property.

Affirmed.