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

AZ Hart, LLC,
Petitioner,

v

MTT Docket No. 427019

Township of Hartland,
Respondent.

Tribunal Judge Presiding
Marcus L. Abood

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

On November 13, 2013, Respondent filed a motion requesting that the Tribunal dismiss the above-captioned case. On December 2, 2013, Petitioner filed a response to the Motion. After reviewing the Motion and the response, the Tribunal determined that additional information was necessary. As such, on December 30, 2013, the Tribunal placed the Motion in abeyance and ordered the parties to file briefs and, if desired, reply briefs.

On January 10, 2014, both Petitioner and Respondent filed their briefs as required by the Tribunal's Order. On January 22, 2014, Respondent filed its reply brief.

The Tribunal has reviewed the Motion, response, the briefs submitted on behalf of each party, and the evidence submitted, and finds that granting Respondent's Motion for Summary Disposition is warranted at this time.

BACKGROUND

In 2004, Respondent entered into an agreement with Livingston County under 1957 PA 185 to acquire, construct and finance sanitary sewage improvements, extending and enlarging its existing system. Respondent determined that a portion of the cost of the improvements would be

paid by special assessment. On May 10, 2005, the Respondent's board confirmed the Special Assessment Roll for Sanitary Sewer Special Assessment District No. 4, pursuant to 1954 PA 188, MCL 41.721 *et seq*. The subject parcel was not included in the original Special Assessment Roll confirmed on May 10, 2005. However, its parent parcel, Parcel No. 08-22-300-034, was included and was assessed for 15 residential equivalent units (REUs). The parent parcel was subsequently split into two child parcels (Parcel Nos. 08-22-300-048 and 08-22-300-049). See Petitioner's Brief, Exhibit 8. The child parcels appear to have been assigned REUs proportionately based upon their acreage.[1]

Respondent found that the original roll was illegal and rescinded the original roll. Respondent held a public hearing regarding the corrected roll on July 19, 2011, and confirmed the Corrected Special Assessment Roll on July 27, 2011. The Corrected Special Assessment Roll revised the assignments of REUs to some of the parcels which were on the original Special Assessment Roll. The corrected roll did not modify the 7.2 REUs assessed to the subject property.

A supplemental assessment was subsequently created to cover monetary deficiencies resulting from a number of defaults and delinquencies on the original assessment. Petitioner appeared at the July 27, 2011, public meeting and protested the adoption of the Supplemental Special Assessment Roll. The Supplemental Special Assessment Roll was confirmed on August 16, 2011, and a supplemental assessment totaling $2,380.40 was levied against the subject property. Petitioner timely filed this appeal on September 13, 2011, contesting the supplemental assessment in its entirety.

[1] The parent parcel consisted of 6.2 acres. After the split, the subject property (Parcel No. 08-22-300-049) was 3.0 acres or approximately 48.4 percent of the original acreage. Thus, it was assigned 7.2 REUs, approximately 48.4 percent of the original 15.

RESPONDENT'S CONTENTIONS

In support of its Motion, Respondent contends that the sole remaining issue is whether the sewer improvements conferred a proportionate benefit on the subject and that Petitioner cannot meet its burden of proof as it failed to file a valuation disclosure. Therefore, Respondent is entitled to judgment as a matter of law. More specifically, Petitioner bears the burden of proof and "must present credible evidence to rebut the presumption that the assessment is valid." *Dalton Enterprises v Dalton Twp*, unpublished opinion per curiam of the Court of Appeals, Docket No. 291789. Petitioner has failed to identify any witnesses or exhibits that could conceivably constitute credible valuation evidence. Lay witness opinion about the value is not credible. *Dalton Enterprises, supra*. Petitioner intends to rely primarily on the Township's assessor for testimony about the market value of the subject property. However, the current assessor was not the assessor in 2005 and because he did not determine the assessed value of the property as of the relevant valuation date, he cannot testify as to how that value was reached. Respondent's Brief in support of its Motion at 7. Further, any such testimony would not be credible evidence of the property's market value, with or without improvements. Assessed values are calculated using a generic mass appraisal approach and are not indicative of the market value required. Moreover, consideration of the off-site public service improvements in assessment calculations is prohibited under Michigan law. See *Toll Northville Ltd v Twp of Northville*, 480 Mich 6; 743 NW2d 902 (2008). Consequently, the subject assessments would not reflect the market value of any benefit conferred by the sewer improvements. Petitioner's witness list does not identify any appraisers or other valuation experts as witnesses, and its reliance on Respondent's assessments of the property, is grossly misplaced. There is no evidence that can be

deduced by this Tribunal to avoid judgment as a matter of law in favor of the Township. Respondent contends that Petitioner's appeal should be dismissed accordingly.

In support of its Brief, Respondent contends that the Tribunal already determined that the Supplemental Special Assessment Roll was "valid and *mandatory* under Act 188." Respondent's Brief, at 2. [Emphasis in original.] Respondent relies upon the Proposed Opinion and Judgment in *Premier Properties-Hartland I, LLC v Hartland Twp*, MTT Docket No. 426856, to indicate that the Tribunal has already ruled that the Supplemental Special Assessment Roll was authorized and mandated by MCL 41.732 which expressly allows for the unfairness contended by Petitioner. See Respondent's Brief at 3. Respondent also contends that Petitioner's reliance on *Wood v Village of Rockwood*, 328 Mich 507; 44 NW2d 163 (1950), is misplaced. Specifically, Petitioner's contention that the assessment must be spread over the entire township is not supported by the holding in *Wood*. Rather, MCL 41.721 makes clear that only benefited properties can be assessed. Respondent further contends that *Wood* does not support the contention that Petitioner is immune from the Supplemental Special Assessment. "Petitioner elected to pay the special assessment in installments, and a balance remains due on the assessment. Thus, to the extent that *Wood* protects properties that have paid 'in full when the first installment became due,' that protection does not extend to Petitioner." Respondent's Brief at 5. Finally, Respondent contends that Petitioner's contention that the supplemental assessments were not spread *pro rata* across all of the properties in the district is "easily disproven by Resolution No. 11-R034." Respondent's Brief at 5.

In support of its Reply Brief, Respondent contends that Petitioner's Brief improperly addresses the Corrected Special Assessment Roll which is not at issue in this case. More specifically, Respondent contends that the subject property was not included in the corrected roll

and that Petitioner's contentions regarding the Supplemental Special Assessment Roll are conclusory and do not amount to a legal argument. See Respondent's Reply Brief at 3.

PETITIONER'S CONTENTIONS

In support of its response to the Motion, Petitioner contends that Respondent mischaracterizes the appeal as being on only the issue of proportionality. The petition actually had two counts and Petitioner contends that "Respondent simply ignores Count I of the Petition, which alleges that the process by which the Supplemental Special Assessment [R]oll was promulgated was illegal, and that the Supplemental Special Assessment Roll is disproportionate to the 2005 special assessment." Response at 1. Petitioner also contends that:

> The law is clear that assessments based on delinquencies cannot be reassessed to the constituents of the special assessment district who have paid *Wood v Village of Rockwood*, 328 Mich 507; 44NW2d 143 (1950). Rather, such a supplemental special assessment would need to be spread *pro rata* over the entire Township, which it was not. Response at 2.

Petitioner contends further that the Supplemental Special Assessment Roll is not proportional to the 2005 Special Assessment. Response at 3.

In support of its Brief, Petitioner contends that Respondent and Petitioner entered into a contract in 2005 in which the parties agreed to a sanitary sewer assessment of 7.2 REUs. Petitioner's Brief at 1. Pursuant to the contract, Respondent agreed to spread the cost by levying special assessments on 3,500 REUs. "Respondent apparently never attempted to sell the entire 3,500 REUs as promised. Rather, the original Roll comprises only 2196.2 REUS." Petitioner's Brief at 3.The reduction of the REUs was the result of property owners' requests and allowing developers to withdraw which removed "more than $4,000,000 from the Special Assessment District Roll" which was "at the direct expense of Special Assessment District No. 4." Petitioner's Brief at 4-5.

Petitioner also contends that Respondent's "maneuvers to avoid District-wide or Township-wide *pro rata* charges [] shift the burden [of the delinquencies] disproportionately to the Petitioner." Petitioner's Brief at 5. Petitioner contends that the Respondent did not have the legal authority to rescind the Special Assessment District No. 4 Roll and create the corrected roll which resulted in a reduction of total REUs. Further, Petitioner contends that there is no uniformity in the assessment of REUs to parcels. "There are larger parcels with fewer REUs and smaller parcels with more." Petitioner's Brief at 9. Petitioner, in conclusion, contends that:

> As set forth *supra*, the supplemental assessments were based upon improper REU allocations, were not spread *pro rata*, were based on other properties' non-payment of penalties and interest and thus, are invalid, *Wood, supra*. Further assessing properties which have full paid, solely based on delinquencies, interest and penalties, is not authorized. *Id.*" Petitioner's Brief at 10.

APPLICABLE LAW

Respondent filed a Motion to Dismiss. The Tribunal finds that the Motion is truly seeking summary disposition of the case. There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions. See TTR 215. In this case, the rule that applies is MCR 2.116(C)(10).

Summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). In the event, however, it is determined that an asserted

claim can be supported by evidence at trial, a motion under (C)(10) will be denied. See *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party. See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)). The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider. See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent's Motion under MCR 2.116(C)(10) and finds that granting the Motion is warranted. The issue is whether Petitioner's proposed evidence is insufficient as a matter of law to meet its burden to prove that the supplemental assessment results in a substantial disproportionality between the cost of the assessment and the benefit conferred upon the subject property and is thus invalid under the Michigan Supreme Court's holdings in *Dixon Road Group v Novi*, 426 Mich 390; 395 NW2d 211 (1986) and

Kadzban v Grandville, 442 Mich 495; 502 NW2d 299 (1993). While Petitioner has not presented any valuation evidence demonstrating that there is a substantial disproportionality between the cost of the assessment and the benefit conferred upon the subject property, Petitioner has not withdrawn this claim from its petition, and as such, the Tribunal must address the issue of proportionality.[2] In addition, Petitioner contends that the Supplemental Special Assessment Roll was not lawfully established or levied *pro rata* as required by MCL 41.732.

In cases where a special assessment is challenged, the question of which party has the initial burden of proof is well settled. In *Kadzban, supra*, the Michigan Supreme Court stated that "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." *Id*. at 505.

In this case, the only assessment at issue is the Supplemental Special Assessment Roll confirmed on August 16, 2013. In its brief, Petitioner appears to be contesting the validity of the Corrected Special Assessment Roll indicating that "[t]he reassessment was neither authorized nor carried out in a legal manner . . . ." Petitioner's Brief at 1. The Corrected Special Assessment Roll was confirmed on July 27, 2011, and MCL 41.276 indicates that "all assessments . . . shall be final and conclusive unless an action contesting an assessment is filed in a court of competent jurisdiction within 30 days after the date of confirmation." As such, Petitioner was required to file on or before August 26, 2011, to properly contest the validity of the Corrected Special Assessment Roll. However, the petition in the instant matter was filed September 13, 2011, and did not invoke the Tribunal's jurisdiction with regard to the validity of the Corrected Special

[2] In the December 18, 2013, meeting between the parties and the Tribunal Judge, it was discussed that there were remaining legal issues to be ruled upon and Petitioner contended that it was withdrawing the factual issue of valuation (Count II) from the appeal. In the Tribunal's December 30, 2013 Order, Petitioner was instructed that "the request to withdraw part of its claim, if desired, must be made by Petitioner formally and in writing." December 30, 2013 Order at 2. Petitioner made no formal request to withdraw this count.

Assessment Roll.[3] As such, the Tribunal shall treat the Corrected Special Assessment Roll as final and determine whether the Supplemental Special Assessment Roll was proportional and properly applied to the subject property on a *pro rata* basis.

The statutory authority that the Supplemental Special Assessment Roll was levied under is MCL 41.732 which states, in pertinent part, that:

> 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 . . ., 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.

Regarding the applicability of this statute, the Tribunal issued an order on June 27, 2013. The Tribunal held that:

> Despite Petitioner's protests the statute states that the township board *shall* make additional pro rata assessments to supply a deficiency, even in situations involving noncollection of the assessments. The Supreme Court of Michigan has held that the term "shall" in a statute indicates a mandatory directive. See *Michigan Education Association v Secretary of State (On Rehearing)*, 489 Mich 194; 801 NW2d 35 (2011). Thus, Respondent's Supplemental Special Assessment was authorized by MCL 41.732 and was required to make up for the deficiency. Tribunal's June 27, 2013 Order at 3.

Thus, the Tribunal has already held that the Supplemental Special Assessment was authorized under MCL 41.732. MCL 41.732 and goes on to state that the *total* amount assessed against any parcel of land shall not exceed the value of the benefits received from the improvement. Here, the total amount is the original special assessment levied under the Sanitary Sewer Special Assessment District 4 and the Supplemental Special Assessment. Accordingly, no corresponding, additional improvement or benefit is required. Rather, in order for Petitioner to

[3] Moreover, Petitioner's interests were not directly affected by the Corrected Special Assessment Roll. The number of REUs assigned to the subject parcel were not modified due to the correction. The correction only slightly decreased the total number of REUs being assessed in Sanitary Sewer Special Assessment District No. 4 from 2,196.2 REUs to 2,181.2 REUs.

prevail, it must prove a substantial disproportionality between the benefit conferred by the improvement and the final cost of the Sanitary Sewer Special Assessment, including the supplemental levy. The governing statute expressly requires "additional pro rata assessments" if the original amount is insufficient for any reason, including non-collection. By mandating an additional special assessment in cases of non-collection, the law expressly allows for the alleged unfairness to which Petitioner objects in its response to the Motion to Dismiss. The only limitation is that the additional amount assessed, when added to the original assessment, may not result in substantial disproportionality between the entire cost and the benefit conferred. In our case, Petitioner did not challenge the original amount. As such, the original assessment is clothed in a presumption that the cost was not substantially disproportionate to the benefit conferred. Petitioner bears the difficult burden to prove that increasing the assessment by $2,380.40 results in substantial disproportionality.

In *Dixon Road, supra,* 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 *Ahearn v Bloomfield Charter Twp,* 235 Mich App 486, 496-497; 597 NW2d 858 (1999), the Michigan Court of Appeals noted that:

> [T]he essential question is not whether there was any change in market value, but rather whether the market value of the assessed property was increased as a result of the improvement. Common sense dictates that in order to determine whether the market value of an assessed property has been increased *as a result of* an improvement, the relevant comparison is not between the market value of the assessed property *after* the improvement and the market value of the assessed property *before* the improvement, but rather it is between the market value of the assessed property *with* the improvement and the market value of the assessed property *without* the improvement. The former comparison measures the effect of time, while the latter measures the effect of the improvement. [Citations omitted.] *Id.* at 496-497. See also *Michigan's Adventure, Inc v Dalton Twp,* 290 Mich App 328; 802 NW2d 353 (2010).

The Supreme Court, in *Kadzban, supra*, also held that:

> 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." *Id*. at 502.

In this case, Petitioner has not filed any valuation evidence, such as a valuation disclosure, to support its position. The deadline for filing its valuation disclosure has elapsed, and as such, Petitioner has failed to present any competent evidence in support of its contention that the subject property supplement assessment renders the total cost substantially disproportionate to the benefit conferred.[4] Further, Petitioner is precluded from offering any evidence not timely disclosed in accordance with the Tribunal's rules and procedural orders entered in this case. See TTR 237.[5] Petitioner contends that despite its failure to file valuation evidence, it may offer lay opinion in support of its position at hearing. While Petitioner may offer testimony at hearing, without any evidence or foundation, that it is the witnesses' judgment that the sewer improvements did not add any value to the subject property, such testimony is not sufficient to meet the burden of proof in this case. The Tribunal has held that a paired data analysis is required to identify the value contributed by a specially-assessed improvement. See *Tononi* v *Clinton Twp*, MTT Docket No. 251985 (2002). In this case, Petitioner has presented no appraisal or other study containing the required paired data analysis. Permitting Petitioner's witnesses to

[4] On December 12, 2012, the Tribunal issued its Notice of Prehearing General Call which indicated that the parties were to file and exchange their valuation disclosures on or before August 1, 2013. This deadline was extended by the Tribunal's Order issued on August 1, 2013. In that Order, the Tribunal held that the deadline was extended and that the parties had until October 1, 2013, to file and exchange their valuation disclosures.

[5] The Michigan Court of Appeals has recently held that the Tribunal is within its authority to exclude untimely valuation evidence as a sanction for a party's failure to comply with the Tribunal's Orders setting the deadline for the filing and exchange of valuation disclosures. *Adelman v West Bloomfield Twp*, unpublished opinion per curiam of the Court of Appeals, issued December 17, 2013 (Docket No. 312435).

disclose its valuation theory from the witness stand for the first time violates the purposes underlying the Tribunal's rules and orders requiring each party to file a Valuation Disclosure during discovery and well in advance of the hearing.[6] The Tribunal finds that Petitioner has failed to meet its burden of proof regarding the issue of proportionality as set forth in Count II of the petition. [7] There is no evidence on record that supports a finding that Petitioner's Count II claim can be supported by evidence at trial. See *Arbelius, supra*. Specifically, Petitioner has not submitted documentary evidence or indication that any witness to testify will be able to present testimony to rebut the presumption of validity or that will establish there is a substantial or unreasonable disproportionality between the amount assessed and the benefit the subject property received. *Kadzban,* at 502-505. In opposition to Respondent's Motion, Petitioner has relied on mere allegations and has not presented documentary evidence establishing the existence of a material factual dispute on the issue of proportionality, and as such, the Tribunal finds that Respondent's Motion is properly granted with regard to Count II. See *McCart, supra; McCormic, supra*. Therefore, the only remaining issue is whether the Supplemental Special Assessment Roll was properly levied on a *pro rata* basis.

To support its contention that the Supplemental Special Assessment Roll was not calculated on a *pro rata* basis, Petitioner relies upon the holding in *Wood, supra*. In its response to the motion, Petitioner contends that the assessment must be spread across the entire township. However, MCL 41.732 specifically states that "the total amount assessed against any parcel of

[6] Petitioner's witness list filed on October 1, 2013, and does not disclose a valuation expert. Allowance of expert testimony at hearing would improperly prejudice Respondent who did not have notice or an opportunity to prepare for such testimony.

[7] The Tribunal notes, again, that in the December 18, 2013, meeting between the parties and the Tribunal Judge, Petitioner contended that it was withdrawing the factual issue of valuation (Count II) from the appeal. Respondent relied upon this contention and did not present additional authority in its brief filed on January 10, 2013, regarding this issue. Respondent's reliance is clear in that it states that "[a]t the recent prehearing conference, Petitioner abandoned its argument that the supplemental special assessment was not proportionate to the benefit conferred by the subject improvements." Respondent's Brief at 1.

land shall not exceed the value of the benefits received from the improvement." Thus, the Tribunal finds that the supplemental assessment cannot be spread over the entire township. Only Special Assessment District No. 4 received the benefit from the sanitary sewage improvements. Thus, per statute, the assessment cannot extend to any property not included in the special assessment district. The Court's ruling in *Wood, supra*, does not support Petitioner's contention that the assessment shall be divided amongst the entire township. Rather, the prior decision in *Wood* indicates the contrary:

> Under the circumstances we are not in accord with plaintiff's contention that it is the duty of the assessing officers of the village to assess forthwith the amount of plaintiff's judgment against the village property at large. Plaintiff refers to 3 Comp.Laws 1929, § 14690, Stat.Ann. § 27.1654, which provides that whenever a judgment has been recovered against any township, [v]illage or city, a transcript of the judgment may be obtained and filed with assessing officers and the amount shall thereupon be assessed on the next tax roll. That statute does not apply to the issue now before us . . . . *Wood v Village of Rockwood*, 311 Mich 381, 388; 18 NW2d 864 (1945).

Thus, Petitioner has failed to demonstrate that the assessment was not properly established on a *pro rata* basis due to Respondent's failure to assess each parcel in the township.

Petitioner also contends that the underlying assessments were not properly established and cannot support a *pro rata* assessment. First, Petitioner submitted an executed contract which indicates that the special assessment district will contain 3,500 REUs. See Petitioner's Brief, Exhibit 2. Petitioner relies upon this contractual provision to indicate that the Supplemental Special Assessment is in error due to its failure to split the additional assessment across the entire district of 3,500 REUs. This contract was executed by Respondent on April 1, 2004, more than one year prior to the confirmation of the original Special Assessment Roll. The Tribunal finds that the Special Assessment Roll was confirmed and contained only 2,196.2 REUs. Any removal of additional REUs prior to confirmation relate to the validity of the original special assessment

levied in 2005. Given that the original Special Assessment Roll contained 2,196.2 REUs, Petitioner's contention that the Supplemental Special Assessment should be assessed *pro rata* against the 3,500 REUs is not supported.[8] Further, Respondent rescinded the original roll and confirmed a corrected roll under MCL 41.733. The Corrected Special Assessment Roll decreased the total REUs to 2,181.2 REUs. Petitioner contends that this additional reduction was neither authorized by law nor was it performed on a proportional basis. Petitioner contends that the number of REUs assigned to the subject parcel is not uniform in relation to the other parcels in the district. However, this again relates to the validity of the Corrected Special Assessment Roll. The manner in which the REUs were assigned to the individual parcels is not at issue here because, as indicated above, neither the original Special Assessment Roll nor the Corrected Special Assessment Roll was timely protested to the Tribunal. As such, the Tribunal must treat the total REUs as final and valid, and any of Petitioner's contentions regarding the irregularities in establishing the total REUs or the assignment of REUs are not properly pending in this case.

The Tribunal finds that the Supplemental Special Assessment Roll properly assesses the delinquency across the entire special assessment district. At the time the Supplemental Special Assessment Roll was established, the special assessment district consisted of 30 parcels and 2,181.2 REUs. The supplemental assessments were calculated *pro rata*. Respondent calculated the percentage of total REUs assessed to the subject parcel, (i.e., 7.2 / 2,181.2 = 0.330%). This percentage was then applied to the value on the roll (i.e., the deficiency) to determine that Petitioner's proportional share was $2,380.40. Therefore, the calculation was properly

[8] The Tribunal's jurisdiction is governed by MCL 205.731 which states, in part, that the jurisdiction includes "direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under the property tax laws of this state." Any claim regarding the contract, or breach thereof, is not within the Tribunal's jurisdiction.

performed and Petitioner's assessment represents its *pro rata* share of the total assessment as authorized by MCL 41.732.

Petitioner also contends that the subject property is immune from the supplemental assessment because, like in *Wood, supra*, Petitioner has paid its portion of the original special assessment in full. The Court in *Wood* held that the trial court below had properly held that the lots that were paid in full should not be reassessed to include the deficiency. While Petitioner contends that it has paid its assessment in full, Respondent has indicated that "Petitioner elected to pay the special assessment in installments, and a balance remains due on the assessment. Thus, to the extent that *Wood* protects properties that have paid 'in full[']. . ., that protection does not extend to Petitioner." Respondent's Brief at 5. Petitioner has not presented any documentary evidence to indicate that it has paid the assessment in full, and thus, has not demonstrated that it should be considered "immune" from the supplemental assessment. More importantly, the statutory authority that the Supplemental Special Assessment was levied under is MCL 41.732 which was enacted pursuant to 1954 PA 188, with an effective date of May 5, 1954. Thus, the Tribunal questions the applicability of the *Wood* case which predates the statue at hand.[9] The statue itself does not provide the alleged immunity and the precedential value of case law is not applicable where there has been an intervening change of law.[10] Therefore, the Tribunal finds that *Wood, supra,* does not provide Petitioner with any immunity or protection from the supplemental assessment due to the intervening change of law (i.e., the enactment of MCL 41.732).

[9] The Tribunal also notes that MCR 7.215(J)(1) states that "[a] panel of the Court of Appeals must [only] follow the rule of law established by a prior published decision of the Court of Appeals *issued on or after November 1, 1990*."
[10] See *Sumner v General Motors*, 245 Mich App 653, 662; 633 NW2d 1 (2001) ("the law of the case doctrine does not apply where there has been an intervening change of law.").

Given the above, the Tribunal finds that Petitioner has failed to present sufficient evidence to demonstrate that the Supplemental Special Assessment Roll was substantially disproportionate to the benefit conferred. In addition, the Supplemental Special Assessment Roll was properly established under MCL 41.732, and was calculated on a *pro rata* basis as required by the statute. As such, the Tribunal finds no genuine issue of material fact remains and Respondent's Motion for Summary Disposition shall be granted.

JUDGMENT

IT IS ORDERED that Respondent's Motion for Summary Disposition is GRANTED.

This Opinion resolves the last pending claim and closes the case.

By: Marcus L. Abood

Entered: February 11, 2014
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