

STATE OF MICHIGAN
COURT OF APPEALS

DALTON ENTERPRISES,

Petitioner-Appellant,

v

DALTON TOWNSHIP,

Respondent-Appellee.

UNPUBLISHED

July 22, 2010

No. 291789

Michigan Tax Tribunal

LC No. 00-328934

Before: FORT HOOD, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

In this special assessment dispute, petitioner Dalton Enterprises appeals as of right the Michigan Tax Tribunal's (MTT) judgment affirming respondent Dalton Township's special assessment on petitioner's property. For the reasons set forth in this opinion, we affirm the MTT's judgment affirming the special assessment, but order respondent to correct the REU assessment for petitioner's property on the assessment roll and recalculate petitioner's special assessment and connection fee based on the corrected REU assessment.

I. FACTS AND PROCEDURAL HISTORY

This matter involves a special assessment levied by respondent to defray the cost of a sanitary sewer improvement project along Whitehall Road in Dalton Township and Muskegon County. The cost of the project was \$2,215,000. Defendant sought to finance the project by creating a special assessment district¹ and levying a special assessment against property owners included in the district. The assessment roll included numerous properties, including petitioner's property and Michigan's Adventure amusement park. The special assessments and connection charges were determined by an REU (Residential Equivalent Unit) Schedule. The schedule established a special assessment cost of \$7,500 per REU and a connection charge of \$500 per REU for properties within the special assessment district.

¹ The special assessment district was designated the Whitehall Road and River Road Sanitary Sewer Special Assessment District No. 1.

Petitioner's property is located on Whitehall Road and is within the special assessment district. Petitioner's property includes a building; the first floor of the building was apparently used as retail space at one time. However, petitioner has used it as a warehouse for 16 years. Respondent calculated petitioner's REUs at 8.73. Petitioner's special assessment was \$63,750, plus a connection charge of \$4,250.² Thus, petitioner's total special assessment, including the connection charge, was \$68,000.

On August 9, 2006, petitioner sought relief from the MTT, arguing that the special assessment should be invalidated on numerous grounds. Petitioner contended that the sewer improvement project was primarily intended to benefit Michigan's Adventure amusement park and respondent's new industrial park and that the amount of the special assessment was not reasonably proportionate to the benefit to petitioner's property because petitioner's property already had a water and septic system that met its needs. Petitioner further argued that the special assessment constitutes a tax under *Bolt v City of Lansing*, 459 Mich 152; 587 NW2d 264 (1998), and therefore violates the Headlee Amendment, Const 1963, art 9, § 31. Finally, petitioner argued that respondent did not follow the statutory and procedural requirements to implement the special assessment.

On July 31, 2007, respondent moved for summary disposition under MCR 2.116(C)(4). In an amended brief in support of its motion, respondent argued that petitioner did not properly protest the special assessment in writing and did not timely file its appeal with the MTT. The trial court denied respondent's motion, and the matter went to trial.

Following a two-day trial, the MTT affirmed the special assessment. Noting that petitioner bore the burden of proving that the special assessment was invalid, the MTT ruled that "[p]etitioner has failed to present credible evidence to refute the presumption that the special assessment is valid[.]" In addition, the MTT also rejected petitioner's argument that the special assessment violated the Headlee Amendment. According to the MTT, the Headlee Amendment only applies to the imposition of taxes by local units of government, and special assessments are not taxes. The MTT also rejected petitioner's reliance on *Bolt*, reasoning that *Bolt* was distinguishable because it involved a user fee that was primarily for a public, rather than private, purpose, and therefore constituted a tax, whereas the instant case involved a special assessment that was not a tax. The MTT further ruled that the assessment district was lawfully created under MCL 123.731 *et seq.*

II. STANDARDS OF REVIEW

In accordance with Const 1963, art 6, § 28, appellate review of a decision of the MTT is limited. *Mount Pleasant v State Tax Comm*, 477 Mich 50, 53; 729 NW2d 833 (2007). Absent

² There is a discrepancy in the number of REUs assigned to petitioner's property and the amount of petitioner's special assessment and connection charge. Petitioner's special assessment of \$63,750 and connection charge of \$4,200 appear to be based on an assessment of 8.5 REUs rather than 8.73 REUs ($\$7500 \times 8.5 = \$63,750$ and $\$500 \times 8.5 = \$4,250$). The source of this discrepancy appears to be the joint stipulation of facts that the parties filed before the MTT.

fraud, this Court reviews a decision of the MTT to determine whether it made an error of law or adopted a wrong legal principle. *Meijer, Inc v Midland*, 240 Mich App 1, 5; 610 NW2d 242 (2000). The MTT's factual findings are final if they are supported by competent and substantial evidence. *Mount Pleasant*, 477 Mich at 53. "Substantial evidence is the amount of evidence that a reasonable person would accept as being sufficient to support a conclusion; it may be substantially less than a preponderance of the evidence." *Wayne Co v Mich State Tax Comm*, 261 Mich App 174, 186-187; 682 NW2d 100 (2004).

Statutory interpretation involves a question of law that this Court reviews de novo; however, this Court generally defers to the MTT's interpretations of the statutes it administers and enforces. *Kok v Cascade Charter Twp*, 265 Mich App 413, 416; 695 NW2d 545 (2005).

III. ANALYSIS

A. MISTAKE IN CALCULATING REUS

Petitioner first argues that respondent erred in calculating the REUs for its property based on the property's classification as a retail store rather than as a warehouse.

At trial, Stephanie Barrett, respondent's zoning administrator and public works clerk, testified that she was the person who assigned REUs to the properties within the special assessment district. Petitioner's property contained a building; the first floor of the building was apparently used as retail space at one time. According to petitioner, however, he had used the building as a storage building for 16 years. Barrett testified that in calculating the REUs for the building, she classified the building as retail space. However, Barrett acknowledged that in making this determination, she did not go into the building or look in the window or do anything to verify whether the building was, in fact, being used as retail space. She further stated that she was not aware that the building was being used for storage. Based on Barrett's determination that the building was being used as retail space, petitioner's property was assessed at 8.73 REUs. At trial, Barrett admitted that there was a mistake in assessing petitioner's property as retail space and that the REU assessment for petitioner's property should have been 5.42. However, she indicated that there was no change made to petitioner's assessment despite the mistake: "We [respondent] told him [petitioner] that that's what the assessment should have been [5.42 REUs]. And if the roll had been reopened, that's what he would have been assessed, but the roll was not reopened."

The MTT did not specifically address the effect of respondent's acknowledged mistake in assessing the REUs for petitioner's property when it affirmed the special assessment. However, the MTT did make a factual finding that "[t]he subject property was not being used as a hardware store, but rather storage" This factual finding is final because it was supported by competent and substantial evidence in the form of Barrett's testimony. *Mount Pleasant*, 477 Mich at 53. Despite its factual finding regarding the use of the property, the MTT affirmed the special assessment of petitioner's property, which was higher because it was based on the classification of petitioner's property as retail space. The MTT made an error of law in affirming the amount of the special assessment and the connection charge in light of Barrett's testimony and in light of its factual finding regarding petitioner's use of the building. The MTT should have ordered respondent to correct the REU assessment for petitioner's property on the

assessment roll and recalculate petitioner's special assessment and connection charge based on the corrected REU assessment.

B. VALIDITY OF SPECIAL ASSESSMENT

Petitioner next argues that the special assessment is invalid because the amount of the special assessment is not reasonably proportionate to the benefit derived from the sewer improvement.

“A special assessment is a levy upon property within a specified district.” *Kadzban v Grandville*, 442 Mich 495, 500; 502 NW2d 299 (1993). Although special assessments are presumed to be valid and generally should be upheld, *id.* at 502, local governments are not free to levy special assessments without regard to the benefit that inures to the assessed property. See *Dixon Road Group v Novi*, 426 Mich 390, 401-403; 395 NW2d 211 (1986). For a special assessment to be valid, “there must be some proportionality between the amount of the special assessment and the benefits derived therefrom.” *Id.* at 401. Without such proportionality, the special assessment “would be akin to the taking of property without due process of law.” *Id.* at 403. In determining the validity of a special assessment, courts need not determine whether there is “a rigid dollar-for-dollar balance between the amount of the special assessment and the amount of the benefit” *Id.* at 402-403. However, a special assessment will be declared invalid when the 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.” *Id.* at 403. “[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.* at 401.

The question whether and how much the value of land has increased as a result of the sewer improvements is a factual determination to be determined based on the evidence presented by the parties. *Kadzban*, 442 Mich at 502. Such a determination is to be resolved by the MTT as the trier of fact. *Id.*

To effectively challenge a special assessment, petitioner, at a minimum, must present credible evidence to rebut the presumption that the assessment is valid. *Id.* at 505. “Without such evidence, a tax tribunal has no basis to strike down special assessments.” *Id.* In this case, the MTT properly found that petitioner failed to present any credible evidence to rebut the presumption that the special assessment was valid. The only evidence submitted by petitioner regarding whether the amount of the special assessment is proportionate to the increased value of its property was Gerald Van Hassel’s³ lay opinion testimony that the value of his property was less because of the sewer assessment and the first page of petitioner’s property record cards. The trial court rejected Van Hassel’s testimony, stating:

The lay opinion of the property owner that the property was worth no more after

³ Van Hassel owns the property at issue.

the installation of the sewer is not sufficient to overcome the presumption of proportionality, especially when coupled with the opinion expressed by Respondent's expert, Brian Beaty, that the subject property's special assessment is proportional given the typical enhancement resulting from the installation of a public sewer system.

The trial court further found the property record cards to be incredible "because only the first page of a multiple-page property record card was introduced and the record card . . . indicates that no sewer was present."

The MTT did not commit an error of law or adopt a wrong legal principle in rejecting Van Hassel's testimony that the value of his property was less because of the special assessment. When asked by his own counsel, "In your opinion, are your properties worth less because of the sewer assessments that have been imposed on them?" Van Hassel responded, "Yes, they are." This testimony is not sufficient to demonstrate 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." *Dixon*, 426 at 403. "[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.* at 401. Van Hassel's testimony does not constitute or permit a determination regarding the increased market value of petitioner's property after the sewer improvement project was completed. Van Hassel's testimony that the value of this property was less because of the sewer assessments was not credible regarding the proportionality of the amount of the special assessment and the value that accrued to petitioner's property as a result of the sewer improvements. The MTT did not err in rejecting this testimony.

Furthermore, the MTT did not commit an error of law or adopt a wrong legal principle in finding the property record cards admitted into evidence by petitioner to be incredible. As the trial court observed, the property cards do not indicate that the sewer was present. The property cards contain a section for "Public Improvements." This section lists various public improvements, including gravel road, sidewalk, water, sewer and electric, that exist on the property. There is a space next to each listing that can be marked to indicate the presence of such public improvement on the property. In petitioner's property card, there is no mark to indicate the presence of sewer. Therefore, the property cards are insufficient to permit a determination regarding the increased market value of petitioner's property after the sewer improvement project was completed. *Id.* The MTT properly found the property record cards to be incredible on the issue of the value of petitioner's property after installation of the sewer.

On appeal, petitioner argues that the testimony of respondent's expert, Brian Beaty, MAI, also establishes that the sewer improvement did not add value to its property. According to petitioner, in portions of his testimony, Beaty admitted that the sewer assessment did not add value to petitioner's property and that any increase in value to petitioner's property hinged on future growth and development that would be possible because of the sewer improvements. It is true that when counsel for petitioner asked Beaty on cross-examination regarding the enhancement in the value of petitioner's property because of the sewer, Beaty responded: "Assuming that there's no chance for a change in use and there's no chance for expansion, I would say I can't think of any benefits at this time" However, Beaty also prepared an Appraisal Consulting Report "to determine whether the benefit enhancement resulting from the

installation of a public sewer system is proportional with the amount of the sewer system special assessment for the subject property[,]" and this report concluded that "the subject property's special assessment is proportional given the typical enhancement resulting from the installation of a public sewer system viewed in the market, as supported by our research and analysis." Beaty's testimony that he could not think of any benefits to petitioner's property as a result of the sewer improvement is not sufficient to rebut the presumption that the special assessment in this case is valid, *Kadzban*, 442 Mich at 505, and it fails to satisfy petitioner's burden to demonstrate "a substantial or unreasonable disproportionality between the amount assessed and the value which accrues to the land as a result of the improvements" because it sheds no light on the existence of a substantial or unreasonable disproportionality between the special assessment and the value to petitioner's land because of the sewer improvement. *Dixon*, 426 at 403. As stated above, "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 benefit derived from the special assessment is proportional to the cost incurred." *Id.* at 401. Furthermore, to the extent that Beaty's testimony contradicted the conclusion in his report that the "special assessment is proportional given the typical enhancement resulting from the installation of a public sewer system[,]" we observe that "[t]he weight to be accorded to the evidence is within the Tax Tribunal's discretion." *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 404; 576 NW2d 667 (1998). The MTT properly determined that the special assessment was valid because petitioner failed to present sufficient credible evidence to overcome the presumption of validity. Without such evidence, the MTT had no basis to strike down the special assessment. *Kadzban*, 442 Mich at 505.

C. HEADLEE AMENDMENT

Petitioner next argues that the special assessment and the connection charge violate the Headlee Amendment, Const 1963, art 9, § 31.

The Headlee Amendment prohibits the levying of a tax by a unit of local government without voter approval and provides, in relevant part:

Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government voting thereon. . . . [Const 1963, art 9, § 31.]

In *Kadzban*, our Supreme Court held that a special assessment is not a tax:

Although [a special assessment] resembles a tax, a special assessment is not a tax. *Knott v City of Flint*, 363 Mich 483, 497; 109 NW2d 908 (1961). 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 government purposes. As the Court explained in *Knott* [*v City of Flint*, 363 Mich 483, 499; 109 NW2d 908 (1961)]:

"There is a clear distinction between what are termed general taxes and special assessments. The former are burdens imposed generally upon

property owners for governmental purposes without regard to any special benefit which will inure to the taxpayer. The latter 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.”

In other words, a special assessment can be seen as remunerative; it is a specific levy designed to recover the costs of improvements that confer local and peculiar benefits upon property within a defined area. [*Kadzban*, 442 Mich at 500 (citations omitted).]

Because the special assessment does not constitute a tax, *id.*, it does not violate the Headlee Amendment.

Whether the connection charge violates the Headlee Amendment turns on whether the connection charge constitutes a fee or a tax. A tax imposed without voter approval “unquestionably violates the Headlee Amendment” *Bolt*, 459 Mich at 158. However, a charge that is a fee “is not affected by the Headlee Amendment”, *id.* at 159, because rather than being an exercise of the local governmental unit’s power to tax, it is an exercise of the unit’s power to regulate the public health, safety and welfare. See MCL 41.181; MCL 333.12752; MCL 333.12753; *Merrelli v St Clair Shores*, 355 Mich 575, 583; 96 NW2d 144 (1959).

“There is no bright-line test for distinguishing between a valid user fee and a tax that violates the Headlee Amendment.” *Bolt*, 459 Mich at 160. In *Bolt* our Supreme Court explained the distinction between a fee and a tax: “Generally, a ‘fee’ is ‘exchanged for a service rendered or a benefit conferred, and some reasonable relationship exists between the amount of the fee and the value of the service or benefit’” whereas “[a] ‘tax,’ on the other hand, is designed to raise revenue.” *Id.* at 161. Furthermore, our Supreme Court explained that “[e]xactions which are imposed primarily for public rather than private purposes are taxes. Revenue from taxes, therefore, must inure to the benefit of all, as opposed to exactions from a few for benefits that will inure to the persons or group assessed.” *Id.* (citations omitted). In addition, our Supreme Court articulated three criteria to consider in determining whether a charge is a fee or a tax: first, a user fee must serve a regulatory purpose and not a revenue-raising purpose; second, a user fee must be proportionate to the necessary costs of the service; and third, a user fee is voluntary, whereas a tax is compulsory by law. *Id.* at 161-162, 167. The three “criteria are not to be considered in isolation, but rather in their totality, such that a weakness in one area would not necessarily mandate a finding that the charge at issue is not a fee.” *Graham v Kochville Twp*, 236 Mich App 141, 151; 599 NW2d 793 (1999); see also *Bolt*, 459 Mich at 167 n 16.

In *Graham*, this Court considered the three criteria articulated in *Bolt* and held that a connection charge to hook up users to a newly extended water supply system was a fee rather than a tax. The plaintiffs in *Graham* had successfully appealed to the MTT the amount of special assessments imposed by the defendant to create the new water supply system. *Graham*, 236 Mich App at 142. Thereafter, the defendant enacted an ordinance requiring only the affected property owners who had appealed the special assessment (and possible future owners of property not yet developed in the district) to pay a connection or “tap-in” fee. *Id.* at 143-144. This Court analyzed the three criteria outlined in *Bolt* and concluded that “the connection fee here serves a regulatory purpose, is proportionate to the necessary costs of the service, and is

voluntary.” *Id.* at 156. In ruling that the connection charge served a regulatory purpose, this Court stated:

[T]he charge will pay for the regulation of a specific part of the community’s access to a municipal water supply. Defendant, the township, has extended its water supply to a rural part of the community that formerly was served only by private wells. It seeks to pay, in part, for such extension of its water pipeline by a connection fee that is exacted when residents of this newly served community connect to the municipal water supply. By exacting the fee for connection to the water system, the purpose is clearly to regulate and control the use and distribution of water provided by the municipal system. This ordinance, through its connection charge, will regulate access to a clean, dependable water supply. . . . [*Id.* at 152.]

We also concluded in *Graham* that the charge in question was proportionate to the necessary costs of the service:

Here, the uncontested cost of the water extension is \$430,000. Defendant set the connection charge for each parcel of land on the basis of the size and use of the land. If all the owners of the parcels at issue connected to the water main and paid their full assessed charge to do so, the amount would equal the actual cost of the improvement, according to defendant. We decline to attempt to determine with mathematical precision the relation of the connection to the charge paid by the owner of each parcel of land, since we presume “that the amount of the fee is reasonable, unless the contrary appears upon the face of the law itself, or is established by proper evidence,” and we find no evidence that the charge here is unreasonable. [*Id.* at 154-155.]

In *Graham*, we also determined that the connection fee was voluntary:

We see no evidence inhibiting property owners from retaining their current wells or drilling new wells, or in fact from using no water at all if the property is not developed and they do not require it. Thus, we conclude that the connection charge is voluntary—those who decide to connect must pay the fee and those who choose not to connect are not required to pay the fee. [*Id.* at 155-156.]

The first two criteria outlined in *Bolt* clearly favor the conclusion that the connection charge in this case is a fee rather than a tax. First, the connection charge serves a regulatory purpose rather than a revenue-raising purpose. *Bolt*, 459 Mich at 161. The special assessment district in this case was created to fund a sanitary sewer improvement project on Whitehall Road. Such a project is an exercise of respondent’s power to regulate the public health, safety and welfare. MCL 333.12752; *Merrelli*, 355 Mich at 583; *Wheeler v Shelby Charter Twp*, 265 Mich App 657, 665; 697 NW2d 180 (2005). The sanitary sewer project in this case is similar to the installation of a new water supply system in *Graham*. Like the water supply system in *Graham*, the sewer improvement project in this case will not benefit the general public, but only those citizens in the community newly serviced by the sewer extension who connect to the sewer. *Graham*, 236 Mich App at 152-153. The connection charge will pay for the regulation of a specific part of the community’s access to a sanitary sewer system, and the sewer improvement

project will not benefit anyone who does not pay to connect to the sewer. *Id.* There is also no evidence that the connection charge serves a revenue-raising purpose. To the extent that revenue raised by the special assessment or connection charge might pay for the construction of the sewer improvement project, this fact does not alter the fact that the purpose of the charge is primarily regulatory—without the construction of the sewer lines and the connection to such line, the citizens in Dalton Township served by the sewer extension would otherwise not have access to the sewer. See *id.*

The connection fee is also proportionate to the necessary cost of the service. *Bolt*, 459 Mich at 161-162. The cost of the sewer improvement project was \$2,215,000. Terry Broemer, an engineer who worked on the sewer improvement project, testified that the special assessments imposed by respondent did not exceed the cost of the project. In fact, Broemer’s testimony indicates that the total amount of revenue generated from the assessment fees and connection fees is actually \$270,000 less than the total cost of the sewer improvement project because respondent anticipated that “about \$270,000 of principal, not including interest . . . would be covered by future connection charges.” In light of Broemer’s testimony, the special assessment and connection charge together are proportionate to the necessary cost of the service. *Id.*

While the first two *Bolt* criteria weigh in favor of the conclusion that the connection charge is a valid fee, the third criterion in *Bolt*, the voluntariness of the charge, does not. In *Bolt*, our Supreme Court explained the voluntariness criterion:

Ordinance 925 [which imposed the storm water service charge] also fails to satisfy the third criterion—voluntariness—because the charge lacks any element of volition. One of the distinguishing factors of a tax is that it is compulsory by law, “whereas payments of user fees are only compulsory for those who use the service, have the ability to choose how much of the service to use, and whether to use it at all.” Headlee Blue Ribbon Commission Report, *supra*, § 5, p 29. The charge in the present case is effectively compulsory. The property owner has no choice whether to use the service and is unable to control the extent to which the service is used. . . . [*Id.* at 167-168 (footnote omitted).]

MCL 333.12753 and MCL 333.12754 authorize a governmental unit to require that any structure in which sewage originates within the unit’s borders be connected to a sewer system if one is available. In this case, respondent mandated that the property owners in the special assessment district connect to the sanitary sewer system. A letter written to business owners by respondent’s supervisor stated: “Sewer will be a mandatory hookup.” This letter indicates that petitioner and other property owners within the special assessment district do not have the ability to choose how much of the service to use and whether to use it at all; to the contrary, connecting to the sanitary sewer system is compulsory. *Id.* at 167. Nevertheless, the fact that petitioner and other property owners are compelled to connect to the sewer system does not mandate a conclusion that the connection charge is a tax. In *Wheeler*, 265 Mich App 657, this Court held that municipal solid waste disposal fees constituted a permissible fee rather than a tax even though the voluntary criterion articulated in *Bolt* was not satisfied:

With regard to the third criterion, the ordinance clearly mandates participation in the residential collection and disposal program and payment for that service. Absolutely no element of volition is involved because the ordinance

makes failure to comply with the mandated service a misdemeanor subject to punishment by up to ninety days in jail, a fine of up to \$500, or both. The ordinance also authorizes the township to collect delinquent charges by adding them to the tax bills and by imposing liens against the properties of the delinquent residents. Nevertheless, the lack of volition does not render a charge a tax, particularly where the other criteria indicate the challenged charge is a user fee and not a tax. . . . The first two criteria so clearly demonstrate the collection and disposal charge is a permissible user fee and not an impermissible tax; the decision of the township to place its policing authority behind the enforcement of the ordinance does not render the user fee a tax for purposes of the Headlee Amendment. We therefore conclude that the waste collection and disposal fee is a valid user fee and its creation does not implicate the Headlee Amendment. [*Wheeler*, 265 Mich App at 666-667.]

In this case, like in *Wheeler*, the first two criteria in *Bolt* are clearly satisfied.⁴ Under *Wheeler*, the mandatory nature of the connection charge does not render the charge a tax when the other two criteria indicate that the charge is a fee and not a tax. *Id.* As the Supreme Court stated in *Bolt*, the three “criteria . . . are not to be considered in isolation.” *Bolt*, 459 Mich at 167 n 16. Considering the three criteria together, the connection charge is a fee, not a tax. Because the connection charge is a fee, it is unaffected by the Headlee Amendment.

D. PETITIONER’S STATUTORY ARGUMENTS

Petitioner next argues that the special assessment is void because respondent did not follow the statutory requirements in establishing the special assessment. Petitioner has failed to develop or explain his arguments regarding this issue. Most significantly, petitioner has failed to assert or explain, even assuming that respondent did not comply with the statutes cited by petitioner, how and why any of respondent’s alleged failings in this regard impact the validity of the special assessment. An appellant may not simply assert an error and then leave it up to this Court to unravel and elaborate for him his arguments and search for authority to either sustain or reject his position. *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). “The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow.” *Id.*

The MTT concluded, in a somewhat conclusory manner, “that the Whitehall Road . . . Special Assessment District was lawfully created pursuant to Public Act 185 of 1957 (MCL 123.731 et seq.) . . .” The MTT also concluded that: “The method of allocating the special assessment between the various properties comprising the special assessment district was by assigning Residential Equivalency Units (REUs) to each parcel and was well within the authority of the governmental unit.” The only specific statutory argument addressed by the MTT was petitioner’s contention that under MCL 123.742, the county was required to enter into a contract

⁴ The fact that the first two criteria are clearly satisfied distinguishes this case from *Bolt*, where all three criteria supported the conclusion that the storm water service charge in that case was a tax that violated the Headlee Amendment.

with the general contractor, and in this case, respondent evaluated the bids and entered into the contract with the general contractor. The MTT rejected this argument, stating:

Upon review of P.A. 1957 No. 185 (MCL 123.731), the Tribunal finds no merit in Petitioner's argument that the statute requires the actual contract to construct the improvement be between the Board of Public Works and the Contractor. Assuming that the statute does require such a contractual relationship, the remedy for such violation would be for a party in interest to challenge the contract in Circuit Court. Even if the contract were successfully challenged, such successful challenge would not affect the validity of the special assessment district and this special assessment in particular.

We have reviewed MCL 123.742, which is the statute cited by petitioner, and MCL 123.731, which is the statute cited by the MTT, and neither statute requires the county to enter into a contract with the general contractor. Moreover, even assuming that the county, not respondent, was required to enter into the contract with the general contractor, petitioner cites no authority for the conclusion that respondent's special assessment is void if the county does not contract with the general contractor. As noted above, an appellant may not simply assert an error and then leave it up to this Court to unravel and elaborate for him his arguments and search for authority to either sustain or reject his position. *Mitcham*, 355 Mich at 203.

The MTT did not make an error of law in rejecting petitioner's argument that the county was required to enter into the contract with the general contractor. To the extent that petitioner's other arguments were either not fully developed or explained or were not addressed by the MTT, they are not preserved for appellate review. *Id.*; *Fast Air, Inc*, 235 Mich App at 549.

E. PETITIONER'S COMPLIANCE WITH MCL 205.735

Respondent argues that the MTT did not have jurisdiction to hear petitioner's appeal because petitioner did not file its appeal within the time frame established by MCL 205.735. An appellee is limited to the issues raised by the appellant unless it cross-appeals as provided in MCR 7.207. *People v Farquharson*, 274 Mich App 268, 279; 731 NW2d 797 (2007); *Barnell v Taubman Co, Inc*, 203 Mich App 110, 123; 512 NW2d 13 (1993). Respondent's failure to file a cross-appeal arguably precludes appellate review of this issue. *Barnell*, 203 Mich App at 123. However, because subject matter jurisdiction involves the power of a court to hear and decide a cause or matter, *In re Estate of Fraser*, 288 Mich 392, 394; 285 NW 1 (1939), it may be raised at any time. *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608, 630; 684 NW2d 800 (2004); MCR 2.116(D)(3).

In rejecting respondent's claim that petitioner failed to timely file its petition, the trial court stated:

[T]he confirmation of the assessment roll constitutes a final decision for purposes of MCL 205.735(3). Therefore, the 35-day statute of limitations established by MCL 205.735(3) begins to run on the date of confirmation. The record indicates that the assessment roll was confirmed on May 30, 2006. However, Respondent's June 14, 2006, letter explicitly states that the assessment roll would be "reconfirmed" at Respondent's July 10, 2006, hearing. This statement was

unqualified and therefore suggests, unequivocally, that the May 30, 2006, confirmation was not final. . . .

The MTT has exclusive and original jurisdiction over “[a] proceeding for direct review of a final decision, finding, ruling, determination, or order of any agency relation to assessment, valuation, rates, special assessments, allocation, or equalization, under the property tax laws of this state.” MCL 205.731(a). MCL 205.735(3) provides, in relevant part: “the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, determination, or order that the petitioner seeks to review.” The date of the confirmation of the assessment rolls commences the running of the limitations period. See *Wikman v Novi*, 413 Mich 617, 653-654; 322 NW2d 103 (1982). An untimely filing under MCL 205.735(2) deprives the MTT of jurisdiction to consider the petition other than to dismiss it. *Leahy v Orion Twp*, 269 Mich App 527, 532; 711 NW2d 438 (2006).

At a public hearing on May 30, 2006, respondent’s board confirmed the special assessment roll as presented. However, on June 14, 2006, respondent sent a letter to certain business owners within the special assessment district, which stated: “Due to questions and concern from some neighboring business owners, the assessment for your business has been re-evaluated. . . . If you disagree with this assessment, we will be reconfirming the roll with your changes on Monday, July 10th, 2006 at 7:00 PM.” At the meeting on July 10, 2006, respondent ultimately decided not to make any adjustments to the special assessments. Nevertheless, in light of respondent’s letter stating its intent to “reconfirm[] the roll . . . on Monday, July 10th”, the MTT did not make an error of law in concluding that respondent reconfirmed the assessment roll on July 10, 2006. Petitioner filed its petition seeking relief from the special assessment with the MTT on August 9, 2006. This was within the 35-day time frame established in MCL 205.735(3).⁵ Thus, the MTT did not commit an error of law or apply the wrong legal principle in determining that petitioner’s petition was timely filed.⁶

⁵ Ironically, the limitations period in MCL 205.735 was increased from 30 to 35 days effective May 30, 2006, the date that respondent originally confirmed the special assessment roll. See 2006 PA 174. Petitioner filed its petition on August 9, 2006, which is exactly 30 days after respondent’s reconfirmation of the assessment roll on July 10, 2006. Therefore, regardless of which time period applies, petitioner’s petition with the MTT was timely.

⁶ Even if petitioner failed to comply with the time requirement in MCL 205.735(3) for filing a petition, the MTT was not required to dismiss the petition. As our Supreme Court noted in *Wikman*, 413 Mich at 651, MCL 205.735 is ambiguous regarding the consequences of a petitioner’s failure to file a timely petition:

Although MCL 205.735; MSA 7.650(35) provides that the tribunal’s jurisdiction shall be invoked by a timely filing, the statute does not state the consequences of failing to file a timely petition. It does not contain any language prohibiting the tribunal from exercising jurisdiction in cases filed later than 30 days after a final ruling or receipt of a tax bill. It contains none of the prohibitive language normally present in statutory limitations. In this respect, MCL 205.735; MSA 7.650(35) is not free from ambiguity. [Footnote omitted.]

Affirmed, in part, and reversed, in part, with instructions that respondent correct the REU assessment for petitioner's property on the assessment roll and recalculate petitioner's special assessment and connection charge based on the corrected REU assessment. No taxable costs under MCR 7.219, neither party having prevailed in full.

/s/ Karen M. Fort Hood

/s/ Stephen L. Borrello

/s/ Cynthia Diane Stephens