

1-1-1999

K & K Constr., Inc. v. Department of Natural Resources, 575 N.W. 2d 531 (Mich. 1998)

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Shana Smilovits, Court Report, *K & K Constr., Inc. v. Department of Natural Resources*, 575 N.W. 2d 531 (Mich. 1998), 2 U. Denv. Water L. Rev. 343 (1999).

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regulation. Since this court did not know the value of the three parcels together, it remanded for consideration of the reduction in property value. Further, the court directed the trial court to determine whether to include the fourth parcel in the analysis.

Shana Smilovits

MINNESOTA

Johnson v. City of Eagan, 584 N.W.2d 770 (Minn. 1998) (municipalities cannot impose an otherwise legitimate fee to recover public improvement costs from parties who previously received a judicial determination that the original assessment value exceeded the benefit a particular property received from the improvement).

In 1992, the City of Eagan authorized an improvement project, and assessed the value of the project against the benefiting subdivision properties. The city charged all landowners that benefited from the improvement project based on the number of frontage feet the benefiting property had. The Johnsons challenged the original assessment for their property and received a judicial determination that the amount the Johnsons were charged exceeded the benefit they received. Accordingly, the court reduced the Johnson's fee by approximately 50 percent.

When the Johnsons decided to connect to city water in 1996, the city charged a standard connection fee. In addition, the city also charged a "lateral benefit water fee" which essentially compensated the city for the original 50 percent reduction in the special assessment. The city only charged the "lateral benefit water fee" to those landowners who had received judicially reduced assessments.

The Johnsons did not challenge the standard connection fee, but contended that the additional fee was improper and requested a refund. Although both the trial court and court of appeals believed the additional fee was "a permissible means of recovering the full cost of the improvement," the Minnesota Supreme Court found the additional fee, in light of the previous judicial assessment, was an unconstitutional taking of the Johnson's property.

In reaching its conclusion, the court noted that municipalities have the authority to levy special assessments against benefiting landowners as a legitimate means of recovering costs for a public improvement project. The court also recognized, however, that "[a]n assessment in excess of the benefit conferred by the local improvement on the property assessed is an unconstitutional taking of private property." When an improvement's cost exceeds its benefit, "the difference must not be borne by a particular property, but instead by the municipality as a whole."

Addressing the city's contention that Minnesota statutes allow it to recover costs through use, availability, or connection charges, taxes, or special assessments, the court stated that this authority is limited. Both the Johnsons and the court recognized that a city has the power to collect improvement costs via availability or connection charges, special assessments, or taxes. A municipality is not allowed, however, to recover judicially disallowed fees through an otherwise legitimate exercise of its authority. The court noted that "such a charge is impermissible if it is imposed discriminatorily as a way of subverting [a reduction or avoidance of an assessment]."

Because the "lateral benefit fee" was assessed against only those landowners that received judicially reduced assessments, the court determined that the fee in this case was an improper special assessment. The court held that "this fee constitutes an unconstitutional taking of private property and is impermissible regardless of whether the recoupment effort is under the guise of an assessment or a connection charge." Accordingly, the Johnsons received a refund for the amount that exceeded the previous judicial decree.

Michael Fischer

NEW HAMPSHIRE

Greenan v. Lobban, 717 A.2d 989 (N.H. 1998) (holding that grantor intended to convey title of land extending to lake's shore line and that non-riparians did not gain right-of-way to the beach outside of delineated boundaries by a prescriptive or a deeded right-of-way).

Defendant owned riparian lots on Newfound Lake ("Lake") in Bridgewater, New Hampshire. The plaintiffs owned non-riparian lots with ten-foot-wide right-of-way easements for access to the Lake's beach. The plaintiffs used the beach in front of and near the right-of-way for forty years. Beginning in the 1980s the defendants asked the plaintiffs to restrict their use to the area inside the right-of-way's boundaries. Because the plaintiffs refused, the defendants constructed barriers and posted "no trespassing" signs on either side of the right of way.

The plaintiffs sued the defendants to quiet title claiming deeded and prescriptive rights to use the beach up to the natural high water mark. The lower court rejected the plaintiffs' contention and ruled that the defendants owned the beach to the high water line and owned exclusive littoral rights to the water and lakebed. However, the court found that the location of the plaintiffs' deeded right-of-way extended beyond the delineated boundaries; thus, the plaintiffs could traverse additional land.