STATE OF MICHIGAN

COURT OF APPEALS

DONALD W. PEASE, WANDA M. PEASE, WALTER MYERS, LELA MYERS, ORVILLE MISHLER, EDNA MISHLER, PAULINE LOUGHRIDGE, RICHARD CARNEY, JR., PETER CARNEY, STANLEY HORSFALL, ERNEST ROSENBERRY, EUNICE L. SIMMONS, ALBERT ASHLEY, DEBORAH ASHLEY, and THOMAS A. PEASE,

Plaintiffs-Appellants,

v

ELDRED CONSOLIDATED DRAIN and KALAMAZOO COUNTY DRAIN COMMISSIONER,

Defendants-Appellees.

UNPUBLISHED
February 14, 1997

No. 183897
MTT
LC Nos. 130315, 130321, 130356, 130360, 130365, 130517, 148775, 148778, 148837, 148910, 149079

Before: Neff, P.J., and Hoekstra and G.D. Lostracco,* JJ.

PER CURIAM.

Plaintiffs, property owners upon whom special assessments were levied in connection with the cleaning and reconstruction of the Eldred Consolidated Drain, appeal as of right a judgment of the Michigan Tax Tribunal affirming the special assessments. We reverse and remand for further proceedings consistent with this opinion.

Our review of tax tribunal decisions, in the absence of fraud, is limited to whether the tribunal made an error of law or adopted a wrong legal principle. *Speaker-Hines & Thomas, Inc v Dep't of Treasury*, 207 Mich App 84, 87; 523 NW2d 826 (1994). The tribunal's factual findings are accepted as final if they are supported by competent, material, and substantial evidence on the whole record. *Id*.

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* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiffs first argue that the tax tribunal erred in finding that the drain commissioner's method of allocating costs to the parcels at issue was a legally acceptable method. Based upon our review of the record, we agree. While it is correct that a drain commissioner is not required to use a definite mathematical formula when determining the amount of benefit and hence the amount of the assessment, see *In re Hurd-Marvin Drain*, 331 Mich 504; 50 NW2d 143 (1951), we believe that here, the drain commissioner's failure to keep any records indicating how he made his decisions regarding assessments, coupled with his inability to replicate the process[1] at the hearing before the tribunal, deprived plaintiffs of a meaningful review of the assessment decisions. The commissioner claimed to have exercised his "best judgment," but because he did not quantify in some form the factors he considered, plaintiffs are unable to challenge potential errors in the formulation of their assessments. Accordingly, we remand the matter so that the commissioner can reassess the properties in a manner which permits potential aggrieved parties meaningful review. Toward this end, the factors supporting the assessments should be quantified and recorded in some fashion.

Given our resolution of plaintiffs' first issue, review of plaintiffs' remaining issues is unnecessary and would have no effect on the outcome. However, we are troubled by the apparent disparity between the alleged increase in value and the amount of certain assessments. In some cases, it appears that the assessments exceed the alleged increase in value by more than nine to one.[2] Furthermore, it also appears that there were some parcels which were benefited by the project, but were not included in the district. On remand, we strongly suggest that these issues be carefully examined by the drain commissioner so that future litigation involving these issues can be avoided.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Joel P. Hoekstra
/s/ Gerald D. Lostracco

[1] The drain commissioner's testimony at the hearing included the following: "I can't today tell you exactly what my thinking process was at that time, but—and I probably could not duplicate it, but that doesn't mean it was like throwing an arrow at a wall and hitting a target." He further testified that the process took into account some very personal thoughts of his, that he used no quantifiable formula in making the assessments, and that he could not testify as to what weight he gave to any of the factors in making the assessments. The commissioner agreed that there would be no way for anyone, including himself, to now determine how a certain percentage designation was computed.

[2] It is well-settled that special assessments will be declared invalid where there is a substantial or unreasonable disproportionality between the assessment and the value accruing to the parcel as a result of the improvement. *Kadzban v City of Grandville*, 442 Mich 495, 502; 502 NW2d 299 (1993). In applying this principle, in *Dixon Rd Group v Novi*, 426 Mich 390; 395 NW2d 211 (1986), our Supreme Court found an assessment only 2.6 times higher than the increase in market value to be unreasonably disproportionate.