

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLIFF BILYEU; BETTY BILYEU;
LLOYD BONARI; NOLAN B. LITTLE;
CD (BUD) MCKENZIE; JIM
MONAHAN; GERALD A. SHEPHERD;
JAMES SUPPLE; KENNETH THEISS;
TERESA THEISS; RALPH THEISS;
SANDRA THEISS; JERRY YOUNG;
ALCINIA YOUNG; AND MITCH
ZIEGLER,
Appellants,
vs.
COUNTY OF WASHOE, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,
Respondent.

No. 43853

FILED

JUL 05 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a petition for judicial review in a matter concerning local land improvements. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

Respondent, Washoe County, formed Special Assessment District (SAD) 32 for the purpose of paving several dirt roads that were maintained by the Spanish Springs Valley Ranches Property Owners Association (POA). In order to comply with the county commission's direction to determine the amount of special assessment on properties within SAD 32, the county engineer divided SAD 32 into five zones.

Zone 1 consisted of parcels that were obligated by the POA to pay dues for the maintenance of the dirt roads that would later be paved by SAD 32. The county engineer concluded that parcels in Zone 1 benefited from the road-paving project by the elimination of paying dues to

the POA. The POA agreed to stop requiring payment of dues for dirt-road maintenance once Washoe County paved the roads and took over their maintenance. The county engineer concluded that the elimination of dues would benefit parcels in Zone 1 in an amount equal to the net present value of thirty years of dues.

For Zones 2 through 5, the county engineer determined the proposed special assessment differently because the parcels in those zones were not subject to paying dues to the POA. Thus, the engineer employed an appraiser to determine the increase in market value to parcels in Zones 2 through 5 as a result of the road-paving project. Zones 2 through 5 were divided based on proximity to the project because the appraiser concluded that parcels closer to the project received a greater benefit from the paved roads than parcels farther away from the project. The appraiser then estimated, based on a paired-sales analysis, the increase in market value to the parcels in Zones 2 through 5 resulting from the project.

Appellants, property owners whose parcels are entirely within Zone 1, challenged in district court the method used by the county in determining the special assessment for parcels in Zone 1. Specifically, appellants argued that the elimination-of-dues method did not reflect an increase in market value to parcels in Zone 1, which violated the provisions of NRS Chapter 271. The district court denied appellants' petition, concluding, "Nothing in Chapter 271 would stand against the proposition that the elimination of dues and fees, paid on an equal basis by all property members within the affected area, is a proper basis for determining a special benefit."

Although we agree that NRS Chapter 271 does not per se prohibit Washoe County's elimination-of-dues method for determining the

special assessment to parcels in Zone 1, we find insufficient evidence in the record to support the county's position that its method reflects an increase in market value to the parcels in Zone 1, as required by NRS 271.208.

Our review of cases involving SADs is generally deferential to the municipality.¹ The estimated assessments and benefits are presumed valid, and the landowners have the burden of proving the contrary.² One way in which landowners can meet their burden is by showing that the estimate of special benefits, as determined by the municipality, is erroneous because it is unsupported by substantial evidence.³

The cost of an improvement project in a SAD may be apportioned to parcels within the SAD when those parcels are specially benefited by the project.⁴ The special assessment must be apportioned in proportion to the amount of special benefits received by the parcels.⁵ NRS Chapter 271 does not specify a method for determining special benefits, and the municipality need not employ an appraiser,⁶ but the amount of

¹Alberty v. City of Henderson, 106 Nev. 299, 302, 792 P.2d 390, 393 (1990).

²Id. (citing NRS 271.025; Brown v. City of York, 416 N.W.2d 574, 576 (Neb. 1987); Nolan v. Bureau of Assessors of N.Y. City Fin. Admin., 286 N.E.2d 435, 438 (N.Y. Ct. App. 1972)).

³Id. at 302-03 (citing Urban Renewal Agcy. v. Iacometti, 79 Nev. 113, 379 P.2d 466 (1963)).

⁴NRS 271.045.

⁵NRS 271.280(5)(c); 271.305(6)(c); NRS 271.365(2).

⁶NRS 271.280(1)(c).

the special benefits must relate to an increase in market value of the parcel "that is directly attributable to [the] project for which [the] assessment is made."⁷

As appellants point out, the county engineer, under the guidance of an appraiser, concluded that the increase in market value to parcels in Zones 2 through 5 resulting from the improvement project varied depending on the parcel's proximity to the newly paved roads. However, the engineer acknowledged no such variance for parcels in Zone 1, even though some parcels in Zone 1 will be up to three-quarters of a mile from a newly paved road while other parcels in Zone 1 will be directly on newly paved roads. This disparate treatment of parcels in Zone 1 to parcels in Zones 2 through 5 suggests that the engineer's calculation of special benefits to parcels in Zone 1 is not related to an increase in market value to those parcels.

The only evidence in the record linking the elimination-of-dues method to market value for parcels in Zone 1 is the county engineer's conclusory statement that the two are linked. However, the county engineer provided no support for this opinion. We therefore conclude that Washoe County's assertion that the elimination-of-dues method relates to an increase in market value for parcels in Zone 1 is unsupported by substantial evidence. Again, we do not conclude that the county's method is per se invalid. Rather, on remand, Washoe County will have to present evidence that the elimination of dues results in some savings to owners of parcels in Zone 1 and that savings translates to an increase in market value of those parcels.

⁷NRS 271.208.

We therefore ORDER the district court's order denying appellant's petition for judicial review REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Steven P. Elliott, District Judge
Lane, Fahrendorf, Vilorio & Oliphant, LLP
Washoe County District Attorney Richard A. Gammick /Civil
Division
Washoe District Court Clerk