

STATE OF MICHIGAN  
COURT OF APPEALS

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RONALD GRIES,

Plaintiff-Appellant,

v

OAKLAND COUNTY ROAD COMMISSION,

Defendant-Appellee.

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UNPUBLISHED

June 26, 2014

No. 314329

Tax Tribunal

LC No. 00-434929

Before: CAVANAGH, P.J., and OWENS and STEPHENS, JJ.

PER CURIAM.

Petitioner appeals as of right the final opinion and judgment of the Michigan Tax Tribunal (MTT), affirming the special assessment levied against petitioner's real property for repaving streets in petitioner's subdivision. We affirm.

I. BACKGROUND

On July 6, 2011, respondent, Oakland County Road Commissioners, received an application by petition for a special assessment road improvement project that would affect the following roadways in Bloomfield Hills: Park Ridge Drive, Lost Tree Way, Alter Road, Brenthaven Drive, Brenthaven Court, Williamstown Court, and Colonial Park Court. Petitioner's property was located on Lost Tree Way in the proposed project area.

Respondent verified that the application contained signatures from property owners whose land encompassed at least 51% of the street frontage for each of the seven streets in the proposed district in accordance with the requirements of MCL 41.271. Respondent determined the application bore signatures of property owners whose ownership interests by street were: Park Ridge Drive, 61.88 percent; Lost Tree Way, 54.49 percent; Alter Road, 58.13 percent; Brenthaven Drive, 59.32 percent; Brenthaven Court, 70.49 percent; Williamstown Court 70.11 percent; and Colonial Park Court, 59.13 percent. On September 22, 2011, respondent acknowledged the validity of the application by resolution and determined that the proposed improvements were necessary for the benefit of the public welfare and convenience and that the improvements be made to the proposed seven streets. The same resolution stated that the application by petition granted it authority to "establish a special assessment district to have improvements made by contract and to assess the benefitting property for the cost of said improvements by reason of benefit accruing from the proposed improvement."

Respondent appointed a hearing examiner who held a hearing for objections on October 27, 2011. Eighteen Residents voiced concerns over the cost of the assessment, the increased speeding that would develop with newly paved streets and how assessment payments would be levied. Petitioner was not noted as participating in the objection hearing. The processes of validating the application by petition, assessing costs under a unit of benefit method and submitting a petition for reconsideration were all explained to those who attended. The hearing examiner made findings of fact which concluded that the streets in the special assessment district were in need of repair and the costs of repair were reasonable.

A reconsideration petition was circulated by property owners who wanted respondent to reconsider its previous determination to approve the application for road improvement. In a resolution dated January 12, 2012, respondent found the Reconsideration Petition invalid for failing to comply with Act 246 of PA 1931 where a Reconsideration Petition must represent more than 50% of the total lineal frontage along the proposed improvement. The Reconsideration Petition received contained signatures of three property owners representing only 1.88% or 318.81 feet of the total lineal frontage along the proposed improvement.

Respondent made a final order of determination by resolution dated February 16, 2012, that the proposed improvement was necessary for the benefit of the public and for the public welfare. By a series of later resolutions, respondent adopted the findings of the hearing examiner, determined the project cost and assessed parcels of land in the district for a percentage of the total cost of the improvement.

Petitioner filed a special assessment appeal petition on May 12, 2012, with the MTT. He challenged whether the special assessment district was properly formed and whether the improvements to his property were proportional to his share of cost for the improvements. Petitioner's corner lot was assessed at \$5,238.62 while other interior lots were assessed \$4,678.96. Respondent answered the appeal petition and filed motions for immediate consideration and summary disposition under MCR 2.116(C)(8). Respondent was granted immediate consideration but denied summary disposition by an MTT referee because further factual development could possibly justify a right to recovery for petitioner. A later in-person hearing, which produced a proposed opinion and judgment that was later affirmed by the Tribunal, found the special assessment district properly established, petitioner's petition for reconsideration invalid and respondent's unit of benefit method for assessing petitioner's property appropriate. Petitioner challenges the formation of the special assessment district and the assessment of his property on appeal.

## II. STANDARD OF REVIEW

Review of decisions by the MTT is limited. *Mt Pleasant v State Tax Comm*, 477 Mich 50, 53; 729 NW2d 833 (2007). In the absence of fraud, a decision of the MTT is reviewed for "misapplication of the law or adoption of a wrong principle." *Briggs Tax Serv, LLC v Detroit Pub Schs*, 485 Mich 69, 75; 780 NW2d 753 (2010). The factual findings of the MTT are

conclusive “if they are supported by competent, material, and substantive evidence on the whole record.” *Liberty Hill Housing Corp v City of Livonia*, 480 Mich 44, 49; 746 NW2d 282 (2008). (internal citations omitted). “But when statutory interpretation is involved, this Court reviews the Tax Tribunal's decision de novo.” *Briggs Tax Serv, LLC*, 485 Mich at 75.

### III. STATUTORY INTERPRETATION

Petitioner argues that the MTT erred in its interpretation of MCL 41.271 and MCL 41.286. He contends the language of the statutes are synonymous with each other, that he should have been held to the petition requirements of MCL 41.271 instead of MCL 41.286, that he should have been granted a hearing to discuss his interpretation of the statutes, and that the statutes were otherwise ambiguous. We disagree. Petitioner’s arguments are without merit, legally, factually and procedurally.

Petitioner’s legal argument that the MTT and respondent erred in their analysis of the numerosity requirement for a hearing on reconsideration is incorrect. Our interpretation of the applicable statutes is guided by *Drew v Cass County*, 299 Mich App 495; 830 NW2d 832 (2013).

The primary goal of statutory interpretation is to give effect to the Legislature's intent, focusing first on the statute's plain language. The words used by the Legislature in writing a statute provide us with the most reliable evidence of the Legislature's intent. While, generally, the interpretation of a statute by an agency charged with its execution is entitled to the most respectful consideration, an agency's construction of a statute is not binding on the courts and cannot conflict with the Legislature's intent as expressed in clear statutory language. *Id.* at 499.

MCL 41.271, in pertinent part, provides

Whenever the owners of more than 51% of the lineal frontage of lands outside of the corporate limits of any city or village fronting or touching upon any public highway or portion thereof, desire a pavement or sidewalks built thereon, they may file an application for such improvement with the county road commissioners of the county in which such pavement or sidewalk is proposed to be built. . . .

. . . The words “highway” or “public highway” as used in this act mean any road, street or alley taken over by and under the jurisdiction of the board of county road commissioners.

MCL 41.286 provides in pertinent part

If the owners of record of more than 50% of the lineal frontage, who were qualified under the provisions of section 1 of this act to sign the petition, desire to have the board of county road commissioners reconsider its determination made under this section, they shall submit within 10 days after mailing of copies of the board's determination, a petition for reconsideration of such determination by the board of county road commissioners.

The two statutes are not as petitioner claims, “essentially identical.” The property owner land interest requirement of MCL 41.271 is more than 51% and MCL 41.286 has a requirement of property owner land interest of more than 50% of the lineal frontage of at least 51% to be represented on the respective petitions. Next, petitioner’s assertion that the street by street analysis from MCL 41.271 is legally applicable to a request for a hearing for reconsideration under MCL 41.286 is belied by the language of the statutes. While MCL 41.271 addresses the need for achieving the 51% requirement on any street to be considered for a S.A.D., MCL 41.286 does not. MCL 41.271 reads

Sec. 1. Whenever the owners of more than 51% of the lineal frontage of lands outside of the corporate limits of any city or village fronting or touching upon any public highway or portion thereof, desire a pavement or sidewalks built thereon, they may file an application for such improvement with the county road commissioners of the county in which such pavement or sidewalk is proposed to be built.

On the other hand MCL 41.286 notes

If the owners of record of more than 50% of the lineal frontage, who were qualified under the provisions of section 1 of this act<sup>1</sup> to sign the petition, desire to have the board of county road commissioners reconsider its determination made under this section, they shall submit within 10 days after mailing of copies of the board’s determination, a petition for reconsideration of such determination by the board of county road commissioners.

The board of county road commissioners shall set a time and place of hearing upon the petition for reconsideration, and shall give notice thereof by first class mail to each owner of or party in interest in property to be assessed at their addresses as shown upon the last local tax assessment records. At the conclusion of the hearing, the board of county road commissioners may modify or confirm its previous determination, the determination shall thereupon be final.

Here, the application petitioned for seven streets to be paved. The statute requires that the application contain signatures from property owners holding ownership interest in more than 51% of frontage on each of the seven streets, with the seven streets then collectively known as the “special assessment district.”

On the other hand, MCL 41.286 plainly provides that “the owners of record of more than 50% of the lineal frontage, who were qualified under the provisions of section 1 of this act to sign the petition” are those that are required to submit the petition for reconsideration. This language clearly explains that a request for reconsideration must be supported by property owners, who together represent more than 50% of the aggregate lineal frontage for the entire district. Section 1, cited in MCL 41.286, is a direct reference to MCL 41.271 which concerns only the original application. Petitioner offers the flawed syllogism that if an original application for a S.A.D. must meet the ownership interest as to each and every street, then a request for

reconsideration need only bear support from a like percentage of owners from any street within the proposed S.A.D. In any case, the petition for reconsideration did not meet the threshold for any street within the S.A.D. with signatures from three property owners on three different streets representing 1.88% of the entire S.A.D.

Petitioner's contention that MCL 48.271 applies to his request for reconsideration because the S.A.D. was not officially created before the petition was filed, also fails. Respondent received the application for the special assessment district to be formed on July 6, 2011. The application was found valid on August 18, 2011. Respondent subsequently established the district and determined the proposed road improvement project would be for the public benefit on September 22, 2011. Objections to the special assessment were entertained October 27, 2011. In accordance with MCL 41.286, a hearing examiner was designated who did in fact hold a public hearing and submitted findings of fact and proposed determinations to respondent on November 4, 2011. Respondent adopted the findings and determinations on December 1, 2011. The petition for reconsideration was filed after all the above proceedings and found invalid on January 12, 2012. Thus, the S.A.D. was created before the petition filing.

Petitioner also argues that the MTT was required to cite supporting case law with its statutory interpretations of MCL 41.271 and 41.286. Supplemental case citation was unnecessary "[w]hen a legislature has unambiguously conveyed its intent in a statute, [because] the statute speaks for itself and there is no need for judicial construction; the proper role of a court is simply to apply the terms of the statute to the circumstances in a particular case." *Niles Twp v Berrien Co Bd of Comm'rs*, 261 Mich App 308, 313; 683 NW2d 148 (2004) (quotation marks, citation, and emphasis omitted). The MTT was not required to interpret any case law alongside an otherwise unambiguous statute.

Petitioner lastly contends that the statutory language of MCL 41.271 and MCL 41.286 is vague and that he should have been granted a hearing to discuss his different interpretation of the statutes. Petitioner fails to understand the connection between submitting a valid petition for reconsideration and having a hearing on the petition for reconsideration. Under MCL 41.286, respondent only makes determinations on valid petitions for reconsideration, those are petitions where "owners of record of more than 50% of the lineal frontage" have signed. Submission of a valid petition for reconsideration prompts the hearing on the petition. An invalid petition halts the reconsideration process and prevents a hearing by respondent. Petitioner's argument also appears to be one of denial of procedural due process. "The fundamental requirements of procedural due process are notice and a meaningful opportunity to be heard before an impartial decision maker." *In re Beck*, 287 Mich App 400, 401-402; 788 NW2d 697 (2010). Both of these requirements were complied with here. Respondent provided notice of its hearing on the confirmation of the special assessment roll to petitioner. Respondent also filed exceptions on two occasions during this case clearly exercising his opportunity to be heard on the issues that matter most to him. Petitioner further has not complained that he was not notified of any hearing regarding the special assessment district formation and levy thereafter. Finally, outside of respondent's complaint on appeal that the MTT arbitrarily affirmed respondent's argument, there was no complaint otherwise that the MTT was affiliated with respondent or somehow impartial.

#### IV. CHALLENGE TO THE FORMATION OF THE SPECIAL ASSESSMENT DISTRICT

Petitioner asserts that the special assessment district was not established until after a petition for reconsideration was circulated and that the petition for reconsideration prevented the proper formation of the district. After a review of the record, we conclude otherwise.

The S.A.D. was properly formed. The establishment of a special assessment district is a legislative act. *Cummings v Garner*, 213 Mich 408; 182 NW 9 (1921). The application by petition is a statutory requirement. If the application is found to be valid, jurisdiction is then conferred upon the respondent to act and make certain determinations as to the benefits and costs of the project proposed by the application. *Id.* at 422. MCL 41.271 states in relevant part that

[a]ny petition so received by the commissioners or presented to them under the provisions of this act, shall be deemed to confer full authority to cause such work to be done in order that the proper proportion of the expense thereof may be met accordingly. The commissioners shall have all the power of laying out and establishing all such pavements or sidewalks.

Respondent received an application by petition on July 6, 2011, for a subdivision road improvement project in the county of Oakland. Respondent determined the application was compliant with the statutory requirements of MCL 41.271 on August 18, 2011. Under MCL 41.271 respondent was required to determine the eligibility of those who signed the application. That process included verifying the property interests of those who signed with the register of deeds, as well as determining the lineal frontage of each property represented on the application by a petitioner's signature. The application by petition was made up of seven streets. Respondent determined that for each street lineal frontage was certified at 61.88 percent, 54.49 percent, 58.13 percent, 59.32 percent, 70.49 percent, 70.11 percent, and 59.13 percent. Those percentages were each more than the 51% required by MCL 41.721. After it resolved the application was valid, respondent established the special assessment district which was made up of the seven streets that petitioned for the road improvement project. It was the submission and receipt of a valid application that granted respondent the authority to establish the special assessment district. The special assessment district in this case was properly formed by resolution on September 22, 2011, after receipt of a valid application by petition in conformance with MCL 41.271. Petitioner's petition for reconsideration was filed thereafter sometime in between December 1, 2011 and January 12, 2012.

In order for petitioner to prevail in his argument that the special assessment district was not properly formed, he must successfully identify deficiencies in the application or attack respondent's approval of the application. Petitioner has argued neither. Petitioner's only attack is that his petition for reconsideration was filed before the special assessment district was formed. Petitioner argues that if this Court finds that the petition for reconsideration was filed before the special assessment district's formation, it should also find that petitioner should have been held to the lineal frontage requirements of MCL 41.271 and not MCL 41.286. As discussed above, the district was formed before petitioner's filing. More importantly however, is that petitioner's argument denies the plain language and clear application of each statute. MCL 41.271 is partially titled "Application by petition" and contains only the process for filing an application by petition. MCL 41.286 is partially titled "petition for reconsideration" and

contains only the process for filing a petition for reconsideration. No matter when petitioner filed for reconsideration, MCL 41.271 would not be applicable because it only applies to the process for application by petition. Even if this Court found that petitioner filed the petition for reconsideration before the district was formed, the fact would not change that petitions for reconsideration are controlled by the provisions of MCL 41.286.

## V. PROPORTIONALITY OF BENEFITS

Petitioner argues that the benefits of the special assessment improvement to his property have not been shown to be proportional to the costs of the improvement. We agree.

“A special assessment is a levy upon property within a specified district. Although it resembles a tax, a special assessment is not a tax. In contrast to a tax, a special assessment is imposed to defray the costs of specific local improvements, rather than to raise revenue for general governmental purposes.” *Kadzban v City of Grandville*, 442 Mich 495, 500; 502 NW2d 299 (1993) (internal citation omitted). “Special assessments are presumed valid” *Kane*, 301 Mich App at 586 (citation omitted), and the petitioner “bears the burden of proof in an appeal from an assessment, decision, or order of the Tax Tribunal,” *ANR Pipeline Co v Dep’t of Treasury*, 266 Mich App 190, 198; 699 NW2d 707 (2005).

It is not uncommon for abutting property to be specially assessed the costs of paving a road like in the instance here where petitioner has been assessed, along with other parcels of land in the subdivision, to cover the costs of paving streets within the subdivision. See *Kuick v Grand Rapids*, 200 Mich 582, 588; 166 NW 979 (1918). Owners of property within a specially assessed district may challenge the benefit received from the proposed project, the proportionality of the amount assessed and the value accrued to their land. In *Dixon Road Group v City of Novi*, 426 Mich 390, 401; 395 NW2d 211 (1986), our Supreme Court held that special benefits must be reflected by an increase in market value. “[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 cost incurred.” *Id.* The holding in *Dixon* did not call for a “rigid dollar-for-dollar balance between the special assessment and the amount of the benefit” but rather “a reasonable relationship between the two[.]” *Id.* at 402-403. This Court should only “intervene where there is a substantial or unreasonable disproportionality between the amount assessed and the value which accrues to the land as a result of the improvements.” *Id.* at 403.

Petitioner’s argument is that he was assessed 15 percent more for his corner lot than the interior base lots of the subdivision and does not understand what extra benefit his property received over the interior lots that would justify his increased assessment. Petitioner’s portion of the assessment was determined to be \$5,238.62 compared to the base lot assessment of \$4,555.32. Both amounts were determined by respondent using a numerical scale that related a property owner’s lineal footage abutting the road to be improved with a “unit of benefit”. According to respondent’s Policy and Procedure Manual for Special Assessment Improvement Projects, respondent’s method of determination of benefits required first, the establishment of the average lot base which was accomplished by adding the frontage of all lots and then dividing that sum by the number of lots. Then,

[t]he base lot is assigned 1.0 units of benefit and all larger lots will have a benefit greater than 1.0 units and will be calculated using the declining rate curve. This curve declines at a rate so that for a lot larger than the base lot, each additional foot over the base lot is assessed as a slightly lesser amount per foot up to a maximum of 30% more than the unit benefit of the base lot. All lots with a frontage less than the base lot will be considered a base lot with 1.0 unit of benefit.

Petitioner's corner lot, according to respondent's policy and procedure manual, would be a "special situation." Accordingly, "each individual special situation will be assigned a benefit by [respondent]." Respondent determined the base lot to be 134 feet and found petitioner's lot to have 276 feet of street frontage. Petitioner's increased lot footage led to an increased assessment for petitioner of \$683.30 on top of the base assessment of \$4,555.32.

Respondent contends that because its "unit of benefit" method was previously approved by the MTT in *Whalen, supra*, and not successfully challenged by petitioner, respondent's increased assessment of petitioner's lot is valid. In *Whalen*, the MTT concluded that respondent's "method of measuring benefit value of ingress and egress to the new paved road and apportioning costs reasonably thereon fairly meets the tests necessary so as to be declared valid." The "test" employed in *Whalen* was that "[a]s long as a method of apportioning costs is shown to be reasonably fair, equitable, and uniformly applied, it is acceptable in the absence of a showing that it is arbitrary and non-uniform." The benefit in *Whalen* related to the ease of ingress and egress. The proposed opinion and judgment of Referee Vertalka, adopted in the final opinion and judgment, stated "[a]s for Petitioner's contention of not receiving benefit from the project and that the method of costs allocation is disproportional," MCL 41.280 provides in part, "[t]he commissioners shall apportion the percentage of the total cost of the improvement which the township at large shall be taxed to pay by reason of the benefit to the public convenience and welfare[.]" Referee Vertalka also cited *Whalen* and concluded that "[p]etitioner had failed to meet his burden to show that the base lot method applied by [r]espondent to allocate the costs of the special assessment" was unreasonable. The final opinion and judgment of the Tribunal additionally held that petitioner "failed to submit any valuation evidence indicating whether the benefit to his property was not proportional to the cost of the improvement to his property."

Notably, the *Whalen* opinion and judgment, entered May 22, 1980, was before our Supreme Court decided *Dixon, supra*, in 1986. In *Dixon*, the Supreme Court reviewed a special assessment cost per acre and evidence of valuation post improvement. *Id.* at 393. The Supreme Court also rejected alternative methods of calculating benefits that did not take into account an increase in the market value of the property assessed. *Id.* at 398-401. In *Kadzban v City of Grandville*, 442 Mich 495, 502; 502 NW2d 299 (1993), the Supreme Court reiterated its holding in *Dixon* and held that "a special assessment will be declared invalid only when the party challenging the assessment demonstrates there is a substantial or unreasonable disproportionality between the amount assessed and the value which accrues to the land as a result of the improvements." *Id.* at 502 (citation and quotation marks omitted). In *Kadzban*, the Supreme Court reviewed a special assessment cost per property owner, *Id.* at 499, and evidence from the defendant municipality that plaintiff's properties increased in value after the improvement, *Id.* at 506-507.

The language in *Kadzban* clearly places the burden on petitioner to demonstrate proportionality. A panel of this Court has also stated that petitioner “bears the burden of proof in an appeal from an assessment, decision, or order of the Tax Tribunal.” *ANR Pipeline Co*, 266 Mich App at 198. This Court begins its analysis with the presumption that the assessment is reasonably proportionate to the benefits received and is thus, valid. *Crompton v Royal Oak*, 362 Mich 503, 514; 108 NW2d 16 (1961). While there was no valuation evidence presented by either petitioner or respondent in this case, the petitioner alone has the burden in an appeal of an assessment. We therefore affirm the Tribunal.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Donald S. Owens

/s/ Cynthia Diane Stephens