

STATE OF MICHIGAN
COURT OF APPEALS

REMA VILLAGE MOBILE HOME PARK,

Petitioner-Appellant/Cross-
Appellee,

V

ONTWA TWP,

Respondent-Appellee/Cross-
Appellant.

UNPUBLISHED

October 27, 2005

No. 256295

Michigan Tax Tribunal

LC No. 00-273828

Before: Zahra, P.J., and Cavanagh and Owens, JJ

PER CURIAM.

Petitioner appeals as of right the tax tribunal's judgment affirming respondent's special assessment on petitioner's property. We affirm the tribunal's factual findings but reverse the tribunal's legal conclusion affirming respondent's special assessment.

I. Facts and Procedure

The property at issue is petitioner's mobile home park in Ontwa Township in Cass County. The park, known as Eagle Lake Estates, consists of four parcels that comprise approximately 15 acres and 92 lots.¹ Petitioner purchased the property, which is close to the Michigan-Indiana border, in 1991 for \$900,000. The park used a septic field system to dispose of sewage since petitioner purchased it. The septic field system included two drain fields and one septic tank. Petitioner used one field at a time to allow liquid waste from the most recently used field to drain into the ground. The tank itself was periodically pumped of solid wastes.

In August, 1999, respondent created three special assessment districts, one of which was designated Sanitary Sewer Special Assessment District No.1. Shortly thereafter, construction started on this municipal sewer system, and respondent proposed special assessments of approximately \$2,200 for each lot in petitioner's mobile home park. In March, 2000, petitioner

¹ Each "lot" is a concrete slab or "pad" and is occupied by one "single wide" manufactured home.

sought relief from the Michigan Tax Tribunal by challenging the constitutionality, legality and validity of the districts and the assessments. In April, 2001, while petitioner's challenge was pending, respondent ordered petitioner to connect to the newly constructed municipal sewer system by July 8, 2001.² Petitioner paid \$4,150 to connect to the system and stopped using its septic field system.

Petitioner appeals a judgment entered by Michigan Tax Tribunal affirming respondent's special assessment of \$204,050 for the municipal sewer system. The tribunal concluded the municipal sewer system and the special assessment imposed on petitioner to pay for it resulted in a decrease in the value of petitioner's property. Notwithstanding this finding, the tribunal appears to have found the assessment valid because a municipal sanitary sewer system promotes better public health. This appeal followed.

II. Standard of Review

Our review of a decision by the tribunal is limited, absent fraud, to determining whether the tribunal misapplied law or adopted a wrong principle. *Blaser v East Bay Twp*, 242 Mich App 249, 252; 617 NW2d 742 (2000). "The tribunal's factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record." *Id* at 252.

III. Analysis

A special assessment is not a tax. Rather, 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, 502; 502 NW2d 299 (1993). Special assessments are "sustained upon the theory that the value of the property in the special assessment district is enhanced by the improvement for which the assessment is made." *Knott v City of Flint*, 363 Mich 483, 499; 109 NW2d 908 (1961). Municipal decisions regarding special assessments are generally presumed to be valid. *In re Petition of Macomb Co Drain Comm'r*, 369 Mich 641, 649; 120 NW2d 789 (1968). A "special assessment will be declared invalid only when a 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.'" *Kadzban, supra* at 502, quoting *Crampton v Royal Oak*, 362 Mich 503, 514-516; 108 NW2d 16 (1961). The party challenging the special assessment also has the burden of establishing the True Cash Value ("TCV") of the property being assessed. MCL 205.737. The TCV is equivalent to fair market value, *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974), and is defined as "the usual selling price at the place where the property to which the term is applied is at the time of the assessment, being the price that could be obtained for the property at private sale" MCL 211.27.

² Michigan law allows local units of government to require homes to connect to available sewer systems: "Structures in which sanitary sewage originates lying within the limits of a city, village, or township shall be connected to an available public sanitary sewer in the city, village, or township if required by the city, village, or township." MCL 333.12753(1).

Petitioner contends the tribunal erred when it concluded the assessment was justified on public health grounds. Petitioner argues that once the tribunal concluded the public sewer system did not enhance the TCV of petitioner's property, the special assessment had to be declared invalid. We agree.

Preliminarily, we reject respondent's claim that petitioner failed to meet its burden of establishing the TCV of the property. Petitioner submitted to the tribunal two valuation disclosures. The first valuation disclosure was rejected by the tribunal early in the proceedings because it was insufficient to establish the TCV of petitioner's property. The second disclosure valuation was not rejected by the tribunal. While petitioner's second valuation disclosure was substantially less comprehensive than the disclosure submitted in *Meadowlanes Ltd Dividend Housing Assoc v City of Holland*, 437 Mich 473; 473 NW2d 636 (1991), any deficiencies in petitioner's valuation do not support respondent's claim that petitioner failed to meet its burden of production. Rather, any deficiencies in this valuation disclosure go to the weight accorded to it by the tribunal.

We conclude there existed competent, material and substantial evidence in the whole record to support the conclusion that the TCV of petitioner's property decreased as a result of the special assessment. Notwithstanding any deficiencies in petitioner's valuation disclosure, the tribunal also considered respondent's valuation disclosure. This disclosure admitted that the TCV of plaintiff's property decreased as a result of the special assessment imposed for the municipal sewer system. Respondent's valuation disclosure determined the value of petitioner's mobile home park, when attached to sewers, was \$862,525 – a little more than \$200,000 less than its value with a properly functioning septic field system.

The special assessment cannot be justified on the basis of public health needs and the tribunal erred to the extent it did so. In *Dixon Road Group v City of Novi*, 426 Mich 390, 398-401; 395 NW2d 211 (1986), our Supreme Court rejected the notion that a special assessment could be supported by a showing of some benefit that is not reflected in the market value of the assessed property. Similarly, in *Knott, supra*, our Supreme Court held that a special assessment was properly invalidated where the assessed property received no special benefit in addition to the benefit conferred upon the general community. Here, public health benefits from the implementation of a municipal sewer system are not unique to the assessed property. Such benefits inure to the community at large. Because the property did not increase in value as a result of the municipal sewer system that was the subject of the special assessment, the improvement did not confer a special benefit to the assessed property as a matter of law.

Respondent argues on cross appeal that the tribunal erred as a matter of law when it concluded that petitioner's septic system did not need to be replaced. Respondent maintains that the special assessment is less expensive than the cost of replacing the septic system. Thus, respondent concludes, the municipal sewer system actually enhances the value of petitioner's property. We disagree.

There was competent, material and substantial evidence on the whole record to support the conclusion that petitioner's septic system was in good working order, in compliance with all applicable legal standards and not in need of replacement. The tribunal did not err by rejecting the un rebutted testimony of respondent's expert, a civil engineer licensed by the state of Michigan, who testified that petitioner's septic field system was overwhelmed and failing from

the day it was constructed. According to respondent's expert, the MDEQ assumes 200 gallons of flow per day per home if not metered, which, when multiplied by the number of homes in the mobile home park, would exceed the capacity of petitioner's septic field system.

There is no requirement in Michigan's evidentiary rules that a trial court accept an expert's un rebutted testimony. A court is free to conclude that the un rebutted testimony of a retained expert is nonetheless lacking in credibility.

The tribunal admitted several exhibits from the MDEQ which are inconsistent with, and arguably rebut, the expert. For example, MDEQ's annual inspection reports note, among other things, compliance of the mobile home park's septic field system. Respondent does not contest that the MDEQ reports were relevant. The tribunal also heard testimony on the subject of the viability of petitioner's septic field system from petitioner's witness who provided information with respect to its maintenance. Other witnesses also testified to some degree about the perceived viability of the septic field system. The tribunal was free to weigh all such evidence for its substance and its credibility.

Respondent also argues that the tribunal erred when it stated the expert's testimony was speculative and without documentation. Respondent contends that documentation in support of an expert's opinion is not necessary under Michigan's evidence rules. Respondent's argument is based upon a myopic view of MRE 702 and a misreading of the tribunal's findings of fact and conclusions of law. The tribunal acted within its discretion when it rejected respondent's expert's testimony because it was not supported by documentation. MRE 702 provides the tribunal with the authority to require an expert's opinion to be based upon "sufficient facts or data. . . ." MRE 702. Thus, the tribunal was free to conclude that the expert's opinion was not based on sufficient data. Further, reviewing the record as a whole, it is clear the tribunal considered many factors before rejecting the expert's testimony, including documentary evidence created by the MDEQ, which supported the conclusion that petitioner's septic system was in acceptable running order and did not need to be replaced. Accordingly, we conclude the tribunal appropriately applied MRE 702 when it rejected the expert's testimony.

IV. Conclusion

The tribunal's factual findings as to the value of the petitioner's mobile home park, before and after connecting to the sewer, as well as the viability of petitioner's septic field system, are affirmed. The tribunal's legal conclusion affirming the assessment is reversed because the assessment imposed by respondent upon petitioner decreased the TCV of petitioner's property.

Affirmed in part and reversed in part.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Donald S. Owens