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Municpal Corporations—Special Assessment Determination—In re Village of Burnsville, ____ Minn. ____, 245 N.W.2d 445 (1976)

disparity between the cases leaves in doubt when criminal conduct will be deemed foreseeable. It is clear that past instances of crime are relevant to, but not determinative of, the issue of foreseeability.[26] Beyond that factor, however, the court has not clarified when landlords are duty-bound to afford their tenants protection from crime.

In conclusion, *Vermes* raised the significant issues of when a landlord has a duty to inform a commercial tenant of undesirable conditions of a premises and when a criminal act against a tenant supersedes a landlord's liability for negligence. The court's disposition of these issues provides some guidance in determining a landlord's duties to inform and protect. Both issues, however, need further clarification through case law before the extent of those duties can be fully understood.

Municipal Corporations—SPECIAL ASSESSMENT DETERMINATION—*In re Village of Burnsville*, ___ Minn. ___, 245 N.W.2d 445 (1976).

Special assessments levied by municipalities for local improvements add to the tax burden imposed on Minnesota citizens which now ranks among the highest in the nation.[1] The advantage of a general tax is that necessary public services are provided by government and the burden is apportioned among all citizens. The purpose of a special assessment, however, is to fund local services that do not justify payment from general revenues. Originally, special assessments were held to violate the state's constitutional requirement of equal taxation.[2] However, an amendment to the Minnesota Constitution in 1869 specifically validated the use of special assessments for local improvements.[3]

In the recent case of *In re Village of Burnsville*,[4] the Minnesota Supreme Court reaffirmed settled interpretations[5] of the 1869 constitutional amendment. In 1963, Burnsville began to assess property at $300 per acre for sewer service. In subsequent years, nearly all the property in Burnsville was serviced, except for property owned by respondent, located on the floodplain of the Minnesota River.[6] When an interceptor

26. *See* ___ Minn. at ___, 251 N.W.2d at 106.

1. *See* MINNESOTA TAXPAYERS ASSOCIATION, HOW DOES MINNESOTA COMPARE? 2 (1976).

2. Bidwell v. Coleman, 11 Minn. 78, 91 (Gil. 45, 56) (1865); Stinson v. Smith, 8 Minn. 366 (Gil. 326) (1862).

3. MINN. CONST. art. 10, § 1, *construed in* Rogers v. City of St. Paul, 22 Minn. 494, 507 (1876).

4. ___ Minn. ___, 245 N.W.2d 445 (1976).

5. *See* Carlson-Lang Realty Co. v. City of Windom, ___ Minn. ___, ___, 240 N.W.2d 517, 519 (1976); Village of Edina v. Joseph, 264 Minn. 84, 95-99, 119 N.W.2d 809, 817-18 (1962); State v. District Court, 33 Minn. 295, 306-10, 23 N.W. 222, 227-29 (1885); Rogers v. City of St. Paul, 22 Minn. 494, 507 (1876).

6. *In re* Village of Burnsville, ___ Minn. ___, ___, 245 N.W.2d 445, 447 (1976). Some service was provided to adjoining land in 1967. *Id.* Burnsville contended that trunk service

sewer[7] was constructed across respondent's property, he was assessed $193,206.[8] Respondent used the land as a landfill and quarry. When respondent appealed the assessment, the trial court found that the highest and best use[9] of the property was as a quarry and landfill; thus no benefit would inure to it.[10] The assessment was invalidated.

On appeal, the supreme court reversed, holding that Burnsville had the power to levy the special assessment as long as it could be shown that the property was specially benefitted by the sewer. Because the trial court failed to make the required finding of increase in market value, the case was remanded to determine whether any special benefit was conferred upon the property.[11]

The Minnesota approach to special assessment justification is not unique. The amount that each landowner pays has always been based upon the amount that the landowner benefits from the local improvement, measured by the increase in market value.[12] Payment of an amount based on increase in market value reimburses the municipality for the benefits conferred, but payment of more than the increase in market value constitutes an unconstitutional confiscation of property.[13] The principal assessment question, however, is how to determine whether the improvement is local, payable from special assessments, or general, payable from general revenues.[14]

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was being provided for the first time, thus respondent could be assessed. Brief for Appellant at 7. *See* Independent School Dist. No. 709 v. City of Duluth, 287 Minn. 200, 204, 177 N.W.2d 812, 815 (1970) (where land receives benefit and is assessed therefor, there can be no assessment for later improvement).

7. "Interceptor sewer" means a sewer designed to conduct all or substantially all sewage from a single governmental unit to treatment works outside the unit. MINN. STAT. § 473.121(23) (1976).

8. Respondent was assessed $300 per acre for his 643.97 acres. Expert testimony regarding increase in market value varied from $0 to $290,000. *In re* Village of Burnsville, ___ Minn. ___, ___, 245 N.W.2d 445, 447 (1976).

9. Under the judicial "highest and best use" test, property to be assessed is valued according to its most advantageous and reasonable use, not speculative use. *See* D. SALIBA, REAL ESTATE VALUATION IN COURT 74 (1972).

10. *But see In re* East Fourth Street, 173 Minn. 67, 70, 216 N.W. 607, 608 (1927) (property devoted to its most valuable use may be benefitted by improvement).

11. The court also held that the Metropolitan Waste Control Commission had the power to charge Burnsville for building the sewage system, and Burnsville, in turn, had the power to require reimbursement by special assessment. *In re* Village of Burnsville, ___ Minn. ___, ___, 245 N.W.2d 445, 447-48 (1976). *See* MINN. STAT. §§ 429.051, 444.075(4), 473.521(3) (1976).

12. Nyquist v. Town of Center, ___ Minn. ___, ___, 251 N.W.2d 695, 697 (1977); *In re* Hazel Park Sewer Sys., 176 Minn. 62, 66, 222 N.W. 522, 523 (1928). *See* 14 E. MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS § 38.02 (3d ed. 1970); C. RHYNE, MUNICIPAL LAW § 29-2 (1957).

13. *In re* Superior St., 172 Minn. 554, 559, 216 N.W. 318, 320 (where assessment greatly exceeds benefits, it is a taking of private property for public use without just compensation), *cert. denied*, 276 U.S. 628 (1927); 14 E. MCQUILLIN, *supra* note 12, § 38.03.

14. In Rogers v. City of St. Paul, 22 Minn. 494 (1876), the court formulated an approach

The rule reaffirmed by the court in *Burnsville* is commonly known as the special benefits rule, under which an improvement is defined to be local if it specially benefits property nearby or adjoining the improvement.[15] The test of special benefit is whether the improvement, by reason of its being confined to a locality, enhances the market value of adjoining property as distinguished from benefits diffused by it throughout the municipality.[16] Although the rule has been adopted by a majority of jurisdictions,[17] it has been subject to criticism.[18]

The special benefits rule suffers from a conceptual weakness. Under the rule, the assessor's finding determines not only how much the landowner must pay, but also whether or not there has been a local improvement.[19] If the assessor can find any increase in market value of the property in excess of the increase in market values generally, the improvement is local and the property may be subject to a special assessment.[20] To counteract the finding of the assessor, expert appraisal testimony is frequently offered by the landowner.[21] The court then determines the nature of the improvement, that is, general or local, based upon the value finding. Because a local increase in market value could

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to the question by adopting an assessment test based on benefit to the property measured by increase in market value. *Id.* at 508. The market value measure was recently affirmed in Carlson-Lang Realty Co. v. City of Windom, ___ Minn. ___, ___, 240 N.W.2d 517, 519 (1976). The issue of local improvement is a question of fact, State v. District Court, 33 Minn. 295, 308, 23 N.W. 222, 228 (1885), and, because it is initially a legislative, not a judicial function, it is presumed to be valid. Imperial Refineries, Inc. v. City of Rochester, 282 Minn. 481, 486, 165 N.W.2d 699, 702, *appeal dismissed,* 396 U.S. 4 (1969).

15. Carlson-Lang Realty Co. v. City of Windom, ___ Minn. ___, ___, 240 N.W.2d 517, 519 (1976); Quality Homes, Inc. v. Village of New Brighton, 289 Minn. 274, 280, 183 N.W.2d 555, 559 (1971); State v. Reis, 38 Minn. 371, 373-74, 38 N.W. 97, 98 (1888); Annot., 134 A.L.R. 895, 896 (1941).

16. *See* Mayer v. City of Shakopee, 114 Minn. 80, 82, 130 N.W. 77, 78 (1911); State v. Reis, 38 Minn. 371, 373, 38 N.W. 97, 98 (1888).

17. Annot., 134 A.L.R. 895, 896 (1941).

18. *See* City of Waukegan v. De Wolf, 258 Ill. 374, 377-78, 101 N.E. 532, 533 (1913); Hinman v. Temple, 133 Neb. 268, 270-72, 274 N.W. 605, 607 (1937) (special benefits definition of local improvement does not add much to the words themselves); Annot., 134 A.L.R. 895, 897 (1941).

19. *See In re* Village of Burnsville, ___ Minn. ___, ___, 245 N.W.2d 445, 450 (1976) (if improvement caused market values to rise $100 per acre, but caused value of subject property to rise $1,000, special benefit would be $900).

20. Minnesota assessors are presumed to consider only the local effect of an improvement, and to overlook general benefit. Village of Edina v. Joseph, 264 Minn. 84, 92, 119 N.W.2d 809, 815 (1962). *See* Qvale v. City of Willmar, 223 Minn. 51, 59, 25 N.W.2d 699, 704 (1946) (where reasonable persons differ, the assessor's determination will be upheld).

21. *See In re* Village of New Brighton, 293 Minn. 356, 357-58, 199 N.W.2d 435, 436-37 (1972). An implicit purpose for the expert testimony is government bias of the assessor. *Cf.* Handler, *The Real Estate Valuation Witness—Competency and Weight,* 8 TRIAL LAW. GUIDE 67, 80-81 (1964) (eminent domain appraisers are often challenged for bias towards government resulting from long experience and fear of losing job).

probably be found for almost any improvement,[22] such judicial juggling with market values as the sole determinant for assessment justification seems unsatisfactory.[23]

Alternatives to the special benefits rule exist. The court either could adopt a more restrictive definition of the concept of local improvement, or it could continue to apply the special benefits rule but qualify its application. A more restrictive definition of local improvement forms the basis for the "primary purpose" rule.[24] Formulated by the Illinois court in *City of Chicago v. Law*,[25] the definition is now accepted in one form or another by seven states.[26] Under the primary purpose rule, if the primary purpose and effect of an improvement is to improve a locality, it is a local improvement. If the primary purpose and effect is to benefit the public generally, then it is a general improvement, notwithstanding incidental benefit to localities.[27] The primary purpose rule consists of a two-stage analysis. First, the improvement itself is analyzed to determine whether its primary purpose and effect is to benefit the locality or the general public.[28] If the primary purpose and effect of the improvement has been determined to be local, only then is the special benefit assessment made. For example, if a city decides to install a sewer system, all connections to the interceptor sewer would primarily benefit the individual local residents. However, if the city built a new treatment plant and installed interceptor sewers for the entire city, the primary purpose and effect of the improvement would inure to the public in general.[29]

22. *See* City of Waukegan v. De Wolf, 258 Ill. 374, 378-79, 101 N.E. 532, 533 (1913); Hinman v. Temple, 133 Neb. 268, 271-72, 274 N.W. 605, 607 (1937).

23. *See* State v. District Court, 33 Minn. 295, 304, 23 N.W. 222, 226 (1885) ("Amid the conflict of opinions it is easy to see that there may have been errors of judgment on the part of the assessors.").

24. City of Waukegan v. De Wolf, 258 Ill. 374, 378-83, 101 N.E. 532, 533-35 (1913); Annot., 134 A.L.R. 895, 897 (1941).

25. 144 Ill. 569, 33 N.E. 855 (1893).

26. *See* Home Builders Ass'n v. Riddle, 109 Ariz. 404, 407, 510 P.2d 376, 379 (1973); Crane v. City of Siloam Springs, 67 Ark. 30, 37, 55 S.W. 955, 957 (1899); Rafkin v. City of Miami Beach, 38 So. 2d 836, 838 (Fla. 1949); City of Waukegan v. De Wolf, 258 Ill. 374, 378, 101 N.E. 532, 533 (1913); Hinman v. Temple, 133 Neb. 268, 271, 274 N.W. 605, 607 (1937); Ruel v. Rapid City, 84 S.D. 79, 86, 167 N.W.2d 541, 544-45 (1969); Duncan Dev. Corp. v. Crestview Sanitary Dist., 22 Wis. 2d 258, 264, 125 N.W.2d 617, 620 (1964).

27. *See* Village of Downers Grove v. Bailey, 325 Ill. 186, 191, 156 N.E. 362, 363 (1927); City of Waukegan v. De Wolf, 258 Ill. 374, 378, 101 N.E. 532, 533 (1913); *In re* Village of Hinsdale, 23 Ill. App. 3d 357, 359-61, 319 N.E.2d 83, 85 (1974).

28. The determination of the nature of the improvement would probably be made in the first instance by the city council with advice from the city attorney as counsel. *Cf.* Fowler v. City of Santa Fe, 72 N.M. 60, 380 P.2d 511 (1963) (city council acted on advice of city engineer).

29. *See* Village of Grand Ridge v. Hayes, 271 Ill. 431, 111 N.E. 289 (1915). Even if the improvement is determined to be of general benefit, members of the locality incidentally benefitted would nevertheless pay increased general property taxes because of the inciden-

The primary purpose rule seems to describe more accurately the concept of local improvement,[30] and it reflects early judicial intent to sanction special assessments only in equitable cases.[31] The basic advantage of the primary purpose rule is that it narrows the definition of local improvement by focusing the judicial inquiry at the first instance on the nature of the improvement, not market values.[32]

As an alternative to the primary purpose rule, the court could also consider adopting reasonable qualifications to the application of the special benefits rule. Some jurisdictions recognize an improvement-type distinction, under which the nature of the improvement is a function of prior determination. The general or special nature of an improvement is established by statute or by the courts. For example, main sewers can be distinguished from district sewers.[33] Costs for main sewer construction are considered general expenses, but district sewer construction is considered a local expense. A similar distinction may be made with

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tal benefit. Thus, the benefit would not go untaxed. *See generally* MINN. STAT. § 272.01 (1976).

30. *But see* 21 ILL. L. REV. 54, 54-56 (1926) (primary purpose rule inferior to special benefits rule; an "inspiration of but a few cases").

31. *See* Sperry v. Flygare, 80 Minn. 325, 328, 83 N.W. 177, 178 (1900) (dictum) (special assessments justified only when improvement so beneficial to private interests as to make it unjust for public to pay).

32. Primary purpose rule cases refusing special assessments include: Home Builders Ass'n v. Riddle, 109 Ariz. 404, 510 P.2d 376 (1973) (city parks); Rafkin v. City of Miami Beach, 38 So. 2d 836 (Fla. 1949) (road widening project), *noted in* 3 MIAMI L.Q. 641 (1949); Stockman v. City of Trenton, 132 Fla. 406, 181 So. 383 (1938) (same); Village of Grand Ridge v. Hayes, 271 Ill. 431, 111 N.E. 289 (1915) (water main); Hinman v. Temple, 133 Neb. 268, 274 N.W. 605 (1937) (viaduct); Ruel v. Rapid City, 84 S.D. 79, 167 N.W.2d 541 (1969) (public auditorium). Primary purpose rule cases finding a local improvement include: Nakdimen v. Fort Smith & Van Buren Bridge Dist., 115 Ark. 194, 172 S.W. 272 (1914) (bridge); City of Belleville v. Miller, 339 Ill. 360, 171 N.E. 535 (1930) (sewer system); Village of Downers Grove v. Bailey, 325 Ill. 186, 156 N.E. 362 (1927) (water main); Duncan Dev. Corp. v. Crestview Sanitary Dist., 22 Wis. 2d 258, 125 N.W.2d 617 (1964) (water tower).

33. *See* Southworth v. City of Glascow, 232 Mo. 108, 132 S.W. 1168 (1910); State v. Wilder, 217 Mo. 261, 116 S.W. 1087 (1909); Hill v. Swingley, 159 Mo. 45, 60 S.W. 114 (1900) (decisions interpreting ordinance which distinguished main sewers from district sewers; main sewers provide general benefit). Montana, under a statute, has followed the Missouri approach. *See* Crutchfield v. Nash, 84 Mont. 556, 276 P. 938 (1929); Rush v. Grandy, 66 Mont. 222, 213 P. 242 (1923). Minnesota followed this approach in the past. *See* Act of April 21, 1903, ch. 312, § 2, 1903 Minn. Laws 545 (repealed 1953) (sewers classified general are financed by general revenues, sewers classified district are financed by special assessments). Other jurisdictions achieve this distinction by judicial declaration. *See* City of Edwardsville v. Jenkins, 376 Ill. 327, 331, 33 N.E.2d 598, 601 (1941); Hurd v. Sanitary Sewer Dist. No. 1, 109 Neb. 384, 388, 191 N.W. 438, 439 (1922) (interceptor sewers are general improvements). *But see* Duncan Dev. Corp. v. Crestview Sanitary Dist., 22 Wis. 2d 258, 265, 125 N.W.2d 617, 620 (1964) (difficult to classify improvements abstractly as local or general for purpose of considering special assessments); MINN. STAT. § 429.051 (1976) (municipalities have discretion to decide the nature of the improvement).

regard to water supply.[34] In addition, original construction and repair improvement can be distinguished.[35] Such preconceived qualifications can result in a careful and just approach to municipal revenue policy.

Other courts qualify the special benefits rule by invalidating assessment when the benefit from the improvement is based on mere speculation or conjecture.[36] To assess equitably under this qualification, benefit to the property must be actual, physical, and material.[37] Assessments held void for speculative benefits typically include projects providing no objective benefit to adjoining property owners,[38] or projects requiring future action for completion.[39] There is authority in Minnesota law supporting the speculative benefit qualification to the special benefits rule.[40]

The court's sanction of Burnsville's assessment under the special ben-

34. *See* Village of Grand Ridge v. Hayes, 271 Ill. 431, 111 N.E. 289 (1915).

35. Crane v. West Chicago Park Comm'rs, 153 Ill. 348, 353, 38 N.E. 943, 944 (1894) (repair improves public access, general benefit because special benefit has already been received); City of Erie v. Russell, 148 Pa. 384, 386-87, 23 A. 1102, 1103 (1892) (sewers); Hammett v. City of Philadelphia, 65 Pa. 146, 156 (1869) (streets). *See* St. Paul, Minn., Council File No. 268302 (Dec. 21, 1976) (reconstruction of standard improvements such as streets, curbs, and gutters should be financed by general revenues). *See generally* Plowman, *Municipal Assessments for Reconstruction of Streets, Sewers, Sidewalks and Water Mains,* 19 U. PITT. L. REV. 87 (1957).

36. *E.g.,* Kansas City S. Ry. v. Road Improvement Dist. No. 3, 266 U.S. 379, 387 (1924). This approach may depart from the general rule that the benefit from the improvement inures to the land itself regardless of its present use. *See* Louisville & Nashville R.R. v. Barber Asphalt Paving Co., 197 U.S. 430, 433 (1905) (the amount of benefit is a matter of forecast and estimate); Qvale v. City of Willmar, 223 Minn. 51, 57, 25 N.W.2d 699, 703 (1946).

37. Nampa & Meridian Irrigation Dist. v. Petrie, 37 Idaho 45, 54, 223 P. 531, 533 (1923); City of Lawton v. Akers, 333 P.2d 520, 524-25 (Okla. 1958) (benefits from improvements which depend upon contingencies and future action of public authorities cannot be considered in making the assessment); Wm. H. Heinemann Creameries, Inc. v. Village of Kewaskum, 275 Wis. 636, 641, 82 N.W.2d 902, 905 (1957).

38. *See* DeFraties v. Kansas City, 521 S.W.2d 385, 387 (Mo. 1975) (four-lane highway found detrimental because of increased traffic, noise, pollution, and litter; special assessment held void); Heavens v. King County Rural Library Dist., 66 Wash. 2d 558, 563-66, 404 P.2d 453, 456-58 (1965) (benefit from library held incidental and remote; benefit must be actual, physical, and material). *But see* Village of Edina v. Joseph, 264 Minn. 84, 98, 119 N.W.2d 809, 817 (1962) (assessment for street improvement upheld; land should be considered generally and apart from particular use at time of assessment); Heavens v. King County Rural Library Dist., 66 Wash. 2d 558, 567-68, 404 P.2d 453, 458-59 (1965) (dissenting opinion) (library specially benefits adjoining landowners).

39. City of Carterville v. Phillips, 309 Ill. 433, 141 N.E. 182 (1923); City of Chicago v. Sullivan Mach. Co., 269 Ill. 58, 62, 109 N.E. 696, 698 (1915); Crutchfield v. Nash, 84 Mont. 556, 568-69, 276 P. 938, 943 (1929); Molbreak v. Village of Shorewood Hills, 66 Wis. 2d 687, 225 N.W.2d 894 (1975) (assessment based on possibility of future rezoning).

40. *See In re* Faribault County, 237 Minn. 358, 362, 55 N.W.2d 308, 311 (1952) (assessment cannot be based upon speculative, future benefits); Mayer v. City of Shakopee, 114 Minn. 80, 83, 130 N.W. 77, 78 (1911) ("when an arbitrary rule is followed, without regard to proximity, location, or conditions, the assessment is void").

efits rule in this case seems unfair.[41] The purpose of the interceptor sewer across respondent's property was to carry effluent from Burnsville to a new sewage treatment plant.[42] Rather than justifying assessment solely upon speculative market value considerations, the primary purpose rule would first determine the purpose and effect of the improvement to determine whether the sewer was constructed for the benefit of the municipality, or for the local landowners. Moreover, the improvement-type distinction qualification to the special benefits rule would equitably apportion cost based on common experience regarding the effect of certain improvements. Finally, because the foreseeable and restricted use of respondent's property[43] was as a landfill and quarry, a determination of increased market value may have been based on mere speculation and conjecture as to future use. The result in *Burnsville* suggests that Minnesota's special assessments policy should be reviewed.

Workers' Compensation—CALCULATION OF EARNINGS CAPACITY—*Mathison v. Thermal Co.*, ___ Minn. ___, 243 N.W.2d 110 (1976).

Workers' compensation laws were developed to provide a system of compensation to workers injured while at work.[1] Minnesota has adopted this system, which imposes financial liability upon the employer without regard to fault.[2] Under Minnesota law, compensation is based upon

41. *See* City of Edwardsville v. Jenkins, 376 Ill. 327, 331, 33 N.E.2d 598, 601 (1941) (it is impossible to justify special assessment to finance interceptor sewers). *But see* Federal Constr. Co. v. Ensign, 59 Cal. App. 200, 215-19, 210 P. 536, 542-43 (1922) (city built new sewage disposal plant and interceptor sewer and all city property assessed; entire city may specially benefit from local improvement).

42. *In re* Village of Burnsville, ___ Minn. ___, ___, 245 N.W.2d 445, 446 (1976).

43. *See* Brief for Respondent at 21 (with regard to nearly all of respondent's property, any use of land other than present use requires approval of Lower Minnesota River Watershed District, Minnesota Department of Natural Resources, State Pollution Control Agency, City of Burnsville, and Metropolitan Council).

1. The Interim Commission on Industrial Accident Compensation and State Industrial Insurance, *Report to the Legislature of Minnesota*, MINN. S. JOUR. 131 (1921) stated:

> The underlying theory of the new system of compensation is that it is for the welfare of society as a whole that all employe receive certain designated benefits payable in installments, as wages are payable, rather than that a few only of the injured should receive larger amounts in a lump sum; a considerable part of which was often consumed by attorney's fees and expenses of litigation and the balance often lost through unwise business ventures or extravagent living.

2. MINN. STAT. § 176.021(2) (1976) (emphasis added) provides in part:

> Every such employer is liable for compensation according to the provisions of this chapter and is liable to pay compensation in every case of personal injury or death of his employee arising out of and in the course of employment *without regard to the question of negligence*, unless the injury was intentionally self-inflicted or when the intoxication of the employee is the proximate cause of the injury.