

STATE OF MICHIGAN
COURT OF APPEALS

PAUL A. JEAN,

Plaintiff-Appellant,

v

LARKIN CHARTER TOWNSHIP and
LEONARD SERVINSKI,

Defendants-Appellees.

UNPUBLISHED

June 19, 2007

No. 274127

Midland Circuit Court

LC No. 06-001039-CZ

Before: White, P.J., and Saad and Murray, JJ.

WHITE, P.J., (*dissenting*).

I respectfully dissent. I conclude that the notice was affirmatively misleading. The challenged notice stated in part:

PLEASE TAKE FURTHER NOTICE that if written objections to the Project are filed with the Township Board, at or before the hearing, signed by record owners of land constituting more than 20% of the area in the proposed assessment district, then the Township Board may not proceed unless petitions in support of the Project, signed by record owners of more than 50% of the area to be made into the assessment district, are filed with the Township. Written comments or objections may be filed with the Township Clerk as set forth above.

Before the hearing, plaintiff and several other individuals who owned parcels of property as tenants in the entirety signed and filed written objections that lacked the signature of their respective spouses. The township concluded that these objections were not valid because the “record owner” did not sign them. When these objections were disregarded, the remaining objections were from record owners of 20 percent or less of the land in the proposed district and, therefore, the township could proceed without a petition.

While MCL 41.723 does not require that the notice include information concerning the filing of written objections, nor provide an explanation of the meaning of “record owners,” neither can the notice affirmatively mislead the recipient. *Trussell v Decker*, 147 Mich App 312; 382 NW2d 778 (1985).

MCL 41.723 speaks of objections being filed “by *the* record owners of more than 20% of the total land area in the proposed special assessment district.” [Emphasis added.] The notice, however, states that objections must be signed “by record owners of land constituting more than 20% of the area.” The use of the definite article is significant. Without the word “the,” petitioners justifiably believed that objections were properly signed “by record owners of land constituting more than 20% of the area.” With the definite article, petitioners would have been on notice that the signatures of all the record owners might be required.

I would reverse.

/s/ Helene N. White