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.

APPELLANTS' APPLICATION TO THE SUPREME COURT FOR FURTHER REVIEW OF THE COURT OF APPEALS DECISION FILED JUNE 16, 2021

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ATTORNEY FOR APPELLANTS

Question Presented for Further Review

Whether the court of appeals erred as a matter of law by not recognizing the significant special benefits a railroad receives when a 100 year-old and partially collapsed district tile crossing its right of way is to be abandoned, the railroad directs the tile be moved at least 150 feet away from its culvert, and requires the tile be constructed of unique and expensive materials and procedures making the project cost-prohibitive for the remaining agricultural landowners in the district, thereby effectively preventing the project, ending drainage for the agricultural land owners, and violating long-established drainage easement rights.

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Statement Supporting Further Review

The court of appeals has decided an important question of law that has not been, but should be, settled by the supreme court as provided by Iowa R. App. P. 6.1103(1)(b)(2). Although the supreme court has long recognized the benefits railroads receive from drainage district improvements and how difficult it is for a commission to calculate benefits in general, there is no precedent interpreting the applicable sections of the drainage code and how a reclassification commission should determine the special benefits received by a railroad that requires unique and expensive materials that increases the cost of the project by almost fifty percent, and results in assessments against on some agricultural land in excess of $2,000 per acre.

This case also presents an issue of broad public importance that the supreme court should ultimately determine as provided by Iowa R. App. P. 6.1103(1)(b)(4) because the ruling could end drainage in districts with railroads that require expensive materials and procedures. The case involves a drainage district with an underground drain tile that passes through a railroad right-of-way with tracks and an embankment. The drain tile is collapsing beneath the railbed and must be abandoned, its location moved and then reconstructed. The railroad and federal regulations require

materials and procedures that are unique, rigorous, and expensive compared to those used in agricultural lands. In this case, the materials and procedures increased the cost of the project by $98,343, almost doubling the total cost. The benefit commissioners prepared a reclassification of benefits report and assessed almost one-half of the total cost of the project to the railroad for erosion protection, as provided by Iowa Code section 468.44(2). The commission followed Iowa Code section 468.44(4) and separately stated the specific benefits *other than those derived from the drainage of agricultural lands.* The railroad appealed and the district court set aside the reclassification of benefits report which will result in the railroad being assessed 5.8% of the project cost based upon the original assessment schedule prepared when the district was established over one hundred years ago. The court of appeals affirmed the district court for the most part.

There are many drainage districts in Iowa. Most of them are over one hundred years old with aging tile and include railroad right of ways with tracks and embankments. If the benefits of the drainage district improvements to the railroad are not recognized and the railroads are not assessed according to those benefits, the cost of the expensive materials and procedures will be assessed almost entirely to the owners of agricultural

lands. When the cost per acre exceeds $2,000.00 per acre of farmland, or even $1,000 per acre, the cost of the project becomes cost-prohibitive and cannot be approved by the board because they are not feasible, which is in violation of section 468.126. In those cases, the drainage of agricultural lands will be blocked which is in violation of long-established common law on drainage easement rights and violates the express purpose of chapter 468 which is to promote drainage of agricultural land in Iowa. The court of appeals decision will set a precedent that will result in railroads demanding more and more expensive materials and procedures and preventing drainage of agricultural land.

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STATEMENT OF THE FACTS

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 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."

App. v. II p. 44-57.

See also 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 (usually used for ag land) 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

Gallentine went on to state:

> 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, 70.

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.

Gallentine also referred to the photographs taken by Union Pacific's witness to show there was ponding near the railroad tracks, which meant the tile must have been partially blocked and was not draining through the right of way. Evidence was presented about the benefit to the railroad tracks and embankment.

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.

ARGUMENT

Preservation of Error. The court of appeals opinion was filed on June 16, 2021. This application for further review was filed within twenty days as required by Iowa R. App. P 1.1103

Scope and standard of review.

The Appellants agree with the statement by the court of appeals that, although this is an equity action, it reviews a summary judgment ruling for the correction of errors at law, citing *Iowa Arboretum, Inc. v. Iowa 4-H Found.*, 886 N.W.2d 695, 700 (Iowa 2016).

Argument.

Iowa Code section 468.2 provides:

> 1. The drainage of surface waters from agricultural lands and all other lands, including state-owned lakes and wetlands, or the protection of such lands from overflow shall be presumed to be a public benefit and conducive to the public health, convenience, and welfare.
>
> 2. The provisions of this subchapter and all other laws for the drainage and protection from overflow of agricultural or overflow lands shall be liberally construed to promote leveeing, ditching, draining, and reclamation of wet, swampy, and overflow lands.

Iowa Code section 468.44 provides the commissioners shall set forth in their report:

> ". . .
> 2. The amount of benefits to highway and railroad property and the percentage of benefits to each of said other tracts and the apportionment and amount of assessment of cost and expense, or estimated costs or expense, against each:
> . . .
> d. For erosion protection and control or flood control.
> . . .
> 4. Any specific benefits other than those derived from the drainage of agricultural lands shall be separately stated."

Iowa Code section 468.40 is entitled "rules of classification" and subparagraph 2 provides, in part, that in estimating the benefits as to the lands not traversed by the drainage district improvement, the commissioners shall consider how the improvement relieves the lands from overflow and relieves and protects the lands from damage by erosion.

The court of appeals relied upon *Chicago, R.I. & P.R. Co. v. Board of Sup'rs Clay County* 204 N.W.2d 311 (Iowa 1925): "The greater ease and lessened expense of maintaining the right of way cannot be considered unless there is evidence that the expense of upkeep has been lessened." That case is distinguishable from this one where both the district court and the court of

appeals failed to recognize the contract that was entered into with the railroad when the district was established providing the railroad would provide and deliver the higher quality pipe it wanted to go through its right of way. See contract at App. v. II, p. 70. At this point in time, the railroad did not offer to construct the crossing and submit it as damages as provided by section 468.109. It did not volunteer to provide the expensive pipe and deliver it.

And the *Chicago, R.I. & P.R. Co. v. Board of Sup'rs Clay County* opinion is inconsistent with the supreme court's holding that, in assessing the properties in the district the commissioners are authorized to take into consideration potential future use. *Chicago, R.I. & P.R. Co. v. Wright County Drainage District No. 43*, 175 Iowa 417, 154 N.W.2d 888 (Iowa 1915); *Cordes v. Board of Supervisors*, 197 Iowa 136, 140, 196 N.W.2d 997, 998 (1924); *Fulton v. Sherman*, 238 N.W. 88 (1931); *Chicago & N.W. Ry. Co. v. Board of Supervisors of Hamilton County*, 182 Iowa 60, 78, 162 N.W. 868, 874 (1917). In last cited case this court said: 'Benefits, as we have before had occasion to say, include more than immediate enhancement of market value.'

In *Chicago, R.I. & P.R. Co. v. Board of Sup'rs Clay County*, the court of appeals also wrote, at 313:

> We also recognize, as an element of benefit to a right of way, the greater permanence and security of the embankment, and the increased life of the wood used in railroad construction, as ties and timbers.

The supreme court 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).

See also Zinser v. Board of Sup'rs of Buena Vista County, 144 N.W. 51 (Iowa 1907) wherein the supreme court wrote (bold added herein):

> 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.

. . .

> 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**.
>
> . . .
>
> 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.**

In this case at bar, the court of appeals cited *United States Railroad Administration v. Board of Supervisors Buena Vista County*, 194 N.W.2d 365, 366 (Iowa 1923) wherein the supreme court held it improper to assess a railroad one-half the cost of constructing a highway bridge over a drainage ditch in addition to the drainage benefits assessed to the railroad because the bridge's construction was merely a byproduct of constructing the drainage ditch. The ruling is outdated because Iowa Code section 468.111 provides (bold added herein):

> The cost of building, rebuilding, constructing, reconstructing, changing, or repairing, as the case may be, any culvert or bridge, when such improvement is located at the place of the natural waterway or place provided by the railroad company for the flow of the water, **shall be borne by such railroad company without reimbursement therefor.**

Furthermore, Iowa Code section 468.108(1) provides (bold added herein):

> When a levee, ditch, drain, or change of any natural watercourse crosses a public highway, necessitating moving or building or rebuilding any secondary road bridge upon or ditch or drain crossing the road, the board of supervisors shall move, build, or rebuild the bridge, ditch, or drain, **paying the costs and expenses, including construction, maintenance, repair and improvement costs, from county funds.**

Iowa Code section 468.109 also provides that whenever a district is being established and a drain will cross the right of way of any railroad, the district shall direct the railroad company to construct the improvement across its right of way **so as not to obstruct, impede, or interfere with the free flow of the water therein.**

The Appellants respectfully submit these statutes in Chapter 468 recognize that roads and railbeds cannot be allowed to act as dams and prevent water from draining from the dominant estate through the subservient estate. The first two statutes provide roads and railroad companies should pay the entire cost of constructing bridges and culverts to allow water to

drain freely through their right of ways. And the third statute requires the railroad companies to construct the crossing in a way that will not interfere with the free flow of the water. It was inconsistent for the court of appeals to rule the railroad should be required to pay little or nothing for the expensive materials they demand to allow water to pass underground through their right of way in drain tiles. If the railroad demands materials that are cost-prohibitive, it will effectively violate natural drainage law by preventing the water from draining from a dominant estate through a subservient estate.

In *Sobotka v. Salamah*, 828 N.W.2d 325, 32 (Iowa App. 2013), the court of appeals set forth the salient principles of the rights and obligations of dominant and servient landowners vis-à-vis the drainage of surface water, citing *Koenigs v. Mitchell Cnty. Bd. of Supervisors*, 659 N.W.2d 589, 593-94 (Iowa 2003); *Braverman v. Eicher*, 238 N.W.2d 331, 334 (Iowa 1976); *Moody v. Van Wechel*, 402 N.W.2d 752, 757 (Iowa 1987); and *Witthauer v. City of Council Bluffs*, 133 N.W.d 71, 74-75 (Iowa 1965):

> The owner of the upper or dominant estate has a legal and natural easement in the lower or servient estate for the drainage of surface waters. In determining which of adjacent tracts is dominant, relative elevation and not general movement of floodwaters is controlling.
>
> Water from a dominant estate must be allowed to flow in its natural course onto a servient estate. The flow may not be diverted by

> obstructions erected or caused by either estate holder. These corresponding rights and obligations do not mean that low parts on land must retain water in ponds until it percolates into the soil. A landowner may divert water by surface drainage constructed upon his or her own land even though some different or additional water may thereby enter the servient estate.
>
> This right to employ modern drainage practices, sometimes called lip surface drainage, is not without limits.
>
> Plainly, the holder of the dominant estate clearly may not go so far as to collect and discharge water upon the servient estate in such a manner as to cut a stream bed. The servient estate is obligated to receive water from higher land, but not in such a way as to cut channels which did not previously exist.

In this case, the court of appeals held: "We reiterate, the cost of construction across a particular property is not a consideration in apportioning benefits. *See Pollock*, 138 N.W. at 416; *see also Conklin*, 168 N.W. at 876." The *Conklin* opinion is completely off point factually with this one, and the court of appeals erred as a matter of law when it cited the case as a controlling precedent. It involved an action by a landowner to recover damages from the city for nuisance, and a claim to lower her assessment by the drainage district by the amount it cost her to abate the nuisance. It did not involve a classification commission's assessment of benefits to a railroad versus the assessments to the other agricultural lands in the district.

In *Pollock*, the drain tile was laid across the appellant's agricultural land 9 feet deep at a cost of $31.87 per acre, while the average cost for laying tile over the other agricultural land in the district averaged only $14.20 because they did not have to dig as deep. The supreme court did state:

> The cost of construction of the drain across particular land is by no means the measure of benefit to such land. Granting, however, that it is a proper subject for consideration, it turns a sharp edge toward the appellants in this case. Manifestly the cost of construction across this land was greatly increased by the great depth of 9 feet. This depth was rendered necessary because of its high elevation and to furnish outlet to the lower elevations of the land further north and up the course.

The *Pollock* opinion was written over one hundred years ago and simply prohibits landowners of agricultural land from asking for their assessments to be lowered based on the actual cost of installing drain tile in their parcel of agricultural land compared to other parcels of agricultural land. The opinion does not prohibit a benefit commission from comparing the benefits received by non-agricultural lands when tile is installed and relying upon the cost of the materials and procedures unique to that business to calculate a dollar amount of benefit.

The reliance on the *Pollock* opinion also ignores Iowa Code section 468.44 requiring the benefit commissioners consider the benefit railroads and roads receive from erosion protection and requires they specifically state

"any specific benefits other than those derived from the drainage of agricultural lands". The Commission did exactly that at Section 4.2 of its report when it found "For [the Union Pacific parcel], 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.*

The legislature recognized land included in drainage districts might be used for purposes other than agriculture. The benefit commission was required, by section 468.44(4) to recognize that land within the district that is used for non-agricultural purposes. The legislature provided, in sections 468.108 and 468.111, that counties must pay the entire cost of bridges, ditches and drains crossing a highway, and railroads must pay the entire cost of bridges and culverts located in the natural waterway or place provided by the railroad company. This facilitates the drainage of waters from dominant estates through subservient estates. Otherwise, the roads and bridges would serve as dams and violate drainage easement common law principles.

Chapter 468 does not require the drainage district prove the counties or railroads received any specific drainage benefits whatsoever by constructing the bridges or culverts. It is the cost for allowing water to drain. They pay the entire cost without any deliberation by the board of supervisors or benefit commissioners. When taking these other sections into consideration, it seems logical to conclude a railroad should be required to pay a significant portion of the extraordinary costs for materials and procedures that provide a commensurate benefit in the form of a sturdy railbed. Counties assess their taxpayers to pay for the cost of the bridges, ditches and tiles. Railroads pass the expense of complying with federal regulations and drainage easement laws onto their customers – farmers cannot. There is a reason section 468.444(4) requires the benefit commissioner's report to state "any specific benefits other than those derived from the drainage of agricultural lands".

The court of appeals erred as a matter of law when it failed to recognize the benefit the railroad receives in the form of erosion control. And neither the district court nor the court of appeals recognized that section 468.126 prohibits the board of trustees from approving repair projects that are not *feasible*. The Appellants respectfully submit if the cost per acre for a repair project approaches or exceeds $2,000.00 per acre of agricultural land,

or even $1,000 per acre, it is simply cost-prohibitive. Additionally, if the cost of laying a drain tile through a railroad right of way (and moving it to a new location at the direction of the railroad company) becomes so high it becomes cost-prohibitive and violates the right of the dominant estate holders to drain water through the railroad right of way thereby violating the principles of drainage easement law.

The railroad company in this case also receives a benefit by having the tile relocated at least 150 feet away from its culvert. Since the railroad company is solely responsible for the construction and maintenance of its bridges and culverts pursuant to section 468.111, it stands to reason they do not want work done close to them. This eliminates the risk their expensive bridges and culverts might be damaged or compromised by new construction.

The court of appeals also ruled, at page 9, the commission and board acted improperly by considering how much the other properties in the district would be assessed for the cost of repair under the prior assessment and cited the *Martin* opinion. The reliance upon the *Martin* opinion is in error. The quote cited by the court of appeals is misplaced. The *Martin* opinion dealt with a property owner who appealed the assessment. The supreme court ruled the assessments must be reduced because there were drain tiles in place

before the district was established and the board and commission should have recognized the reduced need for the drainage improvements. The quote from the *Martin* opinion is a very basic point found in section 468.39 providing that the benefit commissioners are required to inspect and review all tracts of 40 acres or less in the district, compare them to the parcel given the 100 rating, and provide an assessment of benefit for each parcel. That is exactly what the commission did in this case. Their assessment for each tract was set forth on the last page of their report. App., vol I, pages 84-94. It goes without saying that the commission cannot use "the average assessment per acre" as a criterion for reassessment of the properties. Each parcel must be evaluated separately.

Iowa Code section 468.46 dictates the board of trustees review the benefit commissions report and "may affirm, increase, or diminish the percentage of benefits or the apportionment of costs and expenses made in said report against any body or tract of land in said district as may appear to the board to be **just and equitable**." This does require the board to review the assessments against other parcels vis-a-vis other parcels to determine if they are equitable.

The benefit commission must formulate a reclassification of benefits that is equitable. If an industrial parcel requires materials and procedures that are not required for agricultural land and it results in costs that are cost-prohibitive for farming, the commission must consider the cost of those materials and procedures to determine if the industrial parcel is being assessed for the benefit it receives. If it the amount of the assessment is lower than the benefit, the assessment must be increased. And the fact the costs may be cost-prohibitive for the agricultural lands should be taken into consideration because the project must be feasible, or it cannot be approved as dictated by section 468.126(4)(d).

The commission took into consideration the erosion that would result if a drain tile beneath the railroad bed would collapse. It would result in erosion to the track bed. More soil would fall into the collapsed tile and cause sinkholes in the railbed. The extra materials and procedures extend the life of the tile and reduce the chances of erosion of the railbed. This constitutes a benefit to the railroad. It may allow the drainage tile to function for another hundred years.

CONCLUSION

Wherefore, the Board of Trustees respectfully applies to the supreme court for further review of the decision entered by the court of appeals and after doing so find the railroad did not overcome the presumption of correctness in favor of the benefit commission, find the benefit commission report was not based on prejudice, gross error, and mistake, reverse the decision of the court of appeals, and reinstate the reclassification of benefits report file by the commission and approved by the Board of Trustees.

COST CERTIFICATE

I hereby certify that the actual cost for printing and copying the requisite number of copies of the foregoing Application for Further Review was $0.00 because it was electronically filed.

THE JOHNSON LAW FIRM, PLC

/s/ David R. Johnson

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1. This application for further complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

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/s/ David R. Johnson
David R. Johnson July 6, 2021