IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK J. GEURTS AND ROBERT J. ARNDELL,
Appellants,
vs.
LYON COUNTY COMMISSIONERS, IN THEIR OFFICIAL CAPACITY AS TRUSTEES FOR THE SILVER SPRINGS GENERAL IMPROVEMENT (SEWER) DISTRICT,
Respondents.

No. 37216

FILED

NOV 07 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from a district court order dismissing a petition for a writ of mandamus and prohibition which challenged a special assessment levied for the construction of a sewer system. This court reviews the district court's grant or denial of a writ petition for an abuse of discretion.[1]

Before special assessments may be charged upon the property of private persons, the owners must be given notice, with an opportunity to be heard and to contest the validity and fairness of the assessment; otherwise, there is a denial of due process.[2] The district court relied on NRS 318.199 and NRS 318.202 in concluding that personal service of the notice is not required. Both statutes are inapplicable.

NRS 318.199 requires the board of a general improvement district to publish notice of its intent to change the "rates, tolls, or charges for services performed or products furnished." But the special assessment

[1]County of Clark v. Doumani, 114 Nev. 46, 53, 952 P.2d 13, 17 (1998). Relief in the form of a writ of prohibition is not available here. See NRS 34.320 (providing that a writ of prohibition arrests the proceedings of any tribunal, corporation, board or person exercising judicial functions).

[2]14 Beth A. Jacobsthal & Al Maldonado, The Law of Municipal Corporations § 38.98, at 304 (3d ed. 1998) (footnote omitted).

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imposed here is apparently for the capitalization charges on revenue bonds issued to fund construction, not to cover any changes in rates, tolls or charges. And before any rates, tolls, or charges may be collected on the tax roll in the first place, the board of a general improvement district must mail written notice to each property owner subject to the rate, toll, or charge.[3]

NRS 318.202 is likewise inapplicable. It governs the "fees or charges" that may be imposed "for the privilege of connecting to . . . sewerage facilities."[4] Further, the statute mandates that written notice of the connection charge be mailed to all persons owning land subject to the charge.[5]

NRS Chapter 318, which governs the formation and operation of general improvement districts, does not discuss the notice required for the imposition of a special assessment. When the board of a local improvement district intends to impose a special assessment for the construction of a sewer system, it must submit the proposed assessment to the electorate.[6] Further, the boards of both local and general improvement districts appear prohibited from imposing a special assessment to pay capitalization charges on revenue bonds.[7]

Appellants Patrick Geurts and Robert Arndell argued in their petition that they were entitled to service of notice by mail. This

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[3]NRS 318.201(6).

[4]NRS 318.202(1)(a).

[5]NRS 318.202(4).

[6]NRS 309.330(1). A primary feature distinguishing a local improvement district from a general improvement district is the method of creation. A local improvement district is created by a majority of property owners who will be benefited by the improvement and who petition the board of county commissioners for formation. NRS 309.030; NRS 309.040. In contrast, the formation of a general improvement district may be initiated by the board of county commissioners or any property owner in the proposed district. NRS 318.055(1).

[7]See NRS 309.332; NRS 318.320; NRS 318.325.

argument is consistent with case law from other states as well as from Nevada.[8] Respondents did not suggest that they provided any notice, only that Geurts and Arndell waived any defect in notice by attending public hearings on the general improvement district. Although "[f]ailure on the part of the local government to give proper notice is waived by a property owner who appears at the meeting and protests,"[9] the appellate record indicates that Arndell, but not Geurts, was present at the public hearing(s) in which the $325.32 special assessment was mentioned. Further, it appears that during the June 17, 1999 hearing, respondents may have indicated to those present, including Geurts, that respondents intended to delay the special assessment, given that respondents voted to place the general obligation bond-issuance question on the 2000 ballot, "and pursue other funding to go forward on the project." Mere presence at a hearing without knowledge of the proposed action does not satisfy due process.[10] The district court did not, however, reach this issue.

Moreover, the district court failed to consider any of Geurts and Arndell's other arguments. For instance, Geurts and Arndell argued that the special assessment was arbitrarily calculated. "[A] municipality cannot levy a special assessment that exceeds the special benefit which the property derives from the improvement."[11] Here, it appears that respondents may have failed to determine the special benefits accruing to

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[8]See Garden Homes Woodlands Co. v. Town of Dover, 742 N.E.2d 593 (N.Y. 2000) (collecting cases for the proposition that publication notice of a special assessment violates due process); cf. Bing Construction v. Douglas County, 107 Nev. 262, 810 P.2d 768 (1991) (requiring personal notice of the revocation of a special use permit).

[9]4 Sandra M. Stevenson, Antieau on Local Government Law § 65.08[10], at 65-35 (2d ed. 2002).

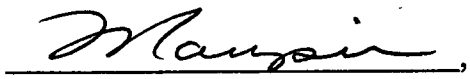
[10]See Bing Construction, 107 Nev. at 266, 810 P.2d at 771.

[11]14 Jacobsthal & Maldonado, supra note 2, § 38.31, at 136-37.

Geurts and Arndell, and instead used a formula which merely divided the sewage facility's total cost by the number of assessable parcels.[12]

Consequently, we conclude that the district court abused its discretion in dismissing Geurts and Arndell's writ petition. Accordingly, we

ORDER the judgment of the district court REVERSED, AND WE REMAND this matter to the district court for proceedings consistent with this order.[13]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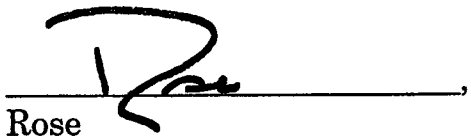
, J.
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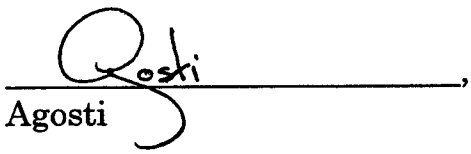
, J.
Agosti

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[12]See Alberty v. City of Henderson, 106 Nev. 299, 305-06, 792 P.2d 390, 395 (1990) (stating that "cost = benefits" assumptions may be arbitrary); accord Gold Vain Ltd. Liab. v. Cripple Creek, 973 P.2d 1286, 1288 (Colo. Ct. App. 1999) (commenting that a special assessment "must be based not on the cost of the improvement, but on the increased value of the property").

Further, although Geurts and Arndell did not specifically raise it, we note that the Board's use of a special assessment to pay capitalization charges on revenue bonds appears prohibited. Revenue bonds may be issued without an election to fund construction of a sewage facility if the bonds are made payable solely out of the net revenues derived from the sewage facility rather than any special assessment. NRS 318.320; see also NRS 318.325.

[13]On remand, the district court should consider the entirety of Geurts and Arndell's writ petition arguments, as well as respondents' purported use of the $325.32 special assessment to pay capitalization charges on revenue bonds. The district court might also consider ordering briefing on this last point.

Finally, although appellants have not been granted permission to file documents in this matter in proper person, see NRAP 46(b), we have received and considered appellants' proper person documents.

cc: Hon. David A. Huff, District Judge
Lyon County District Attorney
Robert J. Arndell
Patrick J. Geurts
Lyon County Clerk