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Smith v. City of Avon, No. 99CA007319, 2000 Ohio App. LEXIS 5435 (Ohio Ct. App. Nov. 22, 2000)

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Smith v. City of Avon, No. 99CA007319, 2000 Ohio App. LEXIS 5435 (Ohio Ct. App. Nov. 22, 2000) (affirming Lorain County Court of Common Pleas' decision that the addition of a water line constituted a special benefit to landowner's property because none existed prior to the water line improvement).

The City of Avon ("City") installed a water main on Avon Road and assessed the improvement to the landowners abutting Avon Road based on proportionate benefit. Georgette Smith owned property that abutted Avon Road.

Smith argued the assessment was invalid, and filed suit to enjoin the City from enforcing the assessment. The Lorain County Court of Common Pleas determined an injunction was unwarranted, the water line improvement on Avon Road benefited Smith's property, and the amount assessed did not exceed the statutory limitation.

Smith raised two assignments of error for review by the Court of Appeals of Ohio. Under the first assignment of error, Smith argued the water line did not benefit her land because the property was not buildable and because the nature of the land remained the same. Smith had the burden of proving her property received no special benefit from the improvement by clear and convincing evidence. The evidence on record did not support the conclusion that Smith's land was not buildable. The court reasoned there is no requirement that an improvement must better the landowner's property to the extent that the landowner desired in order for an improvement to constitute a benefit for purposes of imposing a valid assessment. Property improved by the addition of a public water line that serves private property, where no such service existed before, constitutes a special benefit to the land. Smith's appraiser testified at trial that no water line existed on Smith's property prior to the City's water line installation and the improvement benefited the property. Accordingly, the court held the trial court's decision was based on competent, credible evidence, and the trial court did not err in finding Smith did not meet her burden in establishing the improvement did not benefit her land.

In the second assignment of error, Smith argued the trial court erred in finding the assessment appropriate. Smith argued the assessment exceeded one-third of the property value. The City based the land's market value on purchase offers received after the water line installation. Smith insisted it was improper to use the purchase agreements in evaluating whether the City's assessment exceeded one-third of the value of her property. The court agreed. The Ohio Revised Code mandated the determination of assessments should occur on the date of the assessing ordinance. Yet, the court held Smith failed to meet her burden of proof because Smith failed to present any evidence of the property's value at the assessment date. Thus, the court overruled the second assignment of error.

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