

# Commonwealth of Kentucky

## Court of Appeals

NO. 2007-CA-000116-MR

CITY OF EDDYVILLE, KENTUCKY

APPELLANT

v. APPEAL FROM LYON CIRCUIT COURT  
HONORABLE BILL CUNNINGHAM, JUDGE  
ACTION NO. 04-CI-00158

RICHARD R. WHITTINGTON;  
SALLY WHITTINGTON;  
AND PATRICIA S. WICKER

APPELLEES

OPINION  
AFFIRMING

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BEFORE: KELLER AND TAYLOR, JUDGES; HENRY,<sup>1</sup> SENIOR JUDGE.

TAYLOR, JUDGE: The City of Eddyville (city) brings this appeal from a December 11, 2006, order of the Lyon Circuit Court dissolving the city's statutory lien upon real property. Kentucky Revised Statutes (KRS) 91A.280. We affirm.

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<sup>1</sup> Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

In February 1994, the city enacted Ordinance No. 1-24-94-A (ordinance), which imposed a special assessment upon real property located in the Sarah Lane Subdivision (subdivision). The special assessment was enacted under KRS 91A.220 and was intended to finance public improvements in the subdivision.<sup>2</sup> The ordinance provided that “the total costs shall be on a per-lot basis as to each individual lot and on a benefits received basis as to the 1.77-acre tract.” The ordinance was later filed with the Lyon County Court Clerk on March 23, 2000.

Richard Whittington, Sally Whittington, and Patricia Wicker (collectively referred to as appellees) owned the 1.77-acre tract in the subdivision. Pursuant to the ordinance, the city levied two special sewer assessments upon the 1.77-acre tract; however, appellees only paid one of the special sewer assessments.<sup>3</sup> As a result, the city filed a statutory lien under KRS 91A.280 against the 1.77-acre tract. The lien was in the amount of \$2,784.01.

Thereafter, in September 2004, the Commonwealth of Kentucky, Transportation Cabinet, Department of Highways instituted an eminent domain action seeking to condemn part of the 1.77-acre tract. The city was named as a party because of the statutory lien. Appellees filed a motion to dissolve the statutory lien. In a December 11, 2006, order, the circuit court dissolved the lien. In so doing, the court concluded that

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<sup>2</sup> These public improvements included construction of streets and extension of sewer lines.

<sup>3</sup> The 1.77-acre tract was not affected by street improvements and, thus, was only subject to special sewer assessments.

the two special sewer assessments imposed upon the 1.77-acre tract violated the ordinance and KRS 91A.210(4). This appeal follows.

The city contends that appellees are “procedurally barred from objecting to the special assessment.” In particular, the city argues that appellees were required to file an action in circuit court within thirty days after receiving notice of the special assessment under KRS 91A.270. The city maintains that appellees failed to contest the validity of the special assessment pursuant to the statutory procedure provided in KRS 91A.270; thus, appellees are now “barred” from so doing.

KRS 91A.270 clearly outlines the procedure for property owners to contest the validity of a special assessment. *See Chambers v. City of Newport*, 101 S.W.3d 904 (Ky.App. 2002). In our case, appellees are not challenging the validity of the special assessment but are challenging the city's calculation of the amount of the special assessment as being violative of the ordinance.<sup>4</sup>

Under the ordinance, the amount of the special assessment on the 1.77-acre tract was to be calculated on a “benefits received basis.” The ordinance did not specify the particular amount of the special assessment to be imposed upon the 1.77-acre tract. The city later determined the amount and imposed two special sewer assessments upon the 1.77-acre tract.<sup>5</sup> The circuit court ultimately dissolved the statutory lien because the

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<sup>4</sup> The circuit court essentially determined that the City of Eddyville did not properly calculate the special assessment based upon the “benefits received basis” as required by Ordinance No. 1-24-94-A.

<sup>5</sup> The exact date that the city actually assessed the double sewer assessment and gave appellees notice of the same cannot be determined from the record. A written notice of the assessment was mailed after the project was completed, but it was neither dated nor did it state the basis for a



ALL CONCUR.

BRIEFS AND ORAL ARGUMENT  
FOR APPELLANT:

Marvin Lee Wilson  
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BRIEF AND ORAL ARGUMENT FOR  
APPELLEES:

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