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

Don Bowen, Inc.,
Petitioner,

v

MTT Docket No. 435138

Tuscarora Township,
Respondent.

Tribunal Judge Presiding
Preeti P. Gadola

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Don Bowen, Inc., appeals the special assessment levied by Respondent, Tuscarora Township, against Parcel No. 16-161-025-200-022-00. Lawrence P. Hanson, Attorney, represented Petitioner, and Robert C. Kerzka, Attorney, represented Respondent.

A hearing on this matter commenced on January 13, 2014, and resumed on March 6, 2014. Petitioner's witnesses were Donald A. Bowen and Robert H. Morris. Respondent's witnesses were Michael E. Ridley and Ken Arndt. Petitioner and Respondent filed post-hearing briefs on March 27, 2014, and reply briefs on April 3, 2014.

The Tribunal finds that the subject property does not benefit from the special assessment and that the amount assessed is, therefore, not proportional to the benefit conferred upon the subject property. As such, the subject property's final special assessment as established by the Tribunal is:

Parcel Number: 16-161-025-200-022-00

Type of Special Assessment	Special Assessment to be Levied
Sanitary Sewer	$0

PETITIONER'S CONTENTIONS

Petitioner contends that when the assessment was originally approved, the projected cost was only $4.2 million. However, the final construction costs for the revised sewer system, pursuant to the signed bids, were $5.9 million. Pursuant to MCL 41.724, an additional hearing was required to provide property owners with a due process opportunity to object to the significantly higher costs. Petitioner contends that Respondent's assessment is invalid based upon the failure to hold the additional hearing addressing the change in cost and, contrary to Respondent's contentions, the additional hearing is required even though the assessment on the subject property was not increased.

Petitioner also contends that the special assessment will not add to the value of the subject property, and therefore, the amount assessed is not proportionate to the benefit received. Petitioner argues that the sewer was not needed and provides no benefit to the subject property which has been historically serviced by a fully functional septic system.

Petitioner also contends that the Residential Equivalent Units ("REUs") were not assigned appropriately to the properties within the district and contends that the district boundaries are not rational or explained. More specifically, Petitioner states that the district was the result of "gerrymandering", meaning that Respondent purposefully set the boundaries to include and exclude certain properties. "The geographical layout of the SAD [special assessment district] is not a nice neat square; it crosses under a major interstate, under two rivers, and jogs and meanders to pick up a nonsensical group of parcels. . . . The numerous riverfront parcels along Club Road are not included." *Id*. at 13. In addition, Petitioner contends that Respondent set forth that Burt Lake State Park would be a user of the system. However, Burt Lake State Park's acreage is not within the SAD and the State Park will not be paying for its proportional share of

the cost. See *id.* at 19. Petitioner also contends that O & M ("operation and maintenance") changes are excessive.

PETITIONER'S ADMITTED EXHIBITS

P-1 Special Assessment District Documents

- P-1A Tuscarora Township Sanitary Sewer Use Ordinance #28
- P-1B Resolution No. S/2013-1 Establishing Sewer Rates
- P-1C 5/22/13 Tuscarora Township Letter to Sewer District Property Owners
- P-1D Sewer Bid and Estimates comparison
- P-1E Gourdie Frasure Communications
- P-1F Special Assessment Resolution No. 4
- P-1G Minutes of the December 3, 2013 Tuscarora Township Board Meeting
- P-1H Notice of Hearing on Special Assessment Improvements
- P-1I Notice of Review of Special Assessment Roll

P-2 REU Calculations and Analysis

- P-2A Township analysis of other community REU calculations
- P-2B Analysis of O&M Rates, Revenues & Costs GFA #11354 Rev Nov. 25, 2013
- P-2C State of Michigan criteria for Subsurface Sewage Disposal
- P-2D June 4, 2010 email from Mike Ridley
- P-2E November 5, 2013 email from USDA

P-3 Summary of REU Disparities

P-4 District 4 Health Department Communication (March 28, 2012 Letter)

P-5 Documents from the Committee to Bring Wastewater Treatment to Indian River

- P-5A Information Packet and Petition for Wastewater Treatment
- P-5B The Sewer Fact Sheet
- P-5C Gourdie Frasure Sewer District Boundary – Standard Gravity Collection System
- P-5D Email communications
- P-5E August emails from USDA to Mike Ridley regarding O&M

P-6 Summary of Incorrect Statements by Township and/or Committee relating to SAD

P-6A December 26, 2013 article in Resorter Newspaper
P-6B December 2, 2013 letter to Tuscarora Township Board

P-7 IRCEDA Sewer Committee Phase I District Plan

P-8 Communication between Committee and Township regarding cost

P-8A 2008 emails between Committee and MDNR
P-8B July 10, 2008 cost estimated with and without Burt Lake State Park
P-8C September 4, 2008 letter from Gourdie Frasure to MDNR regarding participation
P-8D Email from Keith Chelli MDNR
P-8E May 22, 2009 letter from Keith Cheli to Mike Ridley
P-8F March 4, 2011 letter from Ronald Olson to Mike Ridley
P-8G March 1, 2012 Draft Sewer Agreement between State of Michigan and Township
P-8H Emails between MDNR employees and Township
P-8I July 22, 2013 email from Gourdie Frasure to Township with attached letter
P-8J July 29, 2013 email from Gourdie Frasure to Township with attached budget
P-8K November 18, 2013 letter from Ronald Olson to Mike Ridley

P-9 Letter and Emails from USDA to Tuscarora Township

P9A November 19, 2013 Letter and email from USDA to Mike Ridley

P-10 Miller Canfield memo 5-9-2008

P-11 Respondent's Appraisal of Lincoln Property

PETITIONER'S WITNESSES

Donald A. Bowen

Donald A. Bowen, Petitioner's agent, testified that he has been licensed in real estate since 1986 and has been managing rental properties for about 25 years. Transcript at 152-53. The subject property, commonly referred to as the Bowen Plaza, is one of Mr. Bowen's rental properties. The subject was purchased in 1998 for $195,000, and is currently used as offices and retail space. *Id*. at 153. Mr. Bowen testified that over the past ten years he has spent approximately $1,200 in maintenance on the subject property's septic system and that he

estimates that the subject property uses less than 1,000 gallons per month. *Id.* at 155-56. There are no washing machines, dishwashers, showers, or bathtubs located on the subject property. *Id.* at 156. Mr. Bowen testified that the subject was assigned 4 REUs because it is divided into four units. He stated that it is actually one building, but there are four rental units and four separate doctor's offices occupy the space. *Id.* at 158. Mr. Bowen stated that he asked Respondent if the REU assessment could be reduced to more appropriately reflect the minimal water usage and was told that it could not be done "because the REUs were set by the district . . . ." *Id.* at 159. It is also not clear whether the subject will have four separate hookups for the units or if it will be one hookup tied together.

Mr. Bowen also testified that he felt that Respondent's appraisal accurately estimates the decline in value his property would have if the system was implemented. *Id*. He also stated that he did not submit his own appraisal, but that Respondent's appraisal "did a good job" and accurately represented the decline in value. *Id.* at 164.

Mr. Bowen testified that the subject site is unique as it sits on marrow which means that building anything, or installing the sewer lines, requires additional preparation and to be placed below the frost line. See *Id*. at 160-61. The installation of the sewer system is much more costly maybe $15,000 to $20,000 more than the installation of an alternate system which would defer the drain field maintenance issue. Transcript at 162.

Mr. Bowen testified that the sewer system will not increase the rental rates on the subject property and, therefore, will not increase the value of the property to him. *Id*. at 163. Currently, the property has one vacancy, two five-year leases, and the rest are month-to-month. Mr. Bowen testified that he does not believe that he could find another tenant to rent the subject units for

more than their current rate, especially given his vacancy and struggles with the planning commission. *Id*. at 164.

Robert H. Morris

Robert H. Morris, Petitioner's rebuttal witness, testified that he is retired now from his position of Manager of the Harbor Springs Area Sewage and Disposal Authority. He testified that he is also a resident of the subject township and is familiar with the special assessment. When he worked for Harbor Springs Area Sewage and Disposal Authority, he was "responsible for budgets for six municipalities that made up the authority." Transcript at 305. Mr. Morris testified that the Harbor Springs Area was approximately 10 to 14 miles from the subject jurisdiction. *Id*. The Tuscarora Township special assessment district is only about 5 percent of the size of the Harbor Springs Area Authority. *Id.* at 306.

Mr. Morris testified that there were large differences in cost between the subject special assessment district and what the Harbor Springs Area Authority assessed. More specifically, he testified that the cost per REU in the Harbor Springs Area ranged from $88.21 to $167 per year O&M costs ranged from $13.92 to $24.92 per year while the subject SAD costs are much higher. *Id.* at 307, 309. Mr. Morris stated that the difference can be attributed to the number of REUs assessed in the Harbor Springs Area, 3,374, versus the subject SAD with only "300–something." *Id*. at 309. He said that he believes, based upon the way he did budgeting, the projected costs in Gourdie Fraser's budget were too low. He also stated that the budget was incomplete and is labeled as such as it does not include repair and replacement. *Id.* at 310. He stated that he discussed his budgetary concerns with officials from the United States Department of Agriculture (USDA) and the Michigan Department of Environmental Quality (MDEQ) and they

have similar concerns. See *id.* at 312-14. Mr. Morris further testified that he developed a budget and projects that the actual cost will be about $14,863 per REU and O&M costs of $1,800 per year over the 40-year lifespan. *Id.* at 314-15. This results in significantly higher costs of $72,800 over maintaining the functioning septic system at $9,000 for the same 40-year timeframe. *Id.* at 317.

RESPONDENT'S CONTENTIONS

Respondent contends that Petitioner has not met its burden of proof in this case. More specifically, the burden in a special assessment case "is a heavy one as there is a legal presumption that the special assessments levied against their property are valid." Respondent's Brief at 13 [citing *Ficus v West Bloomfield Twp,* 19 MTTR 652 (Docket No. 342251, August 2, 2011).] Respondent contends that, given the high burden, Petitioner has failed to establish that the special assessment is not reasonable or is disproportional. Petitioner did not present an appraisal to support its contentions and Mr. Bowen's opinion regarding value is insufficient. Respondent contends that its appraisal does show the value of the property with and without the improvement and that the special assessment is supported.

Respondent also contends that there was no need for an additional hearing after the bids were returned indicating an increase in cost exceeding 10 percent. This is due to the fact that the assessments on the properties were not increased. Respondent secured additional funding and the increase in cost was not passed on to Petitioner. Respondent contends that "Petitioner was informed of this assessment, the Petitioner was provided a hearing at the Township on April 11, 2012 to protest the assessment and then file an appeal to the Tax Tribunal" and as such, Petitioner was provided sufficient notice and opportunity with respect to the special assessment and an additional hearing on the increased cost would have provided no additional benefit. See

Respondent's Brief at 19. Respondent also contends that the assessment was uniform. Petitioner erroneously relies upon a unique property, the only supermarket, to compare the assignment of REUs.

Finally, Respondent contends that Petitioner failed to present any evidence or testimony to show that the district boundaries were the result of fraud or mistake. Respondent cites *Crampton v City of Royal Oak*, 362 Mich 503; 108 NW2d 16 (1961) to contend that Petitioner was required to show "fraud or mistake or that the action of the municipality was arbitrary or capricious. . . . This was a citizen's driven petition and 67% of the land mass in the special assessment district signed the petition for the sewers in this area." Respondent's Reply Brief at 12.

RESPONDENT'S ADMITTED EXHIBITS

R-1 Appraisal of Kenneth Arndt

R-2 Booklet: The Committee to Bring Wastewater Treatment to Indian River

R-3 Special Assessment Resolution No. 4

R-4 List of Parcel Number, Owner, and Address for Special Assessments

R-5 Special Assessment Roll for Tuscarora Township for Year 2013 SAD

R-6 List of REUs assigned to parcels

R-7 Stipulated Order of Dismissal 53rd Circuit Court Case No. 12-8316-CZ

R-8 Final Opinion and Judgment in MTT Docket No. 434794

R-9 List of REU determinations in other communities

R-10 List of REU determinations for Tuscarora Township

R-11 February 12, 2014 letter from Scott Smith to James J. Turner

R-12 February 21, 2014 letter from William Creal to James J. Turner

RESPONDENT'S WITNESSES

Michael E. Ridley

Michael E. Ridley, Respondent's supervisor and assessor, testified that his involvement with the special assessment at issue began when he joined the ad hoc committee to bring wastewater treatment to Indian River after being elected township supervisor. Transcript at 203. This committee prepared a booklet to explain the process and provided this booklet to the members of the special assessment district before and during the petition drive. See R-2. Mr. Ridley testified that in order to obtain approval for the district, 51 percent approval was required to create the district and, in fact, the committee received 67 percent. Transcript at 204.

Mr. Ridley testified that he did not believe MCL 41.724 required a subsequent hearing because the statute says "to be assessed" and the loan amount has not changed and will not affect the amount to be assessed to the property owners. *Id*. at 214-16. He also testified the state park is not included in the assessment because state-owned property cannot be assessed and the project is not contingent upon the state park participation. *Id*. at 216. Finally, he testified that no fractions were utilized in assigning the REUs, "if it was greater than one, it was rounded up to two" and that this was done uniformly to each of the properties in the district. *Id*. at 217. Mr. Ridley provided examples of many properties that were assessed and compared them to the subject property indicating that the subject property was treated in a uniform manner with the other properties in the district. See *id*. at 216-24. He further stated that he believes that the sewer system "cleans up the environment, it improves land use, and it increases property value." *Id*. at 230.

Ken Arndt

Ken Arndt, Respondent's expert witness for real estate appraising, testified that he is a licensed appraiser in the state of Michigan and has been appraising real estate since 1986. Transcript at 243-47. He stated that he inspected the exterior and did not walk through the entire interior of the subject property and discussed the property features with the owner. *Id*. at 260-61. The income approach was developed for this property because Mr. Arndt testified that there was sufficient data regarding rents and expenses. See *Id.* at 261. Mr. Arndt testified that the subject was worth $226,000 without the assessment and with the assessment he originally concluded to a value of $216,000, and recalculated this to be $214,000 after correcting an error. Transcript at 261-67. Thus, there was a decrease in value of either $10,000 to $12,000 from the value of the subject without the sewer improvement. *Id*. at 268. Mr. Arndt testified that his value is considering that the subject property has 4 REUs assigned to it. *Id*. at 262. Mr. Arndt testified, however, that 2 REUs would be more appropriate for the subject property and that the cost would be able to be passed onto the tenants. *Id*. at 263. The revised value with only 2 REUs would be $223,000, which is still a decrease in value. *Id*. at 269. Mr. Arndt also prepared a sales comparison approach to value, but relied on his income approach.

Mr. Arendt testified that he used exterior measurements to estimate the square footage at 4,890 square feet and with a survey sketch provided by the owner, he was able to estimate the leasable area at 4,400 square feet. *Id*. at 264. He testified that he valued the property between $8.00 and $9.50 per square foot given "how nicely they were finished" and used a 12 percent vacancy rate. *Id*. He used operating expenses with and without the cost of the assessment to determine the values of the property and selected a 9.75 percent capitalization rate. *Id*. at 264-65.

The subject was valued as assessed with 4 REUs and a second approach with 2 REUs was calculated. See Transcript at 265-70.

FINDINGS OF FACT

1. The subject property is located at 3999 South Straits Hwy. in the county of Cheboygan.
2. The special assessment at issue in this appeal was imposed under MCL 41.721 et seq., PA 188 of 1954.
3. The special assessment at issue was initiated by petition of record owners of land in the proposed special assessment district. The proposed district was approved by the owners of 67 percent of the landmass, in excess of the 51 percent required under MCL 41.723.
4. Respondent provided notice of the hearing held for the purpose of confirming the special assessment roll by publishing notice twice in the Straitsland Resorter, Indian River, Michigan, with the first publication being at least 10 days prior to the hearing, and by mailing notice of the hearing by first class mail to all record owners or persons of interest in property in the special assessment district, at least 10 days prior to the hearing.
5. Petitioner had notice of the hearing held on April 11, 2012, and properly protested at that hearing.
6. The improvements proposed by the special assessment consist of the acquisition, construction and installation of sanitary sewer system improvements in the special assessment district and related improvements, structures, equipment and appurtenances, necessary to collect wastewater from properties in the proposed special assessment district and convey the wastewater to a treatment facility at the township’s industrial park.

7. The subject property was assigned 4 REUs at $8,000 per REU. Therefore, the total amount of the special assessment assessed to the subject property is $32,000.
8. The special assessment roll was confirmed at the hearing on April 11, 2012.
9. The budget set for the special assessment was approximately $4.2 million at the time of confirmation.
10. The final budget after the bidding process was increased in excess of 10 percent.
11. An additional hearing was not held under MCL 41.724(4) regarding the increased overall cost of the special assessment.
12. The original assessment rate of $8,000 per REU remained unchanged even considering the increase in the overall assessment cost.
13. Respondent filed an appraisal in support of the decrease in market value of the subject property given the special assessment improvement.

CONCLUSIONS OF LAW

The Tribunal finds that the first issue is whether an additional hearing was required under MCL 42.724. The special assessment at issue was confirmed on April 11, 2012. Petitioner properly protested the assessment at that hearing and timely filed its petition with the Michigan Tax Tribunal. Petitioner contends that (1) Respondent was required to hold an additional hearing under MCL 41.724(4) given the increase in the overall cost of the assessment; (2) the subject property does not receive a benefit as the properties had sufficient septic systems in place or, alternatively, that if a benefit is conferred that it is not proportional to the cost assessed; (3) the district boundaries are not appropriately set and erroneously exclude properties which should be in the district, including the State Park, resulting in higher assessments upon the subject property; (4) the REU assignment by Respondent is not uniform and/or excessive; and (5) the cost of the

O&M expenses are excessive. The Tribunal has considered the evidence and testimony on record in the above-captioned case and finds that the special assessment, with respect to the subject property, is invalid as specifically discussed below.

Regarding Petitioner's contention that an additional hearing was required, the Tribunal finds that MCL 41.724 (4) states:

> If at any time during the term of the special assessment district **an actual incremental cost increase exceeds the estimate therefore by 10% or more**, notice shall be given as provided in section 4a and a hearing afforded to the record owners of property to be assessed. [Emphasis added.]

Petitioner contends that the "cost" is the cost of the project in total while Respondent contends that the "cost" is the amount assessed to Petitioner. The Tribunal finds that even if an additional hearing was required at the local level, the cure is to provide Petitioner with notice and an opportunity to be heard on the issue.

In *Highland-Howell Dev Co, LLC v Marion Twp,* 478 Mich 932; 733 NW2d 761(2007), the taxing jurisdiction modified the improvement plans and in doing so, eliminated a trunk line which traversed the subject property in that case. This modification was formally adopted years after the confirmation of the special assessment. The Michigan Supreme Court held that the Tribunal had jurisdiction to hear the objection to the modification, even though the petition was not filed within 30 days of the confirmation of the special assessment roll "Because when the special assessment roll was confirmed, petition had no basis to object because the plan included the trunk line through petitioner's property." *Id*. at 933. The case was remanded to the Tribunal for further proceedings on the issue of proportionality and after the entry of the Tribunal's opinion was again appealed to the Michigan Court of Appeals. The Court of Appeals held that:

> The effect of respondent's actions was to prevent petitioner from objecting to the revised plans as well as the special assessment that was not based on the revised

> plans. That is, petitioner was not permitted to raise an objection that the special assessment was disproportionate after the change in the project plans, as the Supreme Court's remand order indicated. Thus, under the circumstances of this case, petitioner was required to challenge, for the first time, the validity of a special assessment that was formulated from the original plans—rather than from the revised plans—in the MTT. [*Highland-Howell Dev Co, LLC v Marion Twp*, unpublished opinion per curiam of the Court of Appeals issued March 1, 2011 (Docket No. 294617).]

While the modification in this case occurred closer in time to the confirmation of the special assessment roll, the principal from *Highland-Howell* applies here. The Tribunal finds that even if Respondent's failure to conduct an additional hearing after discovering the increased overall costs deprived Petitioner of its due process rights, the cure is to provide Petitioner notice and an opportunity to be heard on the issue. Like *Highland-Howell*, this opportunity to be heard can be afforded to Petitioner—for the first time—at the Tribunal. As such, the failure to conduct a hearing on the issue of the increased cost estimates does not invalidate the special assessment. Rather, the Tribunal finds that Petitioner has been provided an opportunity to object to the increased cost of the assessment during this proceeding. Therefore, the deprivation of due process at the local level, if any, has been cured as the Tribunal has considered Petitioner's objections to the overall cost increase and evaluated the proportionality of the assessment to the benefit conferred, including the increased overall cost in the rendering of this Final Opinion and Judgment.

Here, the Tribunal finds that the increase in the cost of the assessment did not result in higher assessment on the subject property. This is, in part, due to the additional outside funding secured by Respondent to cover any increased cost. As such, the increased overall cost does not affect the proportionality of the assessment to the benefit conferred on the subject property, which is evaluated fully below.

A special assessment "is a specific levy designed to recover the costs of improvements that confer local and peculiar benefits upon property within a defined area." *Kadzban v City of Grandville*, 442 Mich 495, 500; 502 NW2d 299 (1993). A special assessment is valid if it is found that the improvement confers a benefit on the assessed property and that the amount assessed to the subject property is reasonably proportionate to the benefit derived from the improvement. *Id*.; See also *Dixon Rd Group v City of Novi*, 426 Mich 390, 401; 395 NW2d 211 (1986). The Supreme Court in *Dixon Rd Group* held that to determine the benefit conferred on the subject property, the Tribunal must consider the value of the property before the improvement and after the improvement. *Id*. at 398-401. The relevant comparison is the market value of the assessed property with the improvement and the market value of the assessed property without the improvement. *Ahearn v Bloomfield Charter Twp*, 235 Mich App 486, 496; 597 NW2d 858 (1999).

Here, Petitioner failed to present a before and after appraisal to demonstrate the market value with and without the improvement. Nevertheless, Respondent has submitted its before and after appraisal of the subject property. Respondent's appraiser utilized both the income and sales comparison approaches to value, but relied on the income approach to conclude that the market value of the subject property will decrease as a result of the assessment. Transcript at 261. More specifically, the appraiser used the direct capitalization method in his conclusions of value under the income approach. Mr. Arndt concluded to a rental rate of $8.00 to $9.50 per square foot, depending on the unit, after reviewing the subject's rental rates and market comparables. See R-1 at 35-36. Based upon Realty Rates, the appraiser found a projected vacancy rate of 12 percent and an overall capitalization rate of 9.75 percent also considering the local, rural market. *Id*. at 36-37. Finally, the operating expenses were projected by examining national sources of data as

the actual operating statements were not available. *Id*. at 38. The appraiser concluded to a value of $226,000 without the assessment. Mr. Arndt added in the expenses associated with the special assessment to derive a final value conclusion of $216,000 with the assessment. See *id*. at 44-46. Therefore, Mr. Arndt determined that there will be a reduction in value with the assessment. *Id*. at 46-48. Mr. Arndt testified, after correcting an error, that the value of the subject property with the improvement is $214,000. *Id.* This results, again, in a decrease in value of $12,000 from the value of the property as appraised by Mr. Arndt prior to the improvement. Mr. Arndt also offered testimony regarding the value of the subject if it was, as he contends, more appropriately assessed with 2 REUs rather than the 4 REUs actually assessed. Transcript at 263. However, the Tribunal finds that this revised calculation of $223,000 also resulted in a reduction of value as Mr. Arndt's opinion of value before the assessment was unchanged by this modification. See Transcript at 269. Thus, the Tribunal finds that the valuation evidence on record indicates that the special assessment does not benefit the subject property. Rather, it imposes a costly burden upon the property as it decreases the value of the subject by $3,000 to $12,000, depending on the REUs assigned to the parcel. Thus, the Tribunal concludes that, with regard to the subject property, the special assessment is invalid as it fails confers any benefit upon the property. See *Kadzban* at 500.

Respondent contends that Petitioner did not meet its burden of proof because it failed to present an appraisal and it is inappropriate to rely upon Respondent's appraisal to meet its burden. The Tribunal disagrees. The evidence on record is more than sufficient to demonstrate that the special assessment with regard to the subject property reduces its market value. It is irrelevant that the appraisal submitted by Petitioner was, in fact, prepared by Respondent's expert witness. The *Kadzban* court held 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. Here, the credible evidence submitted was Respondent's own appraisal which indicates that the market value decreases after the special assessment is levied regardless of whether the levy is for 4 REUs or 2 REUs. Therefore, the Tribunal finds that Petitioner was able to present sufficient and reliable evidence, Respondent's appraisal, to demonstrate that the cost of the assessment is substantially disproportional to the benefit, or more appropriately the detriment, to the subject property. See *id*. at 502, [quoting *Dixon* at 403.]

Given the above finding that the special assessment is invalid with respect to the subject property, Petitioner's additional contentions regarding the formation of the district, the assignment of the REUs[1] and the contention that O&M charges need not be addressed in this Final Opinion and Judgment. As such, the Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the special assessment is invalid with respect to the subject property. The special assessment shall be revised as stated in the Introduction section above.

JUDGMENT

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

[1] As mentioned above, even if the REU assignment was lowered to a more appropriate amount of 2 REUs, the value of the subject still decreases as a result of the improvement. Thus, the reduction of REUs does not alter the Tribunal's finding that the special assessment does not benefit the subject property.

been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 28 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this FOJ. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09% for calendar year 2012, (iv) after June 30, 2012, through December 31, 2013, at the rate of 4.25%, and (v) after December 31, 2013, and through June 30, 2014, at the rate of 4.25%.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

By: Preeti P. Gadola

Entered: 6/2/14