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

Arthur and Marlene Klein,
Petitioners,

MTT Docket No. 329578

v

City of Coopersville,
Respondent.

Tribunal Judge Presiding
Stuart Trager

ORDER GRANTING RESPONDENT'S MOTION TO STRIKE PETITIONERS' AFFIDAVITS

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER PARTIALLY AWARDING RESPONDENT'S COSTS AND ATTORNEY FEES

FINAL OPINION AND JUDGMENT

Petitioners, Marlene and Arthur Klein, are appealing a special assessment levied by Respondent, City of Coopersville. Petitioners appeared in pro per; Jessica L. Wood, attorney, represented Respondent, City of Coopersville. Respondent filed a Motion for Summary Disposition pursuant to MCR 2.116(C)(10) on October 7, 2008.

On January 22, 2009 Respondent filed a Motion to Strike Affidavits and a Motion for Immediate Consideration with a Supporting Brief. Petitioners did not file a response to either motion.

Based on the motion, response, affidavits and supporting documents, the Tribunal finds that Petitioners did not meet their burden of proof. The presumption that the special assessment is valid has not been overcome. The Tribunal finds in favor of Respondent. The special assessment is affirmed.

SUMMARY OF THE CASE

Although Petitioners present numerous ancillary issues, the only issues before the Tribunal that are within the Tribunal's jurisdiction regarding the special assessment district (SAD) relate to the formation of the SAD, and whether there is a proportional benefit from the cost of the assessment of the SAD to Petitioners' property. The SAD, as established by the City of Coopersville, has a presumption of validity that Petitioners have the burden of proof to overcome.

For the reasons stated below, Petitioners have failed to present evidence to overcome the presumption that Respondent's SAD is valid.

In 2006, Respondent decided to reconstruct East Randall Street, and subsequently decided to extend the water and sewer utilities along East Randall Street in Coopersville. Respondent created the East Randall water and sewer improvements special assessment district to fund a portion of the costs of the improvements.

Initially, the East Randall Street SAD project started out with the intention to reconstruct East Randall Street; subsequently, the extension of water mains was added to the project in order to loop two water main dead ends, and then sewer lines were added to the project.

After the assessment roll was confirmed, Petitioners filed a petition with the Michigan Tax Tribunal arguing that the special assessment was improper. Petitioners contend, in their petition, that:

> 1. Petitioner is an individual whose address is 551 E. Randall St., Coopersville, Michigan, 49404.
>
> 2. Respondent, City of Coopersville, levies and collects the special assessment taxes on the subject property.
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> 3. The property identification number is 70-05-24-400-016 and the property is classified as 401- residential property (zoned R2).
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> 4. The property is located in Ottawa County, City of Coopersville, in the school district of Coopersville Area Public Schools.
>
> 5. This matter involves issues relating to the "East Randall Water & Sewer Utility Extension" special assessment.
>
> 6. The special assessment levied against the subject parcel is $10,281.81.
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> 7. On October 9, 2006, Petitioner appeared before the appropriate local Coopersville City Council and protested the special assessment of the subject property.
>
> 8. The City Council denied the relief requested and affirmed the special assessment on October 9, 2006. However, we never received any official document on the confirmation of the SAD or the amount.
>
> 9. The subject assessment is improper because of the following:
>
> > a. The City of Coopersville's intention for extension of utilities was clearly stated in the signed application for MDEQ permits required due to the fact that our property consists of wetlands and is in a 100 year flood plain. In this application the city states "Te [sic] utility extensions and road improvements are intended for future residential development adjacent to the project limits . . . ." The City of Coopersville's ordinance

states that “Unless otherwise provided by a contract, no frontage charge shall be made where the system sewer line or waterline adjacent to the connection premises was constructed as part of a development . . . ." (1046.04). In addition, the city ordinances also set forth the procedures for establishing a SAD of which not one procedure was followed.

b. Construction activities were started prior to the hearing to evaluate the financial feasibility of the project. No necessity was ever established other than the proposed development of property adjacent to this project. The area in and around this project is zoned agricultural and R2. The developer of this proposed development was requesting the land be rezoned from agricultural to R2 PDU. Per Michigan's new zoning rules, in order to rezoned to a PDU, water and sewer needs to be at the proposed location or the developer need [sic] to sign an agreement and post bond that he will pay for the extension of water and sewer. Apparently, the developer did not want to do this. However, on November 7, 2006, when the extension of sewer and water was [ ] to the proposed development a notice was published in the newspaper that the zoning commission had rezoned the property from agricultural to R2 PDU.

c. Detailed cost assessments were never completed or analyzed for economic feasibility nor communicated to SAD property owners. The State of Michigan Assessment Administration Certificate R-1783 states that “First, a determination must be made of the geographic distribution of market value influence arising from the public improvement. Then there must be the appraisal of individual properties with and without the influence of the public improvement.”

d. The cost to connect to the utilities is not economical due to distance the home is from the utility connection (436 ft). The ordinance states that any home beyond 200 feet is not required because it is not feasible for property owner to hook up. This is my situation. Therefore, this project has no benefit to the subject parcel. Existing well and septic are operational and in good condition.

e. One particular land owner within the SAD with the largest parcel (approx 58 acres) and the most to gain from development from this utility extension is **not** being assessed any special assessment fees. In addition, this property owner is part of the City of Coopersville Planning Commission which would appear to be a conflict of interest. (Emphasis in original.)

f. Petitioner has been paying water and sewer taxes on subject property without the utilities in place for over 20 years.

Petitioners requested that the Tribunal reduce the amount of their special assessment from $10,281.81 to zero ($0).

The Tribunal, by notice dated May 29, 2007, stated in part:

> Pursuant to TTR 252 and this order, the parties are required to submit a valuation disclosure (i.e., an appraisal, appraisal record card, etc.), prior to holding their prehearing conference. Failure to submit a valuation disclosure as provided in this order will result in the party or parties being placed in default. A valuation disclosure is defined as all documentary evidence or other tangible evidence which a party relies upon in support of their contention as to the property's true cash value or any portion thereof and which contains that party's value conclusions and data, valuation methodology, analysis, or reasoning in support of their contentions. See TTR 101.

Petitioners, by notice dated August 27, 2007, and Respondent, by notice dated June 26, 2007, indicated that neither party would be filing a valuation disclosure.

Respondent took discovery depositions of Petitioners on September 23, 2008.

Respondent filed its Motion for Summary Disposition pursuant to MCR 2.116(C)(10) on October 7, 2008. Petitioners filed a request to extend the response time to Respondent's Motion for Summary Disposition, which was granted, *inter alia*, on October 28, 2008.

On November 5, 2008, Petitioners filed a Response to Respondent's Motion for Summary Disposition stating:

> 1. Petitioner owns real property located in the City of Coopersville.
>
> 2. Petitioner disputes a special assessment levied by Respondent on Petitioners real property for public improvements.
>
> 3. Petitioner understands that the burden of showing that a genuine issue of disputed fact exists and will prove it in the following brief.
>
> 4. Respondent levied disproportionate special assessment on Petitioners' real property.
>
> 5. Petitioner owns real property located in the City of Coopersville that did not receive measureable benefit from the East Randall Street Water & Sewer Project.
>
> 6. In support of this request for denial of Respondent's motion of Summary Disposition, Petitioner submits the attached brief and supporting documents which are incorporated by reference.

Petitioners' brief, attached to their response to the motion, contained numerous unsupported and conclusory assertions and arguments, without any supporting affidavits. Petitioners' brief took issue with the necessity and formation of the SAD without dealing with the issues of whether the subject property was benefited or whether the benefit was disproportionate to the cost of the assessment.

After reviewing Respondent's Motion and Petitioners' Response, the Tribunal, by Order entered December 12, 2008, required Petitioners and Respondent to provide affidavits supporting each and every factual assertion in the Motion, Brief and Response by January 19, 2009. Pursuant to MCR 2.119, the affidavits were required to be made on personal knowledge, to state with particularity the facts that are admissible as evidence establishing or denying the grounds stated in the Motion and Response, and to show affirmatively that the affiant if sworn as a witness could testify competently to the facts stated in the affidavit. Expert testimony affidavits were required to be fully compliant with MRE 701, 702, and 703. The Order went on to indicate that failure to comply may result in dismissal or the scheduling of a default hearing pursuant to TTR 247.

The Tribunal received Respondent's affidavits on January 20, 2009. Petitioners' affidavits were received by the Tribunal on January 20, 2009 and January 22, 2009.

Respondent, in response to the Tribunal's December 12, 2008 Order, submitted the sworn affidavit of Mr. Steven R. Patrick, the city manager of the City of Coopersville (the "City"). The affidavit, in summary, asserts that the City is a home rule city, and as such, is governed by the Home Rule City Act, MCL 117.1 et seq. The Home Rule City Act authorizes the City to levy special assessments for sewer, water, and road improvements. MCL 117.4 a, 117.4 b, and 117.4d.

In his affidavit, Mr. Patrick indicates that in 2006, the City decided to expand water and sewer utilities along East Randall Street in the City ("public improvements"). One of the options available to the City to finance the public improvements was to specially assess the costs, or a portion of the costs, against the properties that specifically benefited from the improvements. Chapter 246 of the Codified Ordinances of the City of Coopersville sets forth the procedure to be used by the city in levying special assessments.

In Resolution No. 2006-191, adopted August 14, 2006, the City Council resolved its intention to proceed with the East Randall Street Special Assessment District ("SAD"). Under Section 246.03 of the Codified Ordinances, the City Council may initiate special assessment proceedings with or without a petition. Thus, it was not necessary for the City to receive a petition before establishing the SAD. Chapter 246 of the Codified Ordinances was in effect at the time the East Randall Street public improvements were made and the SAD was created.

Mr. Patrick testifies that he was the City Manager at the time the SAD was created. He was involved in each phase of the special assessment proceedings and he has personal knowledge of and can testify regarding the City's actions in the planning and construction of the public improvements, as well as the City's actions with regard to the creation of the SAD.

Mr. Patrick indicated that Petitioners' property, located at 551 East Randall Street, Coopersville, Michigan (the "Property"), is located within the SAD. At all times relevant to this appeal, Petitioners Arthur and Marlene Klein held themselves out as owners of, or parties interested to, the Property, which is consistent with city records indicating that Petitioners are the taxpayers for the Property.

He noted that the City Council confirmed the assessment roll for the SAD at its October 9, 2006 meeting. The total cost of the public improvements for water and sewer along East Randall Street was $1,213,164.29. Of the total cost of the public improvements, the City paid fifty percent (50%) of the cost, or $606,582.15. The remaining fifty percent (50%) of the cost, or $606,582.15, was assessed against the properties in the SAD, divided evenly between the parcels on the north side of the street and those on the south side. Petitioners' property is located on the north side of East Randall St. The assessments were apportioned according to the properties' frontage on East Randall Street.

The Patrick affidavit indicated, according to City Records, that Petitioners' Property had 200.23 feet of frontage along East Randall Street (out of a total of 5,906.35 feet of frontage in the SAD as a whole).The assessment levied against Petitioners' property was $10,281.81. The portion attributable to the first 100 feet of frontage ($5,135) was considered the "active" portion of the assessment. The active portion was to be paid in twenty (20) annual installments, the first of which was due with the 2007 summer tax bill. The City gave the property owners in the SAD, including Petitioners, the option of voluntarily deferring payments of interest, and/or principle for the first ten (10) years (i.e., until October 9, 2016). Petitioners did not opt for the voluntary deferment. The portion of the assessment attributable to the remaining 100.23 feet of frontage (the "deferred" portion of the assessment) comes due when the Property is developed, or on October 9, 2023, whichever comes first.

Mr. Patrick noted that at one time, in determining how to apportion the cost of improvements, the City Council considered setting a maximum assessed frontage for water and sewer at 250 feet. However, the City Council ultimately decided to apportion the cost, using the active/deferred method described above, based on the entire frontage of the properties in the district. In doing so, the City Council was cognizant of a request by the property owners in the district to defer the assessments until the properties were developed. Further, under the 250- foot maximum frontage method, the original estimated assessments against Petitioners' property was over $20,000. The City Council modified the original proposed special assessment roll and arrived at the final apportionment based on comments and objections received and based on discussions in good faith negotiations the City had with property owners in the district...

The Patrick affidavit went on to note that the City Council specially assessed the Kulicamp property in the same manner it assessed the other properties in the SAD, as shown on the assessment roll confirmed by the City Council. Subsequent to the confirmation of this special assessment roll, the City and the Kulicamps executed a Public Utility and Access Easement agreement, in which the Kulicamps granted the City a perpetual public utility easement across their property. In consideration for the easement, the City agreed to waive a portion ($12,837) of the special assessment levied against the Kulicamp property ($75,854). Petitioners were not a party to the easement agreement.

Further, Mr. Patrick indicated the public improvements were not constructed as part of a development. The City, he stated, recognized that the water and sewer improvements could possibly benefit future development; however, at the time the improvements were made and the SAD was created, any such development was merely speculative.

He advised that the public improvements evolved from simply reconstructing East Randall Street, to extending both the water and sewer at the same time as the road construction, at the request of the residents in the SAD. The City's main goal in extending the water line was to loop two dead ends in the water system. Mr. Patrick referenced this goal in the report he had prepared for the City Council, which was read at the August 14, 2006 hearing. Also at the hearing, he denied that the public improvements were being made to benefit a particular development.

In fact, Mr. Patrick indicated that the City originally planned to extend only the water line along East Randall Street. Only after the City received a petition from property owners in the district regarding the sewer line did the City decide to install the sewer line at the same time as the water line. If the only purpose of the improvements was to benefit future development, the City would have planned, from the beginning of this project, to extend both water and sewer lines along East Randall Street. When the special assessment proceedings began, Mr. Patrick was under the impression that the residents in the SAD were in favor of the public improvements.

Mr. Patrick averred that he had not prepared an estimate of the cost to connect Petitioners' Property to the East Randall improvements. At one time, he prepared an estimate of the cost to extend the water and sewer lines northward along a private drive to properties that were located outside of the SAD. It was determined that extending the utilities and connecting these properties outside of the SAD would entail installation of a separate main and laterals. The City maintained throughout this process that if the property owners outside of the SAD requested that the City proceed with these improvements, it would involve a separate special assessment district. Those property owners never asked the City to undertake the improvements and the property owners were never assessed the cost of connecting to the system.

He noted that Section 1046.04 [City Code] permits the City to charge a frontage charge for Petitioners' property at the time of the application for a permit to connect to the systems. The exception to Section 1046.04 does not apply to the SAD because improvements were not "constructed as part of a development or project in which private parties or the City, on behalf of and at the expense of private parties, constructed such a sewerage system line or water system line."

Petitioners have never provided the City, or Mr. Patrick, with an estimate of the cost of connecting their Property to the water and sewer improvements.

Mr. Patrick is not aware of any power outages caused by the lift station located on East Randall Street. He is also not aware of any traffic accidents that have occurred due to the lift station.

Mr. Patrick averred that, on information and belief, the public improvements, along with the power poles, service boxes, and the lift station associated with the public improvements, were all

constructed and installed according to plans created by the licensed project engineer, and in accordance with the permit issued by the Michigan Department of Environmental Quality.

FINDINGS OF FACT

The Tribunal finds that in 2006, Respondent decided to reconstruct East Randall Street, and to extend the water and sewer utilities along East Randall Street in Coopersville. Respondent created the East Randall Water and Sewer Improvements Special Assessment District to fund a portion of the costs of the improvements. The City Council confirmed the special assessment roll with respect to the properties located along East Randall Street, including Petitioners' property located at 551 East Randall Street. The City levied special assessments against the properties in the SAD to fund a portion of the cost of the construction of the road, sewer, and water improvements made in the district. The special assessments were calculated based on the properties' front footage abutting the road to be improved. Petitioners' property, which has 200.23 feet of frontage on East Randall Street, was assessed $10,281.81. The City paid 50% of the cost of the improvements out of its general fund.

The Tribunal further finds that Respondent's affidavit of Mr. Steven R. Patrick is supported by evidence and adopts Mr. Patrick's testimony regarding the SAD as true facts in regard to the SAD. Specifically, the Tribunal finds that the assessments were divided into an active portion, which included the first hundred feet of frontage, and a deferred portion, which included the remaining frontage. The active portion of Petitioners' assessment, $5,135 is to be paid in 20 annual installments beginning with the 2007 summer tax bill. The principal and the deferred portion of Petitioners' assessment, $5,146.81, would become due when the property is developed or on October 9, 2036, whichever comes first. The City gave property owners in the district the option to voluntarily defer payments of interest and principal for the first 10 years, until October 9, 2016. Apparently, Petitioners did not opt for the voluntary deferment.

Initially, the East Randall Street SAD project was commenced with the intention to reconstruct East Randall Street, subsequently the extension of water mains was added to the project to loop two dead ends, and then sewer lines were added to the project.

The Tribunal further finds that Petitioners' affidavits are not supported by the evidence and do not comply with the Tribunal's December 12, 2008 Order or the Michigan Court Rules.

CONCLUSIONS OF LAW

INTRODUCTION

Pursuant to the Michigan Constitution, Art. 1, sec. 13, parties have the right to represent themselves in litigation. However, a *pro se* party will be held to the same standards that attorneys are held to. For instance, in *Baird v Baird*, 368 Mich 536; 118 NW2d 427 (1962), where the defendant, in a hearing on a petition for increased support payments, the court determined that the defendant had adequate means and had dismissed counsel. When the defendant appeared in person, the court, after warning him that he should secure counsel, properly held him to the same standard in the presentation of case as would be required of a member of the bar.

Further, MCR 2.114 provides:

> (D) Effect of Signature. The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that
>
> (1) he or she has read the document;
>
> (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
>
> (3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
>
> (E) Sanctions for Violation. If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.
>
> (F) Sanctions for Frivolous Claims and Defenses. In addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2). The court may not assess punitive damages.

Further, Petitioners attempted to have an ex parte communication with the Tribunal and were admonished not to do so. In addition, Petitioners were advised that proceeding on their own without legal counsel, was their prerogative. The Tribunal even indicated that there would be minor allowances made for Petitioners' lack of legal knowledge. However, Petitioners were advised that there are rules and procedures that must be adhered to in order to ensure a fair hearing for both parties. Petitioners, having been so advised, decided to proceed *pro se*.

Therefore, Petitioners, in the instant manner, are to be held to the same standard as a member of the bar and are subject to the same rules and potential sanctions.

Before turning to the merits of Respondent's Motion for Summary Disposition, the Tribunal looks to Petitioners' affidavits submitted in response to Respondent's Motion for Summary Disposition, and Respondent's Motion to Strike Petitioners' Affidavits.

RESPONDENT'S MOTION TO STRIKE PETITIONERS' AFFIDAVITS

As noted above, the Tribunal, after reviewing Respondents' Motion and Petitioners' Response, entered an Order on December 12, 2008, requiring the parties to provide by January 19, 2009, affidavits supporting each and every factual assertion in the Motion, Brief and Response. Pursuant to MCR 2.119, the affidavits were required to be made on personal knowledge, to state with particularity the facts that are admissible as evidence establishing or denying the grounds stated in the Motion and Response, and to show affirmatively that the affiant, if sworn as a witness, could testify competently to the facts stated in the affidavit. Expert testimony affidavits were required to be fully compliant with MRE 701, 702, and 703. The Order went on to indicate

that failure to comply may result in dismissal or the scheduling of a default hearing pursuant to TTR 247.

Petitioners submitted five affidavits: Kelly Ringler; Timothy Stroven; Mabel Siemen; Mitch Cripe; Laura R. Wright.

Respondent, in its Motion to Strike Petitioners' Affidavits, noted that none of Petitioners' affidavits comply with the Tribunal's order of December 12, 2008, requiring that the affidavits support each and every factual assertion in the Motion, Brief and Response.

Respondent objected to the affidavit of Kelly Ringler, asserting that the Ringler affidavit does not create a genuine issue of material fact regarding the benefit conferred on Petitioners' property by the public improvements or the value of such benefit. The Ringler affidavit does not contain any facts or details showing that Petitioners' property did not increase in market value due to the public improvements that were the subject of the special assessment. Moreover, the Ringler affidavit does not contain any facts or details to support her assertion that the cost to connect to the water and sewer system "would offset any perceived increase in property value to an informed buyer."

Respondent goes on to note that the mere conclusory allegations that are devoid of detail do not satisfy the burden of a party opposing a motion for summary disposition (case citation omitted). The affidavit simply states an expert's opinion, without providing any scientific or factual support, and therefore, the affidavit is insufficient to create a genuine issue of material fact (cite omitted). The Ringler affidavit contains mere conclusory allegations that are devoid of detail and lacking in any factual support and thus is insufficient to create a genuine issue of material fact.

Respondent notes further that the Ringler affidavit does not comply with MCR 2.119(B)(1) because the affidavit does not indicate that it was made with personal knowledge. It contains no specific facts or details and does not show affirmatively that Kelly Ringler could testify competently to the facts stated in the affidavit. Respondent goes on to note that the affidavit fails to comply with MRE 702 or MRE 703, because it fails to include any facts or data in support of affiant's opinion, and fails to establish that affiant's opinion is based on sufficient facts or data, and fails to establish that affiant relied on reliable principles and methods in forming her opinion.

Petitioners did not file a response to the motion to strike and the Tribunal, having reviewed the affidavit of Kelly Ringler, determines that it does not comply with the Tribunal's December 12, 2008 Order or Michigan Court Rules.

Respondent objects to the affidavit of Timothy Stroven. Respondent notes that the Stroven affidavit is not signed and notes other objections. The most telling objection is that the Stroven affidavit is not relevant to the issues presented in the case. As noted above, Petitioners have not filed a response to Respondent's motion to strike, and the two relevant issues within the Tribunal's jurisdiction relate to the formation of the SAD and the specific benefit to Petitioners' property. After reviewing the Stroven affidavit, the Tribunal determines that this unsigned

affidavit, as to a property not owned by Petitioners, is simply not relevant to either of the pertinent issues in this matter.

Respondent objects to the affidavit of Mabel Siemen. Respondent simply notes and objects to the format of the affidavit in that it does not comply with MCR 2.119(B)(1)(c) in that it does not indicate that the affiant if sworn as a witness could testify competently to the facts stated in the affidavit. Further, the Tribunal, after reviewing the Siemen affidavit, determines that the assertions in the affidavit are not relevant as to whether or not the special assessment district was formed properly, or whether Petitioners' property was benefited. Therefore, the Tribunal determines that the Siemen affidavit does not comply with the Tribunal's December 12, 2008 Order or Michigan Court Rules.

Respondent objects to the affidavit of Mitch Cripe. Respondent objects to the format of the affidavit, in that it does not comply with MCR 2.119(B)(1)(c) because it does not show affirmatively that the affiant, if sworn as a witness, can testify competently to the facts stated in the affidavit. Respondent also notes that the Cripe affidavit refers to properties owned by others, and therefore is not relevant to Petitioners' property. Respondent goes on to note that the affidavit fails to comply with MRE 702 or MRE 703 because it fails to include any facts or data in support of affiant's opinion, fails to establish that affiant's opinion is based on sufficient facts or data, fails to establish that affiant relied on reliable principles and methods in forming his opinion, and contains mere conclusory allegations. Therefore, the Tribunal determines that the Cripe affidavit does not comply with the Tribunal's December 12, 2008, Order or Michigan Court Rules.

Finally, Respondent objects to the affidavit of Laura R. Wright. Respondent notes numerous deficiencies in the form and content of the affidavit. Respondent notes that the Wright affidavit does not set forth facts supporting Petitioners' position. Rather, it is a compilation of allegations, accusations, and misplaced and erroneous legal conclusions and ramblings. It is not sufficient to create a genuine issue of material fact in this case. It is unclear which portions, if any, of the Wright affidavit are based on Wright's personal knowledge. Further, the affidavit does not show affirmatively that the affiant could testify competently to the facts set forth in her affidavit. Moreover, it is doubtful whether Wright would even be able to testify to the facts that she has alleged in her affidavit. As a lay witness, Respondent notes, Wright is only permitted to give testimony in the form of an opinion or inference, where the testimony is (a) rationally based on the witness's perception and (b) helpful to a clear understanding of the testimony or determination of a fact in issue. MRE 701. Respondent concludes that the Wright allegations are neither admissible nor sufficient to create a genuine issue of material fact.

Further, the Tribunal, after reviewing the Siemen's affidavit, determines that the assertions in the affidavit are not relevant as to whether or not the special assessment district was formed properly or whether Petitioners' property was specifically benefited. Therefore, the Tribunal determines that the Siemen affidavit does not comply with the Tribunal's December 12, 2008, Order or Michigan Court Rules.

Therefore, the Tribunal finds that none of Petitioners' affidavits comport with the Tribunal's December 12, 2008, Order or Michigan Court Rules.

RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

Under MCR 2.116(C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that that there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. *Smith v Globe Life Insurance,* 460 Mich 446, 454-455; 597 NW2d 28 (1999). The *Smith* court, in its analysis, stated:

> This Court in *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996), set forth the following standards for reviewing motions for summary disposition brought under MCR 2.116(C)(10):
> In reviewing a motion for summary disposition under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed 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 documentary evidence show 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. *Neubacher v Globe Furniture Rentals*, 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 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. *McCart v J Walter Thompson*, 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. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1992).

In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion brought under subsection (C)(10) will be denied, *Arbelius v Poletti,* 188 Mich App 14; 469 NW2d 436 (1991).

BURDEN OF PROOF

In a special assessment case, the question of which party has the initial burden of proof is well settled. The Michigan Supreme Court addressed this question in *Kadzban v Grandville*, 442 Mich 495; 502 NW2d 299 (1993), stating special assessments are presumed to be valid. Thus, 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, the Tax Tribunal has no basis to strike down special assessments. Where such evidence is presented, the burden of going forward with evidence shifts. At this point, Respondent must, under *Dixon Rd*

Group v Novi, 426 Mich 390; 395 NW2d 211 (1986), present evidence proving that the assessments are reasonably proportionate in order to sustain the assessments. Thus, the burden of proving that the assessed property does not receive a benefit sufficient to justify the imposition of the assessment rests with the party challenging the assessment. *Graham v City of Saginaw*, 317 Mich 427, 435; 27 NW2d 42 (1947). Furthermore, one who challenges a special assessment carries a heavy burden of proof because of the presumption that the levy is valid. *Konfal v Delhi Township*, 91 Mich App 147; 283 NW2d 677 (1979).

Petitioners cite the Supreme Court's decision in *Kadzban* in their Proposed Exhibits #FA. As such, they were aware of the Court's position on this subject. Furthermore, Petitioners elected not to provide a valuation disclosure, appraisal, or any other legally admissible proof to indicate that Petitioners' property was not benefited. Petitioners simply offered the affidavit of Mitch Cripe. However, as noted, the affidavit failed to comply with MRE 702 or MRE 703, because it did not include any facts or data in support of affiant's opinion, and failed to establish that affiant's opinion is based on sufficient facts or data, and failed to establish that affiant relied on reliable principles and methods in forming his opinion, and contains mere conclusory allegations. This is fatal to Petitioners' special assessment appeal. Petitioners' continued protest in this regard and their refusal to accept responsibility for the burden of proof in this matter is considered frivolous.

As stated previously, in *Kadzban*, the court held "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*, p 505. The Court, in *Dixon Road*, held "[w]e believe 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." *Id*, page 401. The Court of Appeals, in *Ahern v Bloomfield Charter Twp*, 235 Mich App 486, 496; 597 NW2d 858 (1999), further explained what information is required. The 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. *Id*, p 496.

Petitioners' decision to not obtain the services of an appraiser deprived them of the ability to show to the Tribunal whether the property was benefited by the improvement and whether the level of benefit was disproportional to the cost of the assessment.

Based on the evidence, motions, briefs, pleadings and affidavits presented, the Tribunal finds that Petitioners did not meet their burden of proof. The Tribunal finds that Petitioners have not provided any evidence to rebut the presumption that Respondent's special assessment is valid. Further, the Tribunal finds the subject property benefited from the SAD improvements. Also,

the Tribunal finds that Petitioners failed to produce any evidence that the amount of the benefit conferred to the property was disproportional to the cost of the assessment. Therefore, the Tribunal finds in favor of Respondent and the special assessment is affirmed.

ANCILLARY ISSUES

Petitioners assert in their petition that one landowner (apparently, Douglas and Karen Kulicamp) within the SAD is not being assessed the special assessment. The Petition indicates:

> 9a. The City of Coopersville's intention for extension of utilities was clearly stated in the signed application for MDEQ permits required due to the fact that our property consists of wetlands and is in a 100 year flood plain. In this application the city states "Te [sic] utility extensions and road improvements are intended for future residential development adjacent to the project limits." The City of Coopersville's ordinance states that "**[u]nless otherwise provided by a contract, no frontage charge shall be made with the system sewer line or waterline adjacent to the connection premises was constructed as part of a development."** (1046.04). In addition, the city ordinances also set forth the procedures for establishing a SAD of which not one procedure was followed. (Emphasis added.)
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> . . .
>
> 9e. One particular land owner within the SAD with the largest parcel (approx 58 acres) and the most to gain from development from this utility extension **is not being assessed any special assessment fees**. In addition, this property owner is part of the City of Coopersville Planning Commission which would appear to be a conflict of interest. (Emphasis added.)

Apparently, Petitioners are referring to City of Coopersville ordinance Sec. 1046.04(b), which provides:

> Frontage Charge. Those premises adjacent to a sewerage system line or water system line which either have not been included in a special assessment district to pay the cost of such line or have been included in a special assessment district but have not been assessed for the frontage which will be provided with sewer or water service, shall pay a frontage charge at the time application for a permit to connect to the systems or either system is made. **Unless otherwise provided by a contract, no frontage charge shall be made where the system sewer line or water line adjacent to the connection premises was constructed as part of a development or project in which private parties or the City, on behalf of and at the expense of private parties, constructed such sewerage system line or water system line.** Such frontage charge shall be at a rate to be established and adjusted from time to time by resolution of Council. (Emphasis added).

City manager Stephen R. Patrick indicated in his affidavit that the City Council specially assessed the Kulicamp property in the same manner as the other properties in the SAD, as shown

on the assessment roll confirmed by the City Council. Subsequent to the confirmation of the special assessment roll, the City and the Kulicamps executed a Public Utility and Access Easement agreement, in which the Kulicamps granted the City a perpetual public utility easement across their property. In consideration for the easement, the City agreed to waive a portion ($12,837) of the special assessment levied against the Kulicamp property ($75,854). In addition to the affidavit of Mr. Patrick, both Petitioners (Petitioners' Prehearing Statement, Exhibit M) and Respondent (Brief in Support of Motion for Summary Disposition, Exhibit 18) offer a copy of the public utility access easement, parcel number 70-05-24-400-024, the easement agreement between Coopersville and the Kulicamps. The easement specifically indicates that only a portion of the special assessment was waived. Petitioners were not a party to the easement agreement.

The city manager also indicated that the public improvements were not constructed as part of a development. The City recognized that the water and sewer improvements could possibly benefit future development; however, at the time the improvements were made and the SAD was created, any such development was merely speculative.

Given the apparent *quid pro quo*, Petitioners' assertion that the Kulicamps were paying no assessment at all, although not germane to whether or not Petitioners' property was benefited, is not supported by the evidence submitted by Petitioners.

CONCLUSION

Based on the evidence, motions, briefs, pleadings and affidavits presented, the Tribunal finds that Petitioners did not meet their burden of proof. The presumption that the special assessment is valid has not been overcome. Further, the Tribunal finds the subject property benefited from the SAD improvements. Also, the Tribunal finds that Petitioners failed to produce any evidence that the amount of the benefit conferred to the property was disproportional to the cost of the assessment. Therefore, the Tribunal finds in favor of Respondent and the special assessment is affirmed.

Respondent, having requested costs and attorney fees be awarded to cover the expense of defending this matter, is awarded costs and attorney fees commencing from the date Respondent's counsel prepared the Motion for Summary Disposition. The costs and attorney fees are granted because of Petitioners' failure to properly prosecute this case, and the continued prosecution of frivolous and meritless claims.

JUDGMENT

IT IS ORDERED that Petitioners' affidavits are stricken and not admissible as evidence.

IT IS FURTHER ORDERED that the special assessment for parcel number 70-05-24-400-016 is AFFIRMED.

IT IS FURTHER ORDERED that Respondent's request for taxation of costs and attorney fees is partially GRANTED AND RESPONDENT IS AWARDED costs and attorney fees commencing from the date Respondent's counsel prepared the Motion for Summary Disposition.

IT IS FURTHER ORDERED that Respondent shall submit, within 21 days of the entry of this order, a bill of costs and attorney fees commencing from and including the time when Respondent's counsel prepared its motion for summary disposition.

IT IS FURTHER ORDERED that Petitioners shall have 14 days from the submission of the bill of costs and attorney fees to protest the amount of costs and attorney fees.

This opinion and judgment resolves all claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: March 27, 2009 By: Stuart Trager, Tribunal Judge