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

Earl E Erland,
Petitioner,

v

MTT Docket No. 15-006463

City of Greenville,
Respondent.

Tribunal Judge Presiding
Steven H Lasher

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

The Tribunal, having given due consideration to the file in the above-captioned case, finds:

The Tribunal issued a Proposed Order Granting Respondent's Motion for Summary Disposition ("Proposed Order") on June 16, 2017. The Proposed Order states that "[t]he parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing, by mail or by electronic filing, if available,** if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions)."

Neither party has filed exceptions to the Proposed Order.

The Administrative Law Judge ("ALJ") considered the testimony and evidence submitted and made specific findings of fact and conclusions of law. The ALJ's determination is supported on the record and by the applicable statutory and case law.

Given the above, the Tribunal adopts the Proposed Order as the Tribunal's final decision in this case.[1] The Tribunal also incorporates by reference the Conclusions of Law contained in the Proposed Order in this Final Opinion and Judgment. Therefore,

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

IT IS FURTHER ORDERED that the special assessment is AFFIRMED.

IT IS FURTHER ORDERED that Respondent shall cause its records to be corrected to reflect the special assessment as shown in this Final Opinion and Judgment within 20 days of the entry of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected special assessment shall collect the assessment and any applicable interest or issue a refund

[1] See MCL 205.726.

within 28 days of entry of this Final Opinion and Judgment.

This Final Opinion and Judgment resolves the last pending claim and closes this case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[2] Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.[3] A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.[4] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[5]

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[6] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[7] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[8]

By Steven H. Lasher

Entered: July 11, 2017
ejg

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[2] See TTR 261 and 257.
[3] See TTR 217 and 267.
[4] See TTR 261 and 225.
[5] See TTR 261 and 257.
[6] See MCL 205.753 and MCR 7.204.
[7] See TTR 213.
[8] See TTR 217 and 267.

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

Earl E Erland,
Petitioner,

v

MTT Docket No. 15-006463

City of Greenville,
Respondent.

Administrative Law Judge Presiding
Peter M. Kopke

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

PROPOSED OPINION AND JUDGMENT

INTRODUCTION

Petitioner filed this appeal on September 22, 2015, disputing the special assessment levied by Respondent in connection with the Forest View Street Paving Special Assessment District, which was confirmed at a hearing held on August 18, 2015.

The parties filed a joint stipulation of facts on March 29, 2017.

On May 12, 2017, Respondent filed a motion requesting that the Tribunal enter summary disposition in its favor. In the motion, which was filed pursuant to MCR 2.116(C)(4) and (10), Respondent contends that it is entitled to judgment as a matter of law because the Tribunal lacks subject-matter jurisdiction over Petitioner's contract claims and there is no genuine issue of material fact with respect to the validity of the Forest View Street Paving Special Assessment District or the corresponding assessment.

Petitioner has not filed a response to Respondent's Motion for Summary Disposition. Petitioner did, however, file a brief addressing the issues raised by this case on May 12, 2017, as required by the Prehearing Conference Summary and Scheduling Order entered in this matter on February 28, 2017, and subsequent extension of that order.[1]

Respondent filed a reply brief on June 9, 2017.

RESPONDENT'S CONTENTIONS

The basis of Petitioner's appeal is not that the special assessment is disproportionate to the benefit conferred or that the improvement does not confer a benefit to the subject property; it relates to the interpretation and effect of a contract term in a 2004 agreement between a now-defunct developer and the City regarding the developer's obligation to construct and pay for

[1] The Tribunal entered an order extending the dates for the filing of briefs and responses to briefs on April 28, 2017.

street paving in the assessment district. Petitioner's sole argument is that the special assessment is invalid because it was unnecessary based on this unfulfilled promise to pave. The appeal fails for a number of reasons, including that a decision by the City to specially assess instead of pursuing a defunct developer is legislative in nature and should not be second-guessed by the Tribunal. Further, the agreement on which Petitioner relies does not preclude the City from completing paving on its own; it likewise does not impose an obligation to pave on successor developers or other parties, and the Michigan Condominium Act ("MCA") expressly precludes imposition of contractual requirements on successor developers. Moreover, Petitioner is not a third-party beneficiary to the agreement, and he therefore has no standing to enforce it. Even if Petitioner did have standing, he has not joined the appropriate parties for enforcement of the agreement. The Tribunal need not reach these issues to dismiss the appeal, however, as Petitioner's claim is not a tax matter, but a contract enforcement matter that falls outside of the subject-matter jurisdiction of the Tribunal.

PETITIONER'S CONTENTIONS

Respondent's Code of Ordinances posits two standards that must be met for a valid special assessment to be implemented: the project subject to the special assessment must be both advisable and necessary. The parties have stipulated that the Planned Unit Development Agreement requires that the original developer, or any successor developer, is obligated to pave the roads contained within the development. The parties have also stipulated that the agreement can only be modified as provided by Chapter 34 of Respondent's zoning ordinance, and that no such amendment has been granted. As such, and inasmuch as the MCA also requires a developer or successor developer to complete the roads, the subject special assessment is neither advisable nor necessary. The effect of the assessment is to make the condominium unit owners responsible for the cost of construction of the road, and actions by a city that purport to change obligations enshrined in Michigan law and its own zoning ordinance cannot be deemed advisable.[2] Further, the assessment is unnecessary given the obligation imposed by the MCA and the agreement. Instead of shifting the burden of road costs to the residents, Respondent should have enforced its zoning ordinance and the terms of the agreement and required the proper party to absorb the cost. Alternatively, it could have invited the successor developer, who is a member of the city council, to propose an amendment to the agreement. Petitioner had the right to a road paid for and constructed by the successor developer, and that benefit has been turned into a burden and a detriment. Petitioner acknowledges that prior case law contains a rigid definition of special benefit and relates that definition to the improvement in market value as a result of the project subject to the special assessment, but has been unable to find any case law with a fact situation similar or identical to that contained in this litigation where the special assessment process has been improperly used to shift the cost of a common element infrastructure item in a condominium development from a developer to individual unit owners. Such use of the special assessment process should be found in law to never confer a benefit. The purpose of a special assessment is to construct improvements to be shared by benefited property, not to shift infrastructure costs in a manner that benefits the developer.

[2] Pursuant to Greenville City Code, section 46-164(b)(2)m an approved PUD is considered to be a part of the zoning ordinance.

STIPULATED FACTS

1. Petitioner, Earl Erland, is the land contract vendee of parcel no. 59-052-694-122-00 (the "Subject Property"), which constitutes real property located in the City of Greenville ("Respondent").

2. Respondent entered into a Planned Unit Development (PUD) Agreement for Greenville West Drive PUD ("Forest View"), City of Greenville, dated May 20, 2004 (the "PUD Agreement"), with Alden-Nash Properties, LLC ("Alden-Nash") covering a 53-acre parcel of property (the "PUD Property") in the City of Greenville.

3. In 2005, Alden-Nash filed Master Deeds for two development projects within the PUD- the Forest View Duplexes and the Forest View Townhomes.

4. Respondent has designated a special assessment district known as the Forest View Street Paving Special Assessment District (the "Assessment District"), consisting of certain parcels of property in the PUD Property including parcel numbers as follow:

59-052-694-199-00	59-052-694-201-00
59-052-694-121-00	59-052-694-202-00
59-052-694-122-00	59-052-694-203-00
59-052-694-123-00	59-052-694-204-00
59-052-694-124-00	59-052-694-205-00
59-052-694-117-00	59-052-694-206-00
59-052-694-118-00	59-052-694-207-00
59-052-694-119-00	59-052-694-208-00
59-052-694-120-00	59-052-694-601-01
59-052-694-299-01	

5. Each of the above 19 parcels is a child parcel split from the PUD Property (i.e., split from original parcel No. 59-052-694-601-01.

6. Sixteen of the above-listed parcels have been improved with either townhomes or duplexes, and the other 3 remain vacant or undeveloped. The addresses and Unit information for each parcel is shown below:

Parcel No. 59-052-694-	Address	Unit
117-00	1420 Viewpoint	Townhomes 25
118-00	1422 Viewpoint	Townhomes 26
119-00	1424 Viewpoint	Townhomes 27
120-00	1426 Viewpoint	Townhomes 28
121-00	1411 Viewpoint	Townhomes 21
122-00	1412 Viewpoint	Townhomes 22
123-00	1414 Viewpoint	Townhomes 23
124-00	1416 Viewpoint	Townhomes 24

199-00	Vacant	
201-00	1401 Trail View	Duplex 1
202-00	1403 Trail View	Duplex 2
203-00	1421 Trail View	Duplex 3
204-00	1423 Trail View	Duplex 4
205-00	1431 Trail View	Duplex 5
206-00	1433 Trail View	Duplex 6
207-00	1441 Trail View	Duplex 7
208-00	1443 Trail View	Duplex 8
299-01	Undeveloped*	
601-01	Vacant	

*On or about 2/9/15, this parcel, then owned by Lehman Forest View Properties LLC, was split into parcels 209-00 to 222-00; Parcels 209-00 to 214-00 (Duplex Units 9 through 14) contain developments/residential improvements and have been sold to several different buyers since the parcel split.

7. On or about October 6, 2015, Lehman Forest View Properties, LLC, filed a First Amendment of Master Deed to Forest View Duplexes, amending the 2005 Master Deed referenced above and stating that it had acquired development rights in the Forest View Duplexes as a successor developer.

8. The PUD Agreement provides at § 6(a) that Alden-Nash was "to construct, at its sole cost and expense, all streets . . . and other public improvements, required to serve the residential dwelling and commercial office building within the confines of the site."

9. The PUD Agreement further provides at § 6(b)(2) that "the streets will be constructed and paved in accordance with the current standards set by the City."

10. Section 12 of the PUD agreement further provides that "[t]he approved Final Development Plan (including all approved maps and accompanying written materials, and any conditions of approval, as described in this Agreement) shall be binding upon Alden-Nash and upon their heirs, successors and assigns with respect to all future development of the PUD premises (absent revision or amendment . . . in accordance with Chapter 15 of the Zoning Ordinance."

11. There has been no amendment or revision to the PUD Agreement between Alden-Nash and the City of Greenville addressed to sections 6 or 12 as described above.

12. Between 2006 and 2012, Alden-Nash either sold its interests in the PUD Property or had its interests foreclosed and sold by the Montcalm County Treasurer for Alden-Nash's failure to pay ad valorem property taxes. Alden-Nash has no remaining interest in the PUD property.

13. The chart below lists the liber/page of the recorded certificates of forfeiture filed against Alden-Nash and the subsequent recording of notices of the entry of foreclosure judgments for 9 of the parcels in the Assessment District:

Parcel 59-062-694-	Date and Liber/Page of Certificate of Forfeiture	Date and Liber/Page of Recorded Judgment of Foreclosure
117-00	3/1/11, 1505-0623	4/2/12, 1540-0223
118-00	3/1/11, 1505-0624	4/2/12, 1540-0224
119-00	3/1/11, 1505-0625	4/2/12, 1540-0225
120-00	3/1/11, 1505-0626	4/2/12, 1540-0226
199-00	3/1/11, 1505-0629	4/2/12, 1540-0227
201-00	3/1/11, 1505-0630	4/2/12, 1540-0228
208-00	3/1/11, 1505-0631	4/2/12, 1540-0229
299-01	3/1/11, 1505-0632	4/2/12, 1540-0230
609-01	3/1/11, 1505-0633	4/2/12, 1540-0231

14. Alden-Nash is listed by the Michigan Department of Licensing and Regulatory Affairs as being active but not in good standing as of February 17, 2009.

15. Alden-Nash failed to provide paving at the PUD property as contemplated by the PUD Agreement.

16. The improvements paid for through the Special Assessment are paving or the completion of paving of Forest View Drive, Tail View Drive, and the portion of View Point Drive west of Forest View Drive (the "Streets").

17. The 19 parcels in the Assessment District border the Streets where paving is to occur or has already occurred.

18. The Forest View Townhomes Association ("Townhomes Association") is a condominium association governing the residential condominium development known as the Forest View Townhomes, which includes Townhomes Units 21-28in the Assessment District.

19. The Forest View Duplexes Association ("Duplexes Association") is a condominium association governing the residential condominium development known as the Forest View Duplexes, which includes duplex Units 1-8 in the Assessment District.

20. The Forest View Homeowners Association (Homeowners Association) is an additional condominium association consisting of the members of the Townhomes Association and Duplexes Association.

21. As of early 2014, the Streets were privately owned by the Townhomes Association, Duplexes Association, and Homeowner's Association.

22. In late 2014, the Associations and most of the property owners in the PUD Property entered into a Street Dedication and Special Assessment Agreement with the City of Greenville ("dedication and Assessment Agreement").

23. In late September 2015, the Associations dedicated the Streets to the City for public street purposes.

24. Under the Dedication and Assessment Agreement and subsequent resolutions, the City took ownership of the Streets.

25. The Greenville City Council Confirmed the special assessment roll at an August 18, 2015 hearing.

26. Petitioner filed a written Notice of Protest in advance of the August 18, 2015 hearing.

STANDARD OF REVIEW

A. Motions for Summary Disposition under MCR 2.116(C)(4).

Dismissal under MCR 2.116(C)(4) is appropriate when the "court lacks jurisdiction of the subject matter." When presented with a motion pursuant to MCR 2.116(C)(4), the Tribunal must consider any and all affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties.[3] In addition, the evidence offered in support of or in opposition to a party's motion will "only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion." MCR 2.116(G)(6). A motion under MCR 2.116(C)(4) is appropriate where the plaintiff has failed to exhaust its administrative remedies.[4]

B. Motions for Summary Disposition under MCR 2.116(C)(10).

MCR 2.116(C)(10) provides for summary disposition when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law."[5] The Michigan Supreme Court, in *Quinto v Cross and Peters Co*,[6] provided the following explanation of MCR 2.116(C)(10):

> MCR 2.116 is modeled in part on Rule 56(e) of the Federal Rules of Civil Procedure . . .[T]he initial burden of production is on the moving party, and the moving party may satisfy the burden in one of two ways.
>
> First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law.

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[3] *Id.*
[4] See *Citizens for Common Sense in Gov't v Attorney Gen*, 243 Mich App 43; 620 NW2d 546 (2000).
[5] *Id.*
[6] *Quinto v Cross and Peters Co*, 451 Mich 358; 547 NW2d 314 (1996)(citations omitted).

> In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).
>
> In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Id.* at 361-363. (Citations omitted.)

In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied.[7]

CONCLUSIONS OF LAW

Having given careful consideration to Respondent's Motion for Summary Disposition under the criteria for MCR 2.116(C)(4), the Tribunal finds that granting the motion is not warranted. Subject-matter jurisdiction is defined as "[j]urisdiction over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things. — Also termed *jurisdiction of the subject matter*; *jurisdiction of the cause*; *jurisdiction over the action*; *jurisdiction ratione materiae.* Cf. *personal jurisdiction.*"[8] MCL 205.731 provides that "[t]he tribunal has exclusive and original jurisdiction" over proceedings "for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under the property tax laws of this state," as well as those "for a refund or redetermination of a tax levied under the property tax laws of this state."[9] The Tribunal also has jurisdiction over "[a]ny other proceeding provided by law."[10] Respondent correctly notes that this does not encompass contract claims.[11] The Tribunal has itself held as much on more than one occasion.[12] Petitioner is not seeking to enforce the PUD Agreement as Respondent contends, however, but is "seeking direct review of

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[7] *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).
[8] JURISDICTION, Black's Law Dictionary (10th ed. 2014).
[9] *Id.*
[10] *Id.*
[11] See *Highland-Howell Dev Co v Twp of Marion*, 469 Mich 673; 677 NW2d 810, 813 (2004).
[12] See ***Error! Main Document Only.****Double Z Development, LLC v Dalton Twp*, 26 MTTR 349 (Docket No. 15-001494) issued April 1, 2016 and *AZ Hart, LLC v Hartland Twp*, 25 MTTR 71 (Docket No. 427019) issued February 11, 2014.

the governmental unit's decision concerning a special assessment for a public improvement."[13] And as noted by the Michigan Court of Appeals, "a jurisdictional claim 'should be determined not by how the plaintiff phrases its complaint, but by the relief sought and the underlying basis of the action.'"[14] The instant appeal involves a direct challenge to the special assessment, albeit on the basis that there is no benefit because another party was contractually obligated to pay for the improvements. The involvement of a contract does not alter the nature of the case or the type of relief sought, i.e., invalidation of the special assessment.

As for Respondent's Motion for Summary Disposition under MCR 2.116(C)(10), the Tribunal agrees that the City's determination to specially assess for the improvements in lieu of pursuing other avenues for funds is unassailable and non-justiciable. The Tribunal's authority in special assessment appeals is limited to whether the special assessment district was properly formed and whether the benefit from the special assessment is proportional to the cost of the improvement.[15] "Decisions made by a local unit of government regarding what public improvements are made, and the budgeting process for these improvements, are not subject to review by the Tax Tribunal."[16] And like the taxpayer in *Shiffer v City of Wyandotte*,[17] Petitioner's complaint that Respondent improperly funded the improvements because another party was contractually obligated to do so, and that Respondent should have enforced said obligation and required the proper party to absorb the costs, is a complaint regarding a legislative decision, not a complaint related to the "basis for a tax or an amount of tax."[18] In that regard,

> The power to determine whether an improvement is to be made and that a tax will be imposed to meet the cost of the improvement is a purely legislative matter. The general rule, therefore, is well settled that the exercise of discretionary powers by the proper municipal authorities will not be reviewed by the courts so long as they are within the prescribed legal limits, relate to public improvements of the several kinds, and concern reasonable differences of opinion which may exist in good faith, without fraud, oppression or arbitrary action. Thus, under the prevailing practice, the necessity, character and extent of the improvement are determined by the proper municipal authorities, and their judgment is conclusive, unless the court is clearly satisfied that their action has been oppressive and without reasonable grounds.[19]

Given that the subject special assessment was levied as a result of a petition by the three homeowners associations, along with the majority of the homeowners, the Tribunal is not

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[13] *Wikman v City of Novi*, 413 Mich 617, 626; 322 NW2d 103, 104 (1982).
[14] *Zaher v Nickerson*, unpublished opinion per curiam of the Court of Appeals, issued June 23, 2009 (Docket No. 285736) at 2, citing *Colonial Village Townhouse Cooperative v Riverview,* 142 Mich App 474, 477-478; 370 NW2d 25 (1985). See also *Johnson v Michigan,* 113 Mich App 447; 317 NW2d 652 (1982) and *Turner v Lansing Twp,* 108 Mich App 103; 310 NW2d 287 (1981).
[15] See *Highland-Howell*, 469 Mich 673. There is no formation issue in this appeal.
[16] *Shiffer v City of Wyandotte*, 13 MTTR 458 (Docket No. 297098) issued September 23, 2004.
[17] *Id.* at 8.
[18] *Id.* at 9, referencing *Highland-Howell*, 469 Mich at 678. Though "a special assessment is not a tax," *Kadzban v Grandville,* 442 Mich 495, 500; 502 NW2d 299 (1993), the same principles apply to all matters falling within the subject-matter jurisdiction of the Tribunal.
[19] *Id.* citing McQuillin Mun Corp, 3rd Ed., § 37.25 (emphasis omitted).

satisfied that Respondent's action was oppressive or without reasonable grounds. Petitioner's argument fails on this basis alone, and the Tribunal need not address whether another party is contractually obligated to pay for the improvements as he contends.[20] Even if this were not the case, Petitioner's benefit argument would fail. Special assessments "are permissible only when the improvements result in an increase in the value of the land specially assessed,"[21] and to be valid "'there must be some proportionality between the amount of the special assessment and the benefits derived therefrom.'"[22] It is well settled, however, that municipal decisions regarding special assessments are presumed valid and should generally be upheld.[23]

> 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.'[24]

The Michigan Court of Appeals has held that "without credible evidence from the petitioner to rebut the presumption of the assessment's validity, the Tax Tribunal 'has no basis to strike down a special assessment.'"[25] The Court has also held that "[t]he essential question is not whether there was any change in market value, but rather whether the market value of the assessed property was increased as a result of the improvement."[26] Further,

> 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.[27]

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[20] Though Petitioner contends that the parties have stipulated that the Planned Unit Development Agreement requires that the original developer, and any successor developer, is obligated to pave the roads contained within the development, Respondent specifically disputes the existence any obligation to pave by a successor developer in both its brief and Motion for Summary Disposition. Respondent contends that it is only the Final Development Plan that is binding on the developer's heirs, successors and assigns. And though said plan did provide that the terms of the agreement would be binding upon third parties if the developer contracted, sold, or otherwise assigned all or a portion of the construction of the site to qualified third parties, the developer did not contract, sell, or otherwise assign construction and management of the property, but lost its interest in the property to property tax foreclosure.
[21] *Kadzban*, 442 Mich at 501.
[22] *Id.* at 501-502.
[23] *Id.* at 502
[24] *Ahearn v Bloomfield Charter Twp*, 235 Mich App 486, 502; 597 NW2d 858, 863 (1999).
[25] *Lincoln v Twp of Tuscarora*, unpublished opinion per curiam of the Court of Appeals issued April 19, 2016 (Docket No. 326107), citing *Kadzban,* 442 Mich at 502, *Kane v Williamstown Twp,* 301 Mich App 582, 586; 836 NW2d 868 (2013), and *Kadzban,* 442 Mich at 505.
[26] *Ahearn*, 235 Mich App at 496.
[27] *Id.*

Here, Petitioner does not argue that no value accrues to the land or that the subject property is not benefited by the street paving improvements; he argues only that *he* derives no benefit from said improvements, because he must bear the cost belonging to another.[28] This is not the test and Petitioner has presented no evidence, credible or otherwise, of his property's value with or without the paving improvements.[29] Consequently, he has failed to overcome the presumption that the assessment is valid and there is no basis for striking it down.

PROPOSED JUDGMENT

Given the above, the Tribunal finds that there is no genuine issue of material fact with respect to the validity of the assessment at issue in this appeal, and Respondent is entitled to judgment as a matter of law. The Forest View Street Paving Special Assessment district was validly created and Petitioner failed to rebut its presumption of validity. The special assessment levied against the subject shall be AFFIRMED. Therefore,

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

IT IS FURTHER ORDERED that the parties have 20 days from date of entry of this Proposed Order to notify the Tribunal in writing, by mail or by electronic filing, if available, if they do not agree with the Proposed Order and to state in writing why they do not agree with the Proposed Order (i.e., exceptions). Exceptions are limited to the evidence and matters addressed in the Proposed Order. There is no fee for filing exceptions. The opposing party has 14 days from the date the exceptions were mailed to that party to file a written response to the exceptions. A copy of a party's written exceptions or response must be sent by mail or electronic service, if agreed upon by the parties, to the opposing party and proof must be submitted to the Tribunal that the exceptions or response were served on the opposing party.

By Peter M. Kopke

Entered: June 16, 2017
ejg

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[28] Paragraph 11 of the petition states, "Because of the Agreement's requirement that the developer construct the roads in the FVCP at its sole cost, including the finished surface, Petitioner is not being benefitted by the City's special assessment."

[29] Valuation disclosures were required to be filed no later than December 19, 2016, as provided by the Notice of Prehearing General Call and Order of Procedure entered in this matter on May 2, 2016. Petitioner is precluded from offering any evidence not filed in accordance with that order, and he is also precluded from presenting any witnesses to testify in support of his claims, as he failed to timely file his prehearing statement and did not demonstrate good cause for said failure at the prehearing conference. See TTR 237 and *Adelman v West Bloomfield Twp*, unpublished opinion per curiam of the Court of Appeals, issued December 17, 2013 (Docket No. 312435). Even if testimony were permitted, lay testimony, without any evidence or foundation, would not be sufficient to meet the burden of proof. See *AZ Hart, LLC v Hartland Twp*, 25 MTTR 71 (Docket No. 427019) issued February 11, 2014 and *Lincoln v Twp of Tuscarora*, unpublished opinion per curiam of the Court of Appeals, issued April 19, 2016 (Docket No. 326107).