IN THE SUPREME COURT OF IOWA

NO. 20-0814

UNION PACIFIC RAILROAD COMPANY and MIDWESTERN RAILROAD PROPERTIES,
Plaintiffs-Appellees,

vs.

DRAINAGE DISTRICT 67 BOARD OF TRUSTEES, GARY RABE, in his capacity as a member of the Board of Trustees, KEITH HELVING, in his capacity as a member of the Board of Trustees, DENNIS PROCHASKA, in his capacity as a member of the Board of Trustees
Defendants-Appellants,

and

BECCA JUNKER, in her capacity as Hardin County Drainage Clerk, JESSICA LARA in her capacity as Hardin County Auditor,
Defendants.

APPEAL FROM THE IOWA DISTRICT COURT FOR HARDIN COUNTY

THE HONORABLE JAMES A. McGLYNN

APPELLANTS' REPLY BRIEF

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CERTIFICATE OF FILING

The undersigned certifies that on the 7th day of January, 2021, this reply brief was filed with the clerk of the supreme court via the electronic document management system.

David R. Johnson

CERTIFICATE OF SERVICE

The undersigned certifies a copy of this reply brief was served on this 7th day of January, 2021 on the following counsel of record

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David R. Johnson

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES

RULES

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. WHETHER THE DISTRICT COURT ERRED IN GRANTING UNION PACIFIC'S MOTION FOR SUMMARY JUDGMENT AND DENYING THE BOARD OF TRUSTEE'S MOTION FOR SUMMARY JUDGMENT.

Authorities

Iowa Code section 468.47

Chicago, R. I.. & P. Ry. Co. v. Wright County Drainage Dist. No. 43 et al, 154 N.W. 888 (1915).

Chicago & N.W. Ry. Co. v. Board of Sup'rs of Hamilton County, 162 N.W. 868 (Iowa 1917)

Chicago & N.W. Ry. Co. v. Board of Sup'rs of Hamilton County, 162 N.W. 868 (1917)

Chicago & N.W. Ry. Co. v. Board of Sup'rs of Hamilton County, 153 N.W. 110 (Iowa 1915)

C., R. I. & P. Ry. Co. v. Centerville, 153 N. W. 106 (1915)

Hicks v. Franklin County Auditor, 514 N.W.2d 431 (Iowa 1994)

Voogd v. Joint Drainage Dist. No. 3-11, 188 N.W.2d 387 (Iowa 1971)

Stanfield v. Polk County, 492 N.W.2d 648 (1992)

Iowa Code section 468.44

In Re Johnson Drainage Dist. No. 9, 118 N.W. 380 (1908)

Chicago, M. & S.P. Ry. Co. v. Monona County, 122 N.W. 820 (Iowa 1909)

Iowa Code section 468.65

Iowa Code section 468.131

Iowa R. Civ. P. 1.981

Zinser v. Board of Sup'rs of Buena Vista County, 144 N.W. 51 (Iowa 1097)

II. WHETHER THE DISTRICT COURT ERRED BY ORDERING THE PREVIOUS CLASSIFICATION OF BENEFITS REINSTATED, WHEN THE ONLY REMEDY AVAILABLE WAS TO AMEND THE CLASSIFICATION OF BENEFITS.

Authorities

This issue is not addressed in this reply brief.

STATEMENT OF THE CASE

COME NOW the Defendants-Appellants, the "Board of Trustees", pursuant to Iowa Rule of Appellate Procedure 6.903(4), and hereby submit the following argument in reply to Appellee's Brief filed on November 4, 2020. The Board of Trustees' deadline for filing this reply brief was extended to December 2, 2020. While the Defendants-Appellants' Brief and Argument adequately addresses the issues presented for review, a reply is necessary.

ARGUMENT

I. THE DISTRICT COURT ERRED IN GRANTING UNION PACIFIC'S MOTION FOR SUMMARY JUDGMENT AND DENYING THE BOARD OF TRUSTEE'S MOTION FOR SUMMARY JUDGMENT.

First, Union Pacific's primary argument is the drainage district is artificially bringing water to its right-of-way, thereby implying the district is actually creating a burden, even an actionable nuisance, to its roadbed and embankment. Appellee's Brief, pp. 16, 27. So not only is the railroad trying to argue it does not benefit from the drainage district, it is actually arguing it is burdened or harmed by the drain tile that moves water underground and

away from its railbed and embankment. This evidence is incompetent at a hearing on a reclassification report per Iowa Code section 468.47.

Union Pacific is making the same argument another railroad made over 100 years ago - that it just does not benefit from the drainage district improvements and should not be assessed anything for the improvements that keep its roadbed and embankment dry and safe. *See Chicago, R. I.. & P. Ry. Co. v. Wright County Drainage Dist. No. 43 et al*, 154 N.W. 888 (1915). This, in spite of the fact it insists the crossing be moved to a location 150 feet away from its culvert. App. v. I pp. 5, 98. In spite of the fact it insists that special materials and procedures be used to protect the integrity and stability of its railroad bed and embankment which is undeniably a benefit that must be considered for the reclassification of benefits.

The drainage code and caselaw are clear. At a hearing on the reclassification of benefits, the railroad is not allowed to offer evidence that it does not benefit from the existence or repair of the drainage district's main tile. Iowa Code section 468.47 provides such evidence is incompetent at the hearing on the classification commission's report.

As the Supreme Court of Iowa stated in *Chicago & N.W. Ry. Co. v. Board of Sup'rs of Hamilton County*, 162 N.W. 868, 873 (Iowa 1917):

> It will clarify the situation in this respect if we keep in mind the fact that it is the district, and not the individual landowner, with which the drainage law is primarily concerned. It maps out the district and treats it as a whole. In establishing the district, it establishes the fact that it is benefited as a whole to the extent of the necessary and proper cost of the whole improvement. Practically speaking, there is then left but one further question to be passed upon, and that is the proper apportionment of this district tax to the several tracts of land of which the district is composed. If in so doing it were permissible for every individual owner to come into court and show that his particular tract received no benefit from the improvement and be thereby relieved from liability to pay part of the tax, the law would be robbed of all practical effectiveness, and the whole system of drainage as a public enterprise be paralyzed.

In *Chicago & N.W. Ry. Co. v. Board of Sup'rs of Hamilton County*, 162 N.W. 868, 873 (1917) the court stated:

> To sustain its complaint as to the apportionment of the tax, the appellant offered the testimony of three engineers, who identify certain plats of the right of way, describe the general topography of the territory through which it passes, the condition of the railway property, and the improvements thereon, and express the opinion that the drainage does not to any material degree add to the value or convenience of the use of the right of way for railway purposes. Three other witnesses, now or formerly roadmasters in appellant's service, and another who is its section foreman, and another its trainmaster, all unite in expressing a similar opinion.
>
> * * *
>
> .... and further remember that the testimony that the railroad property received no benefit from the improvement is wholly

> incompetent under the statute to exempt the property from assessment...

The court then ruled, at 874-875:

> As the record stands, then, it is practically devoid of anything tending to overcome the presumption that the assessing officers did their duty and that the list made and returned to them is correct. As we have had occasion to say in some of the cases above cited, the assessments having been made by the officers named for that purpose, acting under their official oaths and in obedience of the statute providing therefor, the presumption of their substantial correctness can be overcome only by a very clear showing of prejudicial error or of fraud or mistake. We are to presume, also, that in making such assessments they took into consideration, not only the matters concerning which evidence was given upon trial of the appeal to the district court, but all other elements mentioned by the statute as a basis for estimating benefits. Such assessments are not to be avoided by showing, for example, no more than that the improvement did not render the land any better or more convenient for the present use to which it is put by the owner, for, even if that be proved, it does not negative the accrual of benefits by reason of other matters of which the statute takes cognizance--public utility, convenience, and welfare, promotion to the district or affecting the property assessed, as well as the possibility of the future employment of such property in any valuable use to which it is reasonably adapted. Benefits, as we have before had occasion to say, include more than immediate enhancement of market value. *C., R. I. & P. Ry. Co. v. Centerville*, 172 Iowa, 444, 153 N. W. 106, 154 N. W. 596.

Second, Union Pacific argues the reclassification commissioners simply and incorrectly used "costs" to impute, dollar for dollar, the railroad's "benefits" from the proposed tile repair. Appellee's Brief, p. 22-27. The record contains substantial and abundant evidence of the benefits the railroad would receive as a result of moving and replacing the drainage district drain tile under its roadbed and embankment, upon which the reclassification commission relied to prepare its reclassification report, and the railroad submitted little or no competent evidence to show otherwise.

The record shows the reclassification commissioners went through the entire process of assessing benefits as required by Iowa Code sections 468.38 - 468.40, and 468.44. App. v. I pp. 2-5. When reviewing drainage proceedings, substantial compliance is sufficient as to repairs or improvements; and the procedural requirements should not be too technically construed. *Hicks v. Franklin County Auditor*, 514 N.W.2d 431 (Iowa 1994); *Voogd v. Joint Drainage Dist. No. 3-11*, 188 N.W.2d 387, 390 (Iowa 1971). "Substantial compliance" means compliance to the extent necessary to assure that the reasonable objectives of the statute are met. *Stanfield v. Polk County,* 492 N.W.2d 648, 652 (1992).

The Supreme Court of Iowa has stated, it "has no precedent which enumerates all the elements which may be taken into consideration in considering the benefits to a railroad company or to its property from an improvement of this kind, nor have we any recognized or settled rule by which such benefits may be measured in money with mathematical exactness, nor even with the proximate approach to the measure of exactness which may be applied to farm property or town lots." *Chicago & N.W. Ry. Co. v. Board of Sup'rs of Hamilton County*, 153 N.W. 110 (Iowa 1915).

In Sections 2.0 and 3.0 of the Reclassification Report, the Commissioners went through the Background Information and Evaluations to compare the lands with each other. The railroad property was determined to be the most benefited property and allocated the 100 percent benefit designation. App. v. I p. 89. The agricultural parcels were then assessed a benefit percent relative to the railroad's 100 and the numbers are set forth in the table at the end of the report. App. v. I p. 94.

Iowa Code section 468.44 (2) required the Commission set forth the amount of benefits to the railroad property. And subparagraph (4) required the Commission set forth and specifically state "any specific benefits other than those derived from the drainage of agricultural lands". The

Commission did exactly that at Section 4.2 when it found "For tract 12, approximately 50% of the construction costs in the recent bid letting for the currently proposed project were associated with requirements by the Union Pacific Railroad to prevent erosion on their property and the resulting protection of the Union Pacific Railroad facilities. App. v. I p. 89. As such, the Commissioners felt that tract 12 is the 100% benefited tract for the currently proposed project and should pay 50% of the total reclassification." *Id.* (bold added herein).

The Supreme Court of Iowa has held "benefits include those derived therefrom in the way of the betterment of the roadbed and track". *In Re Johnson Drainage Dist. No. 9*, 118 N.W. 380, 382 (1908). The Supreme Court has held ".. it is not an unreasonable conclusion that additional drainage which aids in any appreciable degree to hasten the discharge of the flood waters and the drainage of the soil on which the embankment rests must be of material benefit to such property and add another element of safety to the road as a highway of travel and commerce." *Chicago, M. & S.P. Ry. Co. v. Monona County*, 122 N.W. 820 (Iowa 1909).

The Supreme Court of Iowa has also stated, in *Chicago, R. I. & P. Ry. Co. v. Wright County Drainage Dist. No. 43 et al.*, 154 N.W. 888 (1915):

"True, if figured out on a mere acreage basis, the amount assessed is materially greater than the average assessment laid upon the farm lands in the district, but that in itself is quite manifestly an insufficient ground for setting aside or reducing the assessment, for the statute does not contemplate the treatment of the right of way solely as a mere fraction of the agricultural area in which it is found."

In the Affidavit of Lee O. Gallentine, P.E. (the engineer who served as one of the three Reclassification Commissioners) in Support of Defendant's Resistance to Motion for Summary Judgment, Gallentine testified in writing to many issues. At paragraph 1.b.i, of his Affidavit, Gallentine refuted the railroad's assertion that the Reclassification Commission "improperly determined that the cost of constructing the tile line was a special benefit" and explained the requirement of Iowa Code section 468.44. App. v. II p. 45.

At paragraph 1.b.ii., Gallentine refuted the railroad's assertion and explained how the Commission recommended the Board of Trustees adopt the Reclassification Report for the current project and, as projects arise in the future, determine on an individual basis if it is equitable. App. v. II p. 45.

At paragraph 1.c., Gallentine explained the *Hardin County Dist. 55* case provides the costs are to be assessed to and be paid by the landowners in the district, including the railroad. He also explained how the railroad's predecessors paid assessments when the district was established. App. v. II p. 46.

At paragraph 2.a. of his Affidavit, Gallentine explained:

> "It is clear from this statement that the benefit the commissioners felt that the Plaintiff's receives is protection from erosion, not the construction costs across the Plaintiff's property. This is verified by an analysis of the bid tabulation for the current project (attached as Exhibit Gallen4). As can be seen from the analysis on said bid tabulation, 49% of the bid costs are associated with the items dictated by the Plaintiff's need for erosion protection above and beyond the tile installation used for other landowners within the Drainage District. These erosion protection measures include, but are not limited to:
>
> i. Leak resistant joints for the main tile (i.e. carrier pipe) itself.
>
> ii. Restrained joints for the main tile (i.e. carrier pipe) itself.
>
> iii. Even with restrained and leak resistant joints on the main tile (i.e. carrier pipe), installation of a second pipe (i.e. casing pipe) with the same characteristics outside of the main tile.
>
> iv. At least 2" air gap on all sides between the outside of the main tile (i.e. carrier pipe) and the casing pipe.
>
> v. Continual construction and monitoring of the Plaintiff's rails to show any signs of erosion.

vi. Installation of the main tile at least 150' away from the Plaintiff's culvert instead of at the current main tile location.

It is important to note that these items are not required by the Drainage District. They are a requirement of the Plaintiff based on a recent Drainage District repair project that was designed and permitted in Hardin County as evidenced by the pink highlighted on e-mail correspondence with the Plaintiff (attached as Exhibit Gallen 10) and the items shown on a blank copy of the Plaintiff's own Standard Form (attached as Exhibit Gallen 11). However, the special construction requirements are nothing new to the Drainage District. Items 2 of Exhibit Gallen3, states that if the Plaintiff's predecessor desires to have the main tile crossing at their embankment "... constructed of cast iron pipe instead of ordinary drain tile...", then the Plaintiff's predecessor was to "... furnish on the ground thirty feet of 12-inch cast iron pipe, which shall be used ..." by the Drainage District"... in construction of said drain instead of the ordinary drain tile." The Plaintiff's predecessor recognized the need to protect their railbed from erosion and were willing to supply the "extra" item they felt necessary to ensure this. This is no different than today, whereas the Plaintiff still has "extra" items they feel necessary to prevent erosion of their railbed. However, they are unlike their predecessor in that they will not directly supply these "extra" items and do not want what they feel necessary to prevent erosion from being assessed as a true benefit. Also, the benefit is not based on the total cost of the main tile crossing the Plaintiff's land as the Plaintiff alleges. Looking at said Exhibit Gallen4, it can be seen that the total of the bid prices by the contractor is $200,8891, but the total sample cost used by the commission throughout said Exhibit F is $250,000. If the commissioners and District Trustees were attempting to "assess construction costs ... as benefits" as the Plaintiff alleges, then these two numbers would match. Based on this, it quite apparent that the Plaintiff's statement is incorrect."

App. v. II pp. 47-48.

See Gallentine Affidavit Exhibit 4, Bid Sheet for Repairs to Main Tile DD#67, Hardin Co., wherein Gallentine highlighted the items that are necessary to prevent erosion to the railroad totaling $103,843, less the cost of 12" polypropylene pipe at a cost of $5,500, resulting in additional cost for erosion prevention in the amount of $98,343. App. v. II p. 77. Based on a total bid price, results in 49% being attributable to erosion protection. *Id.* The items resulting in the additional costs include:

102	24" ⌀ Steel Casing (Jack & Bore)	111 Linear Feet	$62,160.00
103	12" ⌀ DIP Tile	132 Linear Feet	$ 9,438.00
104	Intake Junction Structure	1	$ 4,400.00
106	22 ½° x 12" ⌀ Polyproplyene Bend	3	$ 1,245.00
107	11 1/4° x 12" ⌀ Polyproplyene Bend	2	$ 820.00
108	Type PC-2 Concrete Collar	4	$ 900.00
111	Tile Abandonment	85 Linear Feet	$ 2,380.00
112	Railroad Permitting, Flagging, Insurance, and Coordination	1	$22,500.00

See Gallentine Affidavit Exhibit 11: "Sample Encased Non-Flammable Pipeline Crossing" setting forth the specifications required by Union Pacific Railroad Co.'s Form DR-0404-B. App. v. II p. 124.

See Gallentine Affidavit Exhibit 10, which is a copy of the seven pages of emails between counsel for the railroad and the county and engineer setting forth the railroad's required specifications for the crossing of its right

of way. For example, in paragraph 1, the railroad required the new line shall be located no closer than 150 feet to the nearest portion of any railroad bridge, culvert or other railroad infrastructure. App. v. II p. 117.

See Gallentine Affidavit Exhibit 1: "Repairs to Main Tile Drainage District 67 Hardin County, Iowa, 2019, Sheet 2 for Demolition of the old tile in order to install a new tile at the location designated by Union Pacific:

> "Notes:
>
> 1. CONTRACTOR SHALL PROTECT EXISTING RAILROAD CULVERTS, INTAKES AND CASINGS DURING DEMOTION AND CONSTRUCTION.
>
> 2. CONTRACTOR SHALL PROTECT EXISTING BURIED FIBER OPTIC LINE CROSSING THE EXISTING MAIN TILE (LOCATION TO BE DETERMINED IN FIELD) DURING DEMOLITION AND CONSTRUCTION.
> 3. CONTRACTOR SHALL FOLLOW THE UNION PACIFIC RAILROADS GUIDELINES FOR ABANDONMENT FOR SUBSURFACE STRUCTURES (SEE SHEET 10)."

App. v. II p. 58.

See Gallentine Affdavit Exhibit 1: "Repairs to Main Tile Drainage District 67 Hardin County, Iowa, 2019, Sheet 7 of 10 "Enlarged Crossing Plan" setting forth the "Notes" detailing the requirements that must be met by the drainage district when crossing the railroad's right of way that is too long to set forth herein. App. v. II p. 58.

See also Sheet 10 of 10 of Gallentine Affidavit Exhibit 1: "Repairs to Main Tile Drainage District 67 Hardin County, Iowa, 2019," for Union Pacific Railroad Crossing Track Protection General Notes, setting forth the 1. Abandonment Procedures, 2. Track and Ground Monitoring, and [2] Excavation Requirements. App. v. II p. 67.

See paragraph 2.b. of Gallentine's Affidavit where he explained how the railroad has always been assessed for benefits in the district in the past, and more than other landowners; and how its predecessor agreed to contribute the 12-inch cast iron pipe and delivered it to the location, and the significant value of doing so. App. v. II p. 48.

See paragraph 2.c. of Gallentine's Affidavit where he explained how the reclassification commission determined the railroad property was the most benefited property and section 468.44 requires the commission set forth any specific benefits other than those derived from the drainage of agricultural lands be separately stated. App. v. II p. 49.

See paragraph 2.d. of Gallentine's Affidavit whereby he refuted the railroad's allegation and explained to the district court how the benefit to the railroad's property was based on erosion measurements deemed necessary by the railroad's own standards that are above and beyond those required by

other landowners within the Drainage District. App. v. II p. 49.

See paragraph 2.e. of Gallentine's Affidavit where he explained to the district court how the reclassification commission decided the railroad's tract was the 100% benefited tract. App. v. II pp. 49-50.

See paragraph 2.f. of Gallentine's Affidavit where he explained to the district court how Mr. Vokt's inspection of the land and soil samples was limited to the area around railroad's culvert, and did not include the entire drainage district; and Vokt did not inspect the entire drainage district, observe its patterns, and review its topography as is required for a reclassification commission report. App. v. II p. 50.

See paragraph 2.g. of Gallentine's Affidavit where he explained for the district court how Mr. Vokt did not differentiate between percent benefit and assessment, and how they are two separate and distinct items. App. v. II p. 50.

See paragraph 2.h. of Gallentine's Affidavit where he explained for the district court how Iowa Code section 468.65 and 468.131 allows the Board of Trustees to review the classification of benefits if additional projects arise in the future. App. v. II p. 51.

See paragraph 3.a. of Gallentine's Affidavit where he clarified for the district court that the Reclassification Report was approved by the classification commissioners, not he alone as the engineer. App. v. II p. 52.

See paragraph 3.b. of Gallentine's Affidavit where he explained for the district court how the land receiving the greatest benefit shall be marked on a scale of one hundred, and explained why it was inaccurate for the railroad to claim its parcel was 200% benefited. App. v. II p. 52.

See paragraph 3.c. of Gallentine's Affidavit where he explained for the district court how Mr. Vokt's report was incomplete and misleading in ten different ways, and particularly at paragraph iii where he stated:

> "... Mr. Vokt mixes his observation that "... water was ponded and covered with a thin ice layer (less than 1 inch) at the upstream (southeast) and downstream (northwest) sides of the track embankment..." with his opinion that "The presence of runoff is an indication of Culvert 143.06 receiving surface water runoff along a natural waterway." Although I agree with Mr. Vokt that the culvert (and the main tile in close proximity) are at the location of a natural waterway, I disagree with his opinion and I think that it shows his lack of understanding of the main tile drainage system. Based on conversations with landowners in the area and my work within the Drainage District, it is apparent to me that the standing water that Mr. Vokt observed is present because the main tile is not functioning correctly as described in said Exhibit B. If the main tile were functioning correctly, it would lower the water table in its proximity and reduce if not totally eliminate the standing water Mr. Vokt observed. However, Mr. Vokt does not reach these same

> conclusions as there is no indication that he walked with any landowners or reviewed any district records to analyze how the main tile is even designed to function. This makes his analysis and opinions relative to the Drainage District incomplete and misleading.

App. v. II p. 52.

It is worth pointing out the district court gave little or no weight to Mr. Gallentine's testimony by his affidavit. Iowa R. Civ. P. 1.981 requires there be no dispute of material facts in order for the Court to grant a motion for summary judgment and it may appear there is a dispute on relevant facts in this case. However as argued above and in Appellant's Brief, the evidence offered by the railroad was incompetent because it was arguing it received little or no benefit, and that evidence is incompetent under Iowa Code section 468.47 and the caselaw. As a result, there is no dispute about the relevant facts and the district court should have granted the Board of Trustee's motion for summary judgment and denied the railroad's motion.

The district court also failed to take into consideration how benefits of the repair project and drain tile can be specific to a tract of land, and general to all the properties within the district. *Zinser v. Board of Sup'rs of Buena Vista County*, 144 N.W. 51 (Iowa 1097) involved an appeal from an order of the district court reversing a resolution of the board of supervisors denying a

petition praying for action. It included a summary of the code and discussed the classification of benefits derived from the improvement:

> Then the commissioners subsequently appointed "personally inspect and classify all the lands benefited by the location and construction of such levee or drainage district, or the repairing or reopening of the same, in tracts of forty acres or less according to the legal or recognized subdivisions in a graduated scale of benefits, to be numbered according to the benefit to be received by the proposed improvement; and they shall make an equitable apportionment of the costs, expenses, costs of construction, fees, and damages assessed for the construction of any such improvement, or the repairing or the reopening of the same, and make report thereof in writing to the board of supervisors. In making the said estimate the lands receiving the greatest benefit shall be marked on a scale of one hundred, and those benefited in a less degree shall be marked with such percentage of one hundred as the benefit received bears in proportion thereto. This classification when finally established shall remain as a basis for all future assessments connected with the objects of said levee or drainage district, unless the board for good cause shall authorize a revision thereof." So that the land to be included in the district must derive some benefit from the improvement either in drainage directly or in being afforded an outlet for the excess of water to be drained therefrom or in accessibility or the like. *Chambliss v. Johnson*, 77 Iowa, 611, 42 N. W. 427. When directly affected, **or in the means afforded to carry away water gathered through tiling or other ditches**, is material only as bearing on the classification by the commissioners. But if so located that drainage will not benefit it, or so that it will drain quite as well in the lowlands or slough as it will through the ditch excavated, and it is not made more accessible or the like, then it is not benefited within the meaning of the statute. In other words, there can be no assessment on lands merely because of the improvement of others near by. **The land itself** or its immediate surroundings

must be affected by the improvement in order to justify its inclusion in the drainage district. This rule, sustained by the authorities, is analogous to that relating to the establishment of highways with reference to which Judge Dillon in his work on Municipal Corporations, vol. 2, § 624, says: "Now, benefits and injuries are of two kinds: (1) **General or public**, being such as are not peculiar to the particular proprietor, part of whose property is taken, but those benefits in which he shares and those injuries which he sustains in common with the community or locality at large. (2) **Special or local, being those peculiar to the particular landowner, part of whose property is appropriated, and which are not common to the community or locality at large**, such, on the one hand, as rendering his adjoining lands more useful and convenient to him, **or otherwise giving them a peculiar increase in value**, and, on the other, rendering them less useful or convenient, or otherwise, in a peculiar way, diminishing their value. The former class of benefits or injuries, namely, those which are general and not special, have, according to the almost uniform course of decisions, no place in the inquiry of damages, and cannot be considered for the purpose of reducing the amount, being too indirect and contingent; but injuries which especially affect the proprietor, **or benefits which are especially conferred upon his adjacent property**, part of which is taken, are to be considered; **unless**, by the constitution of the state, or legislative enactment, all benefits, special as well as general, are to be excluded." In *Lipes v. Hand*, 104 Ind. 503, 1 N. E. 871, the court, speaking through Elliott, J., concluded that: **"Whatever gives an additional value to the particular parcel of land is a special, and not a general, benefit; and it may be a special benefit although not an immediate one**. Suppose, for illustration, that the person assessed owns a tract of land situated on a knoll, and well drained in every part, but on all sides of it are great ponds, rendering access difficult, and isolating it from highways. A drainage of the ponds would benefit the landowner, although it might not carry any water at all immediately from his land; **and such a benefit would be a**

> **special** and not a general one." In *Sutherland on Damages*, 441, 452, the author lays down the rule that "these benefits are estimated like damages," and that in doing so the general rule in estimating value is that **"everything which gives the land intrinsic value is to be taken into consideration."** By the language of the statute the land to be included in the district must in some way be affected by the improvement, and, to benefit it, necessarily this must **increase its value, either by relieving it of some burden,** or by making it adapted for a different purpose, **or better adapted for the purpose for which it is used.**

II. THE DISTRICT COURT ERRED BY ORDERING THE PREVIOUS CLASSIFICATION OF BENEFITS REINSTATED WHEN THE ONLY REMEDY AVAILABLE WAS TO AMEND THE CLASSIFICATION OF BENEFITS.

This issue is adequately addressed in the original brief and argument; therefore, it is not address in the reply brief.

CONCLUSION

The district court erred as a matter of law when it granted Union Pacific's motion for summary judgment because the railroad did not submit substantial and competent evidence upon which to overcome the presumption the Reclassification Report was correct and in substantial compliance with the Iowa Code. The district court erred as a matter of law

when it denied the Board of Trustees' motion for summary judgment. The reviewing court should vacate the district court's order and remand this matter back to the district court with instructions to adopt the reviewing court's ruling that the Board of Trustee's motion for summary judgment be granted and dismiss the Plaintiff's appeal and petition with costs assessed to the Plaintiff.

COST CERTIFICATE

The undersigned certifies that the cost for printing and copying the preceding Appellant's Reply Brief, as it was $0.00 as it was electronically filed.

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The undersigned certifies this proof reply brief was filed with the clerk of the supreme court electronically on this 7th day of January, 2021, and served upon counsel of record by emailing a copy to counsel of record to their email addresses set forth below:

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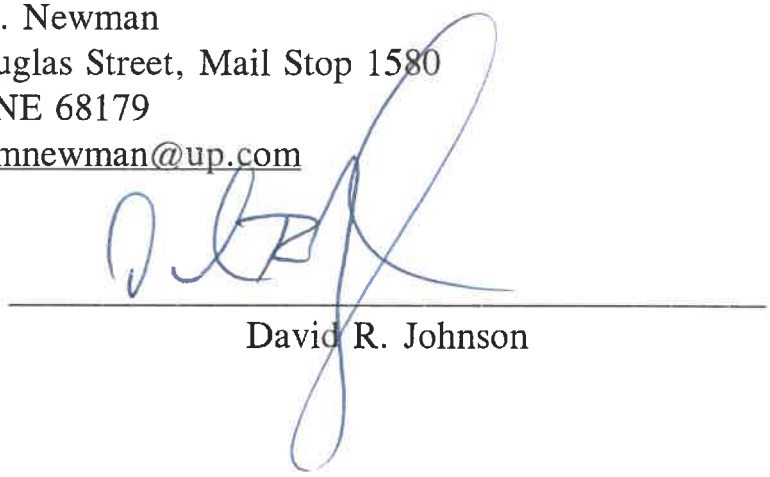

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Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type-Style Requirements

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