Lawrence & Lauren Prentice, *et al*,
Petitioners,

v

Elk Rapids Township,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket Nos. See attached list.

Presiding Judge
Patricia L. Halm

ORDER DENYING PETITIONER'S MOTION FOR REHEARING/RECONSIDERATION

ORDER ADOPTING PROPOSED ORDER DENYING RESPONDENT'S MOTIONS FOR PARTIAL SUMMARY DISPOSITION UNDER MCR 2.116(C)(8) AS FINAL ORDER

ORDER ADOPTING PROPOSED ORDER GRANTING RESPONDENT'S MOTIONS FOR PARTIAL SUMMARY DISPOSITION UNDER MCR 2.116(C)(10) AS FINAL ORDER

ORDER ADOPTING PROPOSED ORDER DISMISSING PETITIONERS' LEGAL CLAIMS REGARDING THE LEVYING OF THE SPECIAL ASSESSMENT AT ISSUE AS FINAL ORDER

On February 10, 2023, Petitioners filed motions under MCR 2.119(F) requesting that the Tribunal reconsider the Proposed Order Dismissing Petitioners' Legal Claims Regarding the Levying of the Special Assessment at Issue entered in the above-captioned case on January 20, 2023. In the Motions, Petitioners state that the Tribunal palpably erred in finding that:

(I) despite competing affidavits/evidence, there is no question of material fact that the "plans" and "estimates" were timely filed (and made available to the public) with Respondent's clerk as required under MCL 41.724; and

(II) that the generic map and total estimated costs contained in the actual Notice of Public Hearing (set for October 18, 2021) ("NOH") ("see Exhibit 2) satisfied the "plans" and "estimates" requirements of MCL 41.724, notwithstanding the fact that the language of the NOH referenced the actual "plans/estimates" as being on file with the clerk

Petitioners argue that the Tribunal was required to follow the general principles of statutory interpretation, including "unless explicitly defined in a statute, 'every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used."[1] Petitioner contends that the Tribunal did not do so in regard to its interpretation of MCL 41.724(1), which states:

> (1) Upon receipt of a petition or upon determination of the township board if a petition is not required under section 3, the township board, if it desires to proceed on the improvement, shall cause to be prepared **plans describing the improvement and the location of the improvement with an estimate of the cost of the improvement on a fixed or periodic basis, as appropriate. Upon receipt of the plans and estimate, the township board shall order the same to be filed with the township clerk.** If the township board desires to proceed with the improvement, the township board shall tentatively declare by resolution its intention to make the improvement and tentatively designate the special assessment district against which the cost of the improvement or a designated part of the improvement is to be assessed.
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> (2) The township board shall fix a time and place to meet and hear any objections to the petition, if a petition is required, to the improvement, and to the special assessment district, and **shall cause notice of the hearing to be given as provided in section 4a. The notice shall state that the plans and estimates are on file with the township clerk for public examination and shall contain a description of the proposed special assessment district.** If periodic redeterminations of cost will be necessary without a change in the special assessment district, the notice shall state that such redeterminations may be made without further notice to record owners or parties in interest in the property. (Emphasis added by Petitioner.)

Petitioner contends that there is a genuine issue of material fact as to whether the plans/estimates were on file with the clerk or otherwise made available to the public. To that end, Petitioner presented four affidavits disputing Respondent's claims as to the availability of the plans. As a result, Respondent's motion under MCR 2.116(C)(10) should have been denied. "The Tribunal's "picking of sides" was a gross misuse of its authority as it should not have been permitted to assess credibility, weigh the evidence, or resolve factual disputes . . . Put simply, the Tribunal committed a palpable error by playing factfinder."[2]

Petitioner further argues that the Respondent did not satisfy MCL 41.724's requirement to keep plans and estimates on file, contrary to the Tribunal's findings. The only

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[1] *Yudashkin v Holden*, 247 Mich App 642, 650; 637 NW2d 257 (2001), quoting *Michigan State Bldg & Constr Trades Counsel, AFL-CIO v Director, Dep't of Labor*, 241 Mich App 406, 411; 616 NW2d 697 (2000).
[2] Petitioner's Brief at 5-6.

documents provided by Respondent were a generic map of the project and a total cost figure, which were not actual plans or estimates. As Respondent indicated in its Notice of Hearing, it received engineering plans and cost estimates; however, these documents were not kept on file.

On February 24, 2023, Respondent filed a response to Petitioners' Motions. In the response, Respondent states that:

> Respondent's Township Clerk submitted a sworn affidavit affirming that the original copy of the engineering drawing/map attached to Respondent's Resolution 2021-14 was prepared by Performance Engineering, Inc., measured 3 feet x 4 feet in size, and was available for public review at the Township offices and during all meetings and public hearings involving the Cairn SAD at least as early as September 14, 2021. See Affidavit of Shelley Boisvert, ¶3 (Exhibit B to Resp Mtn and Brf for Sum Disp). The drawing/map consists of an aerial photo of the Cairn SAD with each parcel delineated and identified, and was accompanied by an inset engineering drawing depicting the location of the proposed sewer within the district. The drawing shows the locations of the sewer with markings indicating the length and purpose of the various sections. This document was also available on the Respondent's website.[3]

Respondent contends that Petitioners' affidavits do not counter the Clerk's unrebutted testimony. Respondent further contends that Petitioners' argument is meritless as Petitioners stated that "Respondent claims this document was in its files at the township at all times from the date of the notice until the October 18, 2021 hearing. Petitioners do not have any way to dispute that, that may be the case."[4] In addition, Respondent argues that:

> Paragraph ee of Petitioners' "Supplement to Petition" goes on to claim that the detailed cost estimate was "never provided to the Public for consideration during the public review process." This is ironic given that Petitioners admit that it was reviewed and received via FOIA prior to the October 18, 2022 public hearing (i.e. documents reviewed and produced) "during the public review process."[5]

The Tribunal has considered the Motions and the case files and finds that Petitioners are merely restating the arguments and evidence previously presented. As stated in the Tribunal's Order:

> On September 23, 2021[,] notice of the October 18, 2021 public hearing regarding the special assessment district was published by Respondent in

[3] Respondent's Response at 4,
[4] Petitioners' Reply Brief in response to Respondent's Motion for Partial Summary Disposition at 3.
[5] Respondent's Response, FN 2 at 3.

> the Elk Rapids News, including a map identifying the district boundaries and the location of the improvements. Additionally, included in the same publication, was an estimate of the total cost of the improvement, along with the notification that the plans and cost estimates could be examined at the office of the township clerk until the date of the public hearing. Additionally, Respondent submitted an affidavit, signed by the township clerk in support of its contention that the aforementioned plans and cost estimates were on file in accordance with the requirements of MCL 41.724(1). *Of particular importance, Petitioners admit that they do not have any evidence to dispute that the required plans and cost estimates were on file with the township clerk as of the dates claimed by Respondent*.[6] (Emphasis added.) (Citations omitted.)

The Tribunal further stated that:

> [I]n the Tribunal's review of the affidavits, both individuals attest that they had notice of the proposed improvement and Special Assessment District following publication in the Elk Rapids News on September 23, 2021, which included the plans and cost estimates for the improvement. The affidavits continue, indicating that the township clerk explained that no other documentation was available from the attorney or engineer. This in no way substantiates that Petitioners Stites and Prentice were denied access to the plans and cost estimates, rather only that they were informed that no additional information was on file with the township clerk . . . the fact remains that Petitioners admit they were permitted to review the documents on file with the township clerk, and that they do not have any evidence to dispute that this evidence was on file with the township clerk as of the date Respondent asserts.[7]

Thus, despite Petitioner's assertions to the contrary, the issues raised in the Motion were considered by the Administrative Law Judge (ALJ) in the rendering of the Proposed Order. Moreover, as discussed above, contrary to Petitioner's assertions, there are no genuine issues of material fact in dispute.

Given this, the Tribunal finds that Petitioners failed to demonstrate a palpable error relative to the Proposed Orders that misled the Tribunal and the parties and that would have resulted in a different disposition if the error was corrected.[8] The Tribunal further finds that the ALJ properly considered the parties' arguments in deciding the Proposed Orders, and the Proposed Orders are supported by the applicable statutory and case law. As such, the Tribunal adopts the Proposed Orders as the Tribunal's Final Orders.

Therefore,

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[6] Tribunal's Order at 7.
[7] *Id*. at 8.
[8] See MCR 2.119.

IT IS ORDERED that Petitioners' Motion for Rehearing/Reconsideration is DENIED.

IT IS FURTHER ORDERED that the Proposed Order Denying Respondent's Motions for Partial Summary Disposition under MCR 2.116(C)(8), issued on January 20, 2023, is ADOPTED BY THE TRIBUNAL AS A FINAL ORDER.

IT IS FURTHER ORDERED that the Proposed Order Granting Respondent's Motions for Partial Summary Disposition under MCR 2.116(C)(10), issued on January 20, 2023, IS ADOPTED BY THE TRIBUNAL AS A FINAL ORDER.

IT IS FURTHER ORDERED that the Proposed Order Dismissing Petitioner's Legal Claims Regarding the Levying of the Special Assessment, issued on January 20, 2023, IS ADOPTED BY THE TRIBUNAL AS A FINAL ORDER.

APPEAL RIGHTS

If you disagree with the Final Orders in this case, you may file a claim of appeal with the Michigan Court of Appeals.

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the Final Order, it is an "appeal of right." If the claim is filed more than 21 days after the entry of the Final Order, it is an "appeal by leave." A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal. The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.

Entered: July 11, 2023 By Patricia L. Haem

plh

Attached list of cases:

Docket Numbers:

22-000029

22-000031

22-000032

22-000036

22-000041

22-000042

22-000043

22-000044

22-000045

22-000046

22-000047

22-000048

22-000050

PROOF OF SERVICE

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provide by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk

Lawrence & Lauren Prentice, *et al*,
Petitioners,

v

Elk Rapids Township,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket Nos. See attached list.

Presiding Judge
Peter M. Kopke

PROPOSED ORDER DENYING RESPONDENT'S MOTIONS
FOR PARTIAL SUMMARY DISPOSITION UNDER MCR 2.116(C)(8)

PROPOSED ORDER GRANTING RESPONDENT'S MOTIONS
FOR PARTIAL SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

PROPOSED ORDER DISMISSING PETITIONERS' LEGAL CLAIMS
REGARDING THE LEVYING OF THE SPECIAL ASSESSMENT AT ISSUE

ORDER ADDING CASES TO THE
AUGUST 1-14, 2023 PREHEARING GENERAL CALL

On October 19, 2022, Respondent filed Motions in the above-captioned cases requesting that the Tribunal enter partial summary judgment in its favor under MCR 2.116(C)(8) and MCR 2.116(C)(10).[1] More specifically, Respondent contends that it is entitled to summary judgment on Petitioners' claims that Respondent failed to establish a necessity for the improvement for which the special assessment district was formed (i.e., the construction and maintenance of a new sewer line "known as the Cairn Highway Sanitary Sewer Special Assessment District No. 1"), as well as the claim that Respondent failed to comply with the requirements of MCL 41.724(1).[2]

[1] There are 20 cases appealing the same assessment. Although the cases have not been consolidated, the parties are each represented by the same attorneys and file the same motions, responses, and replies in each case. As such, this Order addresses all 20 cases. See also MCL 205.732(c).
[2] The Tribunal notes that on October 19, 2022, Petitioners filed briefs in "Support of Procedural Defects" in response to a Scheduling Order issued by the Tribunal on September 21, 2022. Respondent filed a response to Petitioners' briefs on November 2, 2022.

Petitioners filed Responses to the Motions on November 16, 2022. In the Responses, Petitioners contend that if the facts alleged by Petitioners are proven, it would provide a basis for setting aside or restructuring the special assessment at issue in this appeal, and as such, Respondent's Motions under MCR 2.116(C)(8) should not be granted. Further, Petitioners contend that at a minimum their contentions leave a question of fact remaining, and as such, the Motions under MCR 2.116(C)(10) should also not be granted.

On November 30, 2022, Respondent filed a reply on November 30, 2022, as provided by the November 14, 2022 Order granting, among other things, Petitioners' Motions to Extend.[3] Nevertheless, Respondent contends in part that Petitioners failed to rebut Respondent's contention that a determination of necessity of an improvement is not required for the formation of a special assessment district. Further, Respondent contends that there is no legitimate dispute that the plans for the improvement along with a cost estimate was on file with the township clerk as of September 17, 2021, in compliance with the requirements of MCL 41.724(1).

The Tribunal has reviewed the Motion, Responses, and the case file and finds that granting Respondent's Motion for Partial Summary Disposition under MCR 2.116(C)(10) is warranted at this time but not under MCR 2.116(C)(8).

RESPONDENT'S CONTENTIONS

In support of its Motions, Respondent contends that it is entitled to Summary Disposition on the following issues:

1. Petitioners' contention that Respondent "failed to establish a necessity" for the improvement.
2. Petitioners' contention that Respondent failed to comply with the requirements of MCL 41.724(1).

As to the first issue, Respondent contends that it did not have an obligation to make a finding of necessity as it relates to the improvement, as has been previously determined by the Court of Appeals and affirmed by the Michigan Supreme Court.[4]

[3] The Order specifically provided for the filing of a reply, as parties are generally limited to a single motion with brief and a single response with brief. See TTR 225(6).
[4] See *Gaut v City of Southfield*, 34 Mich App 646, 649; 192 NW2d 123 (1971) *aff'd*, 388 Mich 189; 200 NW2d 76 (1972).

As to the second issue, Respondent contends that it complied with the statutory requirements of MCL 41.724(1). MCL 41.724(1) requires Respondent to "prepare plans describing the improvement and the location of the improvement with an estimate of the cost of the improvement," and that the plans and cost estimate must be filed with the township clerk. Respondent states that the plans for the project were outlined in a Resolution, dated September 14, 2021, which included "plans, consisting of an aerial photograph of the district, with each parcel delineated and identified, accompanied by an inset engineering drawing depicting the location of the proposed sewer within the district,"[5] and was available for public review at the township offices from September 14, 2021, forward. Further, a cost summary was filed with township clerk on September 17, 2021, which provided a total estimated cost of the project, and was also available to the public for review. As such, Respondent asserts that it was in compliance with the statutory requirements of MCL 41.724(1), and that Petitioners are attempting to impose heightened requirements on Respondent beyond those outlined in the statute.

PETITIONER'S CONTENTIONS

In support of their Responses, Petitioners contend that Respondent failed to establish the necessity of the improvements for which the special assessment district was formed. Petitioners further contend that Respondent failed to follow the required procedures of MCL 41.724(1), stating that even if the plans were on file with the township clerk, they were not made available for review upon request to certain individuals. Further, in Petitioners' briefs regarding "Procedural Defects," Petitioners state that "[d]ue to lack of detail and specificity in the "plans" provided by Respondent, the public, including Petitioner[s], w[ere] unable to genuinely evaluate the merits of the Project prior to, and at, the October 18, 2021 meeting."[6]

STANDARD OF REVIEW

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

[5] See Respondent's briefs in Support of Summary Disposition, page 3
[6] See Petitioners' briefs regarding Procedural Defects, Page 2.

decision on such motions.[7] In this case, Respondent moves for summary disposition under MCR 2.116(C)(8) and MCR 2.116(C)(10).

Motions under MCR 2.116(C)(8) are appropriate when "[t]he opposing party has failed to state a claim on which relief can be granted." The Court of Appeals has held that:

> A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint. Under this subrule "[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." When reviewing such a motion, a court must base its decision on the pleadings alone. In a contract-based action, however, the contract attached to the pleading is considered part of the pleading. Summary disposition is appropriate under MCR 2.116(C)(8) "if no factual development could possibly justify recovery." [8]

MCR 2.116(C)(10) provides for summary disposition when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law."[9] The Michigan Supreme Court, in *Quinto v Cross and Peters Co*, provided the following explanation of MCR 2.116(C)(10):

> MCR 2.116 is modeled in part on Rule 56(e) of the Federal Rules of Civil Procedure . . . [T]he initial burden of production is on the moving party, and the moving party may satisfy the burden in one of two ways.
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> First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law.
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> In reviewing a motion for summary disposition brought un der MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other

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[7] See TTR 215.
[8] See *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2 633 (2003) (citations omitted).
[9] *Id*.

> documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).
>
> In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving 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. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[10]

"A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ."[11] In evaluating whether a factual dispute exists to warrant trial, "the court is not permitted to assess credibility or to determine facts on a motion for summary judgment."[12] "Instead, the court's task is to review the record evidence, and all reasonable inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial."[13]

CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent's Motion under MCR 2.116(C)(8) and MCR 2.116(C)(10) and finds that granting Respondent's Motion under MCR 2.116(C)(10) is warranted. In that regard, the Tribunal also finds that the granting of Respondent's Motion under MCR 2.116(C)(8) is not warranted, as Petitioner has stated a claim upon which relief could be granted. More specifically, Respondent seeks Summary Disposition on two issues raised by Petitioners: first, that Respondent failed to demonstrate the necessity of the improvement, and second, that Respondent failed to comply with the requirements of MCL 41.724(1).

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[10] See *Quinto v Cross and Peters Co*, 451 Mich 358, 361-363; 547 NW2d 314 (1996) (citations omitted).
[11] See *West v General Motors Corp*, 469 Mich 177 (2003).
[12] See *Cline v Allstate Ins Co*, unpublished opinion *per curiam* of the Court of Appeals, issued June 21, 2018 (Docket No. 336299) citing *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).
[13] *Id.*

As it relates to a finding of necessity for improvements for which a special assessment district was formed, we first look to the relevant statutory provision. MCL 41.721 states, in pertinent part:

> The township board has the power to make an improvement named in this act, to provide for the payment of an improvement by the issuance of bonds as provided in section 15, and to determine that the whole or any part of the cost of an improvement shall be defrayed by special assessments against the property especially benefited by the improvement.

In that regard, the Court of Appeals in *Ahearn v Charter Township of Bloomfield* stated that in order to be considered valid, a special assessment must meet two criteria:

> "the improvement funded by the special assessment must confer a special benefit upon the assessed properties beyond that provided to the community as a whole, and the amount of special assessment must be reasonably proportionate to the benefits derived from the improvement.[14]

Further, in *Speicher v Columbia Twp,*[15] the Court of Appeals upheld the Tribunal's finding that the township "was not required to make a determination of necessity before imposing a special assessment for an improvement," stating that "the applicable statutory provisions do not require a determination of necessity, only a connection between the special assessment and the benefit to the property."[16]

Petitioners fail to cite any authority, statutory or otherwise, which requires Respondent to make a finding of necessity in order to establish a special assessment district. As such, the Tribunal finds that Petitioners' argument is unsupported, and that Respondent is entitled to summary disposition on this issue.

As it relates to the argument that Respondent failed to comply with the requirements on MCL 41.724(1), we again start by looking at the relevant statutory provision. In pertinent part, MCL 41.724(1) states the following:

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[14] See *Ahearn v Bloomfield Charter Twp.*, 235 Mich App 486; 597 NW2d 858 (1999) (Citing *Kadzban v City of Grandville*, 442 Mich 495, 502 NW2d 299 (1993)).
[15] See *Speicher v Columbia Twp*, unpublished opinion *per curiam* of the Court of Appeals, issued January 11, 2018 (Docket No. 335265).
[16] *Id.* The Tribunal recognizes while "unpublished opinions of [the Court of Appeals] are not binding precedent . . . they may, however, be considered instructive or persuasive authority." See *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 145 n 3; 783 NW2d 133 (2010). The Tribunal finds the Court's decision in *Speicher* both instructive and persuasive.

> the township board, if it desires to proceed on the improvement, shall cause to be prepared plans describing the improvement and the location of the improvement with an estimate of the cost of the improvement on a fixed or periodic basis, as appropriate. Upon receipt of the plans and estimate, the township board shall order the same to be filed with the township clerk.

Here, the evidence of record substantiates that Respondent complied with the requirements of MCL 41.724(1).

Petitioners reference in both their brief regarding Procedural Defects, and in their Responses, deficiencies with regard to level of detail in the plans provided by Respondent. However, as previously determined by the Tribunal in *Highland-Howell Dev Co v Twp of Marion*, MCL 41.724(1) "requires a township to prepare plans "describing the improvement and the location of the improvement" and file them with the clerk. The act provides no further requirements regarding the contents of the plans."[17] Here, Respondent provided plans consisting of an aerial photograph of the special assessment district, identifying the affected parcels, as well as an inset engineering drawing, depicting the proposed sewer within the district.[18] Consistent with the statutory language of MCL 41.724(1) and the interpretation of the same, the Tribunal is satisfied that Respondent complied with all the statutory requirements of MCL 41.724 with respect to the specificity of the plans.

Petitioners further contest that Respondent satisfied the requirement of MCL 41.724(1) that the plans and cost estimate be on file with the township clerk. On September 23, 2021 notice of the October 18, 2021 public hearing regarding the special assessment district was published by Respondent in the Elk Rapids News, including a map identifying the district boundaries and the location of the improvements. Additionally, included in the same publication, was an estimate of the total cost of the improvement, along with the notification that the plans and cost estimates could be examined at the office of the township clerk until the date of the public hearing.[19] Additionally, Respondent submitted an affidavit, signed by the township clerk in support

[17] See *Highland-Howell Dev. Co., LLC*, No. 261431, 2004 WL 2251148, at 1 (January 27, 2004).
[18] See Respondent's Brief in Support of Summary Disposition, Page 4.
[19] See Petitioner's Reply Brief, Page 3.

of its contention that the aforementioned plans and cost estimates were on file in accordance with the requirements of MCL 41.724(1).[20] Of particular importance, Petitioners admit that they do not have any evidence to dispute that the required plans and cost estimates were on file with the township clerk as of the dates claimed by Respondent.[21]

Petitioners raise arguments that several individuals were denied meaningful access to the plans and cost estimates. Specifically, Petitioners state that two individuals, Petitioner Stites and Petitioner Prentice were denied access to the aforementioned documentation and submitted affidavits to that effect. However, in the Tribunal's review of the affidavits, both individuals attest that they had notice of the proposed improvement and Special Assessment District following publication in the Elk Rapids News on September 23, 2021, which included the plans and cost estimates for the improvement. The affidavits continue, indicating that the township clerk explained that no **other** documentation was available from the attorney or engineer. This in no way substantiates that Petitioners Stites and Prentice were denied access to the plans and cost estimates, rather only that they were informed that no **additional** information was on file with the township clerk. Further, Petitioners assert that Respondent failed to properly comply with FOIA requests, specifically as it relates to the cost estimates for the improvements. In Petitioners' responses, they admit that Petitioners' representatives were provided an opportunity to review the documentation on file with the township clerk on October 7, 2021, at which point copies of certain documents were requested. Although Petitioners state that the cost estimate was not included in the copies received from the township clerk, the fact remains that Petitioners admit they were permitted to review the documents on file with the township clerk, and that they do not have any evidence to dispute that this evidence was on file with the township clerk as of the date Respondent asserts. As such, the Tribunal finds that Respondent complied with the filing requirements of MCL 41.724(1), and that Petitioners' arguments are an attempt to impose additional requirements upon Respondent beyond those outlined in the statute.

[20] See Respondent's Exhibit B.
[21] See Petitioner's Reply Brief, Page 3.

Given the granting of Respondent's Motions, as indicated herein, and the resultant dismissal of Petitioners' legal claims, as also indicated herein, the parties are required to submit market evidence to address whether there is a "substantial or unreasonable" disproportionality between the amount assessed to the properties at issue and the value which accrues to the properties as a result of the improvements so that the Tribunal may resolve the only remaining issue in these cases.[22] In that regard, the cases were placed on prehearing general calls prior to the filing of the Motion for Summary Disposition and need to be placed on another prehearing general call with sufficient time (i.e., 90 days) to prepare the required valuation disclosures or appraisals for filing and exchange.[23] Therefore,

IT IS ORDERED that Respondent's Motions for Partial Summary Disposition under MCR 2.116(C)(8) are DENIED.

IT IS FURTHER ORDERED that Respondent's Motions for Partial Summary Disposition under MCR 2.116(C)(10) are GRANTED.

IT IS FURTHER ORDERED that Petitioners' legal claims regarding the levying of the special assessment are DISMISSED.

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[22] See *Kadzban v City of Grandville*, 442 Mich 495, 501-503; 502 NW2d 299 (1993), *N H Motel Enterprises, Inc v City of Troy*, 205 Mich App 459, 462–463; 518 NW2d 505 (1994), and *Dixon Road Group v City of Novi*, 426 Mich 390, 399; 395 NW2d 211 (1986), which provides that:

> . . . the general rule is well settled that the benefits which property will derive from a local improvement and for which it may be assessed should be determined **by the difference in the market value of the property before and after the making of the improvement**. [Emphasis added.]

[23] See the unpublished opinion *per curiam* issued by the Michigan Court of Appeals in *8 Mile Woodland LLC v Walker* on January 13, 2022 (Docket No. 356792), which provides, in pertinent part, that:

> . . . this Court reviews a trial court's decision on a motion for an adjournment or continuance for an abuse of discretion. *Charter Twp of Ypsilanti v Dahabra*, ___ Mich App ___, ___;___ NW2d ___ (2021) (Docket No. 354427); slip op. at 3, citing *Soumis v Soumis*, 218 Mich App 27, 32; 553 NW2d 619 (1996). **An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes**. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).
>
> [Emphasis added.]

Although *8 Mile Woodland* is an unpublished opinion and, as such, has no precedential value, it can still provide guidance. See *Cox v Hartman*, 322 Mich App 292, 307; 911 NW2d 219 (2017), TTR 261 and 215, and MCR 7.215(C)(1).

IT IS FURTHER ORDERED that the cases on the attached list of cases are ADDED to the August 1-14, 2023 Prehearing General Call, which has a date for the filing and exchange of valuation disclosures and prehearing statements of May 4, 2023.

IT IS FURTHER ORDERED that the parties shall COMPLY with the dates specified in the Notice of the August 1-14, 2023 Prehearing General Call and Order of Procedure issued by the Tribunal on October 17, 2022. Further, there will be no extensions **absent an actual showing** of extenuating circumstances. Failure to comply with this Order may result in the dismissal of this case or the conducting of a show cause or default hearing.[24]

EXCEPTIONS

This proposed order was prepared by the Michigan Office of Administrative Hearings and Rules. The parties have 20 days from the below "Date Entered by Tribunal" to notify the Tribunal and the opposing party in writing, by mail or by electronic filing, if they do not agree with the proposed order and to state in writing why they do not agree with the proposed order (i.e., exceptions). Exceptions are limited to the motions, the response, the reply, any documentation attached to those documents, and any matter addressed in the proposed order. There is no fee for filing exceptions.

The opposing party has 14 days from the date the exceptions were mailed to that party to file a written response to the exceptions.[25]

A copy of a party's written exceptions or response must be sent by mail or electronic service, if agreed upon by the parties, to the opposing party and proof must be submitted to the Tribunal that the exceptions or response were served on the opposing party. Exceptions and responses filed by *facsimile* will not be considered.

Entered: January 20, 2023 By Peter M. Koglar

PMK/jkk

[24] See TTR 231(1) and (4). See also *Grimm v Department of Treasury,* 291 Mich App 140, 149-150; 810 NW2d 65 (2010); MCL 205.732(c); and the October 17, 2022 Prehearing General Call and Order of Procedure.

[25] See MCL 205.762(2) and TTR 289(1) and (2).

Attached list of cases:

Docket Number
22-000029
22-000031
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22-000034
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PROOF OF SERVICE

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provide by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk