

STATE OF MICHIGAN  
COURT OF APPEALS

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HIGHLAND-HOWELL DEVELOPMENT  
GROUP, LLC,

Petitioner-Appellant,

v

TOWNSHIP OF MARION,

Respondent-Appellee.

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UNPUBLISHED  
March 1, 2011

No. 294617  
Tax Tribunal  
LC No. 00-307906

Before: CAVANAGH, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Petitioner appeals as of right an order of dismissal entered by the Michigan Tax Tribunal (MTT) in favor of respondent in this dispute challenging the validity of a \$3,161,925 special assessment levied against petitioner's property for a sanitary sewer improvement project. The matter had been remanded to the MTT for proceedings by our Supreme Court, *Highland-Howell Dev Co, LLC v Marion Twp*, 478 Mich 932; 733 NW2d 761 (2007). We reverse and remand to the MTT for further proceedings.

This dispute has a long history as set forth by our Supreme Court in *Highland-Howell Dev Co, LLC*, 478 Mich at 932-933, as well as by this Court in *Highland-Howell Dev Co, LLC v Marion Twp*, unpublished opinion per curiam of the Court of Appeals, issued January 31, 2006 (Docket No. 262437). In brief, respondent's township board proposed a sanitary sewer improvement project that included a mile long trunk line across petitioner's property. Because the project, as planned, would be beneficial to petitioner's proposed residential housing development, petitioner did not object to the improvement, the plans for the improvement, or the special assessment districts. After the requisite public hearings were conducted, the township board adopted a resolution approving the improvement, project plans, and special assessment districts. The township board then caused to be made a special assessment roll conforming to the resolution. See MCL 41.725(1)(d). After the requisite public hearing was conducted, MCL 41.726, the township board adopted a resolution on December 2, 1996, confirming the special assessment roll and petitioner's property was assessed \$3,250,000. However, at some time in 1997, without notice to petitioner, public notice, public hearing, or approval by resolution, the township board "informally" decided not to include the trunk line across petitioner's property, thereby changing the project plans—from which the special assessment roll was derived. By

happenstance, petitioner discovered the change in plans which eliminated the trunk line across its property and altered the benefit to plaintiff's property from the sewer improvement project.

On July 21, 1998, petitioner filed its first petition with the MTT, case number 261431, challenging the 1996 special assessment. Following respondent's motion, that petition was dismissed in 2004 for lack of jurisdiction by the MTT on the grounds that (1) petitioner did not object to the special assessment as required under MCL 205.735 and (2) petitioner did not file its challenge within 30 days of December 2, 1996, the date in which the special assessment roll was confirmed as required under MCL 41.726(3). However, while that matter was pending, in 1999, the assessment against petitioner's property was reduced to \$2,875,000. It was later increased in 1999 by an additional \$286,925, for a total special assessment of \$3,161,925. Petitioner filed a second petition with the MTT, case number 266534, challenging the additional assessment. Petitioner also sought leave to appeal the dismissal of MTT 261431 and leave was denied by this Court "for lack of merit in the grounds presented." *Highland-Howell Dev Co v Marion Twp*, unpublished order of the Court of Appeals, entered August 13, 2004 (Docket No. 254835).

On May 13, 2004, respondent's township board adopted a resolution "to formally acknowledge, approve and ratify all of the changes to the Plans which have been made since the Plans were originally accepted, approved and ordered filed with the Township Clerk by way of Resolution on March 14, 1996, including but not limited to the elimination of the east-west trunk line traversing the property owned by [petitioner]."

Following respondent's resolution, on June 14, 2004, petitioner filed its third petition with the MTT, case number 307906—which is the subject of this appeal. Petitioner argued that the change in the sewer improvement plans, which included the elimination of the sewer trunk line across its property, substantially changed the benefit of the sewer project to petitioner's property. Further, the changes in the sewer project plans—which occurred after the time for protesting and appealing the special assessment—were illegal and void. Thus, petitioner argued, the governing plans for the sewer project were those adopted on December 2, 1996. Alternatively, petitioner argued, as a consequence of the project changes, the special assessment imposed on petitioner's property was not proportional to the benefit to the property in violation of MCL 41.725(1)(d). Petitioner argued that the special assessment should be reduced to approximately \$915,000; thus, it was entitled to a refund. Respondent filed a motion to dismiss the third petition, arguing that the claim was barred by collateral estoppel and res judicata because (1) it was an attempt to relitigate the claims asserted and dismissed in MTT 261431 and (2) the township's formal resolution merely made an "unofficial" action "official" and did not provide a basis for challenging the entire assessment.

Although the MTT initially denied respondent's motion to dismiss the third petition, upon reconsideration, the MTT granted the motion. The MTT held:

The Tribunal's March 19, 2004 final Opinion and Judgment dismissing Docket No. 261431 was an adjudication on the merits with regard to the questions of law and fact relevant to the Tribunal's lack of jurisdiction over the petition filed in Docket No. 261431. In that case, Petitioner sought relief with regard to the special assessment that was entered on the special assessment roll that was confirmed December 2, 1996. The factual and legal conclusions in Docket No.

261431 are dispositive in this case and have res judicata effect. It has been ruled that the Tribunal lacks jurisdiction over the special assessment on the role [sic] that was validly confirmed on December 2, 1996, and that the role [sic] became final and conclusive and not subject to appeal 30 days after confirmation. No subsequent act or omission by Respondent changed that legal ruling.

The MTT continued:

It was previously ruled that changes in the plans, “official or unofficial,” have no effect upon the validity and conclusiveness of the December 2, 1996 special assessment roll. The May 13, 2004 resolution by the Township of Marion does not allow Petitioner to appeal the special assessment that was confirmed December 2, 1996.

The MTT concluded that any issues of fact in MTT 307906 pertaining to the 1996 assessment—including whether the assessment imposed on petitioner’s property is proportional to the benefit to the property—were not before the MTT because there was no jurisdiction over that appeal. Accordingly, respondent’s motion for summary dismissal was granted and the petition in MTT 307906 was dismissed.

Petitioner appealed the order dismissing MTT 307906 to this Court and this Court affirmed the decision. *Highland-Howell Dev Co, LLC v Marion Twp*, unpublished opinion per curiam of the Court of Appeals, issued January 31, 2006 (Docket No. 262437). This Court concluded that, although res judicata did not bar the petition, collateral estoppel applied to bar portions of the petition and the other portions were properly dismissed. More particularly, the primary issue on appeal was characterized as whether petitioner was entitled to challenge the December 2, 1996 special assessment roll because respondent changed the sewer plans after that assessment roll. This Court concluded as follows:

This issue was already resolved in the prior petition, where the Tax Tribunal held that a departure from the requirements of the Public Improvements Act does not excuse the jurisdictional requirements in the Tax Tribunal Act. The Tax Tribunal already ruled that it had no jurisdiction over petitioner’s challenge [to] the December 2, 1996, roll assessment because petitioner failed to initiate the challenge within 30 days of confirmation of the roll assessment.

After concluding that collateral estoppel precluded relitigation of the issue, this Court further provided:

To the extent that the prior petition did not, and could not have, specifically challenged the December 2, 1996, assessment in light of the May 13, 2004, formal change in the sewer plans, we conclude that the formal change has no effect on the jurisdictional requirements of MCL 205.725. Therefore, as in the prior petition, because petitioner failed to challenge the December 2, 1996, assessment within 30 days of its confirmation, the Tax Tribunal had no jurisdiction to address petitioner’s challenge to the assessment.

Petitioner sought leave to appeal from our Supreme Court and, following oral arguments, leave was granted. *Highland-Howell Dev Co, LLC v Marion Twp*, 477 Mich 976; 725 NW2d 55 (2006). On June 29, 2007, our Supreme Court issued an order which reversed this Court's judgment and remanded the matter to the MTT "to determine whether the special assessment levied against petitioner's property is proportionate to the benefit to the property." *Highland-Howell Dev Co, LLC*, 478 Mich at 932. First, our Supreme Court discussed the facts of the case, including (1) the 1996 special assessment; (2) petitioner's discovery in 1998 that the township board "unofficially" changed the project plan after the time for challenging the special assessment had passed; (3) the MTT's dismissal of petitioner's first petition on the grounds that it lacked jurisdiction because the requirements of MCL 205.735 and MCL 41.726(3) were not met; (4) in 2004 the township board passed a formal resolution ratifying the changes in the sewer plan, including the elimination of the trunk line; and (5) the MTT's dismissal of petitioner's 2004 challenge to the special assessment on res judicata grounds, which was affirmed by this Court on the basis of collateral estoppel. (*Id.* at 932-933.)

Next, our Supreme Court held:

There must be a proportionate relationship between a special assessment and the benefit to property from a special assessment. MCL 41.725(1)(d); *Dixon Road Group v City of Novi*, 426 Mich 390, 403 (1986) ("a failure by this Court to require a reasonable relationship between the [amount of the special assessment and the amount of the benefit] would be akin to the taking of property without due process of law"). Further, before an assessment is levied, the property owner is entitled to notice and an opportunity to be heard. *Thomas v Gain*, 35 Mich 155, 164-165 (1876). Therefore, in this case, in which petitioner argues that the special assessment is no longer proportionate to the benefit to his property due to the change that the township made to the improvement plan, petitioner must be afforded an opportunity to be heard.

Because "[s]tatutes must be construed in a constitutional manner if possible," *In re Trejo*, 462 Mich 341, 355 (2000), the statutes at issue here cannot be construed in a manner that would deny petitioner due process of law. See *W & E Burnside, Inc v Bangor Twp*, 402 Mich 950l (1978), in which this Court remanded the case to the tribunal to determine whether the petitioner was entitled to notice even though the protest requirement of § 735(1) was not satisfied. That is, § 735(1) cannot be construed to require petitioner to have objected to the removal of the trunk line across its property at the hearing since that removal *had not yet taken place* at the time of the hearing. In addition, § 726(3) cannot be construed to require petitioner to have objected within 30 days after the date of confirmation of the special assessment roll because when the special assessment roll was confirmed, petitioner had no basis to object because the plan included the trunk line through petitioner's property. MCL 205.735(2) grants the tribunal jurisdiction over petitioner's 2004 petition because the 2004 resolution is a "final decision" and petitioner filed a written petition within 30 days after that "final decision."

Finally, petitioner's 2004 claim cannot be barred by res judicata or collateral estoppel. In dismissing petitioner's 2004 claim, the tribunal stated, "[t]he Tribunal's March 19, 2004 final Opinion and Judgment that dismissed Docket No. 261431 fully considered and rendered legal conclusions with regard to all issues pertaining to *official or unofficial* changes to the plans in relation to the jurisdiction of the Tribunal." No official changes existed at that time, however, as respondent did not pass the 2004 resolution until May 13, 2004. Accordingly, the tribunal's March 19, 2004 opinion could not have fully considered and rendered legal conclusions regarding official plan changes that had not yet occurred, and, thus, neither res judicata nor collateral estoppel apply. [*Id.*]

On remand, by order dated January 3, 2008, the MTT requested briefs from the parties regarding their interpretations of the Supreme Court's remand order. On February 5, 2009, the MTT issued a scheduling order, which provided an opportunity for the parties to obtain or supplement valuation appraisals. Respondent then filed a motion for summary dismissal on the ground that petitioner's appraisal failed to value the property with a trunk line, but the MTT denied the motion on July 2, 2009, holding that petitioner "is entitled to challenge the effect of the removal of the trunk line on the proportionality of its special assessment."

The hearing on remand in MTT 307906 began on July 7, 2009, before Tribunal Judge Kimball Smith, III. Judge Smith began the proceedings as follows:

I have at length reviewed the remand order and the file in this matter. This is MTT Docket Number 307906.

And I think it is important that we at the outset identify this particular docket number. I am not here today on Docket Number 261431, which is another case involving [petitioner]. In fact, that case is over, done with . . . .

That case, the case that is closed, was the appeal to the Michigan Tax Tribunal, I believe in 1999 or thereabouts as a result of the 1996 special assessment on this property. In effect, the determination, although it was initially decided on procedural grounds it went to the court of appeals, the tribunal's decision in that case was affirmed, became final. So as to that 1996 special assessment and the events surrounding that assessment, it is my position that that case is over and done with. That assessment, the '96 assessment, has, in fact, been settled and is a legal assessment, which component of that obviously is the proportional benefit.

Thereafter, the three-day hearing proceeded and concluded with the MTT rendering its written order of dismissal on September 23, 2009. The MTT began its order by noting that it was "not going to retry the special assessment that was the basis of MTT Docket No. 261421 [sic], which the MTT had previously found was a final and lawful special assessment, a component of which is proportional benefit." The MTT set forth the issue presented as follows: "Whether the elimination of the trunk line sewer across Petitioner's property (change made in the improvement plan) rendered the 1996 special assessment and 1999 supplemental special assessment no longer proportionate to the benefit received from the assessments as originally enacted." The MTT continued that, to determine that issue, petitioner had to establish the value

of the property with the improvements as originally designed versus the value of the property with the improvements absent the trunk line sewer.

After review of the evidence, the MTT concluded that petitioner presented “absolutely no proof, credible or otherwise, to establish that the removal of the trunk line across Petitioner’s property changed the benefits the property received in such a way so as to create a disproportionality between the benefit the property received and the amount of Petitioner’s assessment that had been found to be legally proportional prior to the removal of the trunk line.” The MTT further held that petitioner “presented no evidence as to the value of the property with the improvements including the trunk line versus the value of the property without the improvements (availability of public sanitary sewer without the trunk line).” Finally, the MTT noted that respondent had moved for dismissal after the close of petitioner’s proofs and that motion had been taken under advisement. However, in light of the lack of evidence, the court granted the motion, holding: “[b]ased upon the total lack of credible and reliable evidence presented by Petitioner to establish the lack of proportionality after the removal of the trunk line across Petitioner’s property by way of the 2004 resolution, the Tribunal has no alternative but to grant Respondent’s motion for involuntary dismissal pursuant to MCR 2.504(B)(2).” In any case, the MTT held, respondent would have prevailed. Accordingly, the special assessment was affirmed. This appeal followed.

Petitioner argues that the MTT erred when it (1) failed to follow our Supreme Court’s remand order by improperly limiting the scope of the proceedings, (2) misunderstood the outcome and effect of MTT 261431, and (3) misapplied the governing law by focusing solely on the effect of the removal of the trunk line and not the proportionality of the entire assessment to the improvement as constructed. We agree.

“The power of the lower court on remand is to take such action as law and justice may require so long as it is not inconsistent with the judgment of the appellate court.” *Sokel v Nickoli*, 356 Mich 460, 464; 97 NW2d 1 (1959). This Court reviews MTT decisions to determine whether the MTT erred in applying the law or adopted a wrong legal principle. *Catalina Mktg Sales Corp v Dep’t of Treasury*, 470 Mich 13, 18-19; 678 NW2d 619 (2004). Factual findings of the MTT are conclusive if supported by competent, material, and substantial evidence on the whole record. *Id.*

As petitioner argues, the MTT improperly limited the scope of the remand proceedings, relied on false and irrelevant facts, and misapplied the law with regard to its dismissal of petitioner’s claims on remand.

First, the MTT improperly limited the scope of the remand proceedings. The MTT had previously dismissed petitioner’s third petition which challenged the special assessment of \$3,161,925.<sup>1</sup> This Court affirmed the dismissal, albeit on different grounds. Our Supreme

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<sup>1</sup> Petitioner’s petition indicated that the special assessment confirmed on December 2, 1996, was \$3,250,000 but, in 1999, it had been reduced to \$2,875,000 and then increased by \$286,925 for a combined total of \$3,161,925.

Court, however, reversed this Court's judgment, and thus the dismissal of the petition, and remanded this matter to the MTT "to determine whether the special assessment levied against petitioner's property is proportionate to the benefit to the property." *Highland-Howell Dev Co, LLC*, 478 Mich at 932. "[T]he special assessment levied against petitioner's property," as referenced by the remand order, means the entirety of the special assessment—\$3,161,925, as stated in petitioner's third petition. Thus, the issue on remand was whether the special assessment of \$3,161,925 was proportionate to the benefit of the improvement—as constructed—to petitioner's property. Contrary to the MTT's holding, the issue was not "[w]hether the elimination of the trunk line sewer across Petitioner's property [] rendered the 1996 special assessment and 1999 supplemental special assessment no longer proportionate to the benefit received from the assessments as originally enacted."

Second, in reaching its decision, the MTT improperly assumed that, in MTT 261431, the special assessment had been adjudicated "proportionate to the benefit received" and improperly accorded that purported fact a *res judicata* effect. The resolution of petitioner's first petition, MTT 261431, was irrelevant to the remand proceedings. That petition was filed in 1998 *before* the township board's formal resolution adopting the project plan changes that included the elimination of the trunk line and was dismissed for lack of subject matter jurisdiction. As our Supreme Court held in its remand order, the dismissal of that 1998 petition does not impact or influence the resolution—either through *res judicata* or collateral estoppel—of petitioner's 2004 petition which challenged the special assessment of \$3,161,925 *after* the 2004 resolution which significantly changed the sewer improvement.

Nevertheless, the MTT noted during the remand proceedings and held in its opinion that the MTT had previously concluded in MTT 261431 that the special assessment was a final and lawful special assessment. In fact, the MTT did not conclude that the special assessment was a final and lawful special assessment. The MTT concluded that it did not acquire jurisdiction over MTT 261431 and the matter was dismissed without a determination of whether there was a proportional relationship between the special assessment and the benefit to the property from the sewer improvement. See MCL 41.725(1)(d). The MTT did not acquire jurisdiction over MTT 261431 because of the significant procedural irregularities that occurred, including the failure of the township board to render a final, appealable decision with regard to the changed project plans. See MCL 205.703, 205.731. As a result of such failure, as our Supreme Court noted, petitioner was denied the opportunity to timely file a petition with the MTT contesting the proportionality of the special assessment after the project plans, on which the special assessment had been based, were changed. Thus, the MTT's finding of fact on remand that the special assessment was adjudged proportional in MTT 261431, and which was relied upon in reaching its decision, is factually erroneous. The issue was never decided. And the factual and legal conclusions in MTT 261431 should not have been accorded a *res judicata* effect by the MTT, an action contrary to our Supreme Court's remand order. See *Sokel*, 356 Mich at 464.

Our Supreme Court's remand order clearly provides that the township board's 2004 formal resolution ratifying changes to the sewer improvement plan gave rise to petitioner's right to contest the proportionality of the entire special assessment because it had been formulated from the original—not the revised—project plans. That is, the 2004 formal resolution—a final decision of the township board—vested the MTT with jurisdiction over this dispute regarding the special assessment of \$3,161,925. See MCL 205.731. The logic underlying this holding clearly

follows the statutory scheme. After the township board decides to proceed with an improvement, MCL 41.724(1) provides that the board “shall cause to be prepared plans describing the improvement . . . .” After those plans are adopted by the board, the plans must be made available for public examination under MCL 41.724(2) and a hearing held to permit objections, revisions, and changes to the plans. See MCL 41.724(3). After the hearing, the township board must “approve or determine by resolution” the plans. See MCL 41.725(1)(b). Then the township board must direct the making of a special assessment roll that conforms to the directions contained in the resolution, including the project plans. See MCL 41.725(1)(d). Before confirming the special assessment roll, the township board must provide notice and a hearing to permit objections to the special assessment roll. See MCL 41.726.

In this case, the original plans describing the improvement—which were adopted by the board, subject to public examination and objections, subsequently approved by the board, and relied upon in the making of the special assessment roll in 1996—were changed. The plans describing the improvement were “informally” changed in 1997 without any public notice. Those changes were not subject to public examination and objections, and those changes were not taken into consideration when the special assessment roll was purportedly confirmed in 1996—because they did not exist. The township board finally adopted a resolution in May 2004 to ratify the changes to the plans, but the board did not hold any public hearing to permit objections to the revised plans. The township board also did not direct the making of a revised special assessment roll that took into consideration the revised plans and thus there was no additional hearing to permit objections to a revised special assessment formulated from revised plans. By failing to “formally” confirm a revised special assessment roll, petitioner was prevented from contesting the initial special assessment by MCL 41.726(3) which provides that, after confirmation of a special assessment roll, “all assessments on that assessment roll shall be final and conclusive” unless contested within 30 days after the date of confirmation. The date of the “confirmation” of the special assessment roll at issue was December 2, 1996, a date several years prior to the official change in the project plans. However, there is evidence in the record that respondent repeatedly changed the special assessment roll to conform to the changed project plans after confirmation of the purported “final and conclusive” roll. Nevertheless there was no formal reconfirmation of the special assessment roll.

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.<sup>2</sup> 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. And because petitioner filed a petition in the

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<sup>2</sup> The Supreme Court’s remand order provides: “Therefore, in this case, in which petitioner argues that the special assessment is no longer proportionate to the benefit to his property due to the change that the township made to the improvement plan, petitioner must be afforded an opportunity to be heard.” *Highland-Howell Dev Co, LLC*, 478 Mich at 933.

MTT within 30 days of the township board's resolution ratifying the revised plans, the MTT had jurisdiction over the petition which argued that the special assessment of \$3,161,925 imposed on petitioner's property was not proportionate to the benefit to the property resulting from the sewer improvement as actually constructed. See *Highland-Howell Dev Co, LLC*, 478 Mich at 933, citing MCL 205.735(2).

Third, the MTT did not afford petitioner the review that our Supreme Court ordered. The MTT was directed "to determine whether the special assessment levied against petitioner's property is proportionate to the benefit to the property." *Highland-Howell Dev Co, LLC*, 478 Mich at 932. Instead the MTT confined its review to: "Whether the elimination of the trunk line sewer across Petitioner's property (change made in the improvement plan) rendered the 1996 special assessment and 1999 supplemental special assessment no longer proportionate to the benefit received from the assessments as originally enacted." The MTT held that to determine the issue, petitioner had "to establish the value of the property with the improvements as originally designed versus the value of the property with the improvements absent the trunk line sewer." These conclusions are legally erroneous and contrary to the remand order.

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 (1) the improvement confers a benefit on the assessed property and not just the community as a whole and (2) the amount of the special assessment is reasonably proportionate to the benefit derived from the improvement. *Id.*; *Dixon Rd Group v City of Novi*, 426 Mich 390, 401; 395 NW2d 211 (1986). Thus, the first step in the analysis is to determine the benefit conferred on the assessed property by the actual improvement.

In *Dixon Rd Group*, our Supreme Court held that, to determine the benefit conferred on a property specially assessed, the market value of the property before the improvement and after the improvement must be considered. *Id.* at 398-401. The Court held: "We believe that a determination of the increased market value of a piece of property after the improvement is necessary in order to determine whether or not the benefits derived from the special assessment are proportional to the costs incurred." *Id.* at 401. Thus, the key question is whether the market value of the property was increased as a result of the improvement. *Kadzban*, 442 Mich at 501; *Dixon Rd Group*, 426 Mich at 400-401. 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 this case, the MTT did not properly consider the benefit, if any, conferred on petitioner's property by the special assessment, i.e., the market value of petitioner's property with the sewer improvement and the market value of petitioner's property without the sewer improvement. Instead the MTT confined its analysis to whether the elimination of the trunk line across petitioner's property rendered the special assessments "no longer proportionate to the benefits received from the assessments as originally enacted." The MTT held that to determine the issue, petitioner had to establish the value of the property with the trunk line versus the value of the property without the trunk line. These holdings are legally erroneous because the sewer trunk line that was eliminated from the project plans by the township board's 2004 resolution

and that was not actually constructed is irrelevant to the determination of the benefit conferred on petitioner's property by *the* sewer improvement for which petitioner was specially assessed \$3,161,925. Because the MTT did not properly consider what benefit, if any, was conferred on petitioner's property by the sewer improvement—the difference in the market value of petitioner's property with and without the sewer improvement as actually constructed—the MTT could not “determine whether the special assessment levied against petitioner's property is proportionate to the benefit to the property” as ordered by our Supreme Court, *Highland-Howell Dev Co*, 478 Mich at 932. See *Kadzban*, 442 Mich at 502. Accordingly, this matter must be remanded to the MTT for a determination of (1) the benefit conferred on petitioner's property by the sewer improvement and (2) whether the special assessment of \$3,161,925 is proportionate to that benefit to the property as set forth in *Dixon Rd Group*, 426 Mich at 402-403.

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

/s/ Mark J. Cavanagh  
/s/ Cynthia Diane Stephens  
/s/ Amy Ronayne Krause