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

Alan Pighin & Lana Buchner,
Petitioners,

v

MTT Docket No. 308411

Township of Ida,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

INTRODUCTION

This case is an appeal of a special assessment levied by Respondent, Township of Ida, to defray the cost of a municipal water project. The special assessment was assessed against each residential property located within the special assessment district on the basis of Residential Equivalent Units (REUs). Originally, the cost of each REU was $7,531.00. Thereafter, this amount was increased to $8,302.00.

Petitioners Alan Pighin and Lana Buchner own residential property subject to the special assessment. Petitioners lease this property to the Monroe Community Mental Health Authority for use as a group home for adults with special needs. Because Petitioners' property is used in this manner, Respondent determined that the property should be assessed two REUs while other residential properties within the special assessment district were assessed only one. It is Respondent's position that this assessment is equitable because the property is not a typical residential property. Petitioners believe that the assessment is unfair and that their property

should be assessed the same as other residential properties. Petitioners do not dispute the cost per REU.

FINDINGS OF FACT

The property at issue, the "subject property," is located in Ida Township, Monroe County. It is classified as residential and identified by Respondent as parcel number 58-08-001-014-20. The address of the subject property is 3250 Geiger Road, Ida, Michigan. Petitioners Alan Pighin and Lana Buchner own the subject property, which is leased to the Monroe Community Mental Health Authority (MCMHA).[1] The MCMHA uses the subject property as a group home for adults with special needs. Petitioners filed this appeal because the subject property was assessed two REUs on Respondent's special assessment roll. Typical residential properties were assessed only one REU.

Based upon public documents filed with Respondent's Motion and with Petitioners' Prehearing Statement, the Tribunal makes the following findings of fact:

1. On January 12 and January 16, 2003, a "Notice of Hearing," advertising a hearing on Water District No. 1, was published in *The Monroe Sunday News*. The Notice listed 7:00 p.m. on January 21, 2003 as the time and date for the hearing. The Notice also listed the parcel numbers of the affected properties and the names of the property owners. This list contained the subject property's parcel number and Petitioners' names. Finally, the Notice explained the requirements for appealing the assessment.

2. On January 21, 2003, Respondent's Township Board, the "Board," held a public meeting at which the proposed project, the special assessment and the properties to be included in the proposed assessment district were discussed.

[1] A copy of the lease, entered into on July 1, 2004, was submitted with Petitioners' Prehearing Statement.

3. On February 25, 2003, the Board adopted the Special Assessment Resolution that established the special assessment district, known as "Water District No. 1." The Resolution specified the parcels of land within the district to be assessed. The Resolution directed the Township Supervisor to prepare an assessment roll.

4. On April 10, 2003, the Township Supervisor certified the special assessment roll.

5. On April 10, 2003, the Township Clerk mailed a Notice of Special Assessment Hearing on Water District No. 1 to each property owner within the district.

6. On April 16 and April 22, 2003, a notice of a public hearing to be held on April 28, 2003, was published in the Monroe Evening News. The stated purpose of the public hearing was to review the special assessment roll and to hear objections to the roll.

7. A Notice of Hearing for the April 28, 2003 public hearing was mailed to each property owner. The date of this Notice is uncertain. Enclosed with this Notice was a cover letter that indicated that the subject property would be assessed two REUs.

8. On April 28, 2003, the public meeting was held. The Board received and reviewed objections to the Special Assessment Roll.

9. On May 6, 2003, a public meeting was held at which the Board confirmed the special assessment roll for the Special Assessment District No. 1. This roll established the cost per REU at $7,531.00.

10. On May 7, 2003, the Township Clerk mailed a "Notice of Establishment of Special Assessment" to each property owner within the special assessment district. This Notice advised property owners an appeal of the special assessment may be made to the Michigan Tax Tribunal if filed within thirty days of confirmation of the roll.

11. On December 2, 2003, Petitioners protested the special assessment to Respondent's Board of Review. The Board of Review denied the relief requested.

12. On May 7, 2004, the Board mailed a letter to each property owner within the special assessment district. This letter explained that a public hearing would be held on May 20, 2004 to discuss the increased cost of the project and that, due to increased project costs, the cost per REU needed to be increased from $7,531.00 to $8,302.00.

13. On May 8 and May 17, 2004, a Notice of Public Hearing to be held on May 20, 2004, to discuss a revised assessment for Water District No.1, was published in the Monroe Evening News.

14. On May 12, 2004, the Township Treasurer mailed a copy of the Notice of Public Hearing to all property owners within the district.

15. In a letter dated May 18, 2004, from Petitioner Buchner to the Board, Petitioner stated:

> Larry Metz [Township Supervisor] said that it was the Board's decision that as long as the home was used as a group home it would be assessed 2 units. If the home is converted to a single family dwelling by the time of tapping the water line, they would change the assessment to one unit. I felt this was a fair decision by the board. My dilemma is that Monroe Community Mental Health continues to use the home as a group home but has still not signed a long-term lease, so they could move at any time.

16. On May 20, 2004, the public hearing was held to receive oral and written comments, questions and objections to the proposed water project and the revised assessment.

17. On May 21, 2004, a public meeting was held at which the Board approved the "Revised Assessment Roll No. 1." Pursuant to the Revised Roll, the cost per REU was increased to $8,302.00. The Resolution stated: "Approval and confirmation of the Revised Assessment Roll No. 1 (Water) by this Resolution, shall not be construed as an action which results in the termination or rescission of the original special assessment, but

instead its approval and confirmation represents a continuation of the original Special Assessment as revised by this Resolution with the additional assessed amounts."

18. On June 18, 2004, Petitioners filed this appeal. Petitioners do not appeal the cost per REU; instead, Petitioners appeal the number of REUs assessed to the subject property.

19. On July 1, 2004, Petitioners entered into a Lease Agreement with the Monroe Community Mental Health Authority for the subject property.

20. Respondent assessed the subject property two REUs. The typical assessment for residential properties was one REU.

21. On June 27, 2005, Respondent filed "Respondent's Motion for Summary Disposition and to Dismiss the Appeal." Petitioners did not file an Answer to this Motion.

RESPONDENT'S MOTION FOR SUMMARY DISPOSITION AND TO DISMISS THE APPEAL

In its Motion for Summary Disposition, Respondent sets forth two reasons why its Motion for Summary Disposition and to Dismiss the Appeal should be granted. First, "[t]his Tribunal lacks jurisdiction to entertain the appeal of the special assessment district due to Petitioners' failure to timely file their petition." (Respondent's Brief in Support of Dismissal, p4) Second, "… Petitioners have failed to allege specific and sufficient facts to establish fraud, discrimination or illegality and have failed to allege that there is an unreasonable disproportionality between the amount assessed and the value that accrued to Petitioners' property." (Respondent's Brief in Support of Dismissal, p6)

In support of the argument that the Tribunal lacks jurisdiction, Respondent states that "[t]he law in the State of Michigan in regard to this matter is well settled. If the Petitioner wished to appeal the Special Assessment District, such appeal must have been perfected within

thirty (30) days of the resolution by the Ida Township Board which confirmed the roll for the Special Assessment District." (Respondent's Brief in Support of Dismissal, p4) Respondent cites the Tax Tribunal Act, specifically MCL 205.735, in support of this argument. Respondent also cites *Sisbarro* v *City of Fenton*, 90 Mich App 675; 282 NW2d 443 (1980), in which the court held that "all other matters, including special assessments, continue to be governed by the 30-day limitation."

Respondent provided a timeline for the various actions taken by the Board.[2] Respondent points to the February 25, 2003 public hearing wherein the Board established the special assessment district. Respondent argues that "…Petitioners were provided opportunity after opportunity to properly protest the Special Assessment District and failed to timely do so." (Respondent's Brief in Support of Dismissal, p2) Respondent next cites the May 6, 2003 public hearing wherein the Board confirmed the special assessment roll. Respondent argues that "…Petitioner's appeal period began running after the date of the special meeting wherein the Ida Township Board confirmed the roll for the Special Assessment District. Notice of such time to appeal to this Tribunal was provided to all interested property owners after the confirmation of the roll." (Respondent's Brief in Support of Dismissal, p2) Not only did Petitioners not appeal within thirty days of confirmation of the roll, "[i]n fact, the Petitioners appeal was not filed until June 17, 2004, more than a full year after their time for appeal had passed." (Respondent's Brief in Support of Dismissal, p2)

Next, Respondent cites the May 21, 2004 hearing. "Any appeal based on this hearing would be only an appeal of the May 21, 2004 assessment to cover the additional costs due to the

[2] This timeline is included in the "Findings of Fact" section of this Opinion.

higher price of steel, not an appeal of the Special Assessment District, the Assignation of the REUs, or any aspect of the process established in 2003." (Respondent's Motion, p3)

Finally, Respondent argues that:

> Petitioners' appearance at the December 2, 2003 Board of Review and protestation of the special assessment is of no relevance to this appeal. The issues involved here are not those of corrections to taxable valuations, and therefore Petitioner's appearance at the December Board of Review is moot. Further, the time for appeal to this Tribunal had already passed and the Petitioner's appearance at the December Board of Review does not in any way renew the appeal period. (Respondent's Brief in Support of Dismissal, p3)

In support of its second argument, that Petitioners failed to allege specific and sufficient facts to establish fraud, discrimination or illegality, and that they failed to allege that there is an unreasonable disproportionality between the amount assessed and the value that accrued to subject property after the improvement, Respondent cited the Michigan Supreme Court's decisions in *Dixon Road Group* v *Novi*, 426 Mich 390; 395 NW2d 211 (1986) and *Kadzban* v *Grandville*, 442 Mich 495; 502 NW2d (1993). (Respondent's Brief in Support of Dismissal, p7)

In *Dixon Road*, the Court held: "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 that accrues to the land as a result of the improvements." *Id*. at 402-403. In *Kadzban*, the Court held: "To challenge effectively special assessments, petitioners, at a minimum, must present credible evidence to rebut the presumption that the assessments are valid. Without such evidence, the Tax Tribunal has no basis to strike down special assessments." *Id*. at 505.

Respondent explained that "[t]he number of REUs assigned to a property depends on the usage of such property. In the instant matter the property at issue was and is currently rented out and used as a residential facility. The 24-hour nature of such residential facility creates an

increased use of water for such facility and as such the assignment of two REUs was appropriate." (Respondent's Brief in Support of Dismissal, pp6-7) Respondent argues that:

> …Petitioners have not alleged that there exists a disproportionality which is unreasonable between the value accrued to the land by the improvements and the amount assessed. The Petitioners have alleged that the use of their land does not differ significantly from the use of the land as a single family residence. However, Petitioners clearly state that the property is used as a Group Home which has 24-hour staffing. This fact, in and of itself, establishes that there is a use of the property which differs significantly from a single-family residence. The use as a group home requires that staff be present at all times. (Respondent's Brief in Support of Dismissal, p7)

PETITIONERS' CONTENTIONS

Petitioners did not file an answer to Respondent's Motion for Summary Disposition. However, the Tribunal recognizes that Petitioners are In Pro Per and, as such, may not understand the importance of such a motion. Given this, the Tribunal believes it is fair and just to describe Petitioners' position based upon other documents Petitioners filed with the Tribunal.

In their Petition, Petitioners stated that:

1. Petitioners are brother and sister individuals whose address is 8369 Burning Bush, Grosse Ile, Michigan 48138.
2. Respondent, Township of Ida, levies and collects the special assessment taxes on the subject property.
3. The property identification number is 08-001-014-20 and the property is classified as residential property. Petitioners' property is presently used as a home for a special needs adult family. Petitioners believe that Petitioners' property was originally designed as a single family specialized residential facility.
4. The property is located in Monroe County and the school district of Ida Public Schools and Monroe County Community College.
5. This matter involves issues relating to the Township of Ida Water System #1, Water District #1, special assessment.
6. The special assessment levied against the subject parcel is for 2 REUs (Residential Equivalent Units) or $16,604.00. Each REU is assessed $8,302.00.
7. On December 2, 2003, Petitioner appeared before the appropriate local board of review and protested the special assessment of the subject property.

8. The Board of Review denied the relief requested and affirmed the special assessment on May 21, 2004.
9. Property was designed for the "single family" use of special needs individuals. The family in this instance is defined as the 3 residents currently living in the home. Monroe Community Mental Health (MCMH) provides 24-hour home management services for the residents by individuals who work in shifts. They do not live in the home. In June of 2003, MCMH stated their intent to terminate the lease and move the current residents, in which case the home will be rented to a single family or sold. As of June 2004, MCMH still occupies the home but on a month by month basis until new accommodations can be provided. It is my contention that the home is a single-family residence. When assigning REU's, the Township of Ida assesses a single-family rental residence at 1 REU. The special needs classification of the individuals living in the home should not justify the assessment of 2 REU's. It is discrimination.
10. [Respondent] contends the special assessment for the subject property is 2 REU's or $16,604.00. The amount in contention is 1 REU or $8,302.00.
11. Petitioner requests that the Tribunal reduce the special assessment from the subject property from 2 REU's, or $16,604.00, to 1 REU or $8,302.00 and order a refund with interest, as provided by the Tax Tribunal Act. (Petitioners' Petition.)

Enclosed with Petitioners' Prehearing Statement were copies of various documents, including a copy of the lease for the subject property, entered into by Petitioners and the Monroe Community Mental Health Authority on July 1, 2004.

Petitioners' Prehearing Statement included the following statement:

> It is my contention that an error was made by the Township in assessing my property 2 REU's at the beginning of their special assessment process. Original Notification of the number of assessed REU's came as documents 1 and 2. These initial documents didn't estimate the amount each REU would be assessed at, nor include an explanation of how the number of REU's was arrived at. My residential home was assessed 2 REU's. (Petitioners' Prehearing Statement.)

At the Prehearing Conference, Petitioner Buchner explained that she thought all residential properties were assessed 2 REUs and complained that Respondent had not explained that the subject property was assessed differently than other residential properties.

Finally, the Tribunal notes that at the Prehearing Conference held in this matter, Petitioner Buchner confirmed that this appeal concerned only the number of REUs assessed to the subject property and that the cost per REU was not at issue.

CONCLUSIONS OF LAW

There is no specific tribunal rule governing motions for summary disposition. As such, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such a motion. TTR 111(4). Pursuant to MCR 2.116(C), a motion for summary disposition may be based on one or more of the grounds specified in (C)(1) through (C)(10). Moreover, the rule requires that the moving party specify the ground on which the motion is based. In the instant case, Respondent's Motion and Brief do not cite a specific ground. However, the Tribunal concludes that Respondent's first argument, that the Tribunal lacks jurisdiction in this matter, is made under MCR 2.116(C)(4). This is a question of law.

The Tax Tribunal's jurisdiction is found in Section 35 of the Tax Tribunal Act, being MCL 205.735, which states in pertinent part:

> (1) A proceeding before the tribunal is original and independent and is considered de novo….For a special assessment dispute, the special assessment must be protested at the hearing held for the purpose of confirming the special assessment roll before the tribunal acquires jurisdiction of the dispute.
> (2) The jurisdiction of the tribunal in an assessment dispute is invoked by a party in interest, as petitioner, filing a written petition on or before June 30 of the tax year involved…**In all other matters, the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 30 days after the final decision, ruling, determination, or order that the petitioner seeks to review,** or within 35 days if the appeal is pursuant to section 22(1) of 1941 PA 122, MCL 205.22. (Emphasis added.)

Thus, pursuant to MCL 205.735, the Tribunal acquires jurisdiction over special assessment disputes only if two requirements are met. First, the petitioner must have protested the special assessment at the hearing confirming the assessment roll. Second, the petitioner must appeal to

the Tribunal "within 30 days after the final decision, ruling, determination, or order that the petitioner seeks to review…." In special assessment cases, there are at least two 30 day appeal periods. The first is the appeal of the decision establishing the assessment district and the second is the appeal of the assessment roll.

In *Houdek* v *Garfield Township*, unpublished opinion per curiam of the Court of Appeals, decided April 28, 2000, (Docket No. 216951), the court determined that the 30 day appeal period was jurisdictional. In that case, the petitioner appealed the respondent's creation of a special assessment district, asserting that an insufficient number of signatures were collected on the initiatory petitions. The respondent argued that the petitioner's appeal was not timely filed. The court agreed, stating "[a]n appeal must be filed within thirty days after the final decision of which review is sought." *Id*. Moreover, the court held that because the appeal was not timely filed, it need not address the issue of whether the creation of the special assessment district met statutory requirements. In support of this decision, the court cited *Szymanski* v *City of Westland*, 420 Mich 301; 362 NW2d 224 (1984). In that case, the petitioners filed their petition at the Tribunal 195 days after the special assessment roll was confirmed. The Court held:

> Since the plaintiffs have failed to file a petition with the Tax Tribunal within the 30-day period provided by the Tax Tribunal Act, and since they point to no other applicable provision granting them a longer period of time to do so, we conclude, on the basis of the plain language of §35 and the rule announced in *Wikman* [*Wikman* v *Novi*, 413 Mich 617; 322 NW2d 103 (1982)], that the Tax Tribunal was without jurisdiction to consider the plaintiffs' petition and therefore correctly dismissed it." *Id*. at 305.

In the instant case, neither party stated whether Petitioners protested the assessment roll before the Board. Therefore, the Tribunal must assume that this is not an issue and that Petitioners complied with this requirement. The issue, then, is whether Petitioners filed this appeal within 30 days of the Board's final decision, ruling, determination or order. While

Petitioners do not contest the creation of the special assessment district, there are still two decisions of the Board to be considered. The first is the Board's May 6, 2003 decision to confirm the first special assessment roll. It was this decision in which the subject property was assessed two REUs. The second decision is the Board's May 21, 2004 decision to increase the cost per REU from $7,531.00 to $8,302.00.

Petitioners' appeal to Respondent's December 2003 Board of Review is not relevant since the Board of Review lacks subject matter jurisdiction. Instead, the relevant date is the date that Petitioners filed this appeal with the Tribunal, specifically June 18, 2004. As it pertains to the Board's first decision of May 6, 2003, Petitioners' appeal is clearly untimely as it was filed more than a year later. On the other hand, Petitioners' appeal of the Board's second decision was filed within thirty days of that decision and is considered timely.

As previously stated, Petitioners filed this appeal because they disagreed with the number of REUs assessed to the subject property, not the cost per REU. Given this, the question to be answered is whether the Board's May 21, 2004 decision dealt with the assessment of REUs. Respondent argues that:

> [w]hile there was a subsequent revision of the Special Assessment roll on May 21, 2004, the revision did not change the roll or the properties to which the special assessment applied. The revision did not change the number of REUs assigned to each of the properties within the special assessment district. The revision did nothing more than assess an additional cost to those properties within the district based on an unforeseen increase in the cost of iron which was necessary to complete the project. (Respondent's Brief in Support of Dismissal, p6)

The May 21, 2004 Revised Special Assessment Resolution (Confirmation of the Roll) supports Respondent's argument. Pursuant to this Resolution, "[a]pproval and confirmation of the Revised Special Assessment Roll No. 1 (Water) by this Resolution, shall not be construed as an action which results in the termination or rescission of the original special assessment, but

instead its approval and confirmation represents a continuation of the original Special Assessment as revised by this Resolution with the additional assessed amounts." (Resolution, pp3-4) For these reasons, the Tribunal finds that the decision regarding the assessment of REUs was made by the Board on May 6, 2003. The only decision made by the Board on May 21, 2004, and thus the only decision that was timely appealed by Petitioners, was the increase in the cost per REU. As such, the Tribunal finds that it does not have jurisdiction to consider Petitioners' appeal of the assessment of two REUs to the subject property.

Moreover, Petitioners stated that they do not disagree with the cost per REU. Because this is the only issue over which the Tribunal has jurisdiction, the Tribunal finds that Petitioners have failed to state a claim on which relief can be granted. Therefore, it is appropriate to dismiss this case pursuant to MCR 2.116(C)(4) and (C)(8).

The Tribunal further finds that even if it had jurisdiction to consider the issue of REUs assessed against the subject property, Petitioners' May 18, 2004, letter to the Board, weakens Petitioners' argument. Again, in this letter, Petitioner Buchner stated:

> Larry Metz [Township Supervisor] said that it was the Board's decision that as long as the home was used as a group home it would be assessed 2 units. If the home is converted to a single family dwelling by the time of tapping the water line, they would change the assessment to one unit. **I felt this was a fair decision by the board.** My dilemma is that Monroe Community Mental Health [Authority] continues to use the home as a group home but has still not signed a long-term lease, so they could move at any time. (Emphasis added.)

Shortly thereafter, on July 1, 2004, the Monroe Community Mental Health Authority signed a lease for the subject property.

Finally, because the Tribunal lacks jurisdiction to consider an untimely appeal, it is unnecessary to address Respondent's second argument, namely that "Petitioners have failed to allege specific and sufficient facts to establish fraud, discrimination or illegality and have failed

to allege that there is an unreasonable disproportionality between the amount assessed and the value that accrued to Petitioners' property." (Respondent's Brief in Support of Dismissal, p6)

JUDGMENT

IT IS ORDERED that Respondent's Motion for Summary Disposition is GRANTED and this matter is DISMISSED.

This Order resolves all pending claims in this matter and closes the case.

MICHIGAN TAX TRIBUNAL

Entered: 04/28/2006 By: Patricia L. Halm