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

Kenneth J Speicher,
Petitioner,

v

MTT Docket No. 14-007923-R

Columbia Township,
Respondent.

Tribunal Judge Presiding
Steven H Lasher

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING SUMMARY DISPOSITION IN FAVOR OF RESPONDENT

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner filed this appeal on November 1, 2014, disputing the Saddle Lake Special Assessment District created by Respondent for aquatic management and control and partial eradication of aquatic plants and weeds, which was confirmed at a hearing held on October 21, 2014.

On July 25, 2016, Petitioner filed a motion requesting that the Tribunal enter summary disposition in his favor. In the Motion, which was filed pursuant to MCR 2.116(C)(10), Petitioner contends that he is entitled to judgment as a matter of law because there is no genuine issue of material fact with respect to the validity of the Saddle Lake Special Assessment District or the corresponding assessment. Petitioner also requested attorney fees and costs.

Respondent filed its Brief in Opposition to Petitioner's Motion for Summary Disposition on August 30, 2016, contending that it validly established the Saddle Lake Special Assessment District, and that the assessment has been properly administered.

PETITIONER'S CONTENTIONS

In support of his Motion, Petitioner contends that in establishing the special assessment district, (i) Respondent failed to support a "finding of necessity" by competent, material, and substantial evidence, (ii) the amount of the special assessment imposed on the subject property is not reasonably proportionate to the benefit received, and (iii) Respondent failed to use the proceeds of the special assessment district for the purpose for which it was formed.

Specifically, Petitioner argues that the subject special assessment district violates Article 6, Section 28 of the Michigan Constitution because in determining that the special assessment roll

was "fair, just and equitable, and that each of the assessments contained thereon is relative to the benefits to be derived by the parcels of land assessed."[1] Respondent failed to include in its "finding of necessity" any supporting findings of fact. Instead of simply announcing that "there exists a need" for treatment of aquatic foliage on Saddle Lake, Petitioner contends that Respondent should have provided those property owners subject to the special assessment, "competent, material and substantial evidence" of the need for the "treatment of aquatic foliage."

Petitioner further argues that the imposition of a flat fee of $130 per parcel on the special assessment roll violates the requirement that there must be some proportionality between the amount of the special assessment and the benefit derived from the improvement.[2] However, Petitioner contends that in this case the disproportionality is between property owners, as all property owners are assessed the same $130 assessment, irrespective of the size of the parcel or the amount of lake frontage.

Finally, Petitioner argues that by specifically stating in Resolution 2014-26 that the improvements contemplated by the Special Assessment District "shall consist of the aquatic management and control and partial eradication of aquatic plants and weeds within Saddle Lake by means of chemical and/or biological means and/or weed harvesting or any other means . . . ," Respondent is precluded from utilizing the process of water aeration to achieve its goals. (Emphasis added) As a result, Petitioner contends that the special assessment district should be invalidated by the Tribunal.

Petitioner's contentions are further supported by:

Affidavit of Petitioner, Kenneth J. Speicher. Petitioner stated that (i) he is the owner of the subject parcel and three other parcels included in the special assessment district, (ii) he is a former Clerk of Columbia Township and a former member of the Columbia Township Planning Commission, (iii) throughout the process of initiating the Special Assessment District and confirming the Special Assessment Roll, Petitioner requested, through Freedom of Information Act requests and other means, all documents relating to the Special Assessment District, including documents supporting the total area of the district and property owners within the district, (iv) he did receive copies of minutes of regular and special meetings held by the Columbia Township Board on July 8, 2014, July 30, 2014, August 19, 2014, September 9, 2014, September 16, 2014, October 7, 2014 and October 21, 2014, and (v) he confirmed that Respondent's agents were not "weed harvesting" on Saddle Lake pursuant to the Special Assessment District resolution, but were utilizing the process of "water aeration" for the purpose of controlling exotic plant species in Saddle Lake.

RESPONDENT'S CONTENTIONS

In response to the Motion for Summary Disposition filed by Petitioner, Respondent contends that (i) any requisite findings of necessity required of Respondent were made in Resolutions 2014-20, 2014-21 and 2014-23, (ii) the amounts assessed against each parcel in the special assessment

[1] Columbia Township Resolution 2014-26, Saddle Lake Special Assessment District, Confirmation of Special Assessment Roll; Lien Payment and Collection of Special Assessments.
[2] *Dixon Road Group v City of Novi*, 426 Mich 390; 395 NW2d 211 (1986)

district were proportional to the benefit received because each parcel received the same weed eradication benefit, and (iii) the amounts received from the special assessment district were used for Saddle Lake weed eradication and for no other purpose.

Specifically, Respondent contends that the Saddle Lake Special Assessment District does not violate Article 6, Section 28 of the Michigan Constitution because said provision applies to administrative officers or agencies or to judicial or quasi-judicial agencies, and not to a legislative body such as Columbia Township. Instead, Respondent is subject to the Public Improvements Act (MCL 41.721 *et seq*.) which allows a township to proceed with improvements provided by the Act.

Respondent further contends that Michigan courts have clearly held that there must be some proportionality between the amount of the special assessment and the benefit to the assessed parcel.[3] In that regard, Respondent contends that a weed eradication program equally affects all lakefront properties, whatever the amount of lake frontage, and that Petitioner has failed to present any credible evidence to rebut the presumption of validity associated with a municipality's creation of a special assessment district. Respondent argues that Petitioner has failed to show any substantial or unreasonable disproportionality between the amount assessed to the subject parcel and other lakefront parcels, or to the amount assessed and the benefit received.

Finally, Respondent contends that the decision to use a water aeration method to eradicate weeds in Saddle Lake was contemplated by language in Respondent's authorizing resolution as it is one of the "other means" available to the township. Respondent relies on the Affidavit provided by Andy Tomaszewski, which concludes that water aeration clearly falls within the methods one might consider for weed eradication.

Respondent's contentions are further supported by:

Affidavit of Andy Tomaszewski, Southern Lakes Manager, PLM Lake & Land Management. Mr. Tomaszewski stated that (a) he and PLM Lake & Land Management have been involved in Saddle Lake water quality issues since 2002, (ii) Saddle Lake suffers from exotic plant problems, impacting native plant diversity, fisheries, and swimming and boating activities, (iii) he was involved in forming prior Saddle Lake special assessment districts to control exotic plants, (iv) in 2012/2013, the Saddle Lake Property Owners Association investigated new technologies and options to supplement existing management efforts, including lake aeration.

STANDARD OF REVIEW

There is no specific Tribunal rule governing motions for summary disposition; thus the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.[4]

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

[3] *Kadzban v City of Grandville*, 442 Mich 495; 502 NW2d 299 (1993).
[4] See TTR 215.

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.
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> First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law. 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]

B. Summary Disposition under MCR 2.116(I)(1)

MCR 2.116(I)(1) provides that "[i]f the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay."[8]

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[5] *Id*.
[6] *Quinto v Cross and Peters Co*, 451 Mich 358; 547 NW2d 314 (1996)(citations omitted).
[7] *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

CONCLUSIONS OF LAW

Having given careful consideration to Petitioner's Motion for Summary Disposition under the criteria for MCR 2.116(C)(10), the Tribunal finds that granting the motion is not warranted. Petitioner's argument relative to Respondent's violation of Article 6, Section 28 of the Michigan Constitution is without merit, because as noted by Respondent, that provision applies to administrative officers or agencies or to judicial or quasi-judicial agencies, such as this Tribunal, and not to a unit of local government such as Columbia Township.[9] Petitioner's attempt to extend the reach of this constitutional provision is a stretch in every sense of the word; Respondent's adoption of Resolution 2014-26 was in no way "the action of a state body created by law acting in a quasi-judicial capacity." Instead, Respondent is subject to the Public Improvements Act, which allows it to make improvements and defray costs as provided by the Act. Specifically, MCL 41.721 provides: "The township board has the power to make an improvement named in this act . . . and to determine that the whole or any part of the cost of an improvement shall be defrayed by special assessments against the property especially benefited by the improvement."[10] Nothing in the language of this or any other applicable section of the Act requires a determination of necessity or specific findings relative to that determination; the only condition is that costs cannot be imposed upon properties not specially benefited by the improvement. Indeed, the Michigan Court of Appeals has held that "[a] special assessment is not a 'taking' of property for public use. Therefore, there is no constitutional requirement for a hearing on necessity in special assessment proceedings."[11]

Petitioner's argument also misses the mark on the formation issue, which revolves around notice and an opportunity to be heard. Specifically, MCL 41.724 requires:

> (1) that a notice fixing a time and place for a meeting to hear objections to the improvement and special assessment district be prepared; (2) publication of the notice of the hearing as to the proposed district two times before the hearing; (3) a statement in the notice that plans and estimates for the project are on file with the township clerk for public examination; and (4) that a description of the proposed assessment district be included in the notice.[12]

MCL 41.724a(2) also "mandates that the notice of the proposed improvement district be mailed by first class mail to owners of properties to be included in the assessment district at least ten

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[8] *Id*.
[9] This section provides: "All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law." Const 1963, art 6, §28.
[10] *Id*.
[11] *Gaut v City of Southfield*, 34 Mich App 646, 649; 192 NW2d 123 (1971), *aff'd*, 388 Mich 189, 200 NW2d 76 (1972), citing *Roberts v Smith*, 115 Mich 5; 72 NW 1091 (1897) and *Smith v Carlow*, 114 Mich 67; 72 NW 22(1897).
[12] *Trussell v Decker*, 147 Mich App 312, 319; 382 NW2d 778 (1985).

days prior to the hearing on whether the district should be established."[13] Petitioner does not assert that Respondent failed to meet any of these requirements. Even assuming arguendo that he did, the submitted resolutions and accompanying documentation evidence complete compliance.

As for Petitioner's proportionality argument, his contentions are once again entirely without merit. Special assessments "are permissible only when the improvements result in an increase in the value of the land specially assessed,"[14] and to be valid "'there must be some proportionality between the amount of the special assessment and the benefits derived therefrom.'"[15] Respondent is not required, however, to conduct a calculation of benefit for each parcel or make finding of fact in support of its benefit determination—the Supreme Court has specifically held that there need not be "a rigid dollar-for-dollar balance between the amount of the special assessment and the amount of the benefit."[16] Further, Petitioner does not assert a substantial or unreasonable disproportionality between the amount assessed and the value that accrued to the land as a result of the improvements.[17] Instead, Petitioner asserts disproportionality between the owners of property subject to the special assessment. Specifically, Petitioner asserts that "a flat fee assessment of $130.00 per-tax-parcel, per-year, to be levied against all parcels on the special assessment roll regardless of lake frontage, acreage, or any other basis for determining a reasonably proportionate benefit for determining the amount of the assessments," is a "per se violation of the proportionality rule set forth in MCL 41.725." Proportionality between owners is not the test, however, and the Court of Appeals has upheld a flat fee assessment on at least one occasion.[18] More importantly,

> It is well-recognized that special assessments are presumed valid and should generally be upheld. A petitioner seeking to challenge a special assessment bears the burden of presenting credible evidence to rebut the presumption that the assessments are valid . . . . 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.'[19]

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."[20] 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

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[13] *Id*.
[14] *Kadzban*, 442 Mich at 501.
[15] *Id*. at 501-502.
[16] *Dixon Rd Grp v City of Novi*, 426 Mich 390, 402–03; 395 NW2d 211 (1986).
[17] See *Storm v City of Wyoming*, 208 Mich App 45, 46; 526 NW2d 605 (1994).
[18] See *Landon v City of Flint*, unpublished opinion per curiam of the Court of Appeals, issued October 21, 2014 (Docket No. 316927).
[19] *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.
[20] *Ahearn v Bloomfield Charter Twp*, 235 Mich App 486, 496; 597 NW2d 858, 863 (1999).

> 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.[21]

Here, Petitioner presented no evidence, credible or otherwise, of his property's value with or without the aquatic management and control improvements. Indeed, Petitioner filed a Notice of No Valuation Disclosure on August 4, 2015. Consequently, he has failed to overcome the presumption that the assessment is valid and there is no basis for striking it down.

Petitioner also contends that Respondent failed to use the proceeds of the special assessment district for the purpose for which it was formed. Petitioner argues that by specifically stating in Resolution 2014-26 that the improvements "shall consist of the aquatic management and control and partial eradication of aquatic plants and weeds within Saddle Lake by means of chemical and/or biological means and/or weed harvesting or any other means," Respondent is precluded from utilizing the process of water aeration to achieve its goals. The Tribunal agrees with Respondent, however, that its decision to use a water aeration method to eradicate weeds in Saddle Lake was contemplated in the authorizing resolution, as it is one of the "other means" available to the township. Respondent is not limited to weed harvesting or chemical and biological means as Petitioner contends.

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 Saddle Lake Special Assessment District was validly created and Petitioner failed to rebut his presumption of validity. The special assessment levied against the subject in the amount of $130 shall stand. Therefore,

IT IS ORDERED that Petitioner's Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that Respondent is GRANTED Summary Disposition pursuant to MCR 2.116(I)(1).

IT IS FURTHER ORDERED that Respondent shall cause its records to be corrected to reflect the special assessment as finally shown 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 within 28 days of entry of this Final Opinion and Judgment.

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

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[21] *Id*.

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.[22] 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.[23] 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.[24] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[25]

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."[26] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[27] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[28]

By Steven H. Lasher

Entered: September 30, 2016
ejg

[22] See TTR 261 and 257.
[23] See TTR 217 and 267.
[24] See TTR 261 and 225.
[25] See TTR 261 and 257.
[26] See MCL 205.753 and MCR 7.204.
[27] See TTR 213.
[28] See TTR 217 and 267.