STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Hartland Glen Development LLC,
Petitioner,

v

MTT Docket Nos. 423343 & 427021

Hartland Township,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Hartland Glen Development LLC, appeals Respondent's levy of a corrected special assessment and supplemental special assessment on the subject property. A three-day hearing commenced on February 4, 2014, and concluded on February 6, 2014. H. Joel Newman, attorney at H. Joel Newman, PLLC, and Mark B. Dickow, attorney at Mark B. Dickow, P.C., appeared on behalf of Petitioner, and Michael D. Homier, attorney at Foster, Swift, Collins & Smith, P.C., appeared on behalf of Respondent. Petitioner's witnesses were Isam Yaldo, a principal of Petitioner; Daniel Kaniarz, a geotechnical engineer; and Michael Rende, MAI, valuation expert. Petitioner also called James Wickman, Respondent's Manager, and Kristofer Enlow, engineer, as adverse witnesses. Respondent's witnesses were David Reynolds Campbell, Respondent's planner, and James Hartman, MAI, valuation expert.

The issue to be determined by the Tribunal is whether the corrected special assessment and supplemental special assessment were proportional to the cost of the improvement on the subject property.

The subject property is located at 12400 Highland Road in Hartland Township and is identified as Parcel No. 4708-26-100-019. It is classified as commercial real property, contains 383.58 acres, and is currently being used as a 36-hole golf course.

On May 10, 2005, a special assessment for sanitary sewer improvements to properties within Special Assessment District No. 4 ("SAD No. 4"), including the subject property, was confirmed. Petitioner did not protest to the hearing held to confirm this special assessment. Subsequently, corrected and supplemental special assessments, relative to SAD No. 4, were issued and later confirmed on July 27, 2011, and August 16, 2011, respectively. Petitioner protested the corrected and supplemental special assessments at the hearings held to confirm the same. Petitioner then timely filed its appeal in Docket No. 423343, relative to the corrected special assessment, on August 12, 2011, and in Docket No. 427021, relative to the supplemental special assessment on September 13, 2011. See MCL 41.726(3). Docket Nos. 423343 and 427021 were subsequently consolidated pursuant to TTR 247. See the Tribunal's September 18, 2013 Order.

The Tribunal finds that the benefits from the corrected and supplemental special assessments are proportional to the cost of the sanitary sewer improvements on the subject property. As such, the subject property's final special assessment as established by the Tribunal is:

Parcel Number: 4708-26-100-019

Type of Special Assessment	Special Assessment to be Levied
Sanitary Sewer Improvements	$3,517,834.75*

*This amount does not take into consideration any payments already made. [1]

[1] The corrected Special Assessment is $3,317,270; the supplemental special assessment is $200,564.75.

PETITIONER'S CONTENTIONS

Petitioner contends that the special assessment proceedings did not conform to the requirement of the statute: "All proceedings on such reassessment . . . shall be conducted in the same manner as provided for the original assessment . . . ." MCL 41.733. Petitioner argues that the Residential Equivalent Units ("REUs") on the subject property were uniquely reassessed to reflect the REUs on the formerly-owned parcels.

The Special Assessment District has no uniformity or plan for assessing the properties proportionally. There are larger parcels with fewer REUs and smaller parcels with more. The corrected special assessment penalized Petitioner. The Township changed the method of calculation in violation of paragraph 5 in addition to violating MCL 41.732. Respondent transferred REUs without permission of the owner.

The supplemental assessments were based upon improper REU allocations, not spread *pro rata*, and were based on other properties' non-payment of penalties and interest and should be invalidated. Petitioner further asserts that assessing properties which had fully paid, solely based on delinquencies, is not authorized. They were based on an invalid assessment roll and should be void *ab initio*.

PETITIONER'S ADMITTED EXHIBITS

P-2 Sewer Expansion Letter of Intention, dated April 9, 2003.
P-3 Resolution No. 04-09-01- Resolution Adopting REU Transfer Policy Statement.
P-5 Special Assessment Contract.
P-7 Connection Fee Agreement.
P-8 Opinion Letter from Daniel A. Kaniarz, of McDowell & Associates, to Pulte Homes of Michigan Corporation, dated November 29, 2004.

P-12 Recommendation Letter from Kristofer Enlow, of Enlow Engineering, LLC, to Respondent, dated June 9, 2011.

P-13 Transcript of Kristofer Enlow's Deposition on August 23, 2013.

P-14 Resolution No. 11-R032- Resolution Confirming Corrected Special Assessment Roll for the Sanitary Sewer Special Assessment District No. 4.

P-15 Transcript of James Wickman's Deposition on August 23, 2013.

P-18 Resolution No. 11-R034- Resolution Confirming Supplemental Special Assessment Roll for the Sanitary Sewer Special Assessment District No. 4.

P-40 Pulte Plan N, Proposed up to 701 residential units.

P-42 Rende Appraisal.

PETITIONER'S WITNESSES

Isam Yaldo is a developer, builder, and principal of the Petitioner and has an engineering degree. Yaldo has another development in the Township, Heritage Meadows. Heritage Meadows was prohibited from using individual wells because of the failing Township Sewage Plant. (TR 1 p 34.) The last couple of units were just finished after a long gap due to the 2005 and 2006 economy in which building stopped.

Yaldo testified that he owns other contiguous parcels within SAD No. 4. He explained the acreage and REUs of other parcels he owns. Respondent solicited Petitioner to participate in a sanitary sewer. Petitioner was interested in 600 REUs for six parcels.

Yaldo signed a Sewer Expansion Letter of Intention (See R-2) for 600 REUs to be placed on six parcels. One of the parcels is the subject of this appeal. They reevaluated future need and thought that development would be inevitable. REUs could be moved to any property in the Township that Petitioner owns. Petitioner also had land over and above the golf course that it could transfer/move the REUs.

Yaldo relied upon information from the Township that the REUs (720) could be distributed to any of the parcels owned by Petitioner based on their plans for development. Yaldo read the following:

> No transfer of any REU and therefore any portion of any special assessment relating to the REU shall be made by the Township without the consent of the owners of both transferor parcel and the transferee parcel. Petitioner's Exhibit 3, page 4, paragraph 9.

The zoning of the subject property at the time of the special assessment was conservation agricultural and currently remains CA. Pulte Homes signed a letter of intent with Petitioner to purchase the subject property sometime in 2004. They developed some conceptual plans that they may have presented to the Township. The plan included the subject property with some other parcels owned by Petitioner. Pulte withdrew after some soil issues with the water table.

Yaldo had access to the soil report (Petitioner's Exhibit 8) a few years ago. After looking at it, he stated that he would not build because the cost of bringing the land to a buildable site (due to the soils report) is prohibitive due to the water table level. The subject property is continued to be marketed and is still for sale. Petitioner has tried unsuccessfully to interest Toll Brothers in purchasing the subject property.

When the subject property was initially purchased in 1999, the intent was to build some residential properties on the land. This is the reason why the initial REUs requested was 600 then increased to 720 as development in 2004-2005 was inevitable. The original REUs were distributed to five separate parcels with 144 REUs per parcel. Parcels were being assembled for a golf course community. It was Petitioner's intent to construct 720 residential units. The golf course was going to be shrunk from 36-holes to 27-holes.

The neighboring properties were being rezoned and Yaldo was confident that the Township would also rezone the subject to PD. The majority of the surrounding properties were rezoned to PD.

Daniel Kaniarz, Senior Geotechnical Engineer for McDowell and Associates, testified that he investigated the soil and groundwater conditions at the subject property. He has done this type of investigation for Pulte for 20 years. He did 41 borings on the site, laboratory testing and compiled a final report to determine the feasibility of a residential development for the subject property. This was done in 2004.

Kaniarz testified that the borings were taken about every five acres starting in the northwest corner of the subject parcel. In plain English, he found that there is shallow groundwater table at 90% of the borings. Basements would be difficult to construct without an engineered fill or pilings, both of which are an added expense to construction costs. The remaining 10% are looking at some larger size foundations, more concrete and excavation due to the soil condition.

Michael Rende, MAI, prepared an appraisal of the subject property. He opined to a value of $2.6 million dollars with or without a sewer. He testified that the availability of sewer taps in any number does not provide any utility to the golf course. The value of the subject property as vacant residential property was $2,525,000. His highest and best use conclusion is the continued use as a golf course. The value of the subject property as vacant with the availability of sewer was considered. The land increased to $3,675,000 for 144 REUs. Rende testified that the additional 603.14 REUs provided no benefit to the subject property because of zoning restrictions.

Rende based the zoning of the subject property on a conversation with the planner at the Township and concluded that the maximum number of units that could be constructed under conservation agricultural ("CA") is 141[2] units. Therefore, he opined that no additional value is added with more REUs because construction is limited to the zoning.

Approximately 358.29 acres is CA zoning and 25.29 acres is zoned planned development ("PD"). Rende calculated a rough estimate of the developable property. He deducted 3.22 acres within the right-of-way, 1.71 acres for an easement, and a triangular parcel at the north end of the subject. The adjusted site is 378.2 acres. Approximately 83 acres are wetlands that diminish the building envelope.

Rende continued with an estimate for roads, infrastructure and site support that reduces the overall acreage by 25%. This reduces the acreage to 283.65. The CA zoning requires a minimum two-acre site. Some of the wetland area can be used as part of the usable area. The 283 acres are divided by two for a maximum number of units at 141.

Rende considered the possibility of rezoning to a medium density suburban residential ("SR"). The usable area equals 262.85 acres. The minimum site is 32,670 square feet. The SR zoning would equal 217 units, but the zoning does not exist.

The sales of vacant land were researched. Rende considered and weighed heavily the sales of vacant land over 100 acres. He relied on Sales 1, 2, and 4, located in Livingston County and Sales 9 and 10 located in Oakland County. Generally the sales ranged from $9,000 to $11,000 an acre. Rende adjusted the sales for market conditions at 4% annually. Sales 1, 2, and 4 were

[2] Rende corrected the REU's in testimony from 144 to 141.

considered to be in an inferior location and adjusted upward. The size of the sales requires a 20% adjustment to all of the sales except Sale 10. After the adjustments, the range of sale prices is $6,909 to $11,111 per acre. The lower end of the range was considered due to the large size of the subject property.

Although the soil study is not a public document, a purchaser would exercise due diligence and therefore, Rende concluded to $7,000 per acre. The conclusion is $2,685,000 minus demolition costs for the final value of $2,525,000. This is slightly less than the value of the subject property as a golf course. This is the reason why the highest and best use without sewer is still to continue to operate as a golf course and hold for future development.

In cross-examination, it was clear that Rende's sewer capacity and any resulting value was driven by the zoning ordinance. Rende determined that the value of the vacant land (with 144 REUs) is $3,675,000. This is above the value of $2,600,000 as a golf course with no sewer access. The $1,075,000 difference indicates a value of $7,465 per REU. The special assessment is $5,500 per REU. Therefore, the increase in value is $1,965 or about $2,000 per REU, indicating the contributory value.

Rende stated "the zoning is what limits the number of REUs that you can use. And that any number in excess of that 141, based on current zoning, would not be usable." TR. 2, page 233.

Kristofer Enlow, Civil Engineer, was deposed August 23, 2013. The parties stipulated to the admittance of his deposition. Enlow was hired to look at properties that were under the same ownership in order to make suggestions on how to reallocate their REU allocations. He

explained that a sewer REU is equal to 210 gallons per day. The residential equivalent unit is supposed to represent typical use for a household.

Enlow did not consider zoning. He testified: "We did not look at the zoning, actually that wasn't part of the scope. We looked at, I guess, three different methods, which were acreage, buildable area, which would be the area less wetlands, and then also conceptually based on the conceptual plans." TR. p 20.

James Wickman, Township Manager, was deposed August 23, 2013. The parties stipulated to the admittance of his deposition. Wickman has been the Township Manager since 2007. His duties (excluding the Township Treasurer and Clerk) include overseeing the employees. He was not at the Township during the original special assessment.

Wickman was aware, beginning sometime in 2008, that there were some delinquencies in the special assessments. The Township considered several options. The delinquencies caused the special assessment district to lose funds. Experts were hired to calculate the probability of anticipated delinquencies. Refinancing the bonds was callable in 2010 and one in 2011 was also considered. The Township also purchased some of the properties that were foreclosed by the county in a tax foreclosure sale. The district was protected by having the asset and hoping that the losses from the assessment delinquencies could be recovered in the future. The solution was to spread the loss back in a supplemental roll. The supplemental roll was spread equitably on all of the properties in SAD 4.

Wickman explained that the number of REUs assigned in the original apportionment of the REUs for Hartland Glen and a few of the other properties that have same owner with multiple

parcels involved, was disproportionate to the land. Enlow was hired to look at methodologies for correcting an error on the appropriateness of the REUs.

The supplemental roll brought to light the error in the REUs for properties that had the same ownership, but multiple parcels. The delinquency had not thing to do with moving the REUs and it brought out errors in apportionment. The Township made corrections to contiguous parcels under the same ownership. Therefore, only those (14) parcels were corrected for the reapportionment of REUs.

RESPONDENT'S CONTENTIONS

Respondent contends that Petitioner was not able to prove that the amount of the corrected and supplemental special assessments levied by Respondent are disproportionate to the value of the benefit conferred on Petitioner's property by the subject sewer improvements.

Petitioner's valuation evidence was wholly discredited at trial. Rende disavowed the valuation conclusion in his appraisal. The appraisal also is dependent upon the property being rezoned to SR (suburban residential). The Township's zoning administrator testified that the property would be rezoned to PD (planned development). Petitioner's own appraisal indicates an increase in the value of the subject property exceeds the amount of the assessment.

Respondent requests the Tribunal to enter judgment in favor of the Township and affirm the corrected and supplemental special assessment for the subject property.

RESPONDENT'S ADMITTED EXHIBITS

R-1 Special Assessment Contract with Hartland Glen.
R-2 Respondent's Valuation Disclosure.

R-3 Township Resolutions:

a. 2005 Resolution Confirming Special Assessment District 4.
b. 11-R028
c. 11-R029
d. 11-R032
e. 11-R034

R-4 Report by Enlow Engineering, LLC

RESPONDENT'S WITNESSES

David Reynolds Campbell, Township Planner Director, testified that he is by default also the Zoning Administrator. The Planning Commission approves site plans. He reviews and approves land use permits. He guides applicants through the process, including site plan approval, rezonings, and planned development.

Campbell is a newer employee of the Township. He was not employed by the Township at the time of the special assessments. His purpose for testifying was to rebut the testimony of Rende in relationship to zoning. He testified that the majority of the subject property is zoned CA. The density allowed under CA zoning is a two-acre minimum lot size for single-family residential properties. He estimated that roads and infrastructure, per a rule of thumb, are approximately 25% of the usable land.

There were 42 requests for rezoning from 1995 to 2005. Three were denied. Campbell testified that the most likely rezoning of the subject property would be PD. This is due to the size of the subject property, the master plan, the types of uses proposed for PD, and based upon the Township's approval record over the last ten years.

Campbell considered the zoning records back to 1995 and did not find any application for rezoning of the subject property. PD is planned development allows integration of uses with

flexibility for both the Township and developer. He testified that there is no reason why the subject property could not be rezoned to PD.

PD zoning relies upon the density of the master plan, which is medium suburban residential. This envisions from one-half to one-acre lots. Plus, there is the possibility of a 40% bonus density. PD is based on gross acreage, not buildable acreage.

Campbell calculated the subject property with gross acreage of 384 acres, with two lots per acre equals 768 units. The PD doesn't require a minimum lot size, just density, so the 768 units do not have to be one-half acre lots. If a bonus is achieved by a developer, the number of units could exceed 1,000.

James Thomas Hartman, MAI, prepared an appraisal of the subject property with the sewer and prepaid tap fees, and then also appraised it without the sewer and prepaid tap fees. The difference is attributed to the value enhanced by the special assessment. The fee simple interest of the subject property was appraised.

Hartman used an extraordinary assumption. It assumed that the subject property was in the same condition on the April 11, 2013, inspection date as the May 10, 2005, appraisal date. He also assumed that the subject property could be built to a density of 603.14 units.

The Township provided the number of residential equivalent units. The zoning and planning director for the Township was also consulted to determine that the most likely zoning would be Planned Development ("PD").

Hartman developed a sales comparison approach to determine the value of the subject property without sewer. Six sales were adjusted for differences in location, access, size, site utility, and economic characteristics for an indicated range of value. The demolition costs were deducted for the razing of the improvements. The value ranged from $15,560 to $26,654. He removed the high and low and concluded to $21,000 an acre with a total of $7,850,000.

The same six sales were also considered to determine the value of the subject property with sewer. The adjustments utilized included location, road access, size, utility, which included prepaid REUs, economic and zoning. The resulting value was $28,000 per acre, with the same deduction for razing of improvements for a conclusion of $10,510,000.

Upon cross examination, Hartman was asked if he assumed that only 200 homes could be built on the subject site, would that change his conclusion? His response was, without doing an appraisal, he cannot determine how much the value would change if the construction is limited to 200 homes. As well, if a buyer had to assume the unpaid amounts of the assessment, would that change the value? The value would not change for the fee simple interest. However, if subject to the outstanding lien, and then it would change.

Hartman, in this appraisal, used SEMCOG projections published December 2003. The year-end numbers for 2005 were not published as of the May 10, 2005 appraisal date. An appraisal for ad valorem tax purposes was prepared for tax years 2011, 2012, and 2013. He had different numbers that he used for the later ad valorem tax appeal. One uses SEMCOG forecast; the other uses Hartland Township building permits. Hartman testified “Well, you can’t look at the after-the-fact data to make adjustment.” TR 3, page 418. He used 2004 year end information for building permits.

The discussion of the adjustment for availability of sewers states:

> I was unable to find sufficient matched pairs to derive a sewer availability adjustment, as the sales found had significant locational differences. The sales similar to the subject in location had sewer available and the more rural sales did not. Taking the benefits of added density and flexibility of layout, I have concluded to a 15% adjustment. R-2, page 110.

Hartman explained that the zoning planning administrator Campbell indicated that without sewer, the potential density is 446 units. With municipal sewer, the density exceeds 1,000 units. Hartman concluded that the value increase attributed to sewer is $2,660,000.

FINDINGS OF FACT

1. The subject property is located at 12400 Highland Road in the County of Livingston.

2. The subject property is 383.58 acres and is classified as commercial real property.

3. 358.29 acres of the subject property is zoned Conservation Agriculture ("CA").

4. 25.29 acres is zoned Planned Development ("PD").

5. 83 acres of the subject property is designated wetlands.

6. The special assessment at issue in this appeal was imposed under 1954 PA 188.

7. The total amount of the special assessment, as corrected and supplemented, is $3,517,834.75.

8. Respondent provided notice of the hearing held for the purpose of confirming the corrected special assessment roll by publishing notice twice, with the first publication at least ten days prior the hearing, and mailing notice to persons with record ownership or interest.

9. Respondent provided notice of the hearing held for the purpose of confirming the supplemental special assessment roll by publishing notice twice, with the first publication at least ten days prior the hearing, and mailing notice to persons with record ownership or interest.

10. The corrected and supplemental special assessments relate to the original special assessment for sanitary sewer improvements.

11. In 2003, Respondent contacted Petitioner to see if Petitioner was interested in participating in a sanitary sewer special assessment district with respect to the subject property.

12. In response to Respondent's inquiry, Petitioner indicated that it was interested in 600 REU's spread over six parcels.

13. On September 10, 2004, Resolution No. 04-09-01 (Resolution Adopting REU Transfer Policy Statement) was passed.

14. In a letter dated November 29, 2004, Daniel A. Kaniarz, of McDowell & Associates, opined that "there are soil conditions at the subject site which may materially increase the cost of developing the property for the proposed use or may require special designs of one or more . . . development/ construction components in order to render the land suitable for the proposed use." P-8 at 1.

15. Based on the opinion of Daniel A. Kaniarz with regard to his soil analysis of the subject property, Pulte Homes of Michigan Corporation decided not to purchase the subject property from Petitioner.

16. Petitioner and Respondent entered into a Special Assessment Contract on April 1, 2005, wherein the parties agreed to a total of 144's REUs on the subject property for a total assessment of $792,000.00.

17. The original special assessment for SAD No. 4, consisting of 27 parcels, including the subject property, was confirmed on May 10, 2005.

18. The original special assessment for SAD No. 4 was based on how many REU's each property requested without consideration as to the size of that property or its buildable area.

19. In a letter dated June 9, 2011, Kristofer Enlow, of Enlow Engineering, LLC, recommended that the REU's in SAD No. 4. be reapportioned based on buildable area.

20. A hearing regarding the corrected special assessment roll for the SAD No. 4 was held on July 19, 2011.

21. On July 27, 2011, Resolution No. 11-R032 (Resolution Confirming Corrected Special Assessment Roll for the Sanitary Sewer Special Assessment District No. 4) was passed.

22. Resolution No. 11-R032 increased the REUs on the subject property from 144 to 603.14, which increased the amount of the special assessment to $3,317,270.

23. The corrected special assessment included 14 properties.

24. A hearing regarding the supplemental special assessment roll for the SAD No. 4 was held on July 27, 2011.

25. On August 16, 2011, Resolution No. 11-R034 (Resolution Confirming Supplemental Special Assessment Roll for the Sanitary Sewer Special Assessment District No. 4) was passed.

26. The supplemental special assessment assessed an additional $199,448.70 on the subject property based on 603.14 REU's.

27. The supplemental special assessment included all 30 properties that were on the original special assessment roll.

28. The appropriate valuation date to determine whether the cost of the special assessment, as corrected and supplemented, is proportionate to the benefit is May 10, 2005.

29. Petitioner submitted an appraisal of the subject property, wherein Petitioner's appraiser developed an opinion of the true cash value of the subject property with and without the sanitary sewer improvements based on the subject property being rezoned to SR (Suburban Residential) and usable REUs.

30. Petitioner's appraisal valued the true cash value of the subject property as vacant land with sanitary sewer improvements at $3,675,000 and without sanitary sewer improvements at $2,525,000.

31. Petitioner's appraisal valued the true cash value of the subject property with its existing use as a golf course with and without sanitary sewer improvements at $2,600,000.

32. Respondent submitted an appraisal of the subject property, wherein Respondent developed an opinion of the true cash value of the subject property with and without the sanitary sewer improvements based on the assumption that the subject property would be rezoned PD with 603 REUs.

33. Respondent's appraisal valued the true cash value of the subject property with sanitary sewer improvements at $10,510,000 and without at $7,850,000.

34. 39 out of 42 rezoning requests made to Respondent were granted between 1995 and 2005.

35. Public water is not available on the subject property.

36. Medium Density Residential ("MDR") requires public water.

37. MDR is not a zoning district.

38. PD does not require public water.

39. The PD zoning would allow in excess of 1,000 units to be developed for the subject property.

40. If the subject property was rezoned, it would most likely be rezoned to PD. TR at 347-348.

APPLICABLE LAW

MCL 41.732 states, in part:

> Should the assessments in any special assessment roll prove insufficient for any reason, including the noncollection thereof, to pay for the improvement for which they were made or to pay the principal and interest on the bonds issued in anticipation of the collection thereof, then the township board shall make additional pro rata assessments to supply the deficiency, but the total amount assessed against any parcel of land shall not exceed the value of the benefits received from the improvement.

MCL 41.733 states:

> Whenever any special assessment shall, in the opinion of the township board, be invalid by reason of irregularities or informalities in the proceedings, or if any court of competent jurisdiction shall adjudge such assessment to be illegal, the township board shall, whether the improvement has been made or not, whether any part of the assessment has been paid or not, have power to proceed from the last step at which the proceedings were legal and cause a new assessment to be made for the same purpose for which the former assessment was made. All proceedings on such reassessment and for the collection thereof shall be conducted in the same manner as provided for the original assessment, and whenever an assessment or any part thereof levied upon any premises has been so set aside, if the same has been paid and not refunded, the payment so made shall be applied upon the reassessment.

In *Kadzban v City of Grandville*, 442 Mich 495, 500; 502 NW2d 299 (1993), the Michigan Court of Appeals stated:

> A special assessment is a levy upon property within a specified district. Although it resembles a tax, a special assessment is not a tax. *Knott v City of Flint*, 363 Mich 483, 497; 109 NW2d 908 (1961). In contrast to a tax, a special assessment is imposed to defray the costs of specific local improvements, rather than to raise revenue for general governmental purposes. . . . In other words, a special assessment can be seen as remunerative**;** it is a specific levy designed to recover the costs of improvements that confer local and peculiar benefits upon property within a defined area.

In *Dixon Road Group v City of Novi*, 426 Mich 390, 401; 395 NW2d 211 (1986), the Supreme Court held 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 cost incurred."

In *Kadzban, supra* at 502, the Court, held:

> . . . *Dixon Rd* did not modify the well-settled principle that municipal decisions regarding special assessments are presumed to be valid. . . . We said in *Dixon Rd.*, and we reiterate here, that the decisions of municipal officers regarding special assessments "generally should be upheld." . . . Moreover, our decision did not alter the deference that courts afford municipal decisions. When reviewing the validity of special assessments, it is not the task of courts to determine whether there is "a rigid dollar-for-dollar balance between the amount of the special assessment and the amount of the benefit…." . . . Rather, a special assessment will be declared invalid only when the party challenging the assessment demonstrates that "there is a substantial or unreasonable disproportionality between the amount assessed and the value which accrues to the land as a result of the improvements."

CONCLUSIONS OF LAW

This Tribunal is to determine if the total Supplemental Special Assessment and the Corrected Special Assessment (Sanitary Sewer Special Assessment District 4) exceeds the value of the benefits received from the improvements.

SAD 4 was found to be insufficient due to non-collection. The statute allows for the supplemental levy. Respondent levied $200,564.75 for the Supplemental SAD 4. The Tribunal finds that the Supplemental SAD 4 was appropriately based on a pro rata basis for all of the parcels in SAD 4.

In preparation of determining the insufficiency of SAD 4, it became apparent to Respondent that the REUs for some parcels were not equitably distributed. It brought out errors in

apportionment. The original SAD 4 was based upon the Letter of Intention that property owners signed with a request for the number of sewer REUs requested. The Township made corrections to contiguous parcels under the same ownership. Contiguous parcels under the same ownership were allowed to reallocate the REUs in SAD 4. Therefore, only those contiguous parcels under the same ownership were corrected for the apportionment of REUs. Subject parcel was reallocated 603.14 REUs from 144 REUs. The corrected apportionment of REUs affected fourteen parcels (14). It did not change the aggregate totals. All of the properties in SAD 4 are assessed at $5,500 per REU.

Petitioner's appraisal (1) fails to value 603.14 REUs. Rende incorrectly utilized the current CA (conservation agricultural) zoning (2) to estimate a total of 144 units for the subject property. Rende considered that if the subject property was rezoned (3) it would be to SR (suburban residential) which would yield approximately 255 homes. Rende stated that any REUs in excess of 144 would not be used. The additional 460.14 REUs contributed nothing to the value of the subject property. The value is the same $3,675,000 with 144 REUs or 603.14 REUs (4). Tr. 2, page 287.

Yaldo testified that he was confident that, based on surrounding properties and discussions with the Township, the subject property would be rezoned to PD. Yet, Rende failed to consider or check with the planning and zoning administrator to find that the most likely rezoning would be to PD.

Rende limited the housing units on the subject property to a maximum of 144 units by incorrectly assuming that the only allowable zoning is CA.

> In investigating the reasonable probability of a zoning change, an appraiser considers zoning trends and the history of rezoning requests in the market area as well as documents such as the community's comprehensive plan (or master plan). Uses that are not compatible with the existing land uses in the area (such as a gas station in the middle of an exclusive single-family residential subdivision) and uses for which zoning changes have been requested but denied in the past (such as an industrial use in a neighborhood where several industrial zoning changes have been turned down in the past two years) can usually be eliminated from consideration as potential highest and best use. Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 14th ed. 2013), p 339.
>
> The Tribunal noted at the beginning of the hearing that zoning is very important, probably more so in this case. Fundamental to the Highest and Best Use Analysis is the definition "The reasonably probable user of property that results in the highest value." The three conditions to examine are:
>
> - The use must be *physically possible* (or it is reasonably probable to render it so).
> - The use must be *legally permissible* (or it is reasonably probable to render it so).
> - The use must be *financially feasible*.
>
> Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 14th ed. 2013), p 332.

If an appraiser in his highest and best use gets the zoning wrong, then the appraiser has appraised the wrong property. Petitioner simply fails in determining the most likely zoning.

Multiple witnesses for Petitioner and Respondent established that the most likely zoning is PD, not SR.

Rende's technique in deducting the outstanding balance of the special assessment was in error. The deduction was not considered appropriate when determining the fee simple value. Rende, however, did deduct the outstanding balance to result in a $950,000 value conclusion. He asked that that portion of the report be stricken. The methodology was already deemed flawed in the valuation appeal for later years by this Tribunal in determining fee simple value.

Much ado was made about the soil conditions of the subject property. However, neither appraiser could quantify how the soil would affect value. Therefore, it is deemed a non-issue for this Tribunal to determine.

The special assessment was $5,500 per REU. Rende valued the subject property with sewer at $7,465 per REU for 144 units. The value added is $2,000 (rounded) per REU. Rende did not believe that the subject property would utilize 603.14 REUs based on zoning. Therefore, he did not add an additional value for more REUs. When questioned as to whether 603 units could be built on the subject property and would it add the same $2,000 per REU? He said yes in a perfect world.

Petitioner's appraisal is given no weight or credibility based on the following which were explained above:

1. Assumes CA zoning.
2. Does not value 603.14 REUs.
3. No before or after sewer valuation[3].
4. Assumes 144 REUs maximum.
5. Fails to consider most likely zoning.
6. Deducted the outstanding balance of the SA, rendering the report not fee simple.
7. Fails to recognize PD zoning would allow in excess of 1,000 units.
8. Does indicate an increase in value of approximately $2,000 per REU for a maximum of 144 REUs.

Hartman appropriately utilized 603.14 REUs to determine that the sewer does add value to the subject property based on an appraisal indicating the value of the subject property with and without sewer. He correctly assumed that the subject would be rezoned to PD. He did not deduct the outstanding debt on the special assessment as an encumbrance to the subject property.

[3] Respondent only considered 144 REUs and determined that any additional REUs would not add value due to the zoning limitation.

The Tribunal finds that it is superfluous to analyze the appraisals in respect to the value of the existing golf course. The appraisals were to determine if the cost of SAD 4 is proportional to the benefit received. This Tribunal finds that based upon the testimony of Petitioner (Yaldo), Respondent's planning and zoning administrator (Campbell), the marketing efforts of Petitioner to various entities for units in excess of 600 units, and Respondent's appraiser (Hartman), Petitioner fails to prove that the benefit is disproportional to the cost of the special assessment for both the supplemental and corrected special assessment.

The Tribunal affirms the corrected and supplemental special assessments for the subject property.

JUDGMENT

IT IS ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's special assessment as finally provided in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

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 28 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 FOJ. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09%, and (iv) after June 30, 2012, through June 30, 2014, at the rate of 4.25%.

This Final Opinion and Judgment resolves the last pending claim and closes this case.

By: Victoria L. Enyart

Entered: 3/31/14