

IN THE SUPREME COURT OF IOWA
Supreme Court 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**

**APPELLEES' PROOF BRIEF
(ORAL ARGUMENT REQUESTED)**

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- I. The District Court correctly determined there was no dispute of material fact, that the District’s assessment of costs as benefits constituted prejudice, gross error, or evident mistake because it did not conform with the Iowa Drainage Code or governing precedent, and, accordingly, the District Court property granted the Railroad’s motion for summary judgment and denied the District’s motion.**

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II. The District Court properly voided the reclassification and assessment and complied with the Iowa Drainage Code by ordering the District to assess the Railroad based on the prior classification and assessment of benefits.

Authorities

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ROUTING STATEMENT

The Iowa Supreme Court should transfer this case to the Iowa Court of Appeals for the following reasons:

1. This Court has already enunciated the legal principles governing responsibility for construction costs for repair of drain tiles conveying artificial drainage across railroad rights of way, therefore transfer to the Court of Appeals is appropriate under Iowa Rules of Appellate Procedure 6.1101(2)(f) and 6.1101(3)(a).

2. This case does not present issues of first impression, meaning retention is not warranted on that basis. *See* Iowa R. App. P. 6.1101(2)(c).

STATEMENT OF THE CASE

A. Nature of the Case.

This is an appeal of a successful drainage appeal challenging a reclassification and assessment of benefits pursuant to Iowa Code Chapter 468, the Iowa Drainage Code. The trustees of Drainage District 67 (the “District”) sought to reclassify the District and increase the benefit assessed to a railroad right of way owned by Midwestern Railroad Properties, a wholly owned subsidiary of Union Pacific Railroad Company (collectively “the Railroad”). The Railroad appealed that reclassification and assessment of benefits pursuant to Iowa Code Section 468.83, and the Iowa District Court in and for Hardin County concluded the District violated the Iowa Drainage Code in a variety of ways and voided the District’s reclassification and assessment of benefits. This appeal followed.

B. Relevant Prior Proceedings.

In 2018, the District determined a repair was needed on a tile drain line that ran underneath the Railroad’s right of way. (App. _____) Plaintiff’s Statement of Fact in Support of Motion for Summary Judgment (“SOF”) at ¶ 6. In May of 2019, the District notified the Railroad that prior to approving the repair, the District would reclassify the benefits from the drain tile to the land in the District. *Id.* ¶ 7 & Ex. D. The hearing on the proposed

reclassification would be held on June 4, 2019. *Id.* ¶ 10 & Ex. E. The District proposed classifying the Railroad’s property, as the 100% benefitted tract and assessing 50% of the costs to repair the tile drain to the Railroad. *Id.* ¶¶ 14-15 & Ex. E & F. The District based its classification of the Railroad property solely on the costs associated with replacing the drain tile under the right of way. *Id.* ¶¶ 11-12 & Exs. E & F. The Railroad filed a timely objection prior to the June hearing, noting that the Railroad’s land made up less than 5% of the land in the District and, due to topography, the Railroad’s land would benefit less, not more, than the average tract in the District. *Id.* ¶ 9 & Ex. G. The objection also noted that if a project costs more because it crosses a railroad right of way, that cost is to be assessed across the District, not just the Railroad. *Id.* At the June 4, 2019 hearing, District approved the reclassification of benefits over the Railroad’s objection. *Id.* ¶ 13 & Ex. F. The Railroad filed an appeal of the District’s reclassification and assessment of benefits in the District Court pursuant to Iowa Code Section 468.83 on July 1, 2019. Petition.

After discovery, the Railroad filed a motion for summary judgment on March 13, 2020, seeking judgment as a matter of law on the grounds that the District’s reclassification was illegal because it “improperly determined that the cost of constructing the tile line was a ‘special benefit’ to the Railroad

under Iowa Code section 468.44.” (App. _____) Plaintiff’s Motion for Summary Judgment, filed 3/13/2020, ¶ 4. The District filed a resistance and cross-motion for summary judgment on April 7, 2020. (App. _____) Defendants’ Resistance and Cross-Motion for Summary Judgment, filed 4/7/2020. A telephonic hearing was held on April 27, 2020. (App. _____) Transcript dated 4/27/2020, p. 1. The parties did not dispute that the tile drain in question was an artificial drain under the railroad right-of-way or that the District assessed the costs of crossing the right of way as a benefit to the Railroad in its reclassification. *Id.*

The District Court granted the Railroad’s motion for summary judgment and denied the District’s motion in a May 15, 2020 order. In assessing the Railroad’s motion on its drainage appeal, the District Court applied the standard that “[a] drainage assessment based on a classification or reclassification commission report carries with it a strong presumption of correctness and must stand unless the objecting landowner shows it resulted from fraud, prejudice, gross error, or evident mistake.” (App.____) Order Granting Plaintiffs[‘] Motion for Summary Judgment and Denying Defendants’ Motion for Summary Judgment (“Order”), filed 5/15/2020, at 5. Based on undisputed facts, the District Court found “as a matter of law that the Reclassification Commission and the Board went outside the lines [of

equity] and based their decision on matters which were not benefits or were otherwise not proper subjects of consideration in making the reclassification, and in doing so acted inequitably.” *Id.* at 7. The District Court specifically found

as a matter of law matter of law that this reassessment was made for the inequitable purpose of supporting a subjective opinion regarding the cost of the repair rather than following the law, and that the reassessment was based on prejudice, gross error and mistake in the following particulars:

- (1) “Costs of construction are not ‘benefits of a character’ which are ‘a proper subject of consideration in a reclassification’”;
- (2) “The costs of complying with federal standards are not benefits and are not of a character which are a proper subject of consideration in a reclassification”;
- (3) “The method used by the Reclassification Commission and the Board of Trustees is contrary to the holding [in *Hardin Cty. Drainage Dist. No. 55 v. Union Pac. R.R. Co.*, 826 N.W.2d 507 (Iowa 2013) (hereinafter “*District 55*”)]”;
- (4) “The reclassification cannot be based upon the railroad’s ability to pay the assessment.”

Id. at 10-17. The District Court voided the offending reclassification of benefits and the associated assessment against the Railroad and reinstated the previous classification of benefits for the Railroad property. *Id.* at 20.

The District filed a timely Notice of Appeal on June 3, 2020. (App. _____) Notice of Appeal.

STATEMENT OF FACTS

The determinative fact in this case is that the drain tile at issue is an artificial drainage improvement that channels water to the railroad right of way that would not otherwise arrive there under natural conditions. The costs associated with safely constructing the drain tile under the railroad right of way are not benefits of the improvement to the railroad property. Instead, these costs are expenses required because of the artificial drainage provided by the drain tile. The District's attempt to redefine these costs as benefits to the railroad property is contrary to the statutory scheme for drainage districts and case law. These facts are determinative under the Iowa drainage code.

A. Statutory Background of Drainage Districts.

To effectively and efficiently handle the administration of drainage and improve Iowa's agricultural lands, the Iowa legislature created drainage districts. *Dist. 55*, 826 N.W.2d at 508. The purpose of a drainage district is to “build and maintain drainage improvements . . . of agricultural and other lands, thereby making them tillable or suitable for profitable use.” *Id.* (quoting *Chi. M. & St. P. Ry. v. Mosquito Drainage Dist.*, 190 Iowa 162, 162, 180 N.W. 170, 170 (1920)). Once installed, a district is required to maintain and repair the drainage improvement with the funds of the district. Iowa Code §§ 468.126, .127. When funding a drainage improvement or repair, a drainage

district classifies or reclassifies all the lands within the district on a graduated scale based on the relative benefit each tract of land receives from the drainage improvement. Iowa Code §§ 468.39 & .67.

The drainage district statutes specify the responsibility for construction and associated costs when improvements are built across railroad rights of way. Iowa Code § 468.109. The code states the railroad is responsible for the “cost of building . . . or repairing, . . . any culvert or bridge” for natural watercourses that cross its right of way. Iowa Code § 468.111. For those improvements that are not a “culvert or bridge,” the code specifies that “[t]he cost of constructing the improvement across the right-of-way” is borne by the drainage district. Iowa Code § 468.113. Simply put, natural drainage at the site of a bridge or culvert is the responsibility of the railroad, while artificial drainage is the responsibility of the District.

B. The District’s Project and Reclassification

In 2018, the District determined that its main tile drain, constructed in 1916, was in need of repair. (App. _____) SOF at ¶¶ 3 & 6. To raise funds, the District attempted to reclassify the benefits associated with the tile drain. *Id.* at ¶ 6. The reclassification commission’s report specifically addressed Tract 12, the Railroad’s property, as an exception (the “Railroad property”). *Id.* at ¶ 12. That exception states that “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[']s facilities.” *Id.* Because of the increased costs, the District’s commissioners “felt that [the Railroad property] is the 100% benefited tract for the currently proposed project and should pay 50% of the total reclassification.” *Id.* The Railroad’s expert, engineer Chris Vokt, disagreed and opined, “Tile drains collecting surface runoff within the drainage area are transporting water below the surface of the ground to [the Railroad]’s Right-of-Way that would not otherwise arrive to [the Railroad]’s Right-of-Way,” and that it was his “opinion that [the Railroad] receives the least benefit of any tract within the District.” (App. _____) *Id.* at ¶ 16 & Ex. H (citing Summary Judgment Appendix, at APP. 000104).¹ The District adopted the reclassification report and assessed the Railroad property one hundred percent of the benefit of the tile drain and an assessment for the project of \$125,000. (App. _____) *Id.* at ¶ 13 & Ex. F.

¹ Appellants argue Vokt’s opinions should not be considered because they are “an unsworn, unverified ‘Technical Memo.’” App. Br., at 62. However, on April 17, 2020, the Railroad filed a “Declaration of Chris Vokt, PE” wherein Vokt affirms, subject to penalty of perjury, that the reports filed in support of the Railroad’s Motion for Summary Judgment represent his expert opinions in this matter. (App. _____) Declaration of Chris Vokt. Any claim that Vokt’s expert opinion should be ignored because it is “unsworn” is baseless.

Under Iowa law, once a drainage district approves a classification of land for drainage purposes, that classification “shall remain the basis of all future assessments for the purpose of the district unless revised by the board in the manner provided for reclassification.” Iowa Code § 468.49. Recognizing that the District’s reclassification of benefits and assessment would not only govern this tile repair but also the future funding of any repairs or maintenance in the District, the commissioners recommended the District take the following action, “As projects arise in the future, [the District should] determine on an individual basis if the Reclassification Commission Report is equitable based on item 4.2 [the exception apportioning the Railroad property as the one hundred percent benefited tract].” (App. ____). *Id.* at ¶ 12 & Ex. F, Summary Judgment Appendix, at APP. 000093, ¶ 5.0. There was, however, no binding language or legal requirement that the District make such an individual determination in the future. *See id.* Prior to the reclassification, the Railroad tract was responsible for approximately 5.8% of the district’s assessment and was not classified as the tract that most benefited from the tile drain. (App. ____). *Id.* at ¶ 5. If the District’s reclassification of benefits was allowed to stand, the Railroad would be responsible for 50% of all costs of the District, as opposed to the previous 5.8%.

As a justification for such a dramatic increase in the benefit assessed to

the Railroad, the District acknowledged that it simply assessed the costs of passing the drain tile under the right of way against the Railroad property by calling the costs a benefit. (App. ____). *Id.* at ¶ 14 and Ex. E. Notably, the District did not indicate the Railroad property will actually be benefited by the drain tile itself. *Id.* They did not state that the drain tile provides drainage of water off of the right-of-way or that it prevents surface waters from coming onto the right-of-way. *Id.* Instead, the District concluded that the increased construction costs necessary to allow the artificial drainage from other tracts in the district to safely pass under the right of way while not damaging the railroad bed are a benefit that “should” be paid for by the Railroad.

ARGUMENT

- I. **The District Court correctly determined there was no dispute of material fact, that the District’s assessment of costs as benefits constituted prejudice, gross error, or evident mistake because it did not conform with the Iowa Drainage Code or governing precedent, and, accordingly, the District Court properly granted the Railroad’s motion for summary judgment and denied the District’s motion.**

A. Error Preservation.

Appellees agree Defendants have preserved error on this issue.

B. Standard of Review.

Appellees agree with the Appellant that the applicable standard of review is *de novo* for correction of errors of law.

C. Argument

In its brief, the District doubles down on its assertion that the Iowa Drainage Code permits it to determine that the statutory benefits attributable to a tract of land can be based on the costs of construction across that particular tract. *See* Apps' Br. at 39 ("The question is whether the methods and materials [required for the drain tile to cross the right of way] benefited the railroad bed and embankment or not."); *Id.* at 56 (asserting that the statutory terms "cost" and "benefit" can be used interchangeably); *Id.* ("the cost of materials that produce the desired benefit may be the best and only way to approximate the amount of benefit the railroad right of way receives."). However, the District's conflation of "costs" with "benefits" is contrary to the Iowa Drainage Code and controlling precedent.

1. The District Court properly interpreted the term "benefits" as used in the Iowa Drainage Code.

The Iowa Drainage Code sets forth a procedure for determining the equitable apportionment of the costs of a drain improvement across the lands in a drainage district. That equitable apportionment mandates that "the tract receiving the greatest benefit must, under the statute, bear the heaviest

assessment. Conversely, that which is the least benefited should be assessed the lowest.” *Fulton v. Sherman*, 212 Iowa 1218, 238 N.W. 88, 90 (1931). The District is duty-bound to assess the benefits of a drainage improvement to the lands in the District. Specifically, the District is mandated to consider the benefit that each tract of land will receive from the drainage improvement and the repair itself. Iowa Code § 468.56 (1)(c) (“Any benefits of a character for which . . . drainage district may be established and which are attributable to or enhanced by the . . . repair . . . shall be a proper subject of consideration in a reclassification . . .”). There is no provision of the Iowa Drainage Code that allows the District to consider the cost of construction through a particular tract of land when assessing benefits.

Rather than determine the benefits of the drain to the Railroad property, the District contends that costs to perform the repair is the benefit to the Railroad. The Drainage Code does not support this position, as it specifically provides that the cost of constructing a drainage improvement across the right-of-way of a railroad when the improve is not a culvert or a bridge at a natural waterway or place provided by the railroad “shall be considered as an element of such company’s *damages* by the appraiser to appraise damages,” and the amount of those damages “shall be paid in the first instance by the parties benefited by the said [drainage] improvement.” Iowa Code § 468.113 & .31.

Thus, the Drainage Code clearly sets forth that construction costs are “damages” to be borne by the lands benefited by the drainage improvement, in this case a tile drain.

The District Court properly held the District’s decision to treat “costs” as “benefits” lacked any justification under Iowa law. As stated by the District Court, the Iowa Supreme Court has specifically addressed and rejected this argument. (App. _____) Order, at 11. In *Pollock v. Bd. of Sup’rs of Story Cty.*, 157 Iowa 232, 138 NW 415, 416 (1912), the Iowa Supreme Court stated “[t]he cost of construction of the drain across particular land is by no means the measure of benefit to such land.” In *Pollock*, the cost of construction across a particular tract was more than twice the same costs across other tracts. *Id.* The increased costs was due to the requirement that the drain tile be laid at a greater depth on that particular tract. *Id.* The *Pollock* Court concluded that there is no direct correlation between the benefits received from a drain and the costs associated with constructing the drain across a particular tract. *Id.*; *see also Conklin v. City of Des Moines*, 184 Iowa 384, 168 NW 874, 876 (1918) (“Lands for the purpose of assessment for drainage purposes are classified upon a percentage basis and without special reference to the expense of constructing the improvement across, or in the vicinity of, any given tract.”).

The District's only response to this clear precedent is that *Pollock* is "not on point" because it did not involve assessment of a tract containing railroad right of way. Apps' Br. at 38-9. Not only is *Pollock* clearly on point for the proposition that benefits and construction costs are two different concepts that cannot be used interchangeably under the drainage code, but both the Legislature and Iowa Supreme Court have continued to differentiate between assessment of benefits and costs of construction, especially across railroad rights of way.

Under Iowa Code § 468.39, reassessment of benefits is a two-step process. The commissioners are required to inspect the lands to produce a graduated scale of benefits each tract receives from the drain tile. Thereafter, the commissioners are to apportion the "costs, expenses, fees, and damages computed on the basis of the percentages fixed" by the scale of benefits. *Id.*; see *Naeve v. Humboldt Cty.. Drainage Dist. No. 126*, No. 13-0929, 2014 WL 3931256, at *10 (Iowa Ct. App. Aug. 13, 2014) ("Classification and assessment is a process by which the commissioners determine how much benefit each landowner receives from the drainage facilities and consequently how much of the installation cost each should be [required to] pay.").

Here, the District's commissioners failed to follow the statutory procedures, and instead went backwards. They first determined the costs for

repairing the drain tile, and then assigned a percentage of benefit to the Railroad property based solely on those costs. *See* (App. _____) Transcript p. 19 lines 5-13 (arguing “the benefit that the railroad is receiving is the benefit of having high tech materials or a casing that surrounds the drainage tile [as required by federal regulations]. . . .”). As further admitted by the District in its brief, it simply exchanged the term “benefit” with the term “cost.” Apps’ Br. at 56. The claimed power to do so is inconsistent with the basic rule of statutory construction that terms in a statute cannot be read to render them redundant or irrelevant. *District 55*, 826 N.W.2d at 512 (quoting *State v. McCullah*, 787 N.W.2d 90, 94-95 (Iowa 2010)). If the Legislature had intended the terms to be interchangeable it would not have required the District to first determine the benefits of the drainage improvement to each tract and then apportion costs based on the percentages of benefit. Iowa Code § 468.39. The District’s failure to follow the statutory procedure for assessing benefits is not in substantial compliance with the Drainage Code and constitutes prejudicial error or fraud or mistake necessitating the voiding of the assessment.

2. The District is improperly attempting to force the Railroad to pay the cost of repairing the tile line at the intersection of the railroad and the drainage improvement.

The District has asserted that the cost to repair the tile under the Railroad's right of way should be borne by the Railroad. In *District 55*, the Iowa Supreme Court specifically addressed "who is responsible for the costs to repair and improve old underground drainage tiles which run under a railroad roadbed." 826 N.W.2d at 508. The drainage district in that case argued that "the railroad should repair [at its costs] any drainage structure that is located at or under its right-of-way." *Id.* at 512. The Iowa Supreme Court rejected that position. It concluded that under the Iowa Drainage Code, "[T]he railroad should not be responsible for artificial underground drainage improvements that would be needed whether the railroad was there or not. The costs of these repairs are, by statute, the responsibility of the drainage districts." *Id.* at 512.

In response to the clear holding of the *District 55* case, the District simply asserts that the Iowa Supreme Court was reviewing a different provision of the Iowa Drainage Code. Apps' Br. at 40. The District does not dispute that both cases involve repairs to tile drain lines conveying artificial drainage under a railroad right of way. The only difference between the *District 55* case and the one at hand is that in the prior case the drainage district

performed the repairs and then sued for reimbursement from the railroad. Here the District is attempting to assess the costs to the Railroad before the repairs are made. That distinction is not relevant under the Iowa Drainage Code.

The District's response fails to acknowledge the Iowa Supreme Court reviewed "the entire statutory scheme" and determined that railroads are not responsible for the costs for repairs of artificial drain tiles. The District Court correctly found that the District cannot avoid the *District 55* holding by simply stating costs are benefits and assessing the Railroad in advance of the repairs.

3. The District's precedent is distinguishable.

The District cites a series of cases involving assessment of benefits to railroad property, but none of those cases are relevant to the issues in this case. *See* Apps' Br. at 48-54. Those cases state the uncontested proposition that railroad property can be assessed for the actual benefits it receives from the improvement. The Railroad has never argued otherwise. (App. _____) Transcript p. 25:20-26:3). None of the cases the District cite dealt with the situation in this case where the drain tile is artificially bringing water to the railroad property. The cases simply do not support the District's contention that it may assess benefits based solely on the costs for constructing a drain tile across the right of way. Instead, the cases support the Railroad's position that the District is bound to consider the actual benefit the Railroad property

receives from the drain, not simply assessing costs of construction as benefits. The District misconstrues the holding in these cases.

The District cites *In re Johnson Drainage Dist. No. 9*, 141 Iowa 380, 118 N.W. 380 (1908), for the proposition that the Iowa Supreme Court has rejected the argument that railroad property can only be assessed the actual benefits from the drainage improvement. Apps' Br. at 48. Yet, the law stated in that case is precisely the inverse of the District's position. The case reinforces the basic law that even though the "benefits to be derived by [railroad] property from the improvement are of an entirely different character from those conferred upon agricultural lands," it is still true that "an assessment can be made for actual benefits only." *Id.* at 382, 383 (citing *Zinser v. Bd. of Sup'rs*, 114 N.W. 51 (Iowa 1907)). The *Johnson* court concluded that the evidence in that case demonstrated that the drainage improvement itself provided benefits to the railroad property in the form of "betterment of the roadbed and track." *Id.* at 383. Here, the question is how the lands are benefitted from the existence *of the drain itself*, not whether the Railroad is benefitted by the method and costs of building the drain under the right of way. Clearly, the Railroad property is not the most benefitted tract from the drain itself, and the District has never argued that the benefit of the drain itself to the Railroad was a "betterment of the roadbed and track." Instead, the

District misconstrues the term benefit to contend the costs of construction and the federal requirements are themselves benefits.

Appellants next cite *Chicago, M. & S.P. Ry. Co. v. Monona Cty.*, 144 Iowa 171, 122 N.W. 820 (1909). Apps' Br. at 49. This case makes the conceded point that a district may assess a railroad for benefits provided by the draining of water from the right of way via the drainage improvement. However, the court emphasized,

The right of way through the district extends along *low lands of a wet character and subject to overflow*, and, although the appellant has raised its embankment and protected it with rip-rapping to avoid damage from this source, 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.

Id. at 822 (emphasis added). Here, the District has never argued that the Railroad's right of way "extends along low lands of a wet character and subject to overflow" or that the drain tile discharges flood water from the roadbed. Indeed, the undisputed fact is that the drain tile artificially collects and transfers surface water that would otherwise not even arrive at the Railroad's right of way. (App. ___) SOF, ¶ 16 & Ex. H. In other circumstances, the construction of a drain tile that is the but for cause of erosion on a neighbor's property would be an actionable tort. *Bd. of Sup'rs of*

Pottawattamie Cty. v. Bd. of Sup'rs of Harrison Cty., 214 Iowa 655, 241 N.W. 14, 21 (1932) (stating, “the owner of higher land has no right even in the course of the use and improvement of his property to collect the surface water upon his own lands into a drain or ditch, increased in quantity or in a manner different from the natural flow upon the lower lands of another to the injury of such lands.) Yet, here the District attempts to claim that the costs to avoid erosion on the railroad property caused by the drain tile is actually a benefit to the railroad property.

The District next cites *Chicago, R.I. & P. Ry. Co. v. Wright Cty. Drainage Dist. No. 43*, 175 Iowa 417, 154 N.W. 888 (1915) for the proposition that an assessment is not necessarily invalid because the assessment exceeds the benefits. Apps’ Br., at 50-1. This only further confirms that the benefits and the amount of cost to be assessed to a landowner are completely separate concepts.

In *Fardal Drainage Dist. No. 72 v. Bd. of Sup’rs of Hamilton Cty.*, 138 N.W. 443 (Iowa 1912), the District’s next case, the court did not address the assessment of benefits for railroad property. The court also did not endorse the determination of the benefits based on the costs of construction as advocated by the District. In fact, the court specifically stated “the lands

receiving the most benefit from the improvement shall bear the greater burden.” *Id.* at 444. Precisely the opposite result of the District’s reassessment.

In *Chicago & N.W. Ry. Co. v. Bd. of Sup’rs of Hamilton Cty.*, the court simply described assessable benefits a railroad can receive from a drainage improvement that actually drains the right of way. 171 Iowa 741, 153 N.W. 110, 110 (1915). The court noted that the railroad had been able to remove some of its bridges because of the drainage provided by the improvement. *Id.* at 110. Being able to remove bridges, thereby avoiding the cost of their upkeep, is certainly a benefit. However, by describing how the district greatly benefited the railroad by reducing maintenance costs, the case is contrary to the District’s assertion that “the cost of materials that produce the desired benefit may be the best and only way to approximate the amount of benefit the railroad right of way receives.” Apps’ Br. at 56. Rather than draining excess water from the right of way as occurred in the *Hamilton County* case, the drain tile in this case actually brings excess water to the right of way. That artificial drainage is why the federal regulations are not a benefit to the railroad. Instead, they are a necessary cost for conveying the artificial drainage across the right of way.

Appellant next assert that the Railroad “did not provide the district court with any evidence the amounts assessed to the agricultural tracts were less

than, equal to, or in excess of the benefits they received from repairing 30% of the main tile.” Apps’ Br. at 55. This is completely irrelevant. Sections 468.38 through 468.44 require drainage districts to classify the lands in the district and assess the benefit they receive, not to create an “assessment/benefit ratio” as Appellants assert. *See id.*

Finally, Appellant cites *Chicago, R.I. & P. Ry. Co. v. Wright Cty. Drainage Dist. No. 43*, 175 Iowa 417, 154 N.W. 888 (1915) for the proposition that “cost” and “benefit” are used similarly by the Iowa Supreme Court. Apps’ Br., at 56. That is simply incorrect. The Iowa Supreme Court stated that the district could consider that certain benefits to the property “would be materially promoted by drainage of the swamp and surface waters from its right of way and from the immediately adjacent premises.” *Id.* at 889. If *draining water* would improve “the solidity and safety of the roadbed, the effective life of the ties, the maintenance of the tracks, culverts, bridges, and fences,” then those were benefits that could be considered. The Iowa Supreme Court did not, and never has, simply allowed a drainage district to determine the cost to cross a railroad right of way and use that amount to determine the railroad’s benefit. Such a scheme is unprecedented and not found in the Iowa Drainage Code.

The District's analogy to an individual purchasing tires for a vehicle is inapt. *See* Apps' Br. at 56. The District posits a scenario where a person decides to put tires on the person's own car, then asks the question, "Why should the owners of other vehicles have to pay for the cost of your tires?" *Id.* This analogy does not fit a drainage district because a district is a shared burden of all landowners in the district. A much more fitting analogy involving a car would be if a group of people bought a car and agreed they would share upkeep expenses based on the miles each person drove (i.e., the benefit received) as opposed to who happened to be driving the car when a tire went flat. The person who was driving at the time of the flat would not have to bear the cost of the new tire alone; pursuant to the parties' arrangement, the cost would be split based on the miles driven by each person, or their relative benefit. The Iowa Drainage Code mandates a separate and independent classification of the benefits received by each tract of property, completely independent of the cost of construction for crossing a particular tract, which is precisely what the District Court held.

The undisputed facts of the case, coming from the District's own reclassification report, clearly establish that the District did not substantially comply with the Iowa Drainage Code by conflating "costs of construction" with "benefits to the landowner." Without this improper assumption, there is

simply no basis to support the District’s unlawful decision to classify 100% of the benefits of the entire District to the one tract owned by the Railroad.

CONCLUSION

The District admitted that it attempted to reclassify and assess the Railroad with the entire cost of the repair to convey the artificial drainage under the Railroad’s track. The District further admitted that it treated the “cost” of construction as a “benefit” to the Railroad. This stance has absolutely no basis in Iowa law and the District Court properly granted summary judgment.

II. The District Court properly voided the reclassification and assessment and complied with the Iowa Drainage Code by ordering the District to assess the Railroad based on the prior classification and assessment of benefits.

A. Error Preservation.

“It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.” *Bank of Am., N.A. v. Schulte*, 843 N.W.2d 876, 883–84 (Iowa 2014) (quoting *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002)); *see also State v. Mulvany*, 600 N.W.2d 291, 293 (Iowa 1999) (“[W]e require error preservation even on constitutional issues.”). “To preserve error on even a properly raised issue on which the district court failed to rule, ‘the party who raised the issue must file a motion requesting a ruling in order to

preserve error for appeal.’ ” *Schulte*, 843 N.W.2d at 884 (quoting *Meier*, 641 N.W.2d at 537).

In response to the Railroad’s Statement of Facts supporting summary judgment, Appellant did not dispute paragraphs 1 through 14. *See* (App. _____) Defendants’ Statement of Disputed Facts and Undisputed Facts, ¶ 1. Regarding the opinion of hydrology and hydraulic engineer, Chris Vokt, Appellant did not argue that the operative facts underlying his conclusion, nor his expert testimony regarding the topography of the District and the Railroad’s property are in dispute in the underlying summary judgment briefing or at the hearing. *Id.* ¶¶ 3-4. Appellants only asserted that Vokt did not sign an “affidavit” and that his testimony is “unqualified, irrelevant and invalid because it does not comply *at all* with statutory procedures for classification and assessment of benefits as set forth at Iowa Code section 468.38, 468.39, and 468.44.” (italics in original). By failing to raise any other alleged factual disputes before the District Court, Appellant has failed to preserve error on any other claims that a factual dispute exists.

B. Standard of Review.

Appellee agrees with the Appellant that the applicable standard of review is *de novo* for correction of errors of law.

C. Argument

1. The undisputed facts before the District Court establish that the District inappropriately substituted “costs” for “benefits.”

In this appeal, the District argues that the Railroad failed to offer any competent evidence to overcome the presumption that the reclassification report was in “substantial compliance” with the drainage code and not the result of prejudicial error, fraud, or mistake. Apps’ Br. at 9. The District contends that the Railroad did not provide the District Court with a comparison of the benefits the Railroad’s right of way receives to the benefits received by the agricultural lands. The District’s argument fails because it was undisputed that the drainage provided by the drain tile is “artificial” and the District assessed the costs of construction as benefits. Furthermore, the District misconstrues the Railroad’s argument on summary judgment. While the Railroad does assert that its assessment was excessive, its legal argument is that the District used unlawful considerations to reach that assessment as a matter of law. The District’s failure to conform with the statutory requirements for reclassifications by substituting “costs” for “benefits” is why the District Court voided the Railroad’s assessment. The District Court’s decision was not solely based on factual comparisons with other tracts in the District.

The best evidence that the District’s reclassification was based on prejudice, gross error and mistake is the reclassification report itself, which

conflates benefits with costs in contravention with the drainage code. (App. _____) SOF, Ex. F at ¶ 4.2. The District continues with its erroneous position that benefits of an improvement and costs of construction can be used interchangeably under the statute. As an appellate court reviewing in equity the District's reclassification and assessment orders pursuant to Iowa Code Section 468.83 and .84, the District Court had a clear, and undisputed, record enabling it to correct this error of law and void the District's actions.

When this case was before the District Court, the District did not contend that the drainage improvement constructed by the District was anything other than artificial in that the drain tile brings water to the right of way that would not otherwise arrive there. The District conceded this fact at the summary judgment hearing. (App. _____) Transcript p. 33, lines 4-17 (exchange between the court and District's counsel in which counsel agrees its "true" that "this drainage is brought not by a creek or river, it's brought to the railbed because that's where they laid the tile."). This uncontested fact is determinative because the Drainage Code makes railroads responsible for the costs of conveying water at natural watercourses across its right of way, while drainage districts are responsible for the costs of conveying artificial drainage across rights of way. *District 55*, 826 N.W2d at 512.

Only on appeal, does the District attempt to create an issue of fact by misquoting the Railroad’s engineering expert to contend that the drainage is *not* artificial, and would “pond” at the right of way. Apps’ Br. at 63. In fact, the engineer wrote that the tile drain is “transporting water below the surface of the ground to [Union Pacific’s] right-of-way that would *not* otherwise arrive at [the] right-of-way.” (App. _____) SOF ¶ 16 & Ex. H, at 4 (emphasis added). The District omits the term “not” in order to contend that the water being conveyed to the right of way “would ‘otherwise arrive’ at the right of way – in other words the water would ‘pond’ at the railroad tracks and embankment.” Apps’ Br. at 63. Clearly, the District cannot misquote the underlying record to create an issue of fact on appeal.² Ultimately, the controlling facts in this matter are the drain tile is artificially conveying water to the right of way and that the District admittedly assessed the costs of conveying that artificial drainage as a benefit. These facts were undisputed in the trial court, and are sufficient evidence to justify the district court’s voiding of the unlawful assessment.

² The District’s assertion that Union Pacific’s engineering report is “unsworn [and] unverified” is baseless. *See* Reply Brief Exhibit I (signed declaration concerning his report) (App. _____).

2. The District Court Properly Voided the Drainage District's Reclassification because it was contrary to clear, mandatory terms of the Drainage Code, and once the District Court voided the reclassification, the District is obligated to use the existing classification schedule.

Iowa Code § 468.83 provides, "Any person aggrieved may appeal from any final action of the board in relation to any matter involving the person's rights, to the district court of the county in which the proceeding was held." The drainage code further provides for the deadlines for perfecting such an appeal, the requirement of an appeal bond and transcript, the applicable filing fee, the required pleadings, and that the appeal "shall be triable in equity." Iowa Code §§ 468.84-.87, § 468.91. No other restrictions or procedural requirements are defined by the Drainage Code for appeals of this type. Despite the lack of restrictions on the court's equitable powers, the District asserts that the District Court lacked the power to void the District's reclassification and assessment of the railroad property and is only permitted to "amend the classification of benefits." Here, the District Court did effectively amend the reclassification report by voiding the unlawful assessment as to the Railroad property and reinstating the prior assessment for that tract.

There is nothing in the drainage code that constrains a district court from voiding the District's actions when such actions are in violation of the

Drainage Code and based on prejudice, gross error, or evident mistake. Doing so would give the District unbridled power, as the District Court noted. (App. ___) Order, at 5. The Iowa Supreme Court has upheld a trial court’s setting aside assessments against a landowner on appeal “even though it might lead to a deficiency assessment against other land owners.” *Schwarz Farm Corp. v. Bd. of Sup’rs of Hamilton Cty.*, 196 N.W.2d 571 (Iowa 1972). The Iowa Supreme Court has also indicated that voiding of a drainage district’s action is appropriate when the district acts with willful neglect of its statutory requirements. *See Johnson v. Monona-Harrison Drainage Dist.*, 246 Iowa 537, 68 N.W.2d 517 (1955).

Here the District Court concluded that the District’s action in considering the costs of construction, the federal regulations, and Union Pacific’s ability to pay as benefits was based on prejudice, gross error, or evident mistake. (App. ___) Order, at 10-20. This determination required the court to void the District’s unlawful action. *See Minneapolis & St. L.R. Co. v. Bd. of Sup’rs of Marshall Cty.*, 198 Iowa 1288 (1924) (affirming the district court’s voiding of assessment due to drainage district’s failure to comply with statutory notice provisions).

The District complains further that the District Court erred because it did not require the Railroad to provide a complete assessment of the benefits

that should be assessed to the other tracts in the District and instead reinstated the prior classification and assessment for the Railroad's property. Apps' Br. at 63-66. There is absolutely no requirement that a party appealing a drainage district's reclassification and assessment of benefits has to issue a proposed alternate reclassification of the entire district. Requiring a landowner to propose a complete, alternate classification for the court to approve on appeal, as Appellant suggests, would impact the other landowners in the district who did not appeal in violation of Iowa Code Section 468.96, which provides that "the decision of the court shall in no manner affect the rights or liabilities of any person who did not appeal." The Railroad is only required to address a "final action of the board in relation to any matter involving [its own] rights" in an appeal under Iowa Code Section 468.83.

As discussed above, the District Court, hearing a drainage appeal in equity, was within its appellate authority to void the unlawful assessment against the Railroad property. Iowa Code Section 468.49(1) mandates, "A classification of land for drainage, erosion or flood control purposes, when finally adopted, shall remain the basis of all future assessments for the purpose of the district unless revised by the board in the manner provided for reclassification." Because the District's attempt at reclassification and assessment as legally deficient and properly voided by the District Court, the

District Court properly determined that the prior classification should be used for any future assessments. Nothing in the Court's order prevents the District from performing a future reclassification that is in compliance with the Iowa Drainage Code. The District Court properly modified the reclassification of benefits by reinstating the prior assessment against the Railroad property.

CONCLUSION

The district court properly granted summary judgment as a matter of law because Drainage District 67 unlawfully performed its reclassification of benefits by basing it on construction costs to convey the artificial drainage across the railroad right of way, which was clear evidence of prejudice, gross error and mistake. The District Court's judgment should be affirmed.

REQUEST FOR ORAL ARGUMENT

Defendants-Appellees respectfully request oral argument regarding the issues presented in this appeal.

RESPECTFULLY SUBMITTED,

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ATTORNEY'S COST CERTIFICATE

I, Keith P. Duffy, certify that there were no costs to reproduce copies of Appellees' Brief because the appeal is being filed exclusively in the Appellate EDMS system.

/s/ Keith Duffy

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I hereby certify that on November 4, 2020, I electronically filed the foregoing with the Clerk of the Supreme Court of Iowa using the Iowa Electronic Document Management System, which will send notification of such filing to the counsel below:

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