STATE OF IOWA,)	
)	
Plaintiff,)	No. CVCV125819
)	
Vs.)	Findings of Fact,
)	Conclusions of Law and Ruling
BOARD OF TRUSTEES OF JOINT)	
DRAINAGE DISTRICT NO. 77 IN)	
POCAHONTAS AND PALO ALTO)	
COUNTIES, IOWA,)	
)	
Defendant.)	

This contested matter was tried to the Court on February 29, 2008. Michael H. Smith, Assistant Attorney General, appeared for the State of Iowa. The defendant, Board of Trustees of Joint Drainage District No. 77 in Pocahontas and Palo Alto Counties, Iowa was represented by its attorney James W. Hudson. The Court, having considered the testimony, the evidence and the arguments of counsel, enters the following findings of fact, conclusions of law and ruling.

Findings of Fact

Petition for Relief from Classification and Assessment of Drainage Benefits was filed by the State on June 29, 2007. This was the result of a report of classifications by the Board of Joint Trustees regarding Drainage District No. 77. A report proffered on May 17, 2007 classified Rush Lake and assigned drainage benefits to the same based upon the conclusion that the lake received benefits from the drainage district facilities. The State, in response, filed written objections. The State contends the threshold question must be the determination that it is "land" that qualifies for classification, and, if so, the Court should determine whether or not the classification is unreasonable, arbitrary and excessive. The State argues that the determination was indeed unreasonable and arbitrary and that the benefits assessed to the lake were 2.65 times higher per acre than the average assessment per acre of all other properties within the

drainage district. The State in conjunction with the DNR, as public trustees, have maintained this wetland. In 1931, approximately 70 additional adjoining acres were purchased by the State. The property was managed as a state park until approximately 1970 and has been managed as the Rush Lake Wildlife Management area since.

In the State's brief, a number of issues were identified as significant in the Court's reassessment. They are:

1. Assigning a drainage benefit to a natural lake is contrary to the statutory purposes of drainage districts.

2. Property held in trust as a water body should be classified as receiving no drainage benefits.

3. In the alternative, a natural lake should be classified as having no greater benefits than the least benefited land in the drainage district.

The State contends that the classification and assessment against this property is tantamount to gross error and suggests that should the Court finds that this is indeed land that the benefit be minimal, approaching zero.

The defendant argues that this is clearly land, albeit covered with water. The range of assessed properties is from .25 to 2.56. Comparatively speaking, Rush Lake has one-third of the benefit of the most valuable property located within the drainage district and assessed in the same percentage.

Both the plaintiff and the defendant presented testimony to support their positions. The Court would summarize that testimony.

Donald D. Etler, an engineer called as an expert to describe the reclassification method used in JDD#77. He testified that the method employed was a very sophisticated classification method. It utilizes LiDAR data in combination with GIS software in computing the relative values. He states that this was the second drainage district to utilize this method. A detailed Power Point presentation was presented to the Court that showed the step-by-step process. The classification factors are identified in Defendant's Exhibit No. 35. Of significant note were the wet factor and the run-off factor. The analysis of these factors can be found in Defendant's Exhibit No. 40. The defendant further produced witnesses who identified the visible benefits provided to the area in

2

question over the course of years. Defendant's Exhibit Nos. 2-10 provided the Court with an insight into the outlet structures that provided relief to the lake's runoffs. Further, there was testimony to establish that removed "stop logs" caused significant silt and debris runoff into adjacent properties. Neighbors and supervisors testified as to the necessity and benefit of the drainage district facilities.

The State offered testimony of Jack Riessen. Mr. Riessen is a licensed engineer who opined that the facilities and the outlets provided no real benefit to the property.

Conclusions of Law and Ruling

Generally, Iowa Code §468 governs those laws related to drainage districts and improvements. Specifically, section 468.40 establishes the rules for classification. Contained therein is the following:

> In estimating the benefits . . . only the benefits which will be received by reason of the construction of the improvement in question as it affords an outlet to the drainage of such lands, or brings an outlet nearer to said lands or relieves the same from overflow and relieves and protects the same from damage by erosion.

As noted by the State, there is a strong presumption that a drainage district assessment is correct and equitable with the burden falling upon the appealing party to show that the assessment is incorrect or inequitable. The presumption can be overcome by a showing of fraud, prejudice, gross error or evident mistake. <u>Martin v. Board of Supervisors Polk County</u>, 251 Iowa 579, 583, 100 N.W.2d 652, 655 (1960).

In this case, the Court must first address the threshold question. Is this property in the category of land that authorizes classification and assessment. Historically, the answer has evolved. A 1985 amendment to the legislature suggested that assessment of drainage benefits against the natural lake was improper and therefore disallowed. However, a 1997 amendment
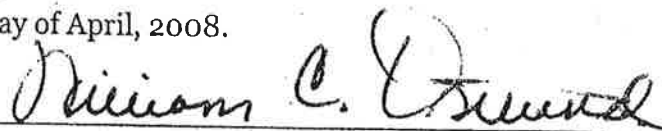
3

repealed the prohibition against assessing benefits to property below the ordinary high water mark.

The State offered in its brief a similar case decided in Hancock County. Counsel for the plaintiff and the defendant were the same counsel arguing this case to this Court. While the Court recognizes that Hancock decision bears no precedent, the Court agrees with the preliminary conclusion contained therein. In short, the Court finds that the land herein may be considered land for the purposes of classification and assessment. A number of cases provided to the Court dating back to State v. Jones, 143 Iowa 398, 122 N.W. 241, 243 (1909) support this conclusion. Having reached that conclusion, the Court must then determine whether or not the classification is the result of fraud, prejudice, gross error or evident mistake.

This Court finds that it is clearly evident that a benefit was derived by the Rush Lake property the result of drainage improvements. This was buttressed by the testimony of those who witnessed drainage runoff over the past years. The Court would direct the parties' attention to what would be identified as State's Exhibit No. 101, a letter authored by Donald Etler describing those factors and the method in which the conclusion was reached for assessment. This Court's attention was particularly drawn to two factors, the runoff and the wetness factor. These in large part contributed to the assessment. This Court could go into great specificity as to the process used, however, the record provides a much better basis for determination. The Court finds that the valuation procedure was detailed, sophisticated, logical and comparably sound. To find otherwise would be arbitrary.

Based upon the premise that the drainage assessment is correct unless overcome by significant evidence, the Court finds that the State's appeal is denied and the classification and assessment stand. Costs are assessed to the plaintiff.

Dated this 23rd day of April, 2008.

_____
WILLIAM C. OSTLUND
District Court Judge

4

Clerk to forward copies to:
Michael H. Smith
James W. Hudson

4/28/2008
cw