

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

CHRISTOPHER WENZLICK,
Petitioner,

v

MTT Docket No. 333799

VILLAGE OF OAKLEY,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

DEFAULT OPINION AND JUDGMENT

This case involves the special assessment of a parcel of real property located in the Village of Oakley, Saginaw County, Michigan. Christopher Wenzlick represented himself. Respondent Village of Oakley was not represented nor was it present at the default hearing conducted in this matter on October 19, 2009 since it had previously been placed in default for failure to answer the petition in this matter or take such other action as allowed by law.

This is an appeal of a Special Assessment (SA) for sanitary sewer, levied by the Village of Oakley. Petitioner owns real property in the Village of Oakley correctly identified as parcel #07-09-2-36-0120-600 (“property”) and having the address of 308 Main Street, Village of Oakley. As part of the Oakley Sewage Disposal System Special Assessment, Petitioner’s property identified by the above tax parcel was assessed the sum of \$44,400. The Tribunal granted Petitioner’s motion to amend the property tax identification number which he had unintentionally placed on his original petition to reflect the correct tax parcel number set forth above, being the parcel number reflected in Respondent’s Special Assessment billings.

Petitioner requests the Tribunal to invalidate the SA as the sewer assessment amounts are not reasonably proportionate to the benefit to Petitioner's property.

In support of his position that the Special Assessment should be voided by the Tribunal Petitioner introduced 14 Exhibits, all of which were admitted into evidence by the Tribunal, together with the testimony of Petitioner.

The admitted exhibits were as follows:

- P-1 Letter of Protest or Plan to appeal dated April 24, 2007
- P-2 Special Assessment
- P-3 REU definition
- R-4 REU determination
- R-5 Special Assessment Schedule of cost pre REU
- R-6 Special Assessment, Schedule of interest pre REU
- R-7 Special Assessment, Schedule of debt service charge per REU
- R-8 Operation and Maintenance, cost per REU
- R-9 Tax Records for the last 5 years with gallons of water usage
- R-10 Manufacturers manual for washing machine gallon usage
- R-11 2006 Property taxes without Special Assessment
- R-12 2008 Property taxes with Special Assessment
- P-13 Valuation Disclosure
- P-14 Market Valuation-Selleck & Sons Agency, Inc. with comparables
Market Valuation-Janet Kovach- ABR,CRS,GRI dated May 7, 2007
Market Valuation-Janet Kovach, ABR,CRS GRI dated 9/8/09
- P-15 Affidavit of M. A. Selleck

Testimony of Christopher Wenzlick.

Mr. Wenzlick testified that he and his wife are owners of the subject property, which consists of a small Laundromat and Beauty Shop. The beauty shop operated by Petitioner's wife is open 3.5 days per week and is closed the rest of the week. The Laundromat portion of the building consists of five washing machines. The village of Oakley has a population of 339. The witness

spent much of his testimony attempting to explain the improper allocation of REU's to his property based on an analysis he had done regarding water usage for both the beauty shop and Laundromat. He further stated that the sewer disposal was not completed until sometime during 2008 and that he is required to tap into the system by December 1, 2009. For tax year 2009, the assessed value of the subject parcel increased from \$9,200 to \$17,100 with an increase in taxable value from \$9,200 to \$9,604. The assessed and taxable value for the 2007 and 2008 tax years were \$9,200, respectively, for each year.

APPLICABLE LAW

Municipal decisions regarding special assessments are presumed to be valid and generally should be upheld absent a substantial or unreasonable disproportionality between the amount assessed and the value which accrues to the land as a result of the improvements. *Dixon Road Group v City of Novi*, 426 Mich 390, 402-403; 395 NW2d 211 (1986). To effectively challenge special assessments, plaintiffs, at a minimum, must present credible evidence to rebut the presumption that the assessments are valid. Without such evidence, a tax tribunal has no basis to strike down special assessments. *Kadzban v City of Grandville*, 442 Mich 495, 505; NW2d 299 (1993).

The Tax Tribunal must conduct a de novo proceeding at which Petitioner bears the burden of proving the special assessments are invalid. MCL 205.735(1); MSA 7.650(35); *Kadzban, supra*; *Dixon, supra*. If a petitioner fails to meet his burden of proving the special assessments invalid, the Tax Tribunal may not make a de novo determination of benefit and substitute its judgment for that of the municipality. *Kadzban, supra*.

In *Dixon, supra*, the court stated that:

...A determination of the increased market value of a piece of property after the improvement is necessary in order to determine whether or not the benefits derived from the special assessment are proportional to the costs incurred.

The court further stated that:

While we certainly do not believe that we should require a rigid dollar for dollar balance between the amount of the special assessment and the amount of the benefit, a failure by this Court to require a reasonable relationship between the two would be akin to the taking of property without due process of law. Such a result would defy reason and justice. Therefore, we conclude that while decisions made by municipalities with respect to special assessments generally should be upheld, this Court will intervene where there is a substantial or unreasonable disproportionality between the amount assessed and the value that accrues to the land as a result of the improvements. In this case, the cost of the improvements is approximately 2.6 times the increase in the value of the properties and for that reason we hold the special assessment invalid. *Id.* at 402-403.

MCL 123.754 provides in part: “After the confirmation the special assessment roll and all assessments thereon shall be final and conclusive unless attacked in a court of competent jurisdiction 30 days after confirmation.”

The advantages and disadvantages of the different permitted approaches in construction of sanitary sewer systems are for the governing body ...to weigh. *Gaut v City of Southfield*, 388 Mich 189; 200 NW2d 76 (1972).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

At all times relevant to this action Petitioner was the owner of the property identified as tax parcel #07-09-2-36-0120-600, which consisted of one structure occupied by a two-chair beauty shop which was open 3.5 days a week, and a 10-washing machine Laundromat.

The amount of the Special Assessment before interest was \$44,400.

At the time of the creation of the Special Assessment District in 2007, the property had an assessed and taxable value of \$9,200 (true cash value based on the assessment of \$18,400) and in 2009 after the completion of the sewer project an assessed value of \$17,100 (true cash value of \$34,100).

Petitioner presented three market value analyses, the first dated May 7, 2007, which indicated a market value of \$40,000, which the Tribunal notes was before the construction of the sewer system; the second dated September 8, 2009, which indicated a range of value between \$30,000-\$35,500 after the completion of the sewer project; and a third analysis dated September 10, 2009, showing a value of \$30,000, likewise after completion of the sewer system. The Tribunal notes that all three of Petitioner's market value analyses are not appraisals in the common accepted sense. The Tribunal finds, absent any credible evidence to the contrary, that the value of the subject property after the completion of the sewer system is, if anything, less than the value of the property without access to village sewer.

The Tribunal does not need to discuss in detail Petitioner's critique of the method by which the REU's in this case were allocated because the Tribunal determines that, based on the evidence which the Tribunal finds believable and credible, the property has incurred absolutely no benefit whatsoever as a result of the Special Assessment; therefore, the Special Assessment should be declared VOID.

JUDGMENT

IT IS ORDERED that the Special Assessment imposed on the subject property by Respondent is hereby VACATED and declared VOID.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998, at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar

year 2005, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (xiii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and after December 31, 2008 at the rate of 3.31% for calendar year 2009.

This Opinion and Judgment resolves all pending claims and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: October 23, 2009

By: Kimbal R. Smith III