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

Farmington Medical Arts, LLC,
Petitioner,

v

MTT Docket No. 14-001436

City of Farmington Hills,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Farmington Medical Arts, LLC, appealed the special assessment levied by Respondent, City of Farmington Hills, against Parcel No. 22-23-26-102-048. Myron W. Serbay, Jr. represented Petitioner, and Daniel Klemptner, Attorney, represented Respondent.

A hearing on this matter commenced on November 13, 2015. Neither party filed a witness or exhibit list, as required.[1] The September 15, 2015 Show Cause Hearing, determined that neither party showed good cause to justify their failure to file or exchange Prehearing Statements or valuation disclosures. The September 15, 2015 Prehearing Conference and Scheduling Order precluded both parties from offering any valuation, testimony or documentation for admission. The Tribunal notes that neither party filed a witness list or valuation disclosure.

The Tribunal finds that Petitioner fails to prove that the subject property does not benefit from the special assessment and that the amount assessed is 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: 22-23-26-102-048

Type of Special Assessment	Special Assessment to be Levied
Westhill Street Road Rehabilitation	$31,815.26

[1] See September 16, 2015 Prehearing General Call Order. See also TTR 237(1), 237(2), and 255(2).

PETITIONERS' CONTENTIONS

Petitioner contends that when the assessment was originally approved, the procedure was primarily for residential use. The subject property is commercial.

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 complains that there is not an economic benefit. It is a negative benefit because the assessment is $31,000, but on a cost basis, decreases the value of the property by $500,000 for the year.

Petitioner also contends that the allocation is unfair; there is no economic benefit. Rents have been decreased, tenants have been lost, which decreases the value of the building. His realtor told him that the building value is half of what it was five years ago due to the market. The road has no impact on the building other than costing $31,000.

Petitioner indicated that his building's primary entrance is off Orchard Lake Road. The special assessment is for Westhill, which is a secondary road. Westhill Road is an existing road that is primarily for residential use. The method of assessing the residents is one unit per house, with the exception of one property. Petitioner stated that the subject property is assessed 4.6% more than the residential property. It is an unfair allocation.

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 their contentions and Petitioner's verbal opinion of value is insufficient.

Respondent also contends that the assessment was uniform. Petitioner has not met the burden of proof to demonstrate that the special assessment was not uniform. Respondent's formula for commercial properties is to divide the actual front feet by the minimal front feet required for the area. This was applied to the two commercial properties in the special assessment district.

Finally, Respondent contends that Petitioner failed to present any evidence or testimony to show that the special assessment is not reasonable or is disproportional.

FINDINGS OF FACT

1. The subject property is located at 23800 Orchard Lake, City of Farmington Hills, Oakland County.
2. The subject property is commercial and utilized for medical offices.
3. The subject property has frontage and entrances on both Orchard Lake and Westhill Street.
4. The special assessment for road improvement at issue in this appeal was imposed under MCL 41.741 et seq., and MCL 117.4d(1)(a).
5. The special assessment at issue was initiated by petition of total voting units, after an informational meeting for affected property owners in July 2013.
6. Respondent provided notice of the hearing held for the purpose of confirming the special assessment roll by publishing notice twice in the Farmington Observer, Farmington Hills, 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.
7. Petitioner had notice of the hearing held on October 28, 2013, and properly protested (by letter) at that hearing.
8. The improvements proposed by the special assessment consist of a road rehabilitation and repaving project in the "Westhill Street Road Rehabilitation District."
9. The subject property was assigned 4.59 units at $6,931.43 per unit. Therefore, the total amount of the special assessment assessed to the subject property is $31,815.26.
10. The special assessment roll was confirmed at the hearing on October 28, 2013.
11. The budget set for the special assessment was approximately $181.534.14 at the time of confirmation.
12. Respondent failed to file any evidence for the Entire Tribunal hearing.
13. On September 3, 2014, Respondent's Summary of Argument and Evidence was filed.
14. Petitioner failed to provide any evidence of value, such as an appraisal, other than Petitioner's lay testimony.

CONCLUSIONS OF LAW

The Tribunal finds that the Petitioner properly appeared at the hearing confirming the roll. Petitioner argues the REU assignment by Respondent is not uniform and/or excessive. The Tribunal has considered the evidence and testimony on record in the above-captioned case and finds that Petitioner has failed to meet its burden of proof to demonstrate that the special assessment does not benefit the subject property or that the benefit is not proportional to the cost, as fully discussed below. As such, the Tribunal confirms the special assessment amount of $6,931.43 per unit, for a total assessment of $31,815.26 on the subject property.

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). In addition, the Court in *Kadzban* held that:

> . . . *Dixon Rd* did not modify the well-settled principle that municipal decisions regarding special assessments are presumed to be valid. . . . We said in *Dixon Rd.*, and we reiterate here, that the decisions of municipal officers regarding special assessments "generally should be upheld." . . . Moreover, our decision did not alter the deference that courts afford municipal decisions. When reviewing the validity of special assessments, it is not the task of courts to determine whether there is "a rigid dollar-for-dollar balance between the amount of the special assessment and the amount of the benefit...." . . . Rather, a special assessment will be declared invalid only when the party challenging the assessment demonstrates that "there is a substantial or unreasonable disproportionality between the amount assessed and the value which accrues to the land as a result of the improvements." [*Id.* at 502.]

Here, Petitioner has not presented any valuation evidence, such as a valuation disclosure or appraisal, to demonstrate the market value with and without the improvement, to support its

position that the special assessment is not proportional. Petitioner only offered lay witness testimony, which it contends is sufficient to support its contentions. Mr. Serbay testified regarding his opinion that the subject does not have any economic benefit from this special assessment. In *Dalton Enterprises v Dalton Twp*, unpublished opinion per curiam of the Court of Appeals issued July 22, 2010 (Docket No. 291789), the Court held that the Tribunal properly found that the petitioner's lay witness testimony was not "sufficient credible evidence to overcome the presumption of validity" and there was no basis to strike down the special assessment. *Id.* [citing *Kadzban*, at 505.] Similar to *Dalton*, the only evidence Petitioner provided was his opinion. The Tribunal is unable to conclude that Mr. Serbay's opinion is sufficient to meet Petitioner's burden of proof.

Notwithstanding the above, Respondent argues that a traffic counter, placed in front of the driveway leading from Westhill Street into Petitioner's parking lot, averaged 370 vehicles a day that utilized Westhill Street to access Petitioner's parking lot. The two commercial properties, that were in the district with the same footage, were treated the same.

Here, the Tribunal finds that Petitioner fails to submit any evidence that there is no benefit, or increase in market value, to the subject property as required by the holding in *Kadzban.*

As indicated above, the *Kadzban* Court held that the benefit need not be a dollar-for-dollar balance and that "a special assessment will be declared invalid only when the party challenging the assessment demonstrates that 'there is a substantial or unreasonable disproportionality between the amount assessed and the value which accrues to the land as a result of the improvements.'" *Id.* at 502, quoting *Dixon* at 403. The Tribunal finds that Petitioner presented no evidence and cannot prove that the special assessment is invalid.

Moreover, the *Kadzban* Court also 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, Petitioner failed to present any competent evidence in support of its contention that the subject property's special assessment renders the total cost substantially disproportionate to the benefit conferred, and relies only upon Mr. Serbay's lay testimony discussed above.

Petitioner also contends that the REU assignment was not uniform or is excessive to the subject property. Respondent's Summary of Argument indicates that the residential property was assessed 1 unit. The two commercial properties in the district utilized the minimum frontage allowed (80) divided by the actual frontage. In this instance, the subject's 367 feet divided by 80 equals 4.50 units, multiplied by $6,931.43 per unit was uniformly applied. As such, the Tribunal concludes that the assignment of 4.59 units to the subject property was appropriate, consistent and not excessive.

Given the above, the Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner has not met their burden of proof, therefore, the special assessment is valid with respect to the subject property. The special assessment shall be affirmed 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 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 June 30, 2016, at the rate of 4.25%.

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

By

Entered: MAR 15 2016