MAA SPECIAL ASSESSMENT COURSE

Court Decisions, Rulings and Research Text

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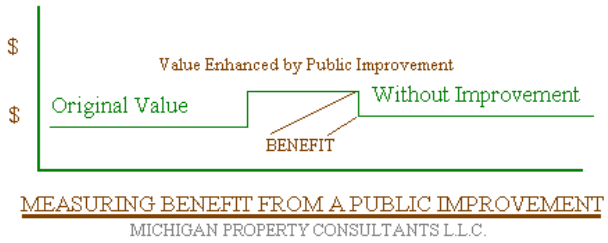
2009 CLASSROOM TEXT
SPECIAL ASSESSMENT ADMINISTRATION IN MICHIGAN

1.0 INTRODUCTION



Welcome to a discussion on the administration of special assessment levies. Special assessment administrators deal with sometimes complex and ever evolving legal issues. This text will explore several distinct, commonly used, special assessment administration processes. Where possible, it will address the refinements and nuances of permitted activities resulting from judicial interpretations over time. We hope you'll find the challenges of the administration of special assessments, professionally stimulating.

An illustrative introductory statement from a Michigan Court of Appeals case follows this paragraph. We hope that each of the principles stated by the court will be embedded within your professional decisions. The intent of this text it is to provide the well documented supporting information and to offer students practical applications of special assessment theory.

2005 Judicial 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 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"*[1]

Assessor's at every level of certification must deal with special assessments. They are an important source of government revenue. Though creating special assessment districts and levying special assessments are a "legislative" function assigned to government bodies, the courts charge Assessor's with the duty of properly determining the "benefit" to a property or properties arising from a public improvement. Michigan's Supreme Court said it this way: "The assessor's, not the court, weight the benefits, if, in truth, there are benefits to be weighed."[2]

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[1]Rema Village Mobile Home Park v Ontwa Twp, Michigan Court of Appeals case No. 256395 unpublished.

[2] Fluckey v City of Plymouth, 358 Mich 447, 454; 100 NW2d 486 (1960)

Taxpayer's rely upon government officials to reasonably and fairly apportion any fiscal burden associated with "benefit" under various special assessment legislation.

Laws and judicial decisions confer great latitude on jurisdictions in the development and administration of any special assessment. Nevertheless, an assessment administrator must follow the law and strive to see the rights of taxpayers are protected in the process. Michigan's Supreme Court considered such things in the arguments of a defendant municipality and the court stated:

> "...it is contended by the defendant's counsel, that although the provisions of the ordinances are not complied with, yet, if the Common counsel by resolution ratify the proceeding, such resolution has the power and effect of an ordinance or by-law and repeals or modifies *pro-tanto*, the ordinance with has been violated or disregarded. This latter assumption is wholly inadmissible as applied to those ordinances which effect the substantial rights of individuals. The common council, in making general ordinances, exercise a legislative power. Making of an assessment roll and apportioning a tax under the ordinances is a ministerial duty, and the confirmation of the assessment partakes more of the character of a judicial than a legislative act. We must, therefore regard the ordinances relating to assessments, as binding and obligatory upon the corporation as upon the individual citizens."[3] (It may be of interest to the reader that in this case, the court took the unusual step of awarding "costs to the appellees.")

The assessment process requires a local government to make the fundamental determination of the necessity for a public improvement which will be funded through a special assessment levy. Officials must approve special assessment boundaries and they must approve the levying of a special assessment.

[3]Williams v Mayor of Detroit, et al., 2 Mich 560, 5; WL 3638 Mich (1853)

The determination and apportionment of benefits for special assessments is a legislative function with which the courts should not interfere, at least in the absence of clear proof of fraud, bias, or discrimination.

Ad Valorem taxation and special assessments have been in use in Michigan since at least the 1800s and are financial tools used throughout the United States.

In Michigan, two guiding principles have developed to address taxation in general and ad valorem taxation specifically: (1)"In general, tax laws are construed against the government."[4] (2) tax exemption statutes are strictly construed in favor of the government.[5]

So, rules for special assessments are much different than ad valorem taxation. A special assessment is presumed to be valid. Rules governing special assessments are less clear and far more foreign to the ordinary citizen; often being obscure even to members of the legal community. While special assessments are usually confused with ad valorem taxes by a lay person, any professional in matters of property taxation must be able to discriminate between a property tax and a special assessment. Assessor's must be knowledgeable in the valuation principles which support the special assessment process and at least conversant with overall

[4] Great Lakes Sales, Inc v State Tax Comm, 194 Mich App 271, 276; 486 NW2d 367 (1992)

[5] Elias Brothers Restaurants v Treasury Dept, 452 Mich 144, 150; 549 NW 2d 837 (1996)

procedures and guidelines.

The Supreme Court has pointedly stated that the benefits claimed must be real.

> "The point here is more fundamental; where viewed in its entirety, no benefit upon abutting property owners has been conferred by the improvement, but rather a detriment suffered, a special assessment based upon the enhancement of the value of the property is a fraud in law upon such owners. There has been no enhancement. We are not unaware of such arguments as that the elimination of the formerly existing dirt shoulders would lessen the dust in the area, and that the depressions or ditches along the old road have been filled, but it was the conclusion of the trial chancellor that 'the special benefits which are claimed by the city of Plymouth are pretty much afterthoughts.' We need not go so far. The doctrine of *de minimus* is fully applicable to alleged benefits conferred by the elimination of problems so nebulous."[6]

1.1 What is a special assessment?

A special assessment is not a property tax. Rather a special assessment is a specific levy designed to recover the cost of improvements that confer local and peculiar benefits upon a property within a defined area. [7]

Let us contrast an ad valorem tax and a special assessment. An ad valorem property tax is based exclusively upon a property's value. Money collected from ad valorem taxes may be used for any of the many purposes of government. A determination of property value as used for ad valorem taxation is mandated by the state's Constitution. The ad valorem tax burden created by it is strictly limited. Limits exist through a constitutional limit on millage rates and through a requirement that property values must be newly determined each calendar year.

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[6]Ibid, Fluckey p 454

[7]4Kadzban v City of Grandville, 442 Mich 495, 502; 502 N.W. 2d 299 (1993)

The actual tax burden is created by multiplying a property's taxable value by a millage rate. In the ad valorem tax process, the property value may be no more than 50 percent of True Cash Value; with certain exceptions, the millage rate may be no more than 50 mills. The term of a property tax can't be greater than 20 years.

Economic and legal concepts related to a property's Fair Market Value are familiar and reasonably well understood by many taxpayers. Consequently, the property tax is regarded as one of the fairest of the taxes levied by government.

One reason for the belief property taxes are among the fairest of taxes is the ease with which an appeal from this tax burden can be made by ordinary citizens. Typical objections to a property tax (e.g. the value used) may be appealed each and every year without any (or at minimal) cost to the taxpayer. In addition to familiarity and ease of appeal, property tax burdens also represent a form of relief from state and federal income tax burdens. Regulations permit the deduction of property taxes as part of the formula for calculating an income tax burden.

Special Assessments do not enjoy these characteristics and are distinguishable from property taxes in several ways.

"The differences between a special assessment and a tax are that (1) a special assessment can be levied only on land; (2) a special assessment cannot ... be made a personal liability or the person assessed; (3) a special assessment is based wholly

on benefits; and (4) a special assessment is exceptional both as to time and locality."[8]

Special assessment levies may not be deducted in federal or state income tax formulas. They generally are not levied upon a property's value. Most special assessments levies are calculated by dividing some fixed aggregate cost by the number of years over which the costs are to be spread. The exceptions to this procedure are certain special assessments in which a millage rate is levied against a property's Taxable Value - often these levies involve a "unit wide" Special Assessment District (S.A.D.). In such cases, S.A.D. boundaries are established to be congruent with the levying entity's political boundaries. This form of **ad valorem special assessment** is becoming favored to fund public safety operations.

1.2 Legislative function

Creating a special assessment is a legislative function. In part, this means that the ordinances and decisions of governing bodies of local units of government are a form of extension of the state law(s) through which the local actions were enabled. The rules and decisions promulgated may be unique and confined to a specific political jurisdiction, but they have the weight of the law behind them. In

[8] 5Blake v Metropolitan Chain Stores, 247 Mich 73, 77; 225 NW 587 (1929), quoting Cooley on Taxation (4th Ed), § 31

part, that means courts defer to the judgement of local government officials unless there is a very serious flaw in the process. This deference is known as a "presumption of validity." Municipal decisions are presumed to be valid.[9] This means that the special assessment and the process which created it are presumed to be properly created and levied unless clearly demonstrated otherwise.

The decision of local government leaders that a project is needed (more, specifically that there is a *"necessity"*) is very rarely successfully opposed. It should be noted within this context, the legal standard of necessity is much more akin to one of reasonableness than a determination of conditions requiring absolute need.[10] The term "necessity" has not been defined by the courts as the following citation from a condemnation case states. And if the term is defined at some point, the term "necessity" as used in special assessments may be differently determined than "necessity" as used in condemnation. Nevertheless, this quote is instructive.

> "While 'necessity' has not been defined, the courts have considered the facts of each case and what authority has been granted under the applicable condemnation statute in reviewing for 'necessity.' Nelson Drainage Dist v Filippis, 174 Mich App 400, 404; 436 NW2d 682 (1989), abrogated in part on other grounds City of Novi, supra p 249 n 4, citing State Hwy Comm v Vanderkloot, 392 Mich 159, 170; 220 NW2d 416 (1974)[11]

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[9] 6In re Petition of Macomb Co Drain Comm'r, 369 Mich 641, 649; 120 NW2d 789 (1968)

[10] City of Novi v Adell Trusts, 473 Mich 242, 254-255; 701 NW 2d 144 (2005)

[11] Township of Gross Isle v Grosse Isle Bridge Company, Case No. 255759, (2005)

The existence of a "presumption of validity" requires taxpayers to overcome significant hurdles if they wish to oppose a special assessment boundary or special assessment levy. They must demonstrate clearly that the process was fatally flawed or that great disproportionality exists between the burden they've been assigned and the "benefit" their property will receive. Fatally flawed means that the process violates a statute, a constitutional right or judicial guidelines.

In fact, prior to the establishment of the Michigan Tax Tribunal (MTT), special assessment disputes were resolved in a court. Following the establishment of the MTT, many special assessment disputes now are resolved by the MTT. However, special assessments levied pursuant to the Michigan Drain Code and certain special assessment levies involving the public's safety, health and welfare (e.g.maintenance of dams et cetera) must still be resolved in a court of law.[12]

From the taxpayer's point of view, the result of court oversight is that an individual appeal usually requires a property owner to spend a large amount of money to hire legal counsel, engineers and other expensive consultants to properly demonstrate any errors that may make a levy improper or illegal. In any case, the appeal of a special assessment usually requires expertise of a broader scope than that of a simple real estate appeal to the MTT. "To effectively challenge a special

[12] MTT Docket No. 312853, Seebeck v Gladwin County Drain Commissioner (2005)

assessment, a plaintiff must at a minimum present credible evidence to rebut the presumption that the assessments are valid."[13]

Another barrier to appealing a special assessment district (S.A.D.) boundary or levy is that the opportunities to appeal foundation issues are very limited in number and duration - usually varying (based upon authorizing statute) between 10 and 30 days after creation. These objections may be raised during the creation or modification of an S.A.D. The owner of property who may object to a special assessment boundary, must overcome the assumption that government did things correctly with regard to establishing or modifying the district. Government is bound by an obligation to consider all facts, known and ascertainable in the formation. From the government's point of view, a "presumption of validity" augments the means by which the jurisdiction may accomplish its goal and helps assure financing will not be delayed by "nitpicking" tactics. Delays arising from challenges will usually develop only when disputes are perceived by the parties involved to be significant enough to warrant the expenditure of considerable money and effort.

1.3 Incumbent special obligation

[13]Storm v Wyoming, 208 Mich App 45, 46; 526 NW2d 605 (1994)

Because taxpayers rights are so limited and the burden of a special assessment can be so damaging, justice demands government administrators and officials involved in establishing special assessments have a special obligation to assure that special assessment districts and levies established subsequent to enabling ordinances are reasonable, lawful and fair. The concept was expressed this way by the Supreme Court: "One's home can be lost just as quickly and finally for non-payment of 'special' assessments as for non-payment of 'general' taxes.[14]

When donning their hats as real estate appraisers, assessment administrators understand that government imposed burdens such as taxes, are one of the considerations which informed buyers and sellers weigh in the execution of most property sales. The financial burden created by a special assessment is often limited geographically to a relatively small area. This is important because in many market transactions, comparable properties exist outside the S.A.D. (maybe even in the exact neighborhood) that are close enough to be a good alternative; and they do not have special assessment burdens. Consequently, there is always a risk that a special assessment burden will lower a specific property's market value. Justice and the law require government officials to carefully evaluate market forces affected by the levying of any special assessment. Market economic forces such as

[14] Lockwood v Nims, 357 Mich 517; 98 NW2d 753 (1959)

contribution and substitution must be carefully evaluated.

Finally, the presumption of validity creates a special risk to the unit of government. If it were to proceed with an improper levy and that levy were successfully challenged, then under the right conditions, the entire assessment might be required to be invalidated. The basic premise being that no special assessment may be levied unless there is a specific, measurable and demonstrable enhancement of value to the property required to carry the burden of a proposed special assessment.

2.0 FOUNDATION ISSUES

2.1 Premise for levying a special assessment

The fundamental premise underlying any special assessment is simple. A unit of government has expended (or plans to expend) public funds which somehow make a public or private property more valuable. When that happens, on behalf of the public, the government unit is entitled to demand that it be reimbursed by each property owner for an amount reasonably proportional to the amount of enrichment a specific property was benefitted, by the public improvement. "The theory of the special assessment is that a special benefit has been conferred, over and above that conferred upon the community itself.[15] In a foundation case, Kuick v Grand Rapids, 200 Mich 582, 588; 166 NW 979 (1918) the court held that special assessments are remunerative. Special assessments seek repayment of a measurable increase in market value from properties which became more valuable as a direct result of a public improvement.

2.2 Necessity and benefit

Here in Michigan, there are two fundamental conditions that make a special assessment lawful: 1) the government unit must make a "determination of

[15] Ibid, Fluckey, p 453

necessity" and; 2) there must be some unique and specific benefit which enhances the Fair Market Value (statutorily defined as True Cash Value) of a property which must bear the burden of a special assessment.

Just as the entire process of special assessing enjoys a presumption of validity, the presumption of validity flows to the "determination of necessity." As a general principle, Michigan's courts are reluctant to interfere with a local jurisdiction's determination of "necessity".

The courts have ruled findings of necessity are invalid if not based upon evidence. That is, a finding of necessity by an appropriate body can only be made if there is evidence on the record with is competent, material and substantial enough to warrant a final determination.

For example, in 2001, the Court of Appeals found there was *insufficient evidence* to support a decision that a special assessment levy for a drain was necessary. It said,

> "...it appears from the record that the trial court may have relied on knowledge from related cases. The trial court's role was to examine the record as it existed in the present case, and it erred in considering information outside the record. The record before us contains no evidence, other than conclusive statements, that the Taub Drain is necessary for the public health. Because the record before us is devoid of evidence of how the township concluded that there was a public health necessity for the proposed drain, we cannot agree with the trial court that competent, material and substantial evidence supported the board's final order of determination with regard to public necessity."[16]

[16] Barak v Oakland Co Drain Comm'r, 246 Mich App 591, 603-604;633 NW 2d 489 (2001)

In what has now become a crucial reference, the Supreme Court said:

> "we clarified the test for determining the validity of special assessments. An earlier Court of Appeals opinion suggested that there were three alternative bases that would support a finding of special benefits sufficient to justify a special assessment: 1) an increase in the land's value, 2) relief from some burden to the land, or 3) the creation of a special adaptability of the land. Rejecting this approach, this Court said that special assessments are permissible only when the improvements result in an increase in the value of the land specially assessed."[17]

The concept of "time" as related to the statutory term "benefit" and to special assessment levies is important. When the "benefit" is conferred, it may be in either the present, or at some future use of a property. It is clear in the 1986 Dixon Road Case, where the Supreme Court looked to a proposed zoning change to determine if there would be "benefit," that a consideration of future uses is a proper basis for "benefit." In Dixon Road, the court ruled the special assessment invalid, not because there would be no future increase (for an increase in value was projected to result from zoning change), but because the ratio of the cost apportioned was not reasonable with regard to the future benefit.[18] Both present and future use may be considered in the same manner as they would in a highest and best use analysis. The presumed "time" used to determine enhancement or benefit must be reasonably contemporary and not a some distant future date. The

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[17] Id. Kadzban, p 501

[18] Dixon Road Group v City of Novi, 426 Mich 390, 393; 395 NW 2d 211(1986)

administration of special assessments does not concern itself with normal inflation or deflation of property value over time. It is concerned with the contributory value of the public improvement.

It is interesting to contemplate the impact of time with regard to the special assessment process. Some special assessments exist for only one year. Others may be levied for five, ten or twenty years. Arguments have been advanced that a special assessment district may last in perpetuity.

Market conditions change with the passage of time. In the 1970s there was an oil embargo and oil prices spiked quickly and dramatically. When that happened, real estate purchasers in the central portion of Michigan had options to purchase homes with natural gas heat, propane heat, coal heat and fuel oil. Within just a few months of this spike in prices, buyers quickly began shying away from homes with systems heated by oil or oil derivatives. Those who owned oil fired furnaces began switching to natural gas.

Today, a new form of market adjustment is being played out. It is related to arguments about global warming which have swirled about for some time. Briefly, it is a fact that the growing season in Michigan is longer today, than in past decades and that significant changes in the efficiency of furnaces and heat pumps have evolved over time. In the past, most Michiganians heated with furnaces and

cooled with separate central air units. However, the combination of lower energy costs for electricity (when compared to natural gas); an increased number of days where the average temperature is 35 degrees F or higher; and the higher efficiency of the most modern heat pumps has created a trend where homeowners are now installing heat pump/air conditioner units. With these units, they now heat and cool their homes for most of the year using electricity only. When colder temperatures arrive and stay, their furnaces kick in using natural gas or some other fuel as the heat producing agent.

The point is, market conditions always change over time. Land uses change. Scenic views are modified by growing trees, new construction or demolition and new skylines. Demand for water and sewer services change. The need for sidewalks change. Commuting routes change. Property uses changes. Neighborhoods change.

Proper administration means paying strict attention to the contributory value of one component of a property's value, benefit. That benefit may change. If there is not a fixed cost spread over a specific period of time, but instead some form of levy which varies periodically; then fairness requires that if a special assessment is established for a long term and the geographic distribution of value is not discrete but is instead amorphous, a periodic evaluation of the boundaries should be

undertaken. This technique is not required by law and it is more involved, but it assures a more reasonable and fairer levy. It should be noted in Fluckey v Plymouth 358 Mich 447, 453; 100 N.W. 2d 486 (1960) that the court did distinguish changes in the contributory value of a public improvement.

" The idea that road improvements automatically carry with them special benefits to abutting property may have been true once, before communities had installed on a widespread basis impervious road surfaces which could be used easily by automobiles. ... But, the order changed. Original paving of a dirt road without any change in its width of, say, 20 feet, may be clearly beneficial to abutting owners. One cannot say the same about the widening of a road in a residential district and its repavement when the pre-existing impervious hard surface was amply adequate for abutting owners."

Clearly, in the first case, a road paved which had been dirt contributed to an increase in the value of affected properties. However, the court found the contributory value of re-paving an existing road did not enhance value.

2.3 Value of improvement

Within the last decade, the court has also clarified how this change in market value is to be measured. It held,

> "Common sense dictates that in order to determine whether the market value of an assessed property has been increased as a result of an improvement, the relevant comparison is not between the market value of the assessed property after the improvement and the market value of the assessed property before the improvement, but rather it is between the market value of the assessed property with the improvement and the market value of the assessed property without the

improvement. The former comparison measures the effect of time, while the latter measures the effect of the improvement."[19]

Of course, one must determine exactly what the improvement is. While it may be a brand new public improvement such as a sidewalk or street, may it also be limited to repair of the side walk and street? After doing independent research, consulting with experts, and after reviewing court and Michigan Tax Tribunal documents, to the best of this author's knowledge, there has been no judicial interpretation by state courts of the term"improvement" as it applies to a special assessment. Various publicly owned structures have been listed in court cases as "improvements," but no formal definition has been articulated. Similarly, there has not been a definition of the term "project" in some authorizing statutes.

Michigan's courts have provided guidance when there is no statutory or judicial definition of a word. A general rule is that when construing a term not defined in a statute, a court can consider dictionary definitions. However, recourse to dictionary definitions is not necessary if the Legislature's intent can be determined from reading the statute itself. "When determining the common, ordinary meaning of a word or phrase, consulting a dictionary is appropriate."[20] Two reference dictionaries were cited in one recent case: Black's Law Dictionary and The

[19] Ahearn v Bloomfield Charter Twp, 235 Mich App 486,863; 597 NW2d 858 (1999)

[20] Title Office, Inc v Van Buren Co Treasurer, 469 Mich 516, 522; 676 NW2d 207 (2004)

American Heritage Dictionary of the English Language.[21]

In this text, we have referred to Black's Law Dictionary whenever possible and a well known dictionary relating to real estate terminology. You will find a limited number of definitions from them along with source citations with this text.

There have been cases which suggest Michigan courts contemplated various forms of the term "improvement." The 1960 Fluckey Supreme Court decision differentiates between an original road as an improvement, and a later resurfacing and widening as an improvement. The consideration in Fluckey centered around a pre-existing condition — the existence of a viable roadway.

In an unpublished 2005 opinion, the Court of Appeals addressed at some length the merits of an existing septic field and a local government's demand that a mobile home park be required to connect its units to a new sewer system. This decision hinged on the fact that the burden of a new sewer actually reduced the mobile home park's value by over $200,000, but a major component of the decision revolved around the court's determination that the existing septic field was sufficient for the park and the new sewer did not contribute new market value. ... it merely enhanced the community's overall public health needs. The court ruled that in light of the 1986 Dixon Road Group decision, a special assessment "*could*

[21] [13]Craig Manske v Department of Treasury, Case No. 250565 (2005)

only be justified on the basis of an increase in property value and not be justified on the basis of public health needs which inure to the public at large."[22]

Given the just mentioned decisions, the 1999 case of Ahearn et al v Charter Township of Bloomfield contains arguments which are quite interesting. The case revolved around a federal mandate that a water retention basin be built. While ordered by the federal government, construction of the basin was not funded with federal money. Portions of the Ahearn case were argued before both state and federal courts. In the end, an assessment for an overflow basin was sustained.

In part, the Michigan Court of Appeals decided that even though the public improvement (a retention basin) did not increase a property's value now or in the future, the lack of its construction would cause a termination of the use of the existing public improvement (a combined sewer/storm sewer) and that would decrease the property's value. Stated another way, the test for enhanced value was not measured by an increase in value after the new retention basin was installed, but by the fact that property values would decrease if there were no retention basin. The logic being: without the federally mandated improvement, the local unit of government would not have been able to continue to provide sewer services.

It is interesting that when the court was presented with the argument that the

[22] Rema Village Mobile Park v Ontwa Twp, Case No. 256295, (2005)

township had an affirmative duty to provide sewer service, Michigan's Court of Appeals stated it had found nothing to support that proposition. It cited Kuriakuz v West Bloomfield Twp [23] for storm sewers and McSwain v Redford Twp.[24] for sanitary sewers in its conclusion that sewers are not mandated public improvements.

In Ahearn, the special assessment district was unit-wide. That is, the boundaries were congruent with the township's political boundaries. While this is a complex case, the final Michigan Appellate Court decision revolved around whether or not the "defendent township was entitled to a summary judgement." That focus addressed only a single legal issue and did not address alternative issues of fact related to the special assessment process.

The court cited several issues of importance to it; in one instance stating that plaintiffs had expressed their contention that the township had an affirmative duty to continue providing sewer service, but offered no authority directly in support of the proposition.[25] There were other arguments that might not have been advanced or preserved which a reader may want to explore more fully. Among them:

1. a taxpayer's vested rights to sewer service after having paid for the service

[23] Kuriakuz v West Bloomfield Twp, 196 Mich App 175, 177; 492 NW2d 757 (1992)

[24] McSwain v Redford Twp, 173 Mich App 492, 499-500; 434 NW 2d 171 (1988)

[25] Ahearn v Bloomfield Twp, 235 Mich App 486, 494; 597 NW2d 858 (1999)

2. the justice of a political jurisdiction choosing or electing to levy a special assessment instead of alternatives such as a unit wide ad valorem debt levy for bond issues

3. the justice or injustice of the unit of government choosing to shift the financial burden to only real estate parcels and intentionally and significantly exempting benefitting business and industrial operations. (This shift in burden occurs because special assessments may not be levied on personal property - thereby a significant part of the tax base is eliminated - even though those businesses and their employees may contribute to the need for this public improvement.)

4. factual arguments regarding alternatives that existed to the public sewer system which would have negated the argument of a cessation of service

5. factual arguments regarding the magnitude or amount of any potential value losses

Special assessment law has evolved since this decision. You may want to consult with legal counsel regarding its contemporary application and instructions.

2.4 Date of change in market value

The exact date of the measurement of Fair Market Value or True Cash Value is critical in matters of property taxation and in special assessment administration. In ad valorem taxation, December 31st is the critical date. All taxing authority under ad valorem regulations flow from this "tax day." In a number of economic development projects where there is a capturing of taxes for some specific purpose, the Fourth Monday in May is a critical date. This is so because the date of finalization of State Equalized Value determines a "base value" from which no

taxes may be captured. However, as property values within the project increase over time valuations above the base value can be used to generate taxes that may be captured and used for "eligible" purposes on eligible properties.

Based upon the 1999 Ahearn decision, it appears the date used to measure a change of value resulting from a public improvement can vary when computing the "benefit," as long as the date chosen is reasonable with regard to the levying of the special assessment. Said in another way, instead of measuring the benefit (increased market value) by determining the value of a property on some date prior to the public improvement and measuring the property's value on a date after construction of the improvement, the proper procedure is to appraise the property's value with and without, the public improvement, on one specific and reasonable date. Courts are not interested in a benefit determination clouded by the passage of time; rather their interest is in isolating and clearly identifying value attributable only to the public improvement. This is the "contribution" of the component to the overall property value.

2.5 Ad valorem levies

The passage of Public Act 33 in 1951 marked a significant change in preferred financing for public safety activities. The Act enabled the levying of a

special assessment for fire protection. The use of millage rates instead of a fixed cost in the special assessment process was assured in a 1958 case. In this case, the court opined that a law prohibiting the use of ad valorem millage rates in levying special assessments was improper. It also ruled that a special assessment levy based upon a property's value was proper. The rationale employed was that in some situations (such as police and fire protection) it was entirely appropriate to use a property's value as the foundation for a levy based upon benefit received.[26] AG Opinion 6896 provided instructions to levy the millage rate against a property's SEV. A later ruling modified these circumstances and now the Taxable Value is appropriate.

The list of ad valorem special assessments levied within the state of Michigan includes more than 120 units of government today. In 1994, passage of what is commonly known as "Proposal A" created a new value for taxation purposes, the Taxable Value. Today, Taxable Value is used in the computation of ad valorem special assessments. Most of these special assessments involve funding public safety agencies such as police and fire departments. However, the list of uses for ad valorem special assessments includes street lighting, trash removal and a number of other "public improvements." Challenges have been

[26] St. Joseph Twp v Municipal Finance Comm, 351 Mich 524; 88 NW 2d 543 (1958)

mounted against this form of special assessment, but as of today it is growing in popularity with government agencies. There are unresolved questions regarding the benefit to vacant land and other issues.

2.6 Duration of special assessment district and levy

Whereas an ad valorem tax must be redetermined every year and in no case can an ad valorem millage rate exceed 20 years, special assessments follow much different rules. In ad valorem taxation both the value used and the tax rate are determined annually.

Most special assessment districts and levies expire by the terms of their creation. This means they often have a fixed dollar amount to be collected and a specific purpose to fulfill. When that is finished, the special assessment is complete.

However, in at least one unpublished case, the Court of Appeals has ruled that a special assessment district for a Lake Level Special Assessment runs in perpetuity. It reiterated that the levy expired upon the terms of its creation. In this case, the levy was authorized by the circuit court for 20 years. Ad valorem special assessment levies can also run in perpetuity if approved by the voters.

3.0 BASIC DEFINITIONS

Benefit: "In order for an improvement to be considered to have conferred a 'special benefit,' it must cause an increase in the market value of the land. Ahearn v Bloomfield Twp, 235 Mich App 486, 493; 597 NW2d 858 (1999)

Contribution: "A valuation principle which states that the value of an agent of production or of a component part of a whole property depends upon how much it contributes to the value of the whole; or how much its absence detracts from the value of the whole. The principle of contribution is sometimes known as the Principle of Marginal Productivity." Real Estate Appraisal Terminology, Byrl N. Boyce, PhD., Editor, University of Connecticut, American Institute of Real Estate Appraisers and Society of Real Estate Appraisers, Cambridge, MA. 1975

De minimis: "De minimis non curat lex. The law does not care for, or take notice of, very small and trifling matters.The law does not concern itself about trifles." Blacks Law Dictionary, Sixth Edition (1990), Page 431

Highest and Best Use: "*That reasonable and probable use that will support the highest present value, as defined, as of the effective date of the appraisal.*" Used for improved properties "*Alternatively, that use, from among the reasonably probable and legal alternative uses, found to be physically possible, appropriately supported, financially feasible, and which results in the highest land value.*" Used for vacant land Ibid, Real Estate Appraisal Terminology, p 107

Improvement: "A valuable addition made to property (usually real estate) or an amelioration in its condition, amounting to more than mere repairs or replacement, costing labor or capital, and intended to enhance its value, beauty or utility or to adapt it for new or further purposes. Generally has reference to buildings, but may also include any permanent structure or development, such as a street, sidewalks, sewers, utilities, etc. An expenditure to extend the useful life of an asset or to improve performance over that of the original asset. Such expenditures are capitalized as part of the asset's cost. Contrast with Maintenance and Repair." Blacks Law Dictionary, Sixth Edition (1990), Page 757

Maintenance: "The upkeep or preservation of condition of property, including the cost or ordinary repairs necessary and proper from time to time for that purpose. Bogan v Postlewait, 265 N.E. 2d 195, 197" Id. Black's Law Dictionary, p 953

Market Value "The highest price in terms of money which a property will bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus." Ibid." Real Estate Appraisal Terminology, p 137

Neighborhood: "A portion of a larger community, or an entire community, in which there is a homogenous grouping of inhabitants, buildings, or business enterprises.

Inhabitants of a neighborhood usually have a more than casual community of interest and a similarity of economic level or cultural background. Neighborhood boundaries may consist of well-defined natural or man-made barriers or they may be more or less well defined by a distinct change in land use or in the character of the inhabitants." Id. Real Estate Appraisal Terminology, p 147 verify

Necessity: There is no legislative or judicial definition of the term "necessity" as it applies to special assessments.

Project: There are legislative definitions of the term "project" as it applies to specific special assessments. See individual statutes for this term.

Property Tax: "Burdens imposed generally upon property owners for governmental purposes without regard to any special benefit which will inure to the taxpayer." Knott v City of Flint at 499 citing In Re Petition of Auditor General 266 Mich 170, 173; 197 NW 552 (1924)

Repair: "To mend, remedy, restore, renovate. To restore to a sound or good state after decay, injury, dilapidation or partial destruction. Congress Bar and Restaurant Inc v Transamerica Insurance Co., 42 Wis 2d 56, 165 N.W. 2d 409, 412. The word "repair" contemplates an existing structure or thing which has become imperfect, and means to supply in the original existing structure that which is lost or destroyed, and thereby restore it to the condition in which it originally existed, as near as may be. Childers v Speer, 63 Ga. App 848, 12 S.E. 2d 439, 440." Id. Blacks, p 1298

Special Assessment: "A special assessment is a levy upon property within a specified district. Although it resembles a tax, a special assessment is not a tax." Knott v City of Flint, 363 Mich 483, 497; 109 NW2d 908 (1961)

"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).

Substitution: "*A valuation principle that states that a prudent purchaser would pay no more for real property than the cost of acquiring an equally desirable substitute on the open market.* The principle of substitution presumes that the purchaser will consider the alternatives available to him, that he will act rationally or prudently on the basis of his information about those alternatives available to him, and that time is not a significant factor."Ibid." Real Estate Appraisal Terminology, p 201

True Cash Value: "As used in this act, 'cash value' means 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, and not at auction sale except as otherwise provided in this section, or at forced sale" M.C.L. 211.27 True Cash Value is equivalent to Fair Market Value CAF Investment Co v State Tax Comm, 392 Mich 442, 450; 221 NW2d 588 (1974)

4.0 DETERMINING BENEFIT - VALUATION CONCEPTS

4.1 Economic principles

While it is possible in the daily administration of government to find an improper special assessment that remains a valid levy because the assessment was not properly challenged, to withstand judicial scrutiny all special assessments require a clear, measurable change in value resulting directly from the public improvement. Now, the measurable change of a property's market value is described as a "benefit" by the courts. It is the only "benefit" from many that may accrue to a property from a public improvement that can justify an assessment.

It is easy for this specific form or benefit to be confused by the public, and indeed, by lawyers and assessing professionals. More than 150 years ago, the issue of a general "benefit" required before taxation could be legal was discussed at length by Michigan's Supreme Court. The court said:

> "Before noticing the distinction urged by counsel upon the argument, it seems proper to remark that every species of taxation in every mode, is in theory and principle, based upon an idea of compensation, benefit or advantage to the person or property taxed, either directly or indirectly. If the tax is levied for the support of government and general police of the State, for the education and moral instruction of the citizens, or the construction of works of internal improvement, he is supposed to receive a just compensation in the security which the government affords to his person or property, the means of enjoying his possessions, and their enhanced capacity to contribute to his comfort and gratification, which constitute their value. Taxation, not based upon an idea of benefit to the person taxed would be grossly unjust, tyrannical, and oppressive,

and might well be characterized as 'public robbery.'"[27]

The court went on to explore the reasons why all public improvements should not become the burden of the public at-large, but in fact it is reasonable and appropriate to specially assess some costs to specially benefitted lands.

> "Some of the provisions of the Constitution ... were cited ... for the purpose of showing that it enjoins a just principle of equality in regard to all public burdens, and prescribes as a limit to the exercise of the taxing power, that common burdens should be sustained by common contributions, regulated by some fixed general rule, and apportioned according to some uniform *ratio* of equality. This may be readily admitted as a just and equitable rule. The soundness of such a proposition is too well approved by good sense, and too well supported by theory of free government and equal rights to be seriously questioned. The only difficulty is the application of the principle."

The change in value required for a special assessment relates to real estate value because special assessment levies may be made only on real property. They do not apply to personalty or personal property.

However, to accurately consider value arising directly from a public project with complex impacts, the valuation methodology must recognize classic economic principles related to all property; property referred to as "goods" within the study of economics. This determination of economic classification is usually not important when the special assessment is for a simple public project of limited scope and impact.

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[27]Williams v Mayor, & C., of Detroit et al., 2 Mich 560, 7; WL 3638 Mich (1853)

Just as accepted best practices used by appraisers to determine the value of real property by class (residential, commercial, industrial et cetera), recognition of the type of property being affected by the public improvement project according to established economic principles is a critical element of the apportionment process. An example of where the classification process should be employed is special assessments to be made pursuant to Michigan's Natural Resource and Environmental Protection Act.

Economists classify a "good," (including real property) into one of four divisions of ownership: "private," "public," "common" and "natural monopolies." The classifications are based upon two general characteristics: ownership rights (privately or public and what happens when the "good" is consumed (in the case of real estate, acquired).

Private, public and common goods are those most often involved in the special assessment process. Private property is a "good" that is typically involved in a market transaction and the owner theoretically has full rights to the goods. This includes the right to exclude use by others and a characteristic known as rivalry ... once the real estate is consumed by one party it is not available to another party.

A public "good" is a good which everyone may have access to at any time and its use by one person does not exclude the use by another person. An example, might be an attractive view of a park or lake. Many people benefit from the view but their viewing does not exclude others from doing the same thing. Economists refer to this form of consumption as "non-rivalrous." This park or lake is a good which is not typically bought or sold within a market place.

A common "good" is one which anyone may have access to the good (this is termed a "non-exclusive good"), but the individual consumption denies that good to other people (the good is a "rivalrous good"). An example would be fishing when the fish caught are kept rather than caught and released. Common goods are not typically bought or sold in the market place, but once consumed may become private goods that are bought and sold. Fishing is a good example. Some fish are caught by individuals for personal consumption. Other fish are caught for the purpose of re-sale as a private good by commercial firms. Both types of fish exist in their initial state as a "common good" but undergo two entirely different economic transformations.

In situations where there is to be an apportionment of costs for a public project to maintain a lake level or water quality, this situation ultimately affects the apportionment. For, value is unquestionably created by a lake in more than one

way. Among those ways is the value of the commercial fishery to the local economy and therefore the government unit or units affected. There is also the value of the income stream generated by recreational users who visit the lake or body of water for non-commercial purposes. Under NREPA, there is to be an apportionment of costs against benefitting government units. This is an at-large assessment which can only be fairly and reasonably apportioned if one considers existing value not typically bought and sold in the market place. The procedure is similar to the procedure involved in standard real estate appraisal practices when an appraiser makes a determination of the highest and best use of the property and whether it should be valued by comparing market exchanges, net income streams or the cost of building a new replacement. Common and Public goods have value estimable using the best practices of economists.

Now let us turn to real estate valuation principles. “Real estate” is a term which technically refers to the physical, tangible land and all things permanently affixed to it. “Real property” refers to the benefits and rights associated with ownership of property.

Real estate textbooks refer to certain basic valuation principles that are factors at work in the marketplace and affect *Fair Market* or *True Cash Value*. These principles should reflect the actual decision making process of buyers and

sellers. According to the International Association of Assessing Officers (IAAO), the basic valuation principles of most importance are:

1. Highest and Best Use	4. Increasing and decreasing returns	7. Contribution
2. Substitution	5. Change	8. Supply and demand
3. Conformity	6. Competition	9. Anticipation

These concepts are critical in a benefit analysis of the market influence of a public improvement on a specific parcel or parcels of real property. Any analysis of the influence of the public improvement should include a careful examination of each of these principles, but the principle central to a special assessment is "contribution." What does a public project external to a real property contribute to that property's value?

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4.2 Contribution

Contribution is defined within this context by the IAAO as: "A principle which holds that the value of any component of a property consists of what its addition adds to the value of the whole, or what its absence detracts from the value of the whole. For example, the rental value of a particular piece of vacant land used for parking purposes may be greater than it would be if the land were improved

with a building. Or the cost of remodeling an apartment building may be greater than justified by the rental increase that can be expected as a result of remodeling.[28]

The point is, the contribution value of anything which increases the fair market value of a property is controlled by market conditions. It is not controlled by the cost of the improvement. The contributory value of an enhancement is that portion of the cost of the enhancement (or that part of the cost of the enhancement) which is equal to the direct increase in market value caused directly by the enhancement.

4.3 Fictional case studies of contribution and substitution

Lets see how these valuation principles interrelate. First, we'll examine a fictional real estate market. In this market, we'll first consider only residential properties. Then we'll look at parking improvements for business.

4.31 Residential properties

We see that there is a sufficient supply of both new construction and existing homes to satisfy the existing demand. There are no obvious distortions in market forces and market conditions appear state and normal.

We've spoken with several active, experienced real estate appraisers and have determined there is also a nice variety of houses offered in the market based

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[28] An Introduction to the Cost Approach to Value, International Association of Assessing Officers, Chicago, Il (1973), Page8

upon amenities demanded by buyers. That is, most buyers are able to acquire the style and functionality they are looking for in this market.

When we examine the motives of buyers, we find for example, that the majority prefer three bedroom houses, with attached garages, full basements and two and one-half baths. However, there are buyers looking for small starter homes with one or two bedrooms and there are a few buyers with large families looking for four and five bedroom homes.

In our consideration of the economic principle of "contribution"we'll first look at the contribution of water and sewers connections. We notice that in new housing, there are special assessments for both. According to our real estate agents, it is unusual for a buyer in this market to object to paying these special assessments. They seem to accept them as part of the cost of buying a newly constructed home. Of course, there are a few buyers who attempt to get the sellers to pay for these special assessments as part of the closing, but this objection is relatively rare and it is not typical that the special assessment balances are paid in full at closing. When we check with local real estate appraisers, we find they do not typically adjust for water and sewer connection fees on new housing. That is, buyers and sellers feel a marketable property must have water and sewer service.

However, we have found several brokers who've been making sales in this

community that have had existing houses where the sewer or water connections had fouled for one reason or another. They state buyers in general, expect costs to fix these deficiencies are to be paid for in full by the sellers at, or prior to closing.

From this investigation, we've concluded that sewer and water connections are considered to contribute value to a property at the initial installation. It seems typically, everyone agrees water and sewer connections are basic components of any newly built residential property.

We have been told that repairs to these basic amenities are considered normal maintenance in this market. Buyers expect them and they do not usually agree to accept costs to repair them. Once a house is occupied and considered existing housing, rather than newly built housing in this market, the burden of financing sewer and water connections is not accepted by buyers.

We've also discovered a similar pattern with paved street surfaces. When the home is new typical buyers seem willing to pay future special assessment levies for the roadway as part of the ordinary costs of new home ownership. However, where a special assessment for street paving exists in older neighborhoods with existing housing, buyers typically look for substitute comparable properties with similar amenities but not the financial burdens of a special assessment for paving. Sellers in this neighborhood typically must pay the

balance of their paving specials at closing or reduce the price of their property to find willing buyers. Based upon this information, we've created a chart illustrating market forces related to the economic principles of contribution and substitution. In some instances, buyers consider these amenities to contribute to the value of the property and are willing to pay for them. In other cases, buyers look for substitute properties without the tax burden but with similar amenities.

Improvement	Contributes Value to New Housing	Contributes Value to Existing Housing
Water and Sewer Connections	Yes	No
Street Paving	Yes	No

When provided with this information, our community's elected officials decide the community policy will be to specially assess the cost of new streets and new sewer and water connections, but they will pay for repairs out of the general fund budget. Their reasoning, in part, includes the idea that communities compete with each other for residents and high tax burdens, including special assessment burdens, will encourage citizens to look for substitute housing elsewhere.

4.32 Business parking

In addition, we've surveyed our brokers and appraisers with regard to parking structures. Luckily, this community's business district has become quite popular. In part due to the urbanization of empty nesters, in part because entrepreneurs and economic developers have succeeded in creating a wonderful central business district with extensive rehabilitation of early 1900s store fronts and in part due to the great geographic location of this community. It sits amidst a high density population of working families that are economically advantaged.

Vacancy rates in this central business district have dropped to levels not seen in decades. As store fronts fill up, vehicular traffic congestion has increased. It is clear that the planning department's call for more parking is justified. Several years ago a parking structure was built near the business district, but six blocks away. It is used extensively by employees of local businesses in an attempt to keep the limited off street and on street parking available for customers.

Demand for housing and offices is such that even the upper floors of the old store fronts have become used for a variety of purposes. There has been some new commercial building going on. The consequence of this activity is that parking is once again at a critical state and a new parking structure is needed.

This one is to be build adjacent to the commercial district, in a large part to

service customers who simply refuse to walk the six blocks or so from the existing parking to the business district. Everyone agrees there is a need for the facility.

Once again we survey our brokers and appraisers for nformation and conducted a survey of prospective business property buyers. There is evidence buyers would not object to a special assessment for parking. As landlords they project higher rents and lower vacancies. They believe retail customer demand will continue to build if more parking is found. This means a continuation of the recent trend towards larger and larger annual sales.

However, most business people believe that if congestion is not eliminated soon, momentum will be lost. Customers will begin shopping in an adjacent community which has also done well in revitalizing its central business district. Business owners believe time is of the essence with regard to getting more parking.

Because of the way the original buildings were constructed, there are residential properties located within the business district. These are primarily single family homes built between 1915 and 1940. There are apartments located in some of the refurbished commercial structures and some of the newly built commercial structures.

Luckily for this tale, a well respected economic development firm has completed a scientific survey of residential property users. Some are renters, some

are shopping for apartments in the housing which has been included within new multi-story commercial structures. Some are looking at the quaint homes from the last century.

Unfortunately, it is clear from the study that residential property owners believe there is sufficient parking for their vehicles and they don't see a need to support business parking structures with their hard earned money. Potential residential buyers, brokers and appraisers all agree that the many communities which surround this metropolitan site offer plenty of comparable substitute housing. Buyers either will not buy in a neighborhood specially assessed for commercial parking or they will only buy properties which are being sold with a discount equal to the financial burden of future special assessment fees.

Another study conducted by our traffic engineers and economic development team show that there will be a small amount of customer traffic from the new parking structure to nearby commercial strip centers. However, the projections are that this traffic is really incidental and nominal in its impact. From this information, we have decided that the *Service District* (the geographic area where influence from the new parking structure is detected) will extend outward from the structure for a radius of six blocks. The S.A.D.however, is smaller. It will only encompass the distance the scientific survey showed customers will walk to

stores. That distance is four blocks.

Based upon this information, we've created another chart which illustrates the contributory value of a new parking structure in this neighborhood. Our conclusion is that the special assessment district boundaries must include some residential neighborhoods. Notwithstanding the boundary decision, market forces are such that there will be no special assessments apportioned against residential properties.

Improvement	Contributes Value to Housing	Contributes Value to Business Property
PARKING FACILITY	No	Yes

Within our community we now have identified components which will help us understand the geographic extent to which certain kinds of special assessments extend. Here is what we've compiled. It deals with sewers, water and parking. With any luck, our GIS people will map this information some day.

Geographic Distribution of Value - Columns show impact of specific improvement			
Improvement Type	Sewer	Water	Parking-6 Blk area
Residential			
Property benefits if adjacent	Yes	Yes	No
Include in Service District	Yes	Yes	Yes
Benefit exists if within 4 blks	No	No	No
Include in Service District	No	No	Yes
Benefit exists if within 6 blks	No	No	No
Comm. & Industrial			
Property benefits if adjacent	Yes	Yes	Yes
Include in Service District	Yes	Yes	Yes
Benefit exists if within 4 blks	No	No	No
Include in Service District	No	No	No
Benefit exists if within 6 blks	No	No	Yes

From this chart we can see that the geographic influence of water and sewer connections are limited to adjacent properties. However, a public improvement such as parking may extend for several blocks. We also see that different classes of property are effected in different ways.

4.4 Combining economic principles and geographic distribution

Let's look more closely at the interaction between various economic forces and methods used to detect changes in value and the geographic distribution of

those changes.

All property value experts recognize that outside influences affect property value. For example, land values are effected by presence of natural features such as water or a lake. Whether created by nature or humans, a lake's market value influence is comparable; external to other property and describable through various economic concepts.

Scarcity: because not every parcel has the benefit of proximity to or use of water, those that do represent a relatively scarce resource. "Scarcity" drives up price.

Competition: there is often a premium buyers are willing to pay for access to natural features. This is represented in the economic concept of "competition." All other factors being equal, where there is true competition for any economic good, the transaction price is driven up.

Increasing and Decreasing Returns: the impact of these external influences is modulated by forces described in a third economic principle. The principle of increasing and decreasing returns. Modulation of price as a function of increasing and decreasing returns relates to both scarcity of the externality (in this case a lake) and the ability to acquire a substitute parcel of land influenced by a comparable external amenity.

In the case of a lake, some areas such as the Great Lakes region, have an abundance of water features. In fact, one publication states that anywhere in Michigan you are no more than five miles from a lake, stream or river.

In cases where the externality exists in more than one geographic location, competitive forces are tempered by the presence of other choices. Thus, “price” or value becomes tempered by economic forces described in the economic principle of substitution and those described by the economic term scarcity. In general, a relative abundance of a good leads to either stable or declining prices. Where properties with similar amenities exist, price is held down through a buyer’s ability to find substitute properties when a particular property is over priced for market conditions.

Consider the difference in arguments made by those with functioning septic systems who are told they must connect to a sewer system. Many citizens believe the cost is unnecessary even though it is commonly upheld. Michigan’s Court of Appeals recently held that a commercial property owner need not pay a special assessment for a sewer when the existing septic system was sufficient. Buyers considering a property on a lake in Michigan which may have a special assessment for a dam or water improvement costs, often have substitute sites available in the same market.

Changes in market value of real estate exchanged in the marketplace from an external force may be detected in the three standard approaches to market value real estate appraisers typically employ. However, it is important for the special assessment administrator to be alert to differences in how the values are detectable depending upon property classification or use.

For example, consider changes in value of unimproved land due to the presence of a sewer line or water line or paved roadway and the presence of a lake. Value changes to residential property are routinely detectable using market comparison techniques including paired associates and multiple regression analysis (hedonic pricing techniques). These external factors are important to most residential buyers and when present as a true market force are reflected in real estate transactions.

However, property for which the highest and best use is industrial, may care only about the presence of sewer, water and streets. In some cases, proximity to a lake might not be simply uninteresting, it might be a detriment; requiring additional costs for environmental safety guards. In the alternative, the author been told of a circumstance where an industrial firm was reported to lower costs for insurance because the volunteer fire department which protected its property could easily access a lake as a water source for firefighting purposes.

Properties where the highest and best use is for commercial purposes, may desire all four external influences, but buyers of such properties are not influenced in the same way as residential buyers. The amenity ultimately desired by commercial firms is higher profit not a good view. That is, a good view is desired if it leads to higher workforce productivity or enhanced sales due to a specific company image or any other result which ultimately translates into profit. Of course, companies which specifically benefit from tourism or visitors from vacation cottages or second homes on the lake, might specifically locate in an area or thrive in an area as a result of the presence of tourists and vacation home owners.

It is important then to measure the impact of cash flows associated with the public project. For example, higher cash flows to retail businesses usually translate into lower vacancy rates and higher rental rates for commercial properties. Any increase in property tax collections directly attributable to the influence of an externality has been recognized as a benefit to government since at least the 1800s when New York's Central Park was studied as a community resource. Unlike the relatively localized impact of streets and sewers and water lines, parks and golf courses and bodies of water all will produce lower taxes for the community at-large because they generate higher property tax cash flows (and sometimes income

tax cash flows) for general fund budgets.

Residential, commercial, industrial all benefit financially from that circumstance.

For these reasons, properly identifying the geographic distribution of external influences on market value of properties being considered for a special assessment levy is critical. After all, the justification for any special assessment is that it is public project of some sort which creates an increase in market value of real estate located within a specific geographic area.

This importance has been well recognized and there are two broad authorities requiring a specific determination of the geographic distribution of value from an external source; a public project. First, Chapter 13 of the Assessors Training Manual produced by the state of Michigan requires special assessment administrators to identify two specific geographic areas. the Service District and the Special Assessment District. Michigan's Supreme Court has held that it is the obligation of the authority proposing a special assessment levy to identify the Special Assessment District.

5.0 FORMING AN S.A.D.

Following a determination of necessity and an analysis which results in the determination of the extent of the geographic distribution of all identifiable benefits from a public improvement (Service District), there are two basic value determinations which need to be made within a special assessment levy.

First, a determination must be made of the geographic distribution of market value influence arising from the public improvement. Then there must be a determination of change in market value of individual properties with and without the influence of the public improvement.

5.1 Service District

In the first case, one can determine which properties would be eligible to place within a special assessment district. Individual property appraisals need not be completed, but some reasonable and fair method of determining where market influences extend to (from the public improvement) must be utilized. The assessor should fully consider the economic factors which can be identified — both those easily known and those can be ascertained or determined with proper due diligence. The outcome of this determination is the identification of exactly where

boundaries for a special assessment district should be placed.

In the second case, the determination of a change in market value on a specific parcel of real property is used to ascertain the amount of benefit received and therefore the amount of special assessment levy that may reasonably be levied or apportioned against a specific parcel.

5.2 **The Special Assessment District** (S.A.D.)

SAD boundaries can be contemplated in a manner similar to a determination of a "neighborhood" surrounding a subject property. While a neighborhood usually has homogeneity as a primary component of its identification, the neighborhood formed by Special Assessment District has only one defining characteristic, "benefit" from a specific public improvement.

All the properties within it receive a factual, measurable, direct and specific increase in fair market value from that particular public improvement. Remember, the S.A.D. boundaries may be congruent to the boundaries of the Service District, they may be smaller than the Service District, but they may never be larger than the Service District.

To identify the boundaries of the S.A..D., the assessor or appraiser must determine which group of properties share the external economic influence. In the

case of the special assessment, the focus is strictly limited to the geographic distribution of value from a specific public improvement.

Here is an example. It is almost always the case that an enhancement of real estate from a water supply connection is limited specifically to the lot or lots to which the water connection is provided. Having a reliable water supply makes property marketable when that might not be the case without water. Examples of this economic factor may be found throughout Michigan, but lack of water is a very significant issue in the southwestern U.S. where demand for water has actually eliminated existing water supplies.

It is very clear to valuation experts that in most cases public improvements, such as initial sewer and water connections, enhance property values by an amount equivalent to the cost of installing them at the time the original public improvement is built. Thus, the land value is enhanced when sewer and water connections become available and the special assessment levy spreads the cost immediately. There need not be any buildings or other improvements affixed to the land for the enhancement to be conveyed. The land itself becomes more marketable because building becomes an option. Available water service may also create a fire protection function. Thus, the assessor can confidently and easily ascertain which properties belong within the S.A.D.

As an aside, some jurisdictions may defer the financial burden to property owners to some future date, but the levy is based upon costs new for the installation. The term "discrete" concerns geographic distribution of the increased market value. By discrete, we mean that the enhanced value only spreads to specific lots or parcels. Usually, the term "discrete" in this context, includes a requirement that the affected property is somehow directly connected to the public improvement. The spread of value is limited to a specific parcel or parcels of real estate.

This is not always the case however. All of us intuitively know the value of a specific parcel of land can often be influenced by features not connected in any way to the property. They are external to the property.

For example, an outside influence effecting value can arise from a beautiful view of some sort. It may be a view of a mountain from a property lying in a valley or hollow. It may be a view of a lake or a forest from a property located on the side of a hill. It may be a view of a city from high atop a building. Buyers pay more money for attractive views. These examples are interesting in their diversity and reflect value enhancement from both nature and man made features. They illustrate common market forces influencing buyers and sellers in a variety of markets.

Thus, a public improvement such as a dam creates a lake. The dam creates

an enhancement downstream as property owners are protected from flooding. The lake creates enhancements to adjacent and nearby properties and it may create an enhancement of property values some distance away.

In this case, let us assume the lake is not a private lake, but a lake large enough to have public access and a lake which is used by the public for recreational purposes. Under these conditions, there are other market influences which effect value. Not only is there the enhancement of recreational or residential property values which directly result from frontage on water, but commercial property values may be influenced.

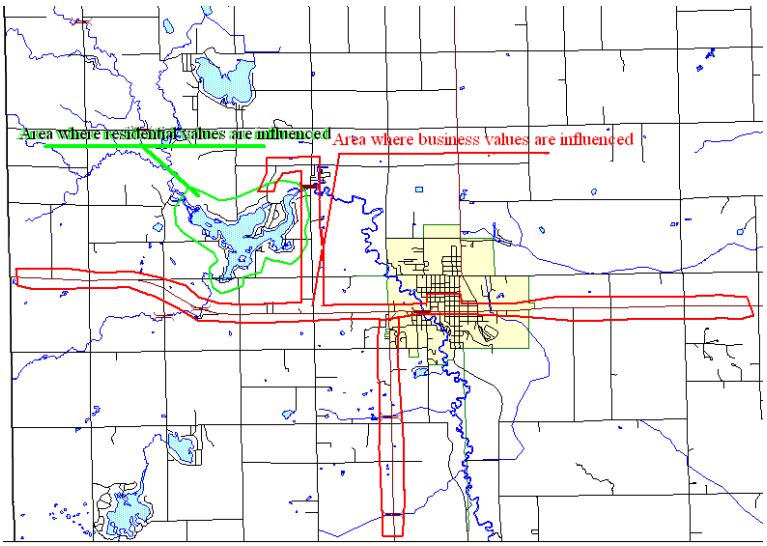
As an illustration, it may be that an abandoned gas station on a road a mile from the lake becomes a viable business site; a bait shop servicing people who like to fish the lake. Maybe a convenience store opens up along one of the access roads to the lake. It may be that homes begin getting built on the lake and local businesses such as food stores and furniture stores and hardware stores benefit from increased annual sales as both residents living on lakefront land and visitors to the lake begin making trips to these local businesses for needed items or simply to enjoy a meal. A stagnant business district may become vibrant.

What has happened is an economic development activity made possible by the waters stored behind the dam. The water enhances the value of property

touching it and properties with easy access to it. The water stimulates tourism which creates new jobs and permits the expansion of existing businesses. People employed in these new jobs spend their earnings and stimulate the local economy through their purchases from local businesses and their demand for housing.

Unlike the fresh water connection to a specific home, the creation of a natural feature such as a lake has a widespread influence on property values. There may be value enhancement of properties directly touching the water or those within close proximity to the lake. Properties which might have a view of the lake and those commercial properties (perhaps some distance from the lake) which become more valuable to rent or market because of enhanced income streams from tourism or other commercial activity generated by people utilizing the lake.

The adjacent graphic prepared by a GIS team for a municipality illustrates and used in an article for the Riparian magazine, shows residential areas of enhanced property values in close proximity to a lake as well as enhanced property values along travel routes and in a nearby retail area. One can clearly



see that the geographic distribution of economic value is greatly affected by the use of the property. Residential and recreational properties lying relatively close to the natural feature have enhanced market value. Service firms and retailers can be located in entirely different areas than residential property and received a substantial financial benefit. As discussed herein, enhanced cash flows to local government units shows a geographic distribution much different than either the residential/recreational or commercial distribution.

Even when there is a paucity of sale data, those enhancements might be detected through higher rents, reduced vacancy rates, or a sudden increase in new businesses arising from the public improvement. There may be other indicators of enhanced property value in business, recreational or residential property. Obviously, rents and vacancies are reliable indicators of changing property values when an income stream to a property is commonly used by buyers and sellers. Therefore, under those conditions these indicators are appropriate determinants of real property value.

For these reasons, and as part of government's obligation to its citizens, it is especially incumbent upon administrators that a benefit analysis for special assessment purposes include reasonable consideration of any geographic distribution of value arising from a public project, by the use and class of property.

6.0 APPLYING THE PRINCIPLES

The power to levy special assessments is derived from the power to tax. Williams v Mayor of Detroit, 2 Mich 560 (1853) Through specific statutes that currently exists, individual types of governments are delegated specific special assessment functions. See the General Village Act (1895 PA 3), 4th Class Cities Act (1895 PA 215), Home Rule City Act (1909 PA 279), Township and Village Public Improvement and Public Service Act (1923 Act 116) and the Public Improvements Act (1954 PA 188). Note: there are many other special assessment acts which deal with specific types of public improvements.

6.1 The geography of boundaries

Boundaries must be defined as the first step in the special assessment process. In Lawrence et.al. V City of Grand Rapids 166 Mich 134, 131 N.W. 581, (1911) the Supreme Court noted "*it is the duty*" of an entity *"when a special improvement is made, the benefits accruing from which are regarded as local, to determine the boundaries of the district within which the property is supposed to be specially benefitted by the improvement."*

Secondly, boundaries are arbitrary and unwarranted when known facts are ignored or facts may be determined but no one looks for them. Continuing with Lawrence v Grand Rapids, the court in its discussion of the second finding said, *"From this and other testimony we feel obliged to agree with the trial judge in the conclusion that the boundaries of the district were fixed by the common council without reference to either known or ascertainable facts; that the action was arbitrary and unwarranted."*

Thirdly, there should be deference to the admonition that the boundary line for a Special Assessment District may not be based strictly upon the basis of its proximity to a public improvement. In Johnson v Inkster, 401 Mich 263; (1977); 258 NW 2d 24(1977) the Michigan Supreme Court held:

"Every public improvement is 'local' in the sense that it is located in a particular area; libraries, fire and police stations and street improvements are all located closer to a property owned by some persons than to property owned by others. The location of this widened highway closer to plaintiff's homes than to other Inkster properties does not by itself justify requiring a special contribution to defray costs."

6.2 Service District — Geographic extent of all benefits

A geographic distribution of benefits from a public improvement may be analyzed by first figuring out exactly which benefits exist. While these benefits must contain economic components, it would be unusual if there were not other "benefits" besides economic. Other benefits might include: public safety components, public welfare components, a larger tax base or other benefits to specific political jurisdictions, benefits to the environment and other benefits.

The geographic extent of all benefits from the improvement defines the "**service district**." That is, you should map out where the identified benefits spread to from the public improvement. In the case of a drain for example, drainage benefits may extend to all land from which water drains and to land which might benefit from the relief of periodic flooding. A paved walkway may provide a path to an elementary school or it may provide a recreational trail through a natural area.

To determine properties that will be benefitted one must look to the authorizing statute's definition of benefit and to cases interpreting or applying this definition. From those sources all benefits from the public improvement may be identified.

The first reference the assessor should turn to is the resolution by the governing body which finds that there is "necessity" for the public improvement.

Why was it needed? What justification was used to make the finding and what facts were used by the deliberating body to conclude there was a need? Are there other documents which support the finding of necessity?

6.3 LES - Legal, Economic and Scientific information

Once you've examined all documents related to the finding of necessity, you should seek out a possible pool of information that may be available for analysis. At a minimum, the source of facts used to define boundaries for a Service District should include considerations of **legal, economic and scientific (LES) information** that may be available. Some brief examples of the principle of LES follow.

6.3.1 Legal documents and information

The bundle of legal rights interwoven within real estate ownership can influence a special assessment process. For example, state owned land is often exempted from special assessment levies. However, there are statutes, such as the Natural Resources Environmental Protection Act (NREPA M.C.A. 324 et seq.), which require the state to pay a special assessment levied pursuant to the Act.

Examine the authorizing statute carefully to substantiate the inclusion of properties that might be otherwise overlooked.

Another example might apply to **recorded deeds or other legal instruments**. There are situations where enhanced market value varies based upon closeness or proximity to a public improvement. In such situations, care must be taken to assure that there are no unknown easements or right-of-ways which physically separate the land to be specially assessed from the public improvement. An example would be a right-of-way owned in fee simple by a utility company, which exists solely to provide access for the company. Another would be long forgotten (or ignored) and never used public streets or right-of-ways. In such circumstances, land which reviewed in the field may look as though it abuts a public improvement, when in fact it may be separated by a substantial barrier. Ignoring such circumstances is more common than one might expect even though evidence is almost always recorded and available in a county clerk's office.

In one recent case, islands in the middle of a lake were omitted from an assessment roll and two special assessment districts, even though they were available for sale and had been identified in an engineering study for the unit of government.

6.3.2 Economic facts and information

Economic benefits include such things as an elevated tax base, new or increased tourism, job generation, new recreational or residential growth and business incentives or features attractive to business. These may be widely spread economic influences. Sometimes they apply to one class of properties and not another.

We've already discussed the importance to market value of a view of water. It may possible that a public golf course or wetlands or some other environmental improvement enhances property in a wide geographic area and properties not physically adjacent to the improvement. Appraisers across the country have investigated these types of economic influences and assessors must be alert to them in the special assessment process.

Remember Economic benefits also include such things as an elevated tax base, new or increased tourism, job generation, business incentives or features attractive to business and new recreational or residential growth. Benefits to units of government in the form of higher property tax collections are easy to trace. One merely reviews the millage rates levied and the jurisdiction the taxes go to when

collected. A map can quickly be prepared which illustrates the geographic distribution of an enhanced property tax base. Benefits from tourism, business incentives (such as infrastructure or enhanced economic development) might require the aid of professionals in those fields to ascertain.

Table of Easily Identifiable Economic Benefits Arising From A Lake	
Enhanced Real Property Values from proximity, access and view of water	Higher Tax collections to many jurisdictions arising from enhanced real estate values
Value of Wetlands as wildlife habitat	Value of Water and wetland for bird watching
Value of Game Fish in water per pound	Value of Rough Fish in water per pound
Value of visitor expenditures - fishing	Value of visitor expenditures - boating
Value of visitor expenditures - swimming	Value of flood protection when applicable
Value of income from annual real estate sold to lawyers, title companies, surveyors etc.	Value of Second Homes as enhanced tax revenue from higher millage rate
Value of income to businesses from home repair and building activities	Value of increased tax collections from visitors - lodging, liquor, sales, tourist items
Where applicable - value of electrical power produced	Value to restaurants and gas stations from visitor expenditures
Other public trust values protected by state	Value to migrating species
Value of lake as bird hunting site	Value of expenditures by second home owners - $7500 - $10,000 per year

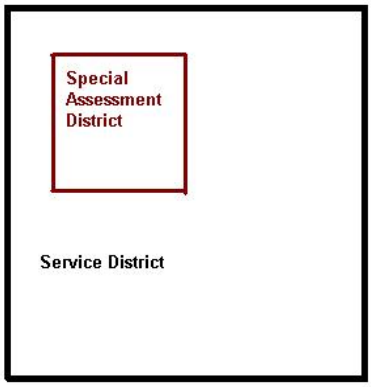
6.3.3 Scientific facts and information

A good example of the importance of **scientific and engineering studies** can be found in one unique situation in Troy, Michigan. In this example, sound barriers were erected as a way to mute traffic noise flowing to a residential neighborhood from an expressway. The noise was so loud, constant and annoying that it adversely impacted property values.

After consulting with experts, the cost of building the barriers was apportioned based upon the propagation of sound waves. This resulted in an apportionment of costs plotted on a map in a wave-like geometric pattern --- that is, there was a cluster of properties at which sound was attenuated greatly. Then areas where little attenuation occurred. The area where sound from the highway was most greatly attenuated were apportioned cost larger than those apportioned against the next a series of properties which barriers didn't help. Traffic noise had already effectively "skipped" them so they were assessed at a lower rate. They were followed by another group of properties influenced by a crest of noise; and so on.

In this case, it was not appropriate to use mere proximity to the barrier as a measure of sound. The proper determination resulted from scientific studies of the

way in which the amplitude of sound from this particular noise generator varied over the local terrain.



Thus, a Service District associated with a particular public improvement can have many facets. The assessment **Service District** is not comprised of properties having only one benefit. It is comprised of all properties identified as being directly or indirectly benefitted by the public improvement. The geographic area comprised of these aggregated properties constitutes the service district.

A service district may be a large area; covering more than one county. For example, it may be an entire surface drainage area such as a watershed which contains hundreds of square miles of land. It may be a downstream flood plain. It may be a central business district serviced by parking facilities or a long commercial strip served by a street. In the case of an activity such as public safety, it may cover multiple jurisdictions which enjoy a mutual aid agreement.

Of those properties located within the Service District there may be some that receive a specific and unique benefit greater than that generally conferred. Those properties benefitting from the public improvement in some special and unique manner greater than that of other benefitting properties should be included within a geographic sub-zone termed the “special assessment district” (SAD).

6.4 Special Assessment District

"It is the duty" of an entity *"when a special improvement is made, the benefits accruing from which are regarded as local, to determine the boundaries of the district within which the property is supposed to be specially benefitted by the improvement...The carving out of a special assessment district in a city is a practical matter, depending wholly upon facts."* Lawrence et al. V City of Grand Rapids, [166 Mich 134, 131 N.W. 581 (1911)]

The special assessment district (S.A.D.) is comprised of only real property located within the service district that receive an increased property value as a direct and unique result of the existence of the public improvement. If this is not the case, then a special assessment may not be levied because a "fraud" is committed when an assessment is levied where a property is not benefitted.[29]

Care must be exercised in reviewing the distribution of benefits when one intends to isolate those creating increased market value. For example, it may be demonstrated that properties within a watershed receive a general benefit that goes to all properties in the community when a storm sewer is put in place; but they do not receive a measurable increase in property value which is unique from any benefit the rest of the community receives from the storm sewer. So, they are not placed within the S.A.D. However, it may be that certain downstream properties

[29]Crampton v City of Royal Oak, 362 Mich 503, 515

do in fact, have property values enhanced due to flood control resulting from the storm sewer project. Those properties would be in the S.A.D. Remember, when defining the S.A.D. it is not critical that you know the exact increase in property value contributed by the public improvement to each specific property. That determination occurs in the apportionment of costs. Establishing district boundaries requires only that available facts and corroborating information are used to establish reasonable boundaries that are fair and appropriate.

The idea is to **include all properties** which should be specially assessed. There are three possible outcomes in creating a district boundary. The district may be perfect, it may be too small and exclude real estate which should be properly included or it may be too large and include properties which receive no benefit.

If a district is too small, then those properties remaining within the district will be forced to carry the financial burden of those properties wrongly excluded. However, if the district is too large (e.g. includes properties that do not receive a market value enhancement), then the error is easily negated. At apportionment, taxing officials simply do not levy a special against properties which have not received a benefit. One should always strive to create perfect boundaries, but from an equity perspective, it is better to error with too large a district rather than too

little. Unfortunately, there is sometimes political pressure to irritate as few voters as possible when creating a district.

"It is settled law that special assessments may be sustained upon the theory that the property assessed receives some special benefit from the improvement differing from the benefit that the general public enjoy."Lansing v Jenison, 201 Mich. 491, 497; 167 N.W. 947 (1918)

In determining boundaries for a special assessment district, it is proper to remember, there is one, and only one, special and unique benefit that permits a property to suffer the burden of a special assessment tax levy. The special and unique benefit which permits the levy of a special assessment is "increased property value".

"This court said that special assessments are permissible only when the improvements result in an increase in the value of the land specially assessed...municipalities are not free to levy special assessments without regard for the amount of benefit that inures to the assessed property. For a special assessment to be valid, 'there must be some proportionality between the amount of the special assessment and the benefits derived therefrom.' In the absence of such a relationship, the special assessment would be 'akin to the taking of property without due process of law.'" Kadzban v Grandville, 442 Mich 495 (1993)

The demarcation between properties qualifying to be located within a specially assessment district and those that may have a benefit but are not eligible for inclusion is the boundary line of the special assessment district. It must be

based upon a factual increase in an individual property's value resulting directly from some public improvement. The assessor is the public official charged with this duty.

"The assessors, not the court, weight the benefits, if, in truth, there are benefits to be weighed." Fluckey v Plymouth, 358 Mich. 447, 454; 100 N.W. 2d 486 (1960).

6.5 Summary: steps for the determination of boundaries

The procedure to be followed is:

For the Service District ...

1. Review the finding of "necessity" authorizing a special assessment levy - Identify potential benefits conferred from the public improvement project.
2. LES - Review legal, economic and scientific studies, facts and other information
3. Determine and map the geographic extent over which all benefits are distributed.

For the Special Assessment District ...

4. Segregate all benefitting properties into two classes: those that have a direct, specific and unique increase in property value as a result of the public improvement from those that don't.
5. Use the demarcation between properties directly benefitting and those that are "indirectly" benefitted as the boundary line for the Special Assessment District.

7.0 APPORTIONING COSTS

7.1 Individual properties

Great leeway exists in how costs can be apportioned. Costs are to be apportioned based upon the specific value enhancement each property receives. The apportionment of costs need not be exactly one dollar of costs for every dollar of enhanced value, but it must be reasonable. The courts have ruled that an amount 2.6 times the enhanced value is too great a disparity.[30]

The foundation for apportioning costs rests upon the enhanced value. The measure of enhanced value is made by measuring the value of the property without the public improvement and then measuring it with the public improvement. At the present time, there is no specific date upon which a special assessment benefit must be estimated. The measurement may occur on any date reasonably related to the public improvement and its contribution to market value.

Market value is to be estimated using good appraisal practices and valuation methods accepted by the courts as appropriate. The change in value of each property within the special assessment district which is a direct and unique result of the public improvement should be estimated and documented.

Meticulous documentation of the special assessment process, proper notification within the process and a factual basis for any government action must be employed by the assessor and other government officials. For, once a taxpayer overcomes the presumption of validity afforded local government in the administration of a special assessment, the burden of proof shifts to the unit of government.

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[30] Dixon Road Group v City of Novi, 422 Mich 858; 365 NW 2d 749 (1986)

7.2 Creating the levy

A special assessment roll is a separate roll from the ad valorem roll. It must be created and then approved by the governing body. The process for a non-ad valorem special assessment levy is quite simple: the special assessment roll contains the apportioned assessment plus any applicable interest.

One note of interest is that a special assessment roll may contain levies against **properties that are exempted** from ad valorem taxation. For example, a church may be specially assessed for a street or sidewalk. While it is not required, it may be wise under such circumstances for the assessor to send a letter or otherwise make contact with the tax exempt entity notifying it that the special assessment is a levy the entity is not exempted from. There have been instances where churches have been subject to foreclosure proceedings for not paying a special assessment levy. Situations of that nature can be public relation disasters even if the assessor acted properly.

Ad valorem levies are very different from non-ad valorem levies. Instead of a specific fixed amount apportioned for one year or a period of years, the roll consists of a special assessment tax determined by multiplying the taxable value of the property by a millage rate approved by voters specifically as a special assessment. Note should be made that the millage rate applies in differing ways to various categories of properties. The table which follows illustrates this principle.

Special Assessment Levy Table

General Rule for Levy of Special Assessments - Verify with specific levy enabling act					
	Exempt Property	Pilot & Commercial Forest Properties	Renaissance Zone Prop	Abated Facilities	Tax Capturing Authorities
PA 33 (1951)	No	No	Yes	Land Only	Yes
Non PA 33 Levies	Yes	Yes	Yes	Yes	Yes

Chart by J. Turner Source Documentation: e-mail to J. Turner et alia from H. Heideman (Director, Tax Analysis Division, Michigan Department of Treasury) Dated November 20, 2007

"Special assessments levied under Public Act 33 of 1951,MCL 41.801 - 41.813, do not apply to property exempt from the collection of taxes under the general property tax act. So special assessments levied under PA 33 of 1951 would be levied on the land on which an industrial facilities tax (IFT) or neighborhood enterprise zone (NEZ) tax facility is located, but not on the IFT or NEZ facility itself.

Housing facilities subject to the MSHDA Act payment in lieu of taxes under MCL 125.1415a and commercial forest property exempt from ad valorem taxes under MCL 324.51105 are not subject to a special assessment levied under PA 33 of 1951.
For special assessments levied under public acts other than PA 33 of 1951, the full special assessment is levied on the properties/facilities described above.

Since MCL 211.7ff provides that property in a renaissance zone is not exempt from a special assessment levied by the local tax collecting unit in which the property is located, property in a renaissance zone remains subject to the full special assessments levied under Michigan law, including PA 33 of 1951."

7.3 At-large assessment

When a property lies within a jurisdiction empowered to levy special assessments for public improvements and an improvement is made for the public good, the cost of which cannot be levied against a specially benefitting property, the property is deemed to receive an indirect benefit and may not be specially assessed. The portion of the cost of the public improvement charged to indirectly benefitting properties is termed an "at-large" special assessment. An at-large assessment comes from the general fund of the local unit of government.

8.0 JUDICIAL DECISIONS OFFERING GUIDANCE

Just as the definition of "Benefit" has been modified over time and through various decisions of Michigan's superior courts, there have also been decisions which are instructive as to the proper resolution of legitimate conflicts that arise from practical administration of special assessments.

Ad Valorem Millage Rates

With the passage of Act 33 of the Public Acts of 1951, it became possible for taxing jurisdictions to levy a special assessment based upon a millage rate times an assessed value. Over time, the term assessed value has been interpreted to mean Taxable Value. In 1958, Rema Village Mobile Home Park v Ontwa Twp, Michigan Court of Appeals case No. 256395 unpublished.

Benefit to Community at large

"The special assessment cannot be justified on the basis of public health needs and the tribunal erred to the extent it did so. ... 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." Rema Village Mobile Home Park v Ontwa Twp, Michigan Court of Appeals, Docket No 256295 (2005) Unppublished

Damage Caused by the Public

The cost of repairing damage caused by the public at large may not be specially assessed against property. In Johnson v Inkster, the court said: "*The principle that persons who 'are made to bear the cost of a public work , are at the same time to suffer no pecuniary loss thereby' does not accommodate an assessment to defray the cost of rectifying conditions mainly brought about by the public at large and not 'specially and peculiarly' related to the use or needs of persons residing in the assessment district.*" Johnson v Inkster 401 Mich 263, 268; 258 NW 2d 24

Existing condition

In some cases, a previously existing condition eliminates specially assessing costs for a public improvement which involves an adequate pre-existing. *"But, the order changed. Original paving of a dirt road without any change in its width of, say 20 feet, may be clearly of special benefit to abutting property owners. One cannot say the same about the widening of a road in a residential district and its repavement when the pre-existing impervious hard surface was amply adequate for abutting owners.* Fluckey v City of Plymouth, 358 Mich 447,452; 100 N.W. 2d 486 (1960)

Facts both known and ascertainable Required

"From this and other testimony we feel obligated to agree with the trial judge in the conclusion that the boundaries of the district were fixed by the common council without reference either to known or ascertainable facts; that the action was arbitrary and unwarranted. We are of opinion, also, that the bill of complaint, fairly interpreted, charges the creation of a district invalid because not including lands benefitted by the improvement." Lawrence v City of Grand Rapids, 166 Mich 134, 143; 131 NW 581 (1911)

Highest and Best Use

"The benefit by reason of which a special assessment is authorized to be imposed must be understood to be a pecuniary benefit resulting from the increased market value of the land, and if the use of the land imposed by law is such that it can have no market value, an assessment cannot be levied." Dixon Road Group v Novi 426 Mich 390, 399 (1986) quoting 70 Am Jur 2d, Special or Local Assessments, §18, p 859.

Market Value - Method Used to Determine

"The three most common methods of determining true cash value are 1) cost-less depreciation approach; 2) capitalization-of-income approach; and 3) the sales-comparison or market approach. Meadowlanes Ltd Dividend Housing Ass'n v Holland, 437 Mich 473, 484-486; 473 NW2d 636 (1991). Under the sales comparison approach, "'[t]he market value of a given property is estimated by comparison with similar properties which have recently been sold or offered for sale in the open market.'" Antisdale v Galesburg, 420 Mich 265, 276 n 1; 362 NW2d 632 (1984), quoting 1 State Tax Comm Assessor's Manual, Ch VI, pp 1-2. Under the costs approach, the land alone is valued as if it were unimproved, then the value of any improvements is established separately by calculating what the improvements would cost to newly construct and deducting an appropriate amount for depreciation. See id. at 276 n 1, quoting 1 State Tax Comm Assessor's Manual, Ch VI, p 4. Under the income capitalization approach, the value of a

property is established by estimating the future income it could earn. Id. at 276-277 n 1, quoting 2 State Tax Comm Assessor's Manual, Ch X, p 1. "Variations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to the fair market value of the subject property." Meadowlanes, supra at 484-485."
Golf course Properties L.L.C. v Tyrone Twp., Page 2, Michigan Court of Appeals, Docket No. 274923, June 12, 2008, Unpublished

Proximity to a Public Improvement

Proximity is not justification for a special assessment levy. In Johnson v Inkster the Supreme Court held: *"Every public improvement is 'local' in the sense that it is located in a particular area; libraries, fire and police stations and street improvements are all located closer to property owned by some persons than to property owned by others. The location of this widened highway closer to plaintiff's homes than to other Inkster properties does not in itself justify requiring a special contribution to defray the cost.*"

Presumption of Validity

"Invariably when a special assessment district is created, as in the instant case, opinions may differ as to its proper extent and its inclusion or non-inclusion, of specific property therein. The creating of the districts was within the legislative powers of the commission, and the presumption of validity attaches to the action taken. Crampton v City of Royal Oak, 362 Mich 503; 108 NW 2d 16 (1961)

Reasonable Proportionality

"While we certainly do not believe that we should require a rigid dollar-for-dollar balance between the amount of the special assessment and the amount of benefit, a failure by this court to require a reasonable relationship between the two would be akin to the taking of property without due process of law. Such a result would defy reason and justice." Dixon Road Group v Novi, 426 Mich 390, 402-403; 395 NW 2d 211 (1986)

Residential Equivalent Unit

An REU is an acronym for a "residential equivalent unit" or sometimes a "residential equivalent user". The term RE is also commonly used which is simply "residential equivalent". The term is used to compare various wastewater generators such as commercial, industrial, office, multiple residential, etc. to a standard unit of measurement. That unit of measurement (REU) is the volume generated in a typical residential home within the district on a daily basis. The

range for a single REU is 235 – 350 gallons per day and is usually established by the local unit of government which will also prepare a chart of REU comparisons for each use allowed in the district. This chart of REU's is then used to determine tap fees, user fees or assessments for any particular use.

True Cash Value

"True cash value" is a constitutional term used in Michigan's 1963 Constitution, at Articles 9 and 3:

> "The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property ... The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed ...; and for a system of equalization of assessments."

Language from Huron Ridge LP v Ypsilanti Twp, Michigan Court of Appeals, *Huron Ridge, LP v Ypsilanti Twp, 275 Mich App 23, 28; 737 NW2d 187 (2007)* provides a more complete description:

Value determinations are to be made by Assessors

"It must be stressed that the facts before us do not involve a mere error in judgement on the part of assessing authorities. We do not trifle with such. Nor do they involve the substitution of the judgment of the court upon the worth of special benefits conferred. The assessors, not the court, weight the benefits, if, in truth, there are benefits to be weighted." Fluckey v Plymouth, 358 Mich 447, 454; 100 NW 2d 486 (1960)

Vested Interests

Under some circumstances, it may be argued that a taxpayer has obtained vested rights in a public improvement through the payment of special assessment fees. The most likely examples would be situations where many years passed between the public improvement and a property's need for it. For example, suppose a water or sewer connection were paid for through a special assessment

and then, the local unit of government denied the property owner a right to connect because local growth had stressed the system. This actually happened in an Illinois case (La Salle Nat'l Bank v Riverdale, 16 Ill 2d 151 (1959). The village denied a plat based upon the lack of an available sewer even thought the property had previously been charged for a sewer connection. The court ruled the plaintiff could not be denied the benefits guaranteed by previous payments *"merely because of changed circumstances."*

9.0 FORMS OF RELIEF FROM THE FINANCIAL BURDEN

9.1 Individual statute

Limited relief from the financial burden of a special assessment is sometimes provided in the form of a hardship exemption. The exemption is granted locally pursuant to enabling statutes. This benefit varies considerably, so individual special assessment statutes need to be scrutinized for this component.

9.2 PA 225 of 1976

This act provides an exemption from special assessments for certain senior citizens and disabled persons. Pursuant to the act, the special assessment is paid by the state of Michigan and a lein is placed against the property. The lein is to be paid in full upon the death of the property owner or the sale of the property. The act creates income parameters for applicants. It requires the payment of annual interest on the lien. The amount of interest may become significant over time and this act is little used.

9.3 Appeals

Most appeals of special assessments are made to the Michigan Tax Tribunal (MTT).. Some, primarily involving the public health, safety and welfare, must be appealed to a court of law. All appeals must be initiated with a local appeal as directed by the authorizing statute. Details of how, when and where to appeal will be cited in the statute enabling the levying of the special assessment.

In some cases, such as the Natural Resources Environmental Protection Act (MCL 324 et seq), special assessment levies are made pursuant to the drain code. In cases such as that, the proper procedure to follow is that outlined in the Drain Code.[31]

[31] Id. Seebeck v Gladwin County Drain Comm.

10.0 SIMPLE MODEL FOR COST vs BENEFIT

The overall relationship of total benefits, unique and special benefits and at-large benefits can be stated mathematically. The distribution of associated costs can be formulated in a similar manner. Consequently, a decision can be made based upon a mathematical model of costs verses benefit.

In any particular project, the amount of total benefit and relationships between components can be stated as follows:

Where: Total Benefit is represented as "B_T"
and Identifiable Unique and Special Benefits are identified as B_D
and Indirect Benefits are represented as B_I

Then $B_T = (B_D + B_I)$ and $B_I = (B_T - B_D)$

This benefit formula may be useful in determining the benefit to be assigned at large and the benefit expected to devolve to properties located within a special assessment district.

A similar formulation may be derived for costs from a public improvement.

Where: Total Project Costs are represented as "C_T"
and Specially Assessed costs are represented as "C_S"
and At-Large costs are represented as "C_A"

For planning purposes, the merit of the project is defined as

$$B_T = C_T \quad \text{or} \quad B_T > C_T$$

That is: Benefits must be equal to or greater than the cost of the project for it to be funded via a special assessment levy. This formula may also be used to identify the amount of cost which may be spread as a special assessment and the portion which must be spread as an at large levy.

This Page indicates

the end of one Section of this publication

and

the beginning of the next

New Sidewalk - Determining the Service Area and S.A.D. - Exercise 1

Problem: Determine the Service area and Special Assessment District for a public works project involving a sidewalk

Site: See following page for area layout and the illustration of the new sidewalk in dark black lines. Then view the area map.

Case Details:

While reviewing public needs associated with installing a new street surface, leaders of Oiltown decided to also install new sidewalks in two areas where they hadn't existed previously. The new sidewalks will have curb cuts with incline planes to facilitate the use of bicycles.

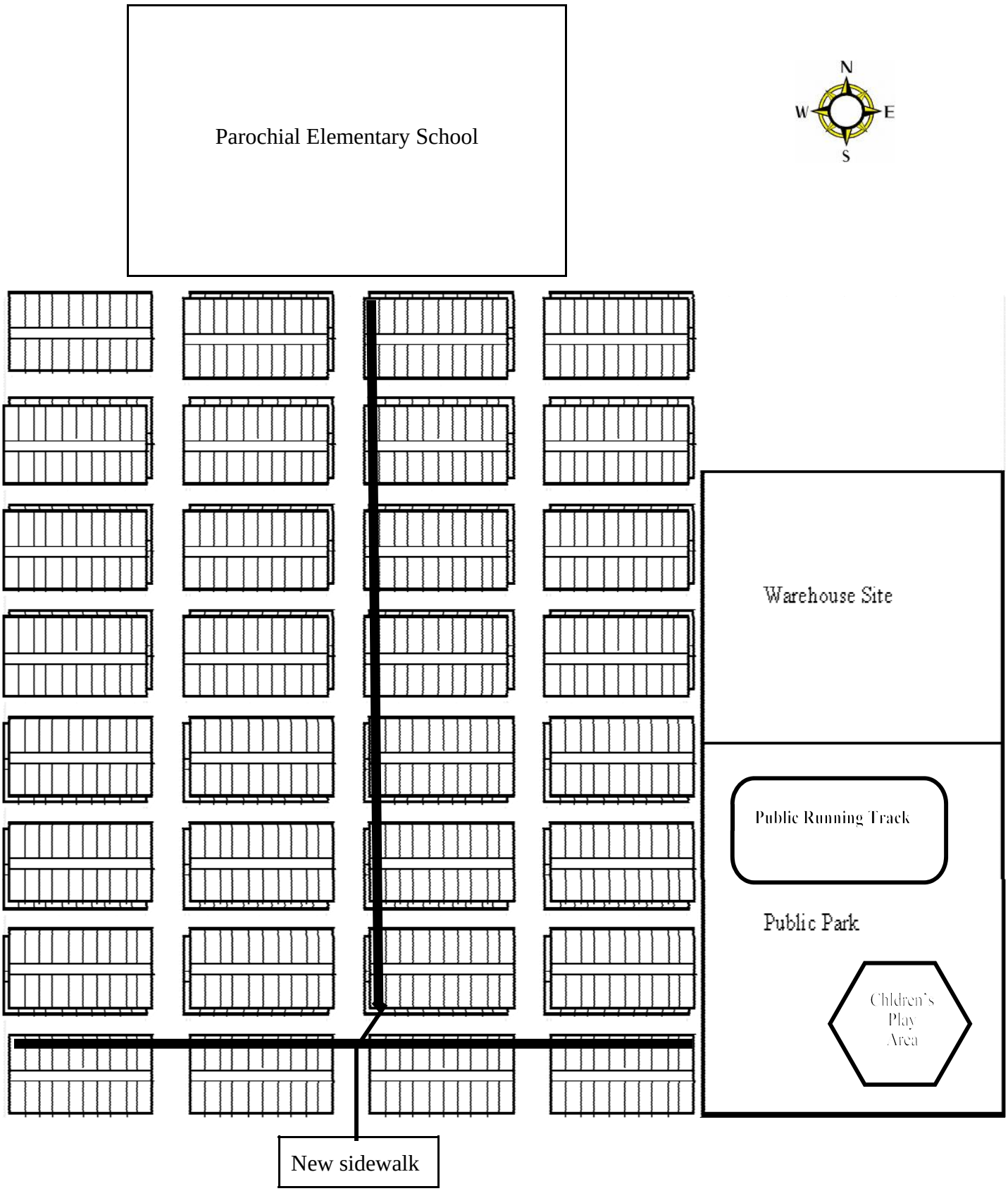
This sidewalk has caused some controversy because it is clear the elementary school students from the neighborhood use it to walk to and from a school located at the north end of the subdivision. In addition, quite a few citizens from neighboring areas use the east/west sidewalk route to get to a local park. Moms and dads with young children use the route during the day and evening. Some park their cars in the driveways so children can play ball using the drive and sidewalk. Kids zip around their block on bicycles. After work, a lot of adults use the sidewalks to get to a well maintained public running track in the park. Senior citizens rise early and stroll over to the park. It is a busy place.

Resident's owning property adjacent to the new side walk complain that the foot traffic gives them less privacy. Some argue the noisy, main route lowers property values. There have been isolated instances of groups of youngsters throwing trash on the ground as they travel to and from school, but for the most part the area is respected and kept clean. Rising gasoline prices support evidence that past trends of driving automobiles short distances rather than walking or bicycling is being reversed.

Assignment:

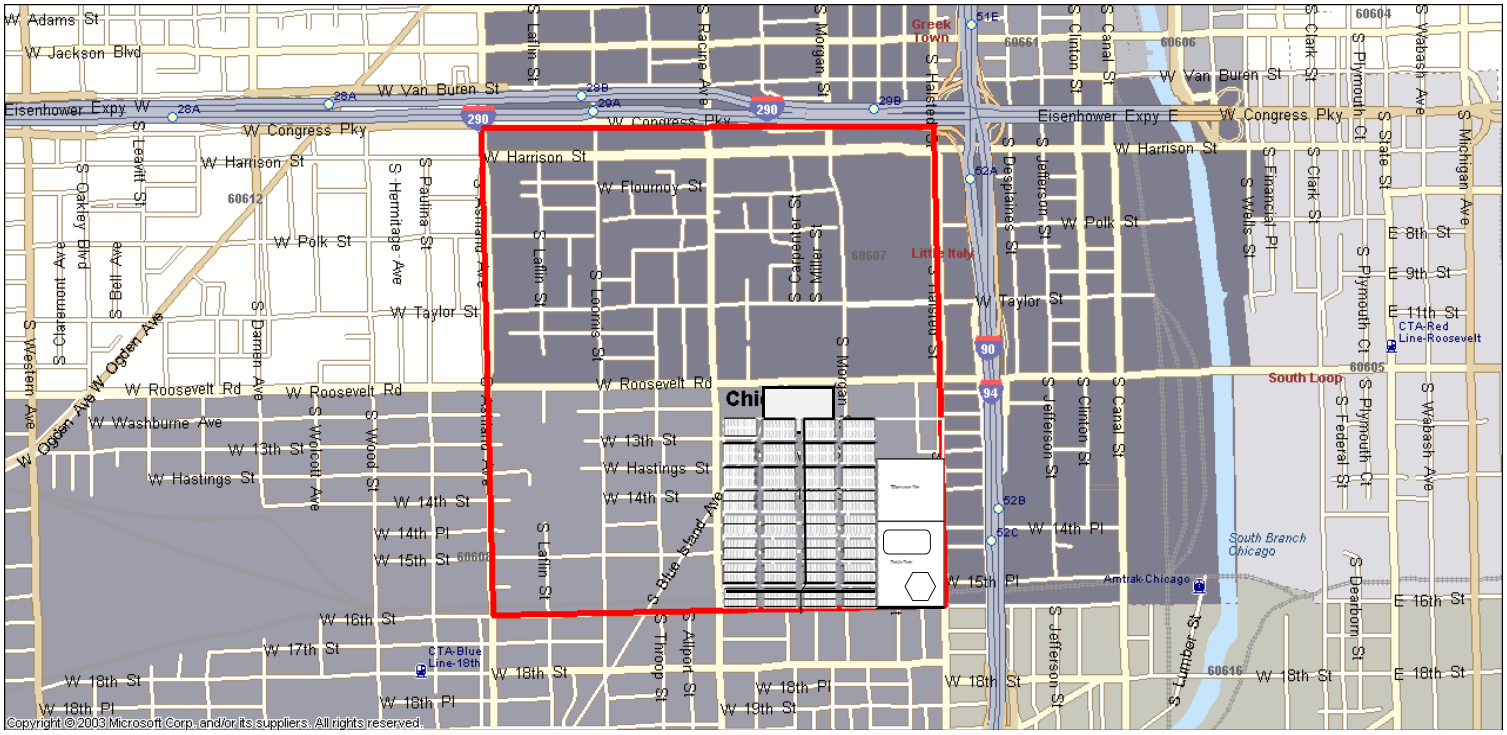
Your assignment is to examine this project using the LES principle (examine the legal, economic and scientific facts) and determine which properties form the service district and which properties should be within the S.A.D. It is possible that service district lines will extend beyond the neighborhood. A survey of sidewalk travelers who were not students at the local school exists. It suggests walkers will routinely travel about 12 blocks maximum to use the park facilities and that bicycle riders come from an area of about a ten minute ride or 2 miles distant.

2008 Special Assessment Exercise - New Sidewalk - Neighborhood



Neighborhood in perspective to other areas

AREA MAP



Problem: Develop proper methodology for a public works project involving a sidewalk

Site: See following page for area layout and new sidewalk in dark black lines

Case Details:

Review the exercise on establishing Service and Special Assessment Districts for a new sidewalk for important information.

The basic situation is that, while reviewing public needs associated with installing a new street surface, leaders of Oiltown decided to also install new sidewalks in two areas where they hadn't existed previously. The new sidewalks will have curb cuts with incline planes to facilitate the use of bicycles.

Of the three most common measurement tools used to identify and quantify values associated with real estate (paired associates, multiple regression analysis and hedonic surveys) only market extractions using paired associates have been completed. They indicate an existing home with a sidewalk will sell for between zero and no more than 4 percent above a similar home which does not have a sidewalk. The average difference, with and without a sidewalk, was 1.6 percent of selling price using 32 sales from across the jurisdiction. These sales spanned five years and the median value was 0.75 percent. Four of the sales were on walking routes to school where litter was a problem. Those sales showed no increase in value. So, of the 16 pairs, two pairs suggest there is no increase in value where litter was a problem. For all pairs, the average change in value indicated by the median price varied from the average price. Think about why the average indicated value was double the median.

Many older areas do not have sidewalks. Fortunately, the planning department contracted with Saginaw Township, Michigan planners who conducted a survey of local citizen attitudes regarding sidewalks. It is attached for your inspection. The local zoning ordinance requires sidewalks for new construction but not old.

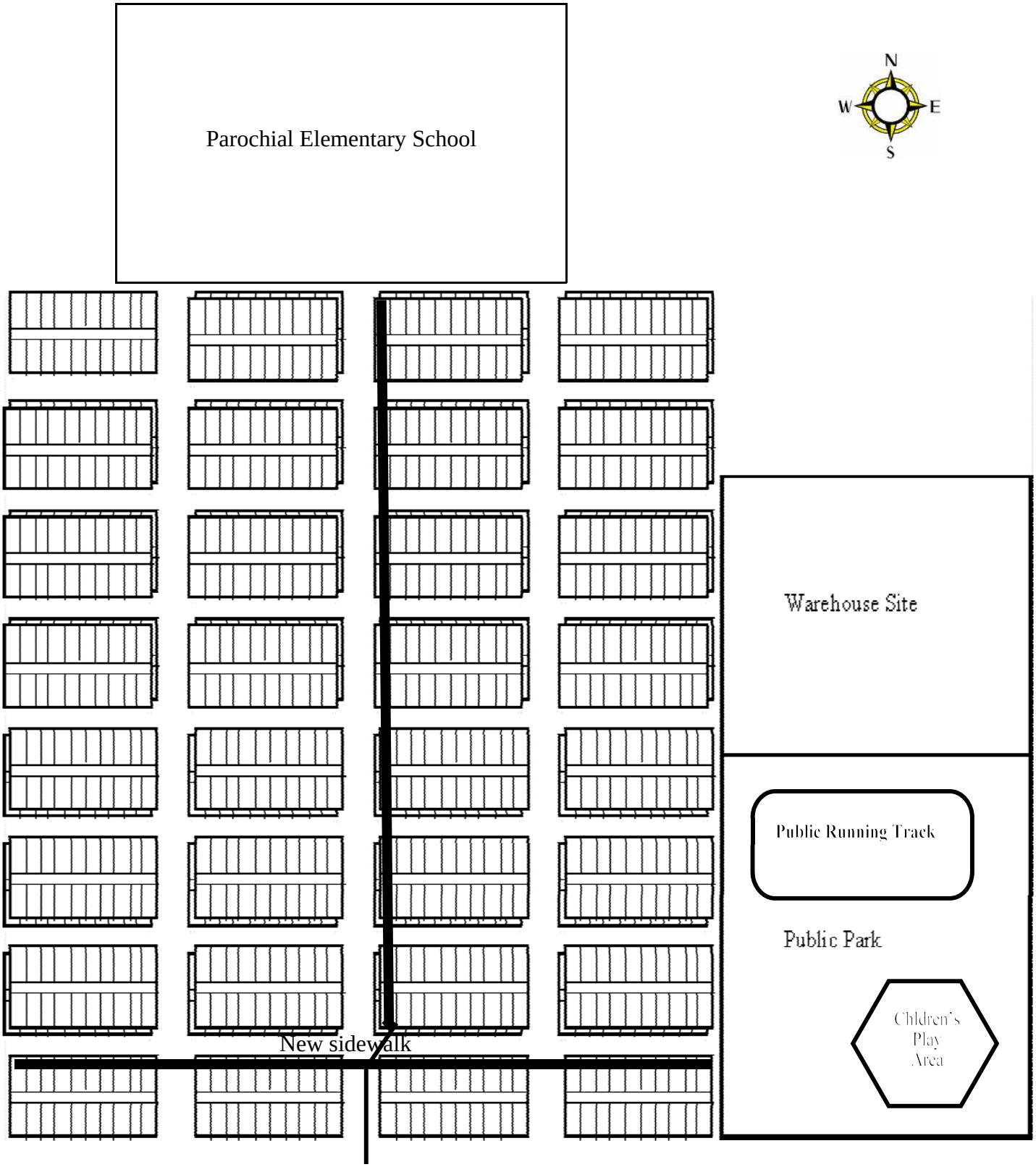
Homes within this particular subdivision were all built within a two year period in the late 1950s. They are very similar in design and construction. The median market value of homes within the subdivision is approximately $100,000. The average cost of a new sidewalk is $20 per lineal foot or $1,200 for a 60 foot lot. Surveys show homeowners want new sidewalks - but on the other side of the street. There has been debate over the proper apportionment method - a single cost per lot or lineal foot basis.

Assignment:

Your assignment is to examine this project using the L.E.S. principle (examine the legal, economic and scientific facts) and to determine the proper assessment methodology. Once that has been determined, you are to apportion costs in a reasonable and appropriate manner: both to the public at-large and to individual properties. Court cases have determined that there is no "one

method" which has to be used for apportioning costs, but that whatever method is used must be reasonable and it must accurately reflect market forces. As of this date Court decisions require that costs need not be apportioned at a ratio of $1 in costs to $1 in increased value; but that an apportionment of $2.60 in costs for every $1 of increase in a property's value will result in an invalidation of the special assessment.

2008 Special Assessment Exercise - New Sidewalk



Saginaw Charter Township Pedestrian Survey

Thank you for taking the time to complete this survey on walking conditions in Saginaw Charter Township. We plan to use the results from this survey to make Saginaw Charter Township a safe place for you and your children to walk and bike to school, to work and for recreation. This survey is your chance to share your experiences and to help us identify areas that need improvements.

For Categorical Purposes Only

0 *.78* *4.41* *21.3* *27.28* *46.23*

Age (circle one) 18 or under | 19-24 | 25-32 | 33-45 | 46-54 | 55 and over

95.94 *1.26* *2.8 NA*

Are you a (circle one): Homeowner Renter

94.7 *1.3* *4.0 NA*

Do you have children who reside with you? YES NO

If you have school age children living with you, how do they get to school? (please circle all that apply): (of those responding)

8.5 *23.5* *68*

walking or riding their bikes | taking the bus | car pool/adult drives them

74 16.2 9.8 NA

During the past 30 days, have you taken a walk or rode a bike? Yes No

PLEASE CIRCLE THE MOST APPROPRIATE ANSWER.

1. In decent weather, how often do you walk or ride a bike in Saginaw Township?

23.72 *39.55* *7.9* *13.01* *15.82*

Daily | Several Times a Week | Once a week | A few times a month | Rarely

2. I believe that making pedestrian improvements (sidewalks, trails, bike lanes, etc.) in the Township is important.

52.41 *33.41* *4.56* *4.3* *5.32*

Strongly Agree | Agree | No Opinion | Disagree | Strongly Disagree

3. I believe that providing sidewalks and pedestrian connections that improve safety is an important function of the Township.

55.81 *32.57* *4.55* *4.04* *3.03*

Strongly Agree | Agree | No Opinion | Disagree | Strongly Disagree

4. I think that connecting Saginaw Township to other destinations, like the Rail Trail, is important.

39.69 *31.05* *14.25* *8.9* *6.11*

Strongly Agree | Agree | No Opinion | Disagree | Strongly Disagree

5. I don't think Township funds should go toward making improvements such as sidewalks and crosswalks, bike lanes and trails.

8.64	*9.95*	*10.21*	*34.81*	*36.39*
Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree

6. If there were improvements that made walking and biking safer (more sidewalks, crosswalks, pedestrian signals), my family and I would walk or bike more.

33.07	*37.53*	*12.34*	*11.02*	*6.04*
Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree

7. I think that even if sidewalks and bike lanes were improved and provided in more locations, that very few people would use them.

3.93	*12.56*	*8.38*	*44.76*	*30.37*
Strongly Agree	Agree	No Opinion	Disagree	Strongly Disagree

8. Please rank the following list below in order of their importance to you, with 1 being most important and 7 being least important.

_____Install new sidewalks/repair existing sidewalks

_____Provide new bike lanes

_____Improve pedestrian crossings at major roadways

_____Provide off-road trails and paths for walking and biking

_____Enhance the safety of walkers and bicyclists

_____Provide safer ways for children to walk and bike to school

_____Other (please specify) _____

9. Please list any specific roads or areas where you think better pedestrian facilities or bicycle facilities (sidewalks, bicycle lanes, pedestrian crossing improvements, off street paths, etc) are needed? (Please give street names or other detailed descriptions below).

Road or Street Name	
(EXAMPLE) *Center Road*	*Heritage High School to Shattuck – too congested in the morning*

Other comments: _____

PLEASE RETURN IN THE ENCLOSED POSTAGE-PAID ENVELOPE NO LATER THAN MAY 23.

Case Study for 2007 MAA Special Assessment Course

Purpose of Special Assessment: To determine Service and Special Assessment District for paving an existing dirt street

Case Details:

The City Council for the city of Oiltown recently received a communication from its city Manager with ☺ faces on it. Oiltown got its name because long ago oil was discovered on city owned property. Oiltown is "well" known (if you excuse the pun) for reinvigorating its old oil wells by installing newer horizontal drilling technology. With the price of oil skyrocketing recently, revenues have taken an unexpected leap. Its oil fields will now produce about twenty-five percent of the total revenues for the city budget.

Prior to its successful oil field redevelopment, Oiltown had struggled financially. Consequently, there are still about 5 miles of its 300 miles of streets that remain unpaved.

After hearing the City Manager's story of unexpected revenues, low bond prices and annual reoccurring requests from citizens who lived in homes fronting on unpaved roadways, it was decided to proceed with a new streets paving project.

The project would involve a complete resurfacing of all five miles of unpaved streets. The area benefitted from a new sewers and upgraded water lines about 10 years ago as part of a federally mandated project. The project was implemented to overcome certain deficiencies related to CSO (Combined Sewer Overflow) issues. Two new sidewalks will be installed about the same time as the street paving.

Four and one half miles of these streets are in residential areas. Those lots are typically 50 - 60 feet wide. The average lot depth is 120 feet. This particular area of the city was laid out in the late 1940s and every block has an alley running through it. These alleys have never been opened nor used as public streets, but over time some residents have developed garages and storage buildings which front to the dedicated alley. These residents usually drive down the dirt alley to access their parking facilities.

The area in which the streets are to be paved, is about 80 percent built-up. The twenty percent vacant land is suitable for new housing. The area is zoned for single family homes. There are a few sales of land in the area over time. They have been sporadic and infrequent. However, over the past two years four sales have occurred which seem to meet the criteria for use in a sales ratio study as fair market transactions. These sales indicate only nominal inflation and "per lot" market values of about $25,000. The average selling price of properties improved with homes is around $125,000. Once paving is complete, the City Council expects to approve a Neighborhood Enterprise Zone designation for the whole area.

A modest market attraction exists for these homes. In spite of the dirt road, the area is neat and clean and attracts young couples seeking their first home. It also has begun to attract a few older couples who want to downsize to a smaller home and as grandparents themselves, enjoy having children around the neighborhood. The blend of young people who are family oriented and old couples who have been adopted by some of the youngsters as "grandpa and grandma" has created a neighborhood setting many people find quite comfortable.

Expectations are that this area will become more attractive when the paving is complete. A small number of residents are opposed to the paving because they believe speeding by motorists will increase dramatically. They also believe that paving the roads will cause people who'd previously avoided the roads to begin using them. This group of people believe paving will destroy part of the ambience of the neighborhood. Polls show that ninety-five percent of adult residents would welcome paving as a way to get rid of the awful dust which the roads cause in the summer and the drudgery of driving through mud in the rainy season.

One anomaly exists with regard to the paving. About a half mile of the five miles of roadway will become a service road to a new warehousing operation. This warehouse operation is unusual in that it involves the creation of 100 well paying new jobs and was recently touted as a major economic development project for Oiltown. The one half mile roadway will need to be wider than the residential roadway and designed to handle much heavier truck traffic. Consequently, the half mile is expected to cost seventy-five percent more than the comparable residential roads. Residential roads are expected to cost $1 Million per mile. This equates to approximately $190 per front foot when only one side of a street is considered or $95 per front foot when both sides of the street are considered. The wide road will cost around $1.75 Million per mile.

Traffic counts illustrate flows on the residential streets are approximately 3,000 cars per day during the week. On weekends the count drops to about 2,500 cars per day. A commercial traffic count was conducted. It shows

No formal appraisal has been done, but real estate brokers and agents experienced in residential property values in this marketplace believe the paving will increase individual residential property values by about 10 percent. It is projected that any increase in property values due to new pavement along the truck corridor will be offset by values losses due to increased truck traffic and increased use of the road by commuters who wouldn't use it before.

Scope of project:

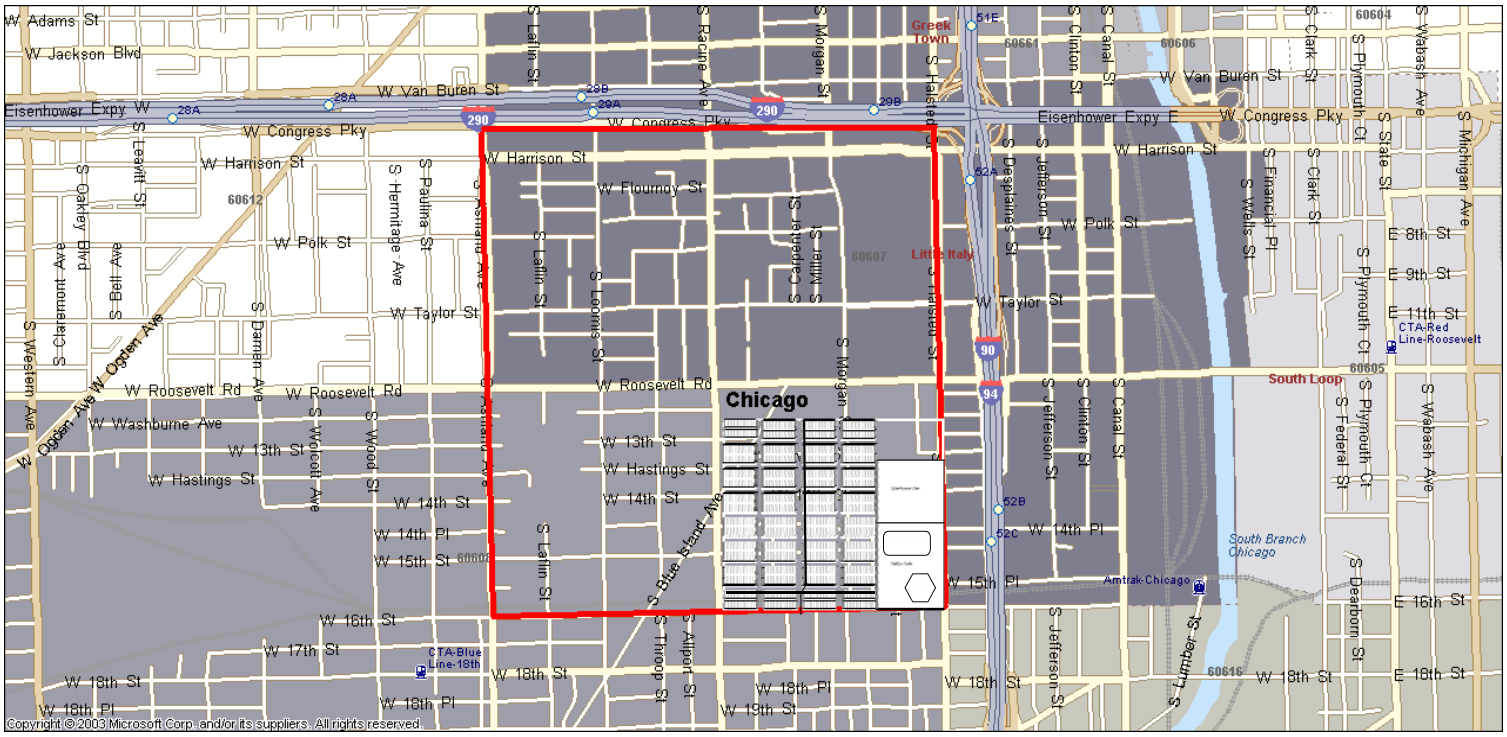
This project will involve paving five miles of roadway. It is estimated the total cost of the project from public funds will be $5 Million. Act 51 money will pay for thirty-five percent of the costs estimated as $1.75 Million. The city council will pay "at-large" for costs that cannot be specially assessed based upon "benefit".

Assignment:

Identify the service district and recommend special assessment district boundaries based

upon the facts provided.

Neighborhood in perspective to other areas



AREA MAP

Traffic Study Data

Range of ratio of Residential to Commercial traffic on most residential streets:

High Commercial Traffic - non-warehouse traffic

non-commercial vehicular traffic (average annual daily count)	*3,000*	*Ratio*
commercial vehicular traffic (average annual daily count)	*29*	*103/1*

Low Commercial Traffic Count

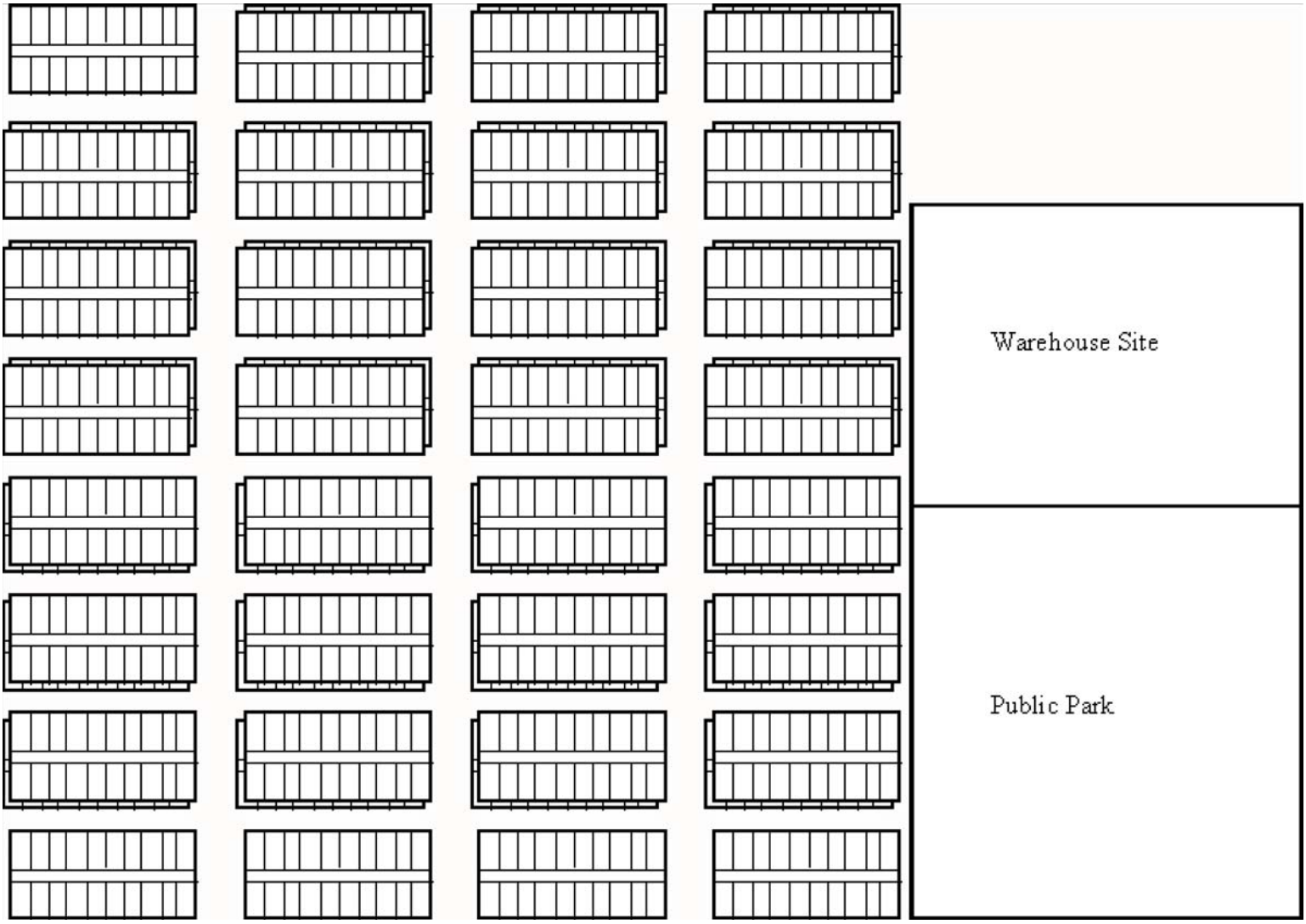
non-commercial vehicular traffic (annual average daily count)	*3,000*	
commercial vehicular traffic (annual average daily count)	*18*	*166/1*

Route to warehouse

non-commercial vehicular traffic(annual average daily count)	2,500	
commercial vehicular traffic (annual average daily count)	72	25/1

relationship between normal residential use and warehouse use: 125/1 v 25/1 5 or 5 times more commercial traffic on warehouse road than on normal residential roads in subdivision.

Street and Neighborhood Layout



Notes:

Street Right-of-Ways (ROW) are 60 feet each.
The alleys in each block are 30 feet wide
Blocks are 600 feet by 270 feet

Streets are one half mile from left to right (Includes 30' ROW at each end of row)
Streets are one half mile from top to bottom (includes 30' ROW at each column end)
Warehouse access will be via the street nearest the middle of the site

Apportionment Case Study for 2007 MAA Special Assessment Course

Purpose of Special Assessment: To pave an existing dirt street

Case Details:

The project would involve a complete resurfacing of all five miles of unpaved streets. The area benefitted from a new sewers and upgraded water lines about 10 years ago as part of a federally mandated project. The project was implemented to overcome certain deficiencies related to CSO (Combined Sewer Overflow) issues.

Four and one half miles of these streets are in residential areas. Those lots are typically 50 - 60 feet wide. The average lot depth is 120 feet. This particular area of the city was laid out in the late 1940s and every block has an alley running through it. These alleys have never been opened nor used as public streets, but over time some residents have developed garages and storage buildings which front to the dedicated alley. These residents usually drive down the dirt alley to access their parking facilities.

The area in which the streets are to be paved, is about 80 percent built-up. The twenty percent vacant land is suitable for new housing. The area is zoned for single family homes. There are a few sales of land in the area over time. They have been sporadic and infrequent. However, over the past two years four sales have occurred which seem to meet the criteria for use in a sales ratio study as fair market transactions. These sales indicate only nominal inflation and "per lot" market values of about $25,000. The average selling price of properties improved with homes is around $125,000. Once paving is complete, the City Council expects to approve a Neighborhood Enterprise Zone designation for the whole area.

A modest market attraction exists for these homes. In spite of the dirt road, the area is neat and clean and attracts young couples seeking their first home. It also has begun to attract a few older couples who want to downsize to a smaller home and as grandparents themselves, enjoy having children around the neighborhood. The blend of young people who are family oriented and old couples who have been adopted by some of the youngsters as "grandpa and grandma" has created a neighborhood setting many people find quite comfortable.

Expectations are that this area will become more attractive when the paving is complete. A small number of residents are opposed to the paving because they believe speeding by motorists will increase dramatically. They also believe that paving the roads will cause people who'd previously avoided the roads to begin using them. This group of people believe paving will destroy part of the ambience of the neighborhood. Polls show that ninety-five percent of adult residents would welcome paving as a way to get rid of the awful dust which the roads cause in the summer and the drudgery of driving through mud in the rainy season.

One anomaly exists with regard to the paving. About a half mile of the five miles of roadway will become a service road to a new warehousing operation. This warehouse operation is

unusual in that it involves the creation of 100 well paying new jobs and was recently touted as a major economic development project for Oiltown. The one half mile roadway will need to be wider than the residential roadway and designed to handle much heavier truck traffic. Consequently, the half mile is expected to cost seventy-five percent more than the comparable residential roads. Residential roads are expected to cost $1 Million per mile. This equates to approximately $190 per front foot when only one side of a street is considered or $95 per front foot when both sides of the street are considered. The wide road will cost around $1.75 Million per mile.

Traffic counts illustrate flows on the residential streets are approximately 3,000 cars per day during the week. On weekends the count drops to about 2,500 cars per day.

No formal appraisal has been done, but real estate brokers and agents experienced in residential property values in this marketplace believe the paving will increase individual residential property values by about 10 percent. It is projected that any increase in property values due to new pavement along the truck corridor will be offset by values losses due to increased truck traffic and increased use of the road by commuters who wouldn't use it before.

Traffic surveys reveal that the major destinations for traffic currently traversing the roads to be paved are: (1) private residences, (2) a local parochial school and (3) the local warehouse. Traffic to the schools flows for eight months of the year (without holidays and vacations) and increases non-commercial traffic flows by about 300 vehicles twice daily or 600 additional vehicles in total. In all honesty, the congestion in the morning is reportedly a real pain in the rear for affected residents. Afternoons are better because the flow does not occur during a time commuters are returning or leaving for work. The affected streets are the three most northerly streets. The flow runs from the west side of the subdivision to the second street in. It then runs north from each street to the school parking lot entrance. Parents and others leaving the school follow a similar pattern but reversed. Property values are ten percent lower than comparable homes not on the school route. Paving the roadway is not expected to change this existing factor.

Scope of project:

This project will involve paving five miles of roadway. It is estimated the total cost of the project from public funds will be $5 Million. Act 51 money will pay $1.75 million (thirty-five percent of the project costs) $1.75 Million. The city council will pay "at-large" for costs that cannot be specially assessed based upon "benefit".

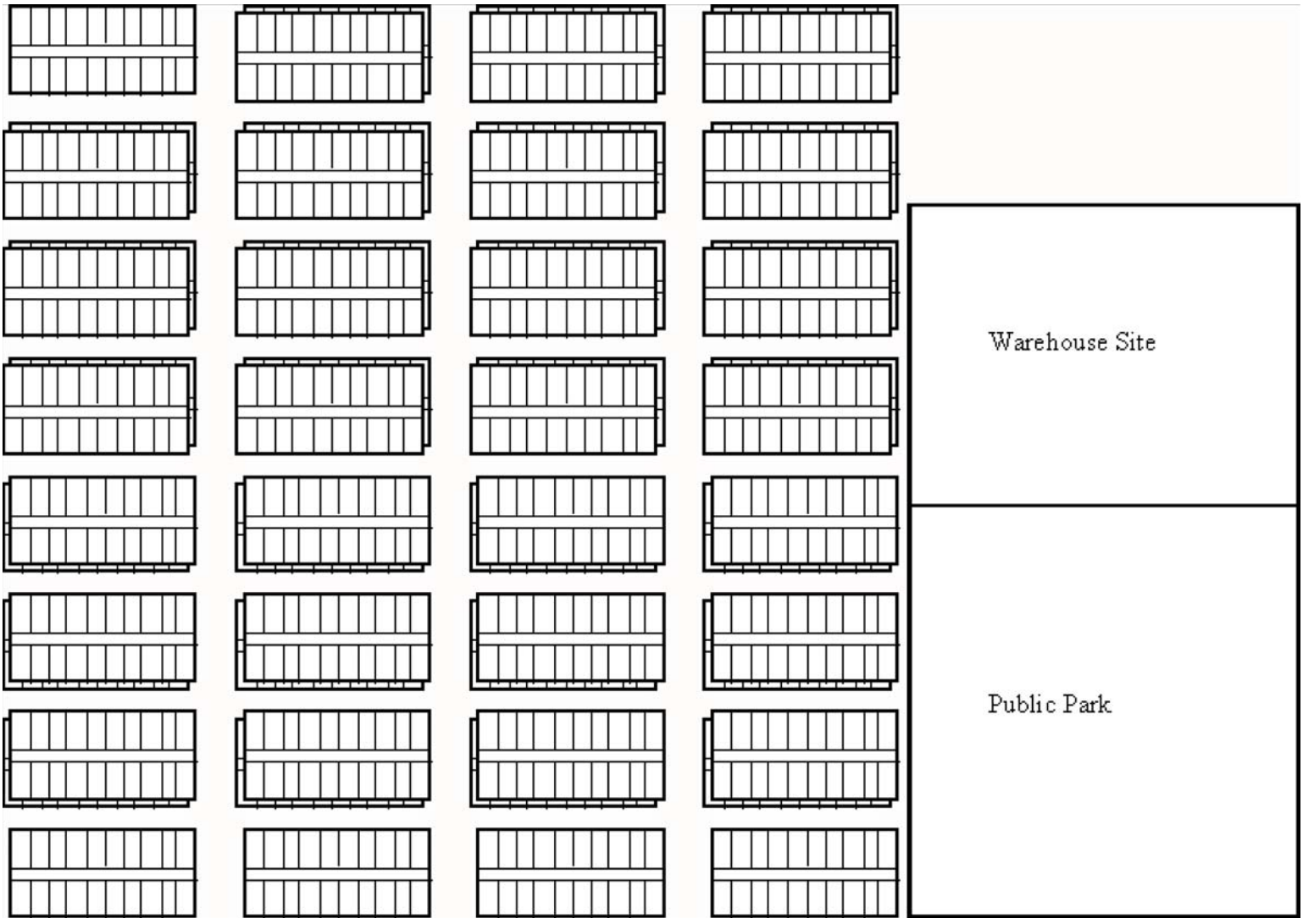
Assignment:

Suggest a method of allocating the special assessment on property within the district. Inform city Council of the amount of money that may be specially assessed. Calculate the apportioned amount for the affected parcels.

Street and Neighborhood Layout

SCHOOL GROUNDS

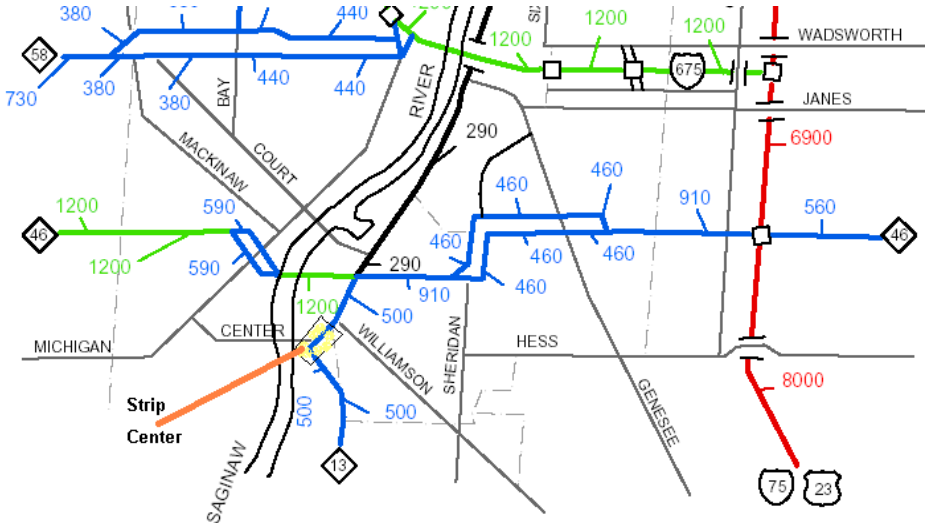
Entrance



Notes: Street Right-of-Ways (ROW) are 60 feet each.
The alleys in each block are 30 feet wide
Blocks are 600 feet by 270 feet

Streets are one half mile from left to right (Includes 30' ROW at each end of row)
Streets are one half mile from top to bottom (includes 30' ROW at each column end)
Warehouse access will be via the street nearest the middle of the site

Case Study for 2006 MAA Special Assessment Course



Purpose of Special Assessment:

To create a new streetscape to stimulate economic development

Case Details:

Members of the Southside Business Association (SBA) recently met with representatives of the local government unit. The LGU is a home rule city with a population of approximately 40,000 people. Government leaders are very concerned about rising unemployment and the transfer of people and wealth to adjacent suburban and exurban areas. The city serves as a hub for medical care in the region. It has an old town area which has become a magnet for an urbane, young crowd of 20 to 35 year olds; and those who wanna be young (actually forty to sixty year olds - some clearly going through a mid-life crisis). The Wannabes only make up 15 percent of the crowd, but they do spend about 25 percent of the money. There are several major routes in and out of the city. State highway M - 235 is one of them. The meeting was held to determine if there were ways local government could use its powers to create new jobs. Business leaders present were primarily owners of retail establishments seeking growth in annual sales for their companies.

It was decided by those involved to proceed with a new streetscape project. The project would involve a complete resurfacing of the state highway, a themed building facade renovation program, a themed street lighting program the and new business. The signage would identify a four block commercial retailing area as the Phoenix Business District.

The business association represents a geographic area defined in this way: A four block long strip of state highway (M - 235) which runs through a cluster of businesses congregated on both sides of the highway. (See map) The area is surrounded by residential properties,

though there are other land uses. For example, this commercial area also is very near farmland. Consequently, an old but still used grain storage building is at the far west end of the commercial strip. Also, there are a number of single family residential structures, one church, an auto repair facility, a convenience store and a school located along the strip. An old neighborhood market is located within one of the blocks along the strip, but it faces residential property and doesn't actually have access to the highway. The market operates under the ownership of a sweet old lady whose father started the store in 1910. Grandma's Corner Market is a favorite with youngsters from the area who congregate to buy home made cookies and candy. Granny's does have signage on M - 235 which directs potential customers down a large joint driveway to her. Recently, her little customers have been spreading the word at school and she's noticed a small but steady increases in the number of customers seeking her out. It turns out parents are spreading the word about Granny's too! The store sits next to an old neighborhood movie theater which was purchased two years ago by three brothers who've restored it. Typical weeknight attendance is around forty people for average shows. On weekends they often get a full house (120 people).

Traffic counts illustrate flows in and out of the community of approximately 20,000 cars per day during the week. However, on weekends the count drops to about 6,500 cars per day. The local economic development director has used her connections to explore the fiscal impact of streetscaping in similar areas. She found that annual retail sales typically increase from 25 to 50 percent in stores directly affected by comparable projects.

The variation depends upon the type of store and its clientele. For example, the dry cleaner and veterinarian rely upon a customer base not greatly effected by transient customers such as tourists. Such stores can expect to see a 25 percent increase in business sales after new streetscaping and business facades are installed. Retail stores with products of interest to transient customers such as antique stores, convenience stores, general merchandise centers and strip malls may expect a 50 percent increase which will be sustained for at least three years after the renovations. Businesses that rely on a non-transient customer base (the veterinarian and dry cleaner) define their market area as approximately a three mile radius from the store. Businesses which do service transient as well as non-transient customers find variations in their customer base, but about 40 percent of their customers come from within a three mile radius of the store. The rest are primarily drive time customers traveling through the area. It is estimated about 80 percent of these customers are "regulars" who visit often.

Real estate brokers experienced in commercial property believe the renovations being considered will increase commercial property values by about 15 percent. There will be a corresponding increase in residential values as the commercial strip becomes more attractive. Experience has shown that residential properties will be expected to have market value increases of from 1 to 5 percent depending upon proximity to the shining new facades and street. The 5 percent increase is expected to affect those properties within an easy walk of the of the commercial strip.

Scope of project:

This project will involve resurfacing one half of a mile of highway. Each business facade is eligible for up to $40,000 in 50/50 matching grant money. Utility poles are to be replaced with underground services. Sidewalks will be removed and replaced with new colourized and sculpted concrete surfaces. It is estimated the total cost of the project from public funds will be $2 Million. While there is an active DDA, leaders decided not to impose a millage rate, opting instead for a special assessment levy based upon benefit.

Assignment:

Recommend special assessment district boundaries based upon the facts provided. Suggest a method of allocating the $2 Million special assessment on property within the district.

Hint: Focus on the necessity of the project - why is it needed and how will monetary benefits be geographically distributed.

Exercise 2 Abatements and Special Assessments

BACKGROUND: A jurisdiction has determined that it will levy the following special assessments:

1. A public safety special assessment levy under Act 33 1951
2. A street improvement special assessment for a new road surface
3. A special assessment for a new sidewalk

The levy for this exercise is an ad valorem special assessment millage made pursuant to PA 33 (1951). This is a six mill levy for five years.

PROBLEM: Calculate the appropriate collection using the information provided below

Anticipated Special Assessment Collections from Selected Properties							
Property	Class	MSHD A Pilot	Renaissance Zone	Abated Facilities	Tax Capturing Authority	Taxable Value	Levy
Property 1	Res	No	No	No	No	$125,000	
Property 2	Comm	No	No	No	No	$1,000,000	
Property 3	Indust	No	No	No	No	$500,000	
Property 4	Exempt	Yes	No	No	No	$10,000,000	
Property 5*land	Indust	No	No	No	Yes	$50,000	
Property 5-imp	Ind	No	No	Yes	Yes	$500,000	
Property 6	Res	No	No	Yes	Yes	$250,000	
Property 7 (church)	Exempt	No	No	No	No	0	
Property 8	No	No	Yes	No	No	$100,000	

Special Assessment Levy Table

General Rule for Levy of Special Assessments - Verify with specific levy enabling act					
	Exempt Property	MSHDA Pilot Properties	Renaissance Zone Prop	Abated Facilities	Tax Capturing Authorities
PA 33 (1951)	No	No	Yes	Yes Land Only	Yes
Non PA 33 Levies	Yes	Yes	Yes	Yes	Yes

Chart by J. Turner Source Documentation: e-mail to J. Turner et alia from H. Heideman (Director, Tax Analysis Division, Michigan Department of Treasury) Dated November 20, 2007

"Special assessments levied under Public Act 33 of 1951,MCL 41.801 - 41.813, do not apply to property exempt from the collection of taxes under the general property tax act. So special assessments levied under PA 33 of 1951 would be levied on the land on which an industrial facilities tax (IFT) or neighborhood enterprise zone (NEZ) tax facility is located, but not on the IFT or NEZ facility itself.

Housing facilities subject to the MSHDA Act payment in lieu of taxes under MCL 125.1415a and commercial forest property exempt from ad valorem taxes under MCL 324.51105 are not subject to a special assessment levied under PA 33 of 1951.
For special assessments levied under public acts other than PA 33 of 1951, the full special assessment is levied on the properties/facilities described above.

Since MCL 211.7ff provides that property in a renaissance zone is not exempt from a special assessment levied by the local tax collecting unit in which the property is located, property in a renaissance zone remains subject to the full special assessments levied under Michigan law, including PA 33 of 1951."

Exercise 3 Abatements and Special Assessments

BACKGROUND: A jurisdiction has determined that it will levy the following special assessments:

1. A public safety special assessment levy under Act 33 1951
2. A street improvement special assessment for a new road surface ($0 residential; $2,000 industrial; $7,500 comm.)
3. A special assessment for a new sidewalk ($500 residential and industrial property; $750 commercial property)

The levies for this exercise are not PA 33 (1951) levies, but is instead are for a streetscaping project which extends into both a tax capturing authority and non-tax capturing authority lands. If exempt properties are to be assessed, you must determine the appropriate class). The special assessment apportionments by class are shown in items 2 and 3 about

PROBLEM: Calculate the appropriate collection using the information provided below

Anticipated Special Assessment Collections from Selected Properties							
Property	Class	MSHDA Pilot	Renaissance Zone	Abated Facilities	Tax Capturing Authority	Taxable Value	Levy
Property 1	Res	No	No	No	No	$125,000	
Property 2	Comm	No	No	No	No	$1,000,000	
Property 3	Indust	No	No	No	No	$500,000	
Property 4	Exempt	Yes	No	No	No	$10,000,000	
Property 5*land	Indust	No	No	No	Yes	$50,000	
Property 5-imp	Ind	No	No	Yes	Yes	$500,000	
Property 6	Res	No	No	Yes	Yes	$250,000	
Property 7 (church)	Exempt	No	No	No	No	0	
Property 8	No	No	Yes	No	No	$100,000	

Special Assessment Levy Table

General Rule for Levy of Special Assessments - Verify with specific levy enabling act					
	Exempt Property	MSHDA Pilot Properties	Renaissance Zone Prop	Abated Facilities	Tax Capturing Authorities
PA 33 (1951)	No	No	Yes	Yes Land Only	Yes
Non PA 33 Levies	Yes	Yes	Yes	Yes	Yes

Chart by J. Turner Source Documentation: e-mail to J. Turner et alia from H. Heideman (Director, Tax Analysis Division, Michigan Department of Treasury) Dated November 20, 2007

"Special assessments levied under Public Act 33 of 1951,MCL 41.801 - 41.813, do not apply to property exempt from the collection of taxes under the general property tax act. So special assessments levied under PA 33 of 1951 would be levied on the land on which an industrial facilities tax (IFT) or neighborhood enterprise zone (NEZ) tax facility is located, but not on the IFT or NEZ facility itself.

Housing facilities subject to the MSHDA Act payment in lieu of taxes under MCL 125.1415a and commercial forest property exempt from ad valorem taxes under MCL 324.51105 are not subject to a special assessment levied under PA 33 of 1951.
For special assessments levied under public acts other than PA 33 of 1951, the full special assessment is levied on the properties/facilities described above.

Since MCL 211.7ff provides that property in a renaissance zone is not exempt from a special assessment levied by the local tax collecting unit in which the property is located, property in a renaissance zone remains subject to the full special assessments levied under Michigan law, including PA 33 of 1951."

A SIMPLE "BENEFIT" DECISION TREE

Insert Name of Project Here (Sample for Discussion)

Note: Used for boundary decisions only - not as basis for apportionment

Benefit Parameter		INDIRECT BENEFIT				Direct Influences on Site's Value			OTHER MARKET INFLUENCES			In S.A.D.
		LEGAL	ECONOMIC	SCIENTIFIC	IndirectBenefit	Site Characteristics	Convenience	Cure Location Obs	Higest and Best Use	Cure Functional Obs	Other Market Factors	Directly Benefitting
TAX ROLL NUMBER												
	1001	0	1	0	YES	1	1	0	1	0	1	YES
	1002	1	0	1	YES	1	1	1	1	0	0	YES
	1003				NO							NO
	1004				NO							NO
	1005				NO							NO
	1006				NO							NO
	1007				NO							NO
	1008				NO							NO
					NO							NO
Unincorporated	Land				NO	0	0	0	0	0	0	NO
	9000				NO							NO
	9001				NO							NO
	9002				NO							NO
	9003				NO							NO
Jurisdication 1					NO							NO
	1000				NO							NO
	1001				NO							NO
	1002				NO							NO
	1003				NO							NO
	1004				NO							NO
Jurisdication 2					NO							NO
	2000				NO							NO
	2001				NO							NO
	2002				NO							NO
	2003				NO							NO
	2004				NO							NO
Jurisdication 3					NO							NO
	3000				NO							NO
	3001				NO							NO
	3002				NO							NO
	3003				NO							NO
	3004				NO							NO
	3005				NO							NO
					NO							NO
Jurisdication 4					NO							NO
					NO							NO
					NO							NO
					NO							NO
					NO							NO
					NO							NO
					NO							NO
					NO							NO
					NO							NO

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AD VALOREM SPECIAL ASSESSMENTS IN MICHIGAN

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AD VALOREM SPECIAL ASSESSMENTS IN MICHIGAN

Contents

AD VALOREM SPECIAL ASSESSMENTS IN MICHIGAN

Summary

Historically, general property taxes have been levied by units of local government to finance a vast array of governmental services and programs. By contrast, special assessments historically have had but a single principal purpose: to finance the construction and maintenance of local public improvements, such as streets, street lighting, and sewers.

While there are several specific characteristics that distinguish general property taxes from traditional special assessments, the Legislature has undermined these distinctions over time by authorizing units of local government to impose a hybrid category of special assessments, that use property values as the base, which are virtually indistinguishable from general property taxes. However, because the majority of the authorizing statutes refer to "special assessments" rather than "taxes," these impositions escape the constitutional and statutory restrictions which govern general property taxes. In effect, through clever use of nomenclature, the Legislature has accorded some units of local government a revenue-raising authority that is essentially unfettered by the state Constitution.

Ad valorem special assessments became a major legislative issue during 1996 after the state Attorney General concluded that they must be levied on state-equalized value rather the taxable value. That ruling was significant because, in March of 1994, voters amended the state Constitution to limit annual increases in taxable value (but not state-equalized value) to the lesser of five percent or inflation. While the issue addressed by the Attorney General is an important one, the more pressing policy question is whether unit-wide, ad valorem special assessments are an appropriate means to finance basic municipal services or are simply a means of circumventing constitutional and statutory property tax limitations.

The full extent of the problem posed by unit-wide, ad valorem special assessments is extremely difficult to ascertain due to three interrelated factors:

(1) inadequate or inaccurate reporting by units of local government which impose them;

(2) the considerable number of authorizing statutes, many of which overlap either as to the type of public improvement permitted to be financed by special assessment, or the type of unit of local government permitted to impose them, or both; and

(3) the general difficulty which, not only taxpayers, but many local officials encounter when attempting to distinguish such special assessments from ad valorem taxes.

Notwithstanding these difficulties, data filed for the 1995 tax year with the State Tax Commission for revenue sharing purposes revealed 147 unit-wide, ad valorem special assessment districts. These districts contained property with an aggregate state-equalized valuation of $15.4 billion and generated $55.5 million in revenues.

There are a number of remedies to the abuses which result from unit-wide, ad valorem special assessments. These remedies include:

– requiring that such special assessments be levied on taxable value, which was the option favored by the Legislature during 1996;

– eliminating statutory authorization for such special assessments;

– treating such special assessments as taxes by subjecting them to the same constitutional and statutory restrictions which apply to ad valorem property taxes;

– authorizing townships to establish separate authorities to provide police and fire protection, since the majority of unit-wide, ad valorem special assessments are levied by townships for either or both of those purposes.

AD VALOREM SPECIAL ASSESSMENTS IN MICHIGAN

Introduction

The longstanding method by which units of local government in Michigan have financed basic municipal services is through taxation, principally general property taxation. The rationale underlying this traditional approach is that the cost of those municipal services which provide a general benefit to all residents of a unit of local government, such as police and fire protection, should be borne through taxation imposed upon the general public.

On the other hand, units of local government often have financed the construction and maintenance of public improvements by means of special assessment. Special assessments have been justified on the grounds that it was inappropriate to use general revenues to finance those improvements that did not benefit an entire unit of local government. Rather, it was considered more equitable to finance such improvements by special assessments and to limit their imposition to that property which received a special benefit.

There are several specific characteristics that distinguish general property taxes from traditional special assessments:

– general property taxes are levied upon both real and tangible personal property not otherwise exempt by law, while traditional special assessments are levied only upon land and premises. Real property which is exempt from taxation is not exempt from special assessment unless the statute authorizing the special assessment so provides.

– general property taxes are levied throughout an entire unit of local government, while traditional special assessments are levied only within a special assessment district comprised of the land and premises especially benefited by the public improvement being financed.

– general property taxes are levied on a modified acquisition value basis (taxable value) until there is a transfer in ownership, while traditional special assessments are levied upon the basis of proportionate front footage or land area.

– general property taxes support basic municipal services, while traditional special assessments are essentially a form of debt used to finance physical improvements to infrastructure.

– general property taxes are subject to numerous restrictions imposed under the state Constitution. These include: uniformity and equalization requirements, limitations on the rate and duration of millage, millage rollback provisions, voter approval requirements, and a cap on annual property tax increases which voters adopted in 1994. In addition, general property taxes are subject to statutory requirements such as truth in taxation and truth in assessment. By contrast, traditional special assessments are not subject to these constitutional and statutory requirements.

Over time, the Legislature has undermined the foregoing distinctions. Increasingly, units of local government have been authorized by statute to impose a hybrid category of special assessments which are virtually indistinguishable from general property taxes. However, because the statutes characterize these impositions as "special assessments" rather than "taxes," they escape the constitutional and statutory restrictions which govern general property taxes. In effect, through clever use of nomenclature, the Legislature has accorded some units of local government a revenue-raising authority that is essentially unfettered by the state Constitution.

For example, the Legislature has authorized townships and villages to levy special assessments for a variety of purposes within special assessment districts consisting of the entire geographic area of the unit of local government. In most instances, these unit-wide special assessments are used to finance not improvements to infrastructure but basic municipal services, such as police and fire protection, that historically have been financed from general taxes. Furthermore, even though basic municipal services by definition benefit all property generally, authorizing statutes usually refer to specially benefited property. In reality, unit-wide special assessments are simply levied, as are property taxes, on the value of all real property within the unit of local government.

The full extent of the problem posed by unit-wide, ad valorem special assessments is difficult to ascertain due to general confusion and inadequate reporting by units of local government. However, data filed for the 1995 tax year with the State Tax Commission for revenue sharing purposes revealed 147 unit-wide, ad valorem special assessment districts. These districts contained property with an aggregate state-equalized valuation of $15.4 billion and generated $55.5 million in revenues.

Ad valorem special assessments became a major legislative issue during 1996 after the state Attorney General concluded that they must be levied on state- equalized value rather the taxable value. However, the basis on which ad valorem special assessments should be levied is simply the most recent, not the most significant, question. The more pressing policy question is whether unit-wide ad valorem special assessments are an appropriate means to finance basic municipal services or are simply a means of circumventing constitutional and statutory property tax limitations. Because the Legislature adjourned at the end of 1996 without resolving the issue raised by the Attorney General, the opportunity now exists to address the broader question in a comprehensive fashion.

I. Distinctions Between General Property Taxes and Special Assessments

Broadly speaking, general property taxes and special assessments are similar in that both constitute a charge upon property imposed by a unit of local government. Traditionally, however, the two approaches also have been marked by significant differences, both legal and practical.

A. Legal Distinctions

The courts long have recognized important legal distinctions between property taxes and special assessments. In *City of Lansing* v *Jenison*, (201 Mich 491, 497; 1918), the Michigan Supreme Court noted that

[i]t is the settled law, that special assessments may be sustained upon the theory that property assessed receives some special benefit from the improvement differing from the benefit that the general public enjoys. This is the foundation of the right to levy special assessments and without such foundation the right must fail.

However, it was in *Blake v Metropolitan Chain Stores*, (247 Mich 73, 77; 1929), that the Supreme Court recited the classic characterization of these legal distinctions:

While the word "tax" in its broad meaning includes both general taxes and special assessments, and in a general sense a tax is an assess-ment, and an assessment is a tax, yet there is a recognized distinction between them in that assessment is confined to local impositions upon property for the payment of the cost of public improvements in its immediate vicinity and levied with reference to special benefits to the property assessed. The differences between a special assessment and a tax are that (1) a special assessment can be levied only on land; (2) a special assessment cannot (at least in most States) be made a personal liability of the person assessed; (3) a special assessment is based wholly on benefits; and (4) a special assessment is exceptional both as to time and locality. The imposition of a charge on all property, real and personal, in a prescribed area, is a tax and not a special assessment, although the purpose is to make a local improvement on a street or highway. A charge imposed only on property owners benefited is a special assessment rather than a tax notwithstanding the statute calls it a tax.

B. Practical Distinctions

In addition to the legal distinctions just described, there are a number of practical characteristics that distinguish taxes from special assessments. Historically, general property taxes have been levied to finance a vast array of governmental services and programs. By contrast, traditional special assessments historically have had but a single principal purpose: to finance the construction and maintenance of local public improvements, such as streets, street lighting, and sewers.

Special assessments have been utilized in Michigan since territorial times. However, it was during two periods in particular that the Legislature greatly expanded the number of statutes authorizing units of local governments to impose them. The first period, from the 1890s to early 1930s, coincided with the migration of residents from rural to urban areas of the state. The second period was during the 1950s to mid-1960s, as the population again migrated, this time from urban to suburban areas.

C. Erosion of the "Public Improvement" Purpose

Simultaneously with its expansion of the number of authorizing statutes, the Legislature also broadened, beyond construction and maintenance of public improvements, the purposes for which special assessments could be imposed. Increasingly, the Legislature authorized special assessments for basic governmental services. This legislative action had the effect of eroding the connection between special assessments and public improvements which, in turn, undermined the distinction between special assessments and general taxes. The consequences of this action continue to be problematic.

The historical connection between special assessments and public improvements afforded taxpayers a simple, but effective, means of performing an essential function: distinguishing between special assessments and general taxes. For it is no accident that the people of Michigan often have sought (even to the point of amending the state Constitution) to limit general property taxes, while all but ignoring special assessments. Because the former were imposed to finance basic governmental operations, citizens understood that there was no natural point beyond which the burden of general taxes might not extend. After all, basic governmental operations might be viewed as co-extensive in scope with the nature of government itself. Absent constitutional restrictions, the only limitation upon the level of general property taxes might be the ingenuity of the tax collector.

By contrast, special assessments were limited by the nature of what they financed. A section of sidewalk, or street lights installed within a portion of a community, were tangible improvements which the person assessed readily could discern. Indeed, the very term *special* assessment conveyed, not the open-ended commitment of general taxation, but rather a limited financial obligation not exceeding the cost of the improvement to infrastructure being financed. However, the statutes authorizing unit-wide, ad valorem special assessments do not honor this historical connection between special assessments and public improvements. The majority of unit-wide, ad valorem special assessments are imposed to finance police or fire protection. While no one would deny that such protection is important, the level of that importance does not transform it into a public improvement. Notwithstanding statutory suggestions to the contrary, police and fire protection are basic services.

When all basic services provided by a unit of local government are financed from general tax revenues, local officials are required to balance various priorities against the availability of those revenues. This allocation of limited resources among competing demands is the essence of the budgetary process. However, the use of unit-wide, ad valorem special assessments to finance basic services can relieve local officials of the obligation to make difficult budgetary decisions. In effect, financing services by special assessments allows local officials to divert to other purposes general tax revenues which otherwise would have financed those services. Thus, units of local government are permitted to live beyond their normal means by maintaining a level of spending which their general property tax might not support.

The fact that some units of local government generate substantial amounts of revenue from ad valorem special assessments is illustrated by **Table 1** on the following page. For example, during 1995, Clinton Township in Macomb County levied less than a mill in general property taxes, but a total of nine mills for two unit-wide, ad valorem special assessments. These special assessment levies generated $14 million, an amount nearly ten times the $1.5 million generated from general property taxes.

Similarly, Royal Oak Township in Oakland County levied 6.5 mills in general property taxes, but over 20 mills for five ad valorem special assessments. It is unclear whether the local officials or taxpayers in either township would have been willing to spend as much for those services financed by special assessments had those services, together with the other township governmental services, been financed solely from general revenues.

Table 1

Comparison of 1995 Ad Valorem Operating Property Taxes and Unit-Wide, Ad Valorem Special Assessments in Selected Units of Local Government

	Ad Valorem Property Taxes			Ad Valorem Special Assessments		
	Millage Rate	Taxable Value[1]	Levy	Millage Rate	Taxable Value[1]	Levy
Macomb County						
Clinton Township	0.8739	$1,684,483,446	$1,472,070	4.0000 (Fire)	$1,557,727,064	$6,230,908
				5.0000 (Police)	$1,557,727,064	$7,788,635
Total	0.8739	$1,684,483,446	$1,472,070	9.0000	$1,557,727,064	$14,019,544
Shelby Township[2]	1.5000	$1,353,384,656	$2,030,077	4.1373 (Fire)	$1,249,401,315	$5,169,148
				4.7032 (Police)	$1,249,401,315	$5,876,184
Total	1.5000	$1,353,384,656	$2,030,077	8.8405	$1,249,401,315	$11,045,332
Oakland County						
Brandon Township	5.0981	$234,638,771	$1,196,212	4.3905 (Fire)	$226,722,021	$995,423
Total	5.0981	$234,638,771	$1,196,212	4.3905	$226,722,021	$995,423
Royal Oak Township[2]	6.5000	$47,547,720	$309,060	8.0000 (Fire)	$40,250,170	$322,001
				8.0000 (Police)	$40,250,170	$322,001
				2.3010 (D.P.W.)	$40,250,170	$92,616
				1.0000 (Lights)	$40,250,170	$40,250
				1.0000 (Parks)	$40,250,170	$40,250
Total	6.5000	$47,547,720	$309,060	20.3010	$40,250,170	$817,119

[1] Taxable value for property tax includes real and tangible personal; taxable value for special assessments includes real only.

[2] Special assessments in Shelby Township and Royal Oak Township were levied on state-equalized valuation. The data which Shelby Township reported to Macomb County, and which the county in turn reported to the state, double counted 8.8405 mills as both property tax mills and as special assessment mills. This error resulted in a reported property tax rate for operating purposes of 10.3405 mills; that rate should have been reported as 1.5000 mills.

Source: State Tax Commission, 1995 County Apportionment Reports and 1995 Ad Valorem Special Assessment Reports; CRC calculation.

D. Statutory Requirements

1. The Intended Administration of Special Assessments

Statutes which authorize units of local government to levy special assessments generally pay homage to the characteristics which distinguish them from property taxes. Thus, for example, the statutes typically require local officials to establish a budget, calculate the amount of the special assessment levy (the cost of the improvement), to identify what property will be specially benefited thereby, and to apportion the levy by specifying the base and rate of the special assessment.

The Base. The base of a special assessment consists of the lands and premises receiving a special benefit from the public improvement being financed. Such property, in the aggregate, constitutes the special assessment district. A determination of what property receives a special benefit is essential because the courts have held that in the absence of a showing of special benefit there is no legal authority on the part of a unit of local government to levy a special assessment.

Furthermore, property which is exempt from the general property tax, such as religious, charitable, or educational property, is not exempt from the base of special assessments (since they are not legally taxes) unless the statute authorizing the special assessment so provides. To ensure that tax-exempt property does not escape

special assessment, local officials typically are required under the authorizing statute to record special assessment levies either in a special column on the general ad valorem property tax roll or on a separate special assessment roll.

The Rate. Most statutes which authorize special assessments generally do not specify a maximum rate that may be imposed nor, in many instances, the maximum duration of the levy. Units of local government are, therefore, granted unlimited and open-ended revenue-raising authority.

The rate of a special assessment is calculated by dividing the cost of the public improvement to be financed by the base against which that cost is to be apportioned. In turn, apportionment can be based upon land area, front footage, or value. For example, if the cost of installing 1,000 feet of sidewalk at a cost of $7,000 were apportioned on the basis of front footage, the levy would be $7 per foot of property abutting the sidewalk. In the case of two parcels abutting the sidewalk – the one by 50 feet and the other by 100 feet – the owner of the latter parcel would be assessed an amount equal to twice that assessed the former. In the alternative, if the cost were apportioned on the basis of value, the rate would be expressed either in mills or the amount of the special assessment per $1,000 of property value. Special assessment statutes follow no single pattern regarding how the levy is to be apportioned.

2. The Actual Administration of Special Assessments

Statutory requirements such as those just described were intended to ensure that special assessments be administered in a manner consistent with the legal attributes which distinguish them from property taxes. As a practical matter, however, special assessments often are levied and collected in a manner which renders them and general property taxes indistinguishable. Public Act 33 of 1951 illustrates the extent to which theory and practice often diverge where special assessments are concerned. That statute authorizes townships, and certain cities and villages, to defray the cost of fire and, since 1989, police protection by special assessment.

The Base. Act 33 refers to lands and premises to be "benefited," or "especially benefited" as the base for special assessment purposes. Such references are to be expected given the legal requirement that property subject to special assessment must receive a benefit which distinguishes it from other property generally. Therefore, the statute implies that property within a unit of local government is to be treated as two distinct groups: that property which receives a special benefit from the public improvement and that property which does not receive a special benefit.

In reality, however, a special assessment district for purposes of Act 33 may consist of an entire unit of local government. Since the geographic boundaries of the special assessment district are identical to those of the unit of local government, it is nonsensical to suggest that some property (that within the special assessment district) receives a special benefit not received by other property (that outside the special assessment district but within the same unit of local government). As a result, the special benefit principle, which courts repeatedly have held is the foundation on which rests the right to levy special assessments, is reduced to a practical illusion.[1]

Furthermore, property which is exempt from the general property tax is not exempt from the base of special assessments unless the statute authorizing the special assessment so provides. Act 33 contains no such provision. Nevertheless, it appears that in most instances units of local government levy Act 33 special assessments only on that property which is subject to the property tax. The statute permits special assessments to be recorded either "in a special assessment roll or in a column provided in the regular tax roll." However, tax-exempt property, given its status, often does not appear on the regular tax roll.

In the absence of explicit statutory authorization, ex-

[1] It might be argued that when a municipal service is provided within a unit-wide special assessment district, benefit to a given parcel should be measured by the extent to which the value of the parcel is enhanced once the service is made available. Such an argument misses an essential point. While *some* benefit to property naturally would be expected from the availability of municipal services, what the courts have required is that there be a *special* benefit, meaning one that differs from the benefit that the general public enjoys.

cluding tax-exempt property from special assessment levies is contrary to law. Furthermore, such a practice has the practical effect of reducing the property base over which a special assessment is apportioned. As a result, those property owners who are subject to the special assessment shoulder a greater share of the levy than intended by the Legislature.

The Rate. As noted previously, a special assessment rate is calculated by dividing the cost of the public improvement by the base against which that cost is to be apportioned. Apportionment can be based on land area, front footage, or value. While Act 33 does not specify the method of apportionment, units of local government levy such special assessments on an ad valorem basis. This practice often leads to confusion in distinguishing them from property taxes which are levied on the same basis.

In addition, just as levying a special assessment throughout an entire unit of local government completely undermines any notion of special benefit, so it is with levying a special assessment on an ad valorem basis to finance basic municipal services. The ad valorem value of property bears no consistent relationship to the benefits received from basic governmental services. For example, it cannot persuasively be argued that the owner of a $200,000 house receives four times the benefit from police protection as that received by the owner of a $50,000 house located in the same special assessment district. Nevertheless, that is the inference that must be drawn to maintain the illusion that an Act 33 special assessment is levied in relationship to benefit.

The *St. Joseph Township* Decision

The Michigan Supreme Court has upheld a unit-wide special assessment district established pursuant to Public Act 33 of 1951. *St. Joseph Township* v *Municipal Finance Commission*, (351 Mich 524; 1958). The Court did so on grounds of implied legislative authorization. The Court noted that the statute which Act 33 repealed had provided that "[n]o township board shall organize all of the land located therein into 1 special assessment district under the provisions of this act." Because Act 33 repealed this limitation, the Court reasoned that the Legislature no longer intended to prohibit unit-wide special assessment districts.

The Court also rejected the argument that the special assessment at issue, which was imposed on the basis of value, was in fact an ad valorem tax. Plaintiffs had based their argument on the statement in *Blake v Metropolitan Chain Stores* (quoted on Page 2) that "[t]he imposition of a charge on all property, real and personal, in a prescribed area, is a tax and not a special assessment, although the purpose is to make a local improvement on a street or highway." The Court responded by noting that "[w]e accept the above as good authority. But it is clear that we do not deal here with 'the imposition of a charge on all property, real and personal, in a prescribed area.' The personal property in this township is omitted from the special assessment."

The reasoning of the Court, that the special assessment at issue was not a tax because it applied only to real property, was not terribly persuasive. It ignored the fact that the tangible personal property of residences also is not subject to the general property tax. Indeed, the reasoning of the Court, if taken to its logical conclusion, suggests that the general property tax might be converted into a special assessment simply by repealing that portion of the property tax which is levied on nonresidential tangible personal property.

II. Constitutional and Statutory Restrictions to Which Ad Valorem Property Taxes, But Not Unit-Wide Ad Valorem Special Assessments, Are Subject

A. Constitutional Provisions

Article 9 of the state Constitution contains numerous provisions which the people of Michigan have adopted to protect themselves against unlimited property taxation. These provisions govern the manner in which property taxes can be imposed, limit overall levels of taxation, and require prior voter approval. However, as a result of case law and Attorney General opinions, none of these constitutional provisions applies to

special assessments. In most instances, these legal authorities simply recite those characteristics which supposedly distinguish special assessments from taxes.

1. Uniformity, Assessment, and Equalization

Section 3 of Article 9 imposes three requirements on the Legislature regarding how ad valorem property taxes are to be assessed and levied on real and tangible personal property: property taxes must be levied uniformly across various property classifications; property must be uniformly assessed at no more than 50 percent of its true cash value; and the Legislature must provide a system for the equalization of assessments.

Uniformity. Ad valorem property taxes, except those levied for school operating purposes, must be levied uniformly across various classes of property. This requirement prevents the Legislature from classifying property into different categories in order to impose different levels of ad valorem taxation on each class. (Proposal A, approved by voters in March of 1994, authorized a limited exception from uniformity; for school operating purposes, homestead and nonhomestead property are taxed at different rates.)

Uniformity of Assessment. Property not exempt by law must be uniformly assessed at the same proportion of true cash value. The Legislature has provided that property be assessed at 50 percent of its true cash value, known as state-equalized value or SEV. In 1994, voters amended Section 3 of Article 9 to require that property taxes be levied not on SEV but on a different basis known as taxable value, until a parcel is sold. The taxable value concept is described later in this section.

Equalization. The Legislature is required to provide for a system of equalization of assessments. The purpose of equalization is to correct for systematic under assessment or over assessment within assessing jurisdictions. Given the large number of assessing jurisdictions in Michigan (approximately 1,500) equalization is essential to ensure that taxable property is uniformly assessed within each county as well as among the counties.

2. Fifteen, Eighteen, and Fifty Mill Limitations

Section 6 of Article 9 limits to 15 mills the rate of ad valorem taxation that may be imposed on a parcel of property. This millage is allocated to applicable units of local government on an annual basis by county tax allocation boards. As an alternative, the voters of a county may adopt a separate, fixed allocation of up to 18 mills. The 15 and 18 mill limitations apply only to operating millage levied by unchartered counties and unchartered townships. (Prior to 1994, these limitations also applied to operating millage levied by school districts. However, in 1994, the Legislature reduced these limitations in each county by the number of mills allocated to school districts in 1993. School districts no longer receive allocated millage. In effect, this millage was reallocated to a statewide six-mill education tax.)

Voters may increase either the 15 or 18 mill limitations to a maximum of 50 mills for up to 20 years at any one time. None of these limitations applies to debt millage, nor to millage levied by units of local government such as cities, villages, or authorities the millage limitations of which are established by charter or general law.

The *Graham* Decision. In *Graham* v *City of Saginaw*, (317 Mich 427; 1947), the Michigan Supreme Court held, although the issue was not before it, that special assessments were not subject to the 15 mill limit. Subsequently, the *Graham* decision was strongly criticized, although not overruled, by the Court. *Lockwood* v *Commissioner of Revenue*, (357 Mich 517; 1959). The following passage from *Lockwood* is significant because it reveals that a portion of the state Supreme Court was willing to recognize that whatever the technical, legal differences between taxes and special assessments, there are no practical differences:

> They [the *Graham* Court] then proceeded to tell the people that by their [15 mill] amendment they had succeeded only in protecting themselves from higher *general* taxes; that the amendment did not include "special" assessments within its protective scope, and that the respective legislative bodies of the State remained free to levy, without limit and without regard for the constitutional limitation, all kinds of "special" assessments....
>
> Now it has always been clear to us that special assessments are "taxes" and that ordinary people by common understanding of their Con-

> stitution had an amendment which protected them from additional property taxation, no matter the brand name which any legislative act or judicial decision might stamp on the particular impost or levy against such property. One's home can be lost just as quickly and finally for nonpayment of "special" assessments as for nonpayment of "general" taxes. (357 Mich at 570-571); emphasis in original.

3. Headlee Rollbacks

In 1978, voters adopted a tax limitation amendment (popularly known as the "Headlee" Amendment) which amended Section 6 of Article 9 of the state Constitution and added Sections 25 through 34 to Article 9. A portion of Section 31 provides that, if the existing property tax base of a unit of local government increases faster than the rate of inflation, the maximum authorized property tax rate must be reduced or "rolled back" by a commensurate amount. The purpose of this provision is to limit, to no more than inflation, increases in local government revenues resulting from growth in the property tax base. Under Section 31, any increase in revenues beyond inflation requires a vote of the people.

In 1979, the Attorney General concluded that ad valorem special assessments were not subject to provisions of the Headlee Amendment. (OAG 1979-80, No. 5562). This conclusion was based on the fact that "[a] charge imposed only on property owners benefited has been held to be a special assessment and not a tax." The opinion cited as authority the case of *Blake v Metropolitan Chain Stores* quoted earlier on Page 2.

Despite the Attorney General's opinion, reports filed with the State Tax Commission reveal instances in which units of local government do roll back ad valorem special assessment millages, perhaps because many local officials are no more able to distinguish special assessments from property taxes than are taxpayers.[2] Although special assessment millage rollbacks benefit property owners subject to them, by reducing the special assessment levies, the practice further undermines any remaining differences between special assessments and property taxes.

4. Taxable Value Limitation

In March of 1994, voters amended Section 3 of Article 9 of the state Constitution to limit, for taxation purposes, annual increases in property values on a parcel by parcel basis to the lesser of five percent or inflation. This limitation is referred to as "taxable value." The purpose of the limitation is reminiscent of the other Article 9 provisions discussed thus far: to limit the overall level of property taxes. In the case of the taxable value limitation, this purpose is achieved by restricting the taxable growth of the property tax base.

The longstanding requirement that property be *assessed* at 50 percent of true cash value (state-equalized value) remains in effect. However, property now is *taxed* not on its state-equalized value, but rather on its taxable value, until there is a change in ownership. When a transfer occurs, the property tax base for that parcel becomes its state-equalized value, the taxable growth of which is then restricted by the taxable value limitation until there is another transfer**.**

The taxable value limitation, by its own terms, applies only to taxes. Indeed, the first three words of the amendatory language that added the taxable value limitation to Section 3 of Article 9 are, "[f]or *taxes* levied...." **(**Emphasis supplied**.)** Nevertheless, it is doubtful that the voters who ratified the constitutional amendment commonly understood that it would not apply to special assessments. Yet, that was the predictable consequence given existing case law. In April of 1996, the Attorney General confirmed this by concluding that the taxable value limitation applied only to general ad valorem property taxes. (OAG 1995-96, N0. 6896).

Because the taxable value limitation applies only to taxes, the Attorney General also concluded that ad valorem special assessments (imposed for police and fire protection pursuant to Public Act 33 of 1951) must be levied on state-equalized value and not taxable value. By definition, the basis of apportioning an ad valorem special assessment must be the value of the property subject to it. However, as the Attorney General noted:

> Taxable value, as determined under the mandate

[2] Because special assessment statutes generally do not specify a maximum authorized rate, presumably what is being rolled back is the rate actually levied.

> of Section 3 of Article 9 of the state Constitution, has no consistent rational relationship to the true cash value of the property to which it applies. It is a mathematical exercise, which is designed to limit the growth of a property's tax bill. With the passage of time, absent a transfer of the property, any correlation that taxable value has with the true cash value of the property is lost.

The Attorney General opinion will have little practical effect in a financial sense. In the majority of instances (108 of the 147 special assessment districts listed in **Appendix A**), units of local government already were levying ad valorem special assessments on state-equalized value rather than taxable value. In essence, the opinion merely gave legal sanction to current practice.

This practice will be more difficult to correct politically with the passage of time as the dollar differential between taxable value and state equalized value increases. Moreover, this fact may create an incentive for units of local government to adopt ad valorem special assessments in order to take advantage of the growth in state-equalized values which is not limited by Proposal A, thereby making legislative correction even more difficult to achieve. On the other hand, a requirement that ad valorem special assessments be levied on the lesser basis of taxable value would not necessarily reduce such special assessment levies. Because most special assessment statutes do not specify a maximum rate, the governing bodies of units of local government could adjust for any reduction in the base simply by levying a higher rate.

B. Statutory Provisions

In addition to the constitutional provisions just described, there also are several statutory provisions which govern property taxes but not special assessments. Principal among these statutes are those specifically intended to pinpoint responsibility for property tax increases by requiring truth in taxation and truth in assessment. Although the state is responsible for administering the property tax, local legislative bodies are responsible for assessing property and for determining, within voter-authorized limits, property tax millage rates. The willingness of some local officials to blame state or county equalization for property tax increases (while quietly accepting the increased revenue) rather than to accept responsibility for local decisions greatly contributed to the adoption of such statutes.

1. Truth in Taxation

Public Act 5 of 1982, which amended the general property tax act, requires any taxing jurisdiction which levied more than one mill in the prior year to annually roll back its property tax rate to offset any increases in the value of existing property. Act 5 is similar, but not identical, to the Headlee rollback provision of the state Constitution.

Headlee rollbacks reduce the maximum *authorized* rate and are triggered by property value increases in excess of inflation. By contrast, truth-in-taxation rollbacks reduce the rate *actually* levied and are triggered by *any* increase in existing property values, whether or not they exceed inflation. The purpose of the truth-in-taxation law is to inform taxpayers that annual property tax increases do not result solely from increases in property values, but also from the tax rate imposed by local governing bodies.

2. Truth In Assessment

Public Act 213 of 1981, which also amended the general property tax act, requires any city or township, in which the state-equalized value exceeds local-assessed value, to reduce its maximum authorized rate so that the levy on state-equalized value does not exceed that which would have been collected had the rate been applied to local-assessed value. Act 213 was designed to prevent assessing jurisdictions (cities and townships) from increasing property tax levies solely as a result of the equalization process. In effect, if an assessing jurisdiction does not assess taxable property at 50 percent of its true cash value, the assessing jurisdiction is penalized by having its maximum authorized rate reduced.

III. Remedies

The full extent of the problem posed by unit-wide ad valorem special assessments is extremely difficult to ascertain due to three interrelated factors: (1) inadequate or inaccurate reporting by units of local government which impose them; (2) the considerable number of authorizing statutes, many of which overlap either as to the type of public improvement permitted to be financed by special assessment, or the type of unit of local government permitted to impose them, or both; and (3) the general difficulty which, not only taxpayers, but many local officials encounter when attempting to distinguish such special assessments from ad valorem taxes.

Data filed for the 1995 tax year with the State Tax Commission for revenue sharing purposes, and summarized in **Appendix A**, revealed 147 unit-wide, ad valorem special assessment districts. These districts contained property with an aggregate state-equalized valuation of $15.4 billion and generated $55.5 million in revenues. Given the factors just noted, it can be assumed these data understate the magnitude of the problem. However, the only means by which a complete list of all ad valorem special assessments could be compiled would be to examine the underlying documentation for every levy – special assessment *and* tax – imposed upon property by every unit of local government in order to trace authorization for each levy back to a specific statute. Such a task would not be practical to say the least; furthermore, in some instances the authorizing statutes themselves are not sufficiently precise.

There are a number of remedies to the abuses which result from unit-wide ad valorem special assessments. These remedies are examined below.

A. Levy Special Assessments on Taxable Value

Throughout the latter part of 1996, the Legislature sought a solution to the issue raised by the Attorney General in April of that year, namely that ad valorem special assessments must be levied on state-equalized value. (Actually, the opinion stated, apparently unintentionally, that such special assessments were to be levied on true cash value which by law is equal to twice state-equalized value.)

The preferred legislative alternative was to amend several statutes which authorize such special assessments to require that they be levied on taxable value. Although the Legislature adjourned at the end of 1996 without resolving the issue, the approach which the Legislature pursued would have amounted to an incomplete remedy for two reasons.

First, there is the issue of whether the Legislature may require units of local government to do something that, in the opinion of the Attorney General, the state Constitution prohibits. While some state policymakers accurately noted that the *authorizing statutes* did not require that ad valorem special assessments had to be levied on state-equalized value, the real issue was, and remains, whether the state *Constitution* so requires. The Attorney General concluded that it does.

Although opinions of the Attorney General command the allegiance of state agencies and officers, they do not have the force of law. Therefore, such opinions are not binding on the courts. Presumably, for the same reason they also are not binding on the Legislature. However, the Attorney General opinion at issue was not directed at the Legislature but at units of local government that levy ad valorem special assessments. Had the Legislature amended various authorizing statutes to require that ad valorem special assessments be levied on taxable value, units of local government would have been confronted by a dilemma: they could have levied such special assessments on taxable value as required by the revised authorizing statutes, but risked violating the state Constitution, or levied them on state-equalized value as directed by the Attorney General and violated the revised authorizing statutes.

Second, whether ad valorem special assessments should be levied on state-equalized value or taxable value was but the most recent issue regarding ad valorem special assessments. Focusing attention on that issue obscured the numerous other concerns which have made such special assessments problematic for decades. Legislative preoccupation with the issue of taxable value can be explained, to some extent, by a desire to convince voters that they were not misled into adopting the concept in the first place. After all, the concept of tax

able value originated with the Legislature. Voters might not have been disposed to approve the proposal which placed that concept in the Constitution had they known that it would limit annual increases in ad valorem property taxes but not other levies (special assessments) which were ad valorem property taxes in all but name. Because the Legislature adjourned at the end of 1996 without resolving the issue raised by the Attorney General, the opportunity now exists to address the valorem special assessment problem in a comprehensive fashion.

B. Eliminate All Ad Valorem Special Assessments

There is no question that traditional special assessments – those levied on a non ad valorem basis in a limited geographic area to finance improvements to infrastructure – have served a useful purpose in Michigan since territorial times. Nevertheless, the benefit derived from traditional special assessments must be balanced against the considerable harm done by their illegitimate brethren. After all, the entanglement of ad valorem special assessments and ad valorem property taxes was made possible only because the former could masquerade as traditional special assessments. However, to eliminate statutory authorization for all special assessments would be impractical.

A more appropriate remedy would be to eliminate statutory authorization for all ad valorem special assessments. Such levies could be replaced to the extent permissible with ad valorem property taxes. In particular instances, this likely would require a reduction in existing service levels because some units of local government either do not have sufficient millage capacity, or could not secure voter approval, to levy enough property taxes to fully replace their special assessment revenue. However, this consideration should not be dispositive because no unit of local government should enjoy a perpetual right to levy unlimited taxes.

C. Treat Ad Valorem Special Assessments as Taxes

If unit-wide, ad valorem special assessments are permitted to continue, at a minimum the Legislature should consider subjecting them to the same constitutional and statutory restrictions which apply to general ad valorem property taxes.[3] Since none of the characteristics traditionally cited by courts to distinguish special assessments from taxes are found in the state Constitution, such a modification could be achieved by statute. However, given the widespread reliance upon ad valorem special assessments, and the general confusion surrounding them, simply amending the authorizing statutes in the manner suggested likely would not be sufficient. An enforcement mechanism also would seem to be in order, such as extending to the administration of special assessments the authority that the State Tax Commission has over the administration of the property tax. Treating ad valorem special assessments as ad valorem property taxes for purposes of constitutional and statutory restrictions would afford taxpayers the measure of protection that these provisions were intended to provide.

D. Establish Police and Fire Authorities

Available data (See **Appendix A**) suggest that the majority of unit-wide, ad valorem special assessments are levied by townships to finance police services, or fire services, or both. Thus, the Legislature could authorize townships, individually or in combination, to provide such service through authorities in lieu of ad valorem special assessments. (Special consideration might be necessary, however, in those instances

[3] It should be noted that the Legislature already has declared, for revenue sharing purposes, that unit-wide, ad valorem special assessments are local taxes. Public Act 140 of 1971, as amended, authorizes the sharing of state revenues with cities, villages, and townships. In 1987, Section 4 of the act was amended to include within the definition of "local taxes" special assessments which meet both of the following criteria:

> (a) the assessment district is the entire city, village, or township and (b) the assessment is levied on an ad valorem basis against all real property in the city, village, or township.

Because Act 140 requires that unit-wide, ad valorem special assessments must be levied on *all* real property, presumably such a special assessment which is not levied on tax-exempt property cannot be counted as a local tax for revenue sharing purposes.

where town ships contain incorporated villages.) Units of local government have been authorized to establish authorities for numerous purposes.[3] Such an approach would have two advantages, but also a disadvantage.

First, the millage imposed by such authorities would be an ad valorem tax and, as such, subject to the constitutional and statutory requirements which do not apply to special assessments. Second, because such a local tax would be newly authorized, it could not be levied without voter approval, pursuant to Section 31 of Article 9 of the state Constitution. This would afford taxpayers a measure of oversight which they presently lack with regard to ad valorem special assessments. Furthermore, authorizing townships to act in concert to provide police and fire services might reduce existing duplication and promote economies of scale to a greater extent than now possible under existing law.

The disadvantage of this approach is that the millage levied by an authority is not subject to the 15, 18, or 50 mill limitations because the second paragraph of Section 6 of Article 9 (the nonapplication of limitation clause) of the state Constitution provides in part that

[t]he foregoing limitations shall not apply to taxes imposed for the payment principal and interest on bonds approved by the electors or other evidences of indebtedness approved by the electors or for the payment of assessments or contract obligations in anticipation of which bonds are issued approved by the electors, which taxes may be imposed without limitation as to rate or amount; or, subject to the provisions of Sections 25 through 34 of this article, to taxes imposed for any other purpose by any city, village, charter county, charter township, *charter authority or other authority*, the tax limitations of which are provided by charter or by general law. (Emphasis supplied.)

However, in order for the nonapplication of limitation clause to apply to authority millage, the authorizing statute must do more than simply declare that the authority is such for purposes of Section 6 of Article 9. According to the Attorney General, the authorizing statute must vest the entity with "the indicia of an 'authority' as that term appears within the context of Section 6 of Article 9 of the state Constitution." (OAG 1979-80, No. 5506 at 200). At a minimum, the authorizing statute must contain a millage limitation which substitutes for the constitutional limitations. Other indicia include those which an authority customarily would be expected to possess, such as the right to sue and be sued in its own name, the right to levy taxes, and the right to hold property.

The Issue of Federal Deductibility

Section 164(c)(1) of the Internal Revenue Code provides that special assessments which benefit property (that is, traditional special assessments imposed to finance public improvements such as sidewalks and street lighting) are not deductible. (Special assessments imposed for purposes of maintenance or repair, or to retire interest charges are deductible.) While Section 164(c)(1) is silent on the matter, presumably unit-wide ad valorem special assessments, which provide no special benefit because they finance basic governmental services, should be deductible to the same extent as are property taxes.

The fact that ad valorem property taxes and special assessments are difficult to distinguish may mean that many taxpayers claim both types of levies as deductions for federal income tax purposes even though the latter, in many instances, are not deductible. Taxpayer confusion may be heightened by the fact that special assessments generally are collected at the same time and in the same manner as are property taxes.

[3] For example, see Public Act 147 of 1939, the Huron-Clinton metropolitan authority act; Public Act 24 of 1989, the district library establishment act; and Public Act 292 of 1989, the metropolitan council act.

Appendix A

Unit Wide Ad Valorem Special Assessment Districts in Michigan by Type of Governmental Unit, Number of Districts, SEV of District, and Levy

County	Imposed By	Number of Districts	State-Equalized Valuation of District	Levy
Antrim	Townships	12	$ 761,845,905	$ 965,125
	Cities	1	5,259,641	10,519
		13	767,105,546	975,644
Arenac	Townships	3	46,297,792	46,298
Bay	Townships	1	16,437,100	24,656
Berrien	Townships	9	616,112,666	1,968,685
	Villages	1	6,029,245	20,355
		10	622,141,911	1,989,040
Calhoun	Townships	5	197,880,900	464,979
Cheboygan	Townships	3	100,422,700	352,182
Clare	Townships	5	103,960,890	158,002
Crawford	Townships	1	36,938,800	73,878
Delta	Townships	1	9,104,006	9,104
Eaton	Townships	2	95,229,700	138,370
Gladwin	Townships	6	126,360,811	126,362
	Cities	1	28,263,295	28,264
		7	154,624,106	154,626
Genesee	Townships	1	228,881,060	412,992
Grand Traverse	Townships	7	1,084,134,471	1,407,973
Gratiot	Townships	1	33,698,470	69,419
Houghton	Townships	1	1,961,200	2,133
Ingham	Townships	1	47,513,066	60,808
Ionia	Townships	1	16,637,880	33,276
Kalamazoo	Townships	4	799,181,125	1,472,747
	Villages	1	7,670,900	15,342
		5	806,852,025	1,488,089
Kent	Townships	3	337,634,795	477,264
	Cities	1	887,358,827	221,840
		4	1,224,993,622	699,104

Appendix A (Continued)

Unit Wide Ad Valorem Special Assessment Districts in Michigan by Type of Governmental Unit, Number of Districts, SEV of District, and Levy

County	Imposed By	Number of Districts	State-Equalized Valuation of District	Levy
Leelanau	Townships	3	324,346,733	217,188
Macomb	Townships	6	3,973,350,483	27,345,424
Manistee	Townships	1	19,646,700	9,823
Marquette	Townships	5	139,207,067	283,679
Midland	Townships	4	153,440,654	208,314
Missaukee	Townships	1	15,833,300	11,866
	Cities	1	13,662,800	47,819
		2	729,496,100	59,685
Oakland	Townships	6	266,972,191	1,812,542
	Cities	3	350,798,284	1,958,876
		9	617,770,475	3,771,418
Osceola	Townships	2	34,299,115	46,304
Otsego	Townships	1	78,165,100	67,222
Roscommon	Townships	4	288,584,024	469,890
Saginaw	Townships	10	391,554,303	982,726
St. Clair	Townships	6	995,109,958	1,359,001
St. Joseph	Townships	2	34,559,760	71,746
Tuscola	Townships	1	33,266,100	62,713
Van Buren	Townships	9	281,198,383	598,916
	Cities	2	20,506,992	24,982
	Villages	2	3,492,180	34,312
		13	305,197,555	658,210
Washtenaw	Townships	1	148,465,625	74,233
	Cities	2	167,271,450	468,360
		3	315,737,075	542,593
Wayne	Townships	3	2,034,007,854	10,830,842
Totals	**Townships**	**132**	**13,872,240,687**	**52,716,682**
	Cities	**11**	**1,473,121,289**	**2,735,678**
	Villages	**4**	**17,192,325**	**70,009**
		147	**$15,362,554,301**	**$55,522,369**

Source: State Tax Commission, 1995 Supplementary Special Assessment Reports; CRC calculation.

Appendix B

Special Assessments Authorized by State Law

Public Act and Year	Governmental Unit	Method of Purpose	Creating District	Voter Referendum	Levy Limits		Property Subject to Assessment
					Amount	Installments	
Act 3 of 1895 Chapters VIII and IX	Village incorporation	Improvements: streets and street paving, drains and sewers, other improvements	Pursuant to village ordinance	No	None	Not specified	Property specially benefited
Act 215 of 1895	Fourth class cities	Public improvements	As specified in municipal ordinance	No	None	None	Property specially benefited
Act 278 of 1909	Home rule villages	Public improvements	Specified in village charter	Subject to charter	None		Not specified
Act 279 of 1909	Home rule cities	Public improvements and street lighting	Specified in city charter	Subject to charter	None	None	Public improvements: not specified Street lighting: on lands abutting street. City-wide special assessment district is prohibited if real property in district is assessed on ad valorem basis
Act 283 of 1909	Townships	Improvements to public highways	Pursuant to Act 188 of 1954 (See below)	No	Not specified	Not Specified	Pursuant to Act 188 of 1954
Act 398 of 1919	Townships, cities, or villages in combination	Construction or reconstruction of bridges	By county board of commissioners upon petition by units of local government	No	None	Not specified	Benefited property
Act 116 of 1923	Townships and villages	Public improvements: garbage collection and disposal; police and fire protection and equipment; water mains for fire protection; streets and bridges; sanitary sewers; public transportation; street lighting	By petition by at least 51% of land owners in special assessment district	No	Annual installments for a single assessment cannot exceed 15% of assessed value, nor all assessment more than 45% of assessed value, in any one year	10 to 40 annual installments depending on the type of improvement	Making, levying, and collection pursuant to Act 3 of 1985 Street lighting: front footage basis or levied equally on each parcel of property assessed

Appendix B (Continued)

Special Assessments Authorized by State Law

Public Act and Year	Governmental Unit	Method of Purpose	Creating District	Voter Referendum	Levy Limits		Property Subject to Assessment
					Amount	Installments	
Act 81 of 1925	Any two adjoining cities, or villages, or both	Public improvements	As determined by legislative body	No	None		Benefited property
Act 312 of 1929	Metropolitan districts established by any two or more cities, villages, townships	Acquisition, operation, and maintenance of parks or public utilities used to provide sewage disposal, drainage, water, or transportation	Not specified	Subject to charter	None	Not specified	Not specified
Act 246 of 1931	Townships	Improvements: county roads within townships, sidewalks	By resolution of county road commissioners upon petition by owners of at least 51% of lineal front footage abutting public highway, or upon receipt of resolution from township board	No	None	Not to exceed 10 annual installments	Lands benefited, either individually or to township at large
Act 342 of 1939	Counties or contracting municipalities	Public improvements: water and sewer systems, garbage collection	Pursuant to charter or statutory provision	Not on special assessment, but on contract	None	Not to exceed 40 annual installments	Property benefited by improvement
Act 183 of 1943	Counties	Zoning; acquisition of private property for the purpose of removing nonconforming uses	In accordance with applicable statutory provisions relating to creation and operation of special assessment districts for public improvements in counties			Not specified	Not specified

Appendix B (Continued)

Special Assessments Authorized by State Law

Public Act and Year	Governmental Unit	Method of Purpose	Creating District	Voter Referendum	Levy Limits		Property Subject to Assessment
					Amount	Installments	
Act 359 of 1947	Charter townships	Local or public improvements: street paving, curbs and gutters, pedestrian bridges, sidewalks, solid waste disposal, storm and sanitary sewers, water systems, highway lighting	Pursuant to Act 188 of 1954	No	Not specified	Not specified	Lands abutting upon and adjacent to or otherwise benefited by the improvement
Act 208 of 1949	Cities, villages, and townships	Improvement of blighted neighborhoods	As part of development of neighborhood betterment plan, with written consent of a majority of the owners of property in the district	No	None		Property which is coterminous with the neighborhood area as set forth in the neighborhood plan
Act 33 of 1951	Townships, incorporated villages, cities with less than 10,000 population	Police and fire equipment and operations	By resolution of township board pursuant to Act 188 of 1954	No	10 mills for equipment; none for operations	Not to exceed 15 annual installments	All lands and premises especially benefited by police or fire protection
Act 188 of 1954	Townships	Public improvements: storm and sanitary sewers, water mains, improvement of public highways, sidewalks, parks, tree removal, garbage collection, lighting, bicycle paths	By resolution of township board after hearing on petition, if required or filed by more than 50% of affected land owners	No	None	One or more installments	Lands benefited in proportion to benefit received
Act 233 of 1955	Authorities established by two or more counties, townships, cities, and villages	Acquisition or operation of water supply or sewage disposal system	Pursuant to charter or statutory provision governing each contracting municipality	Not on special assessment, but on contract with authority	None	None, but 40 year limit on contract	Lands benefited

Appendix B (Continued)

Special Assessments Authorized by State Law

Public Act and Year	Governmental Unit	Method of Purpose	Creating District	Voter Referendum	Levy Limits		Property Subject to Assessment
					Amount	Installments	
Act 40 of 1956 chapters 20 and 21	Drainage boards; public corporations: the state, counties, cities, villages, townships, metropolitan districts, and authorities	Intracounty and intercounty drainage projects	By action of drainage board with respect to public corporations at large; by resolution of public corporation legislative body pursuant to charter or statutory with respect to that portion of lands therein	No	None	None for assessment s at large; not to exceed 30 installments for assessments by a public corporation	Drainage board assesses public corporations at large; a public corporation may in turn assess lands therein especially benefited
Act 185 of 1957	County or contracting municipality	Public works: acquisition, enlargement, or extension of water supply, sewage disposal, refuse, or ero-control system; lake improvements	By resolution of public works board	No	None	Not to exceed 30 installments; contracts cannot exceed 40 years	Lands benefited
Act 120 of 1961	Cities with a master plan for physical development	Redevelopment of principal shopping area	Pursuant to charter or statutory provision	No	None	Not to exceed 20 annual installments	Levied against land or interests therein on the basis of special benefit to the respective properties
Act 76 of 1965	Counties, cities villages, townships school districts, port districts, metropolitan districts	Construction, operation, and maintenance of waste disposal and water supply system	Not specified	No	None	None	Not specified
Act 288 of 1967	Townships, cities villages	Subdivision control; operation and maintenance of storm water retention basins	By resolution of local governing body	No	None	Not specified	Not specified
Act 169 of 1970	Counties, townships, cities, and villages	Local historic districts	Special assessment districts not authorized	–	–	–	Any property within historic district threatened with “demolition by neglect or upon which work has been done without a permit

Appendix B (Continued)

Special Assessments Authorized by State Law

Public Act and Year	Governmental Unit	Method of Purpose	Creating District	Voter Referendum	Levy Limits		Property Subject to Assessment
					Amount	Installments	
Act 139 of 1972	Townships	Maintenance or improvement of private roads	Pursuant to Act 188 of 1954, upon petition by at least 51% of affected property owners	No	Not specified	District cannot last more than 5 years	Property benefited, on a pro rata basis
Act 197 of 1975	Downtown development authority of cities, townships, and villages	Construction, renovation, etc, of public facilities, existing buildings, or multi-family dwellings.	As provided by law	No	None	None	Not specified
Act 639 of 1978	Cities and counties	Port authorities	By resolution of governing body of constituent unit other than a county	No	None	Not to exceed 30 installments	Benefited lands
Act 281 of 1986	Local development finance authorities established by cities, villages, and urban townships	Public facilities designed to reduce, eliminate, or prevent the spread of soil and groundwater contamination	By action of city, village, or urban township which established the local development finance authority	No	Not specified	Not specified	At least 50% of the amount specially assessed must be from parcels owned by parties who are potentially responsible for the indentified groundwater contamination. (At least 50% of the operating costs of the public facility must be paid by special assessment)
Act 83 of 1989	Townships	Permits townships to contract with cities or villages to acquire water for fire protection and other purposes	By resolution of township board in township where lands are serviced by water system financed pursuant to Act 94 of 1933, Act 342 of 1939, or Act 233 of 1955	No	No more than 1/2 of 1% of assessed value in any one year	None	Benefited properties

Appendix B (Continued)

Special Assessments Authorized by State Law

Public Act and Year	Governmental Unit	Method of Purpose	Creating District	Voter Referendum	Levy Limits		Property Subject to Assessment
					Amount	Installments	
Act 186 of 1989	Public corporations: counties, cities, villages, townships, districts, or authorities	Acquisition, improvement, enlargement, and operation of solid waste system	By resolution of county board of commissioners; for a public corporation other than a county, pursuant to statute or charter provision of public corporation;	No		Not to exceed 30 installments for public corporation other than a county; a contract cannot exceed 40 years	Lands benefited
Act 173 of 1992	Land reclamation and improvement authorities established by any individual, partnership, corporation, association, governmental entity, or other legal entity	Improvements: construction, maintenance, and repair of storm and sanitary sewers, public roads, parks, bicycle paths, structures for elevated foot travel; garbage collection and disposal; erosion control; tree removal; etc	By resolution of the authority board. A separate but geographically coterminous special assessment may be established for each improvement	No	None	One or more installments, but no installment can be less than 1/2 of any subsequent installment	Property located within the authority district and especially benefited by an improvement
Act 451 of 1994 Part 47	Sewage disposal or water supply districts established by metropolitan districts, counties, cities, townships, and villages	Acquisition, construction, and operation of sewage disposal and water supply system	Pursuant to charter or statutory provision of contracting municipality or water supply district	Not on special assessment, but on creation of sewage disposal	None	None, but 40 year limit on contract	Property benefited
Act 59 of 1995 Part 307 (Act 59 amended Act 451 of 1994)	Counties	Determination and maintenance of inland lake water levels	By resolution of county board of commissioners	No	Sufficient to meet bond and note obligations	None	Property benefited, including privately owned property, political subdivisions of the state, and state owned lands under the jurisdiction of the director of the Michigan Department of Natural Resources

Appendix B (Continued)

Special Assessments Authorized by State Law

Public Act and Year	Governmental Unit	Method of Purpose	Creating District	Voter Referendum	Levy Limits		Property Subject to Assessment
					Amount	Installments	
Act 59 of 1995 Part 309	Any unit of local government	Improvements to public inland lakes	Action by lake board pursuant to resolution by local governing body	No	None	Not to exceed 30 annual installments	Lands benefited in proportion to benefit received
Act 59 of 1995 Part 341	Counties with a population of 400,000 or less	Irrigation districts and irrigation improvements	Not specified	No	None	Not to exceed 10 annual installments	Lots, premises, and parcels of land benefited by irrigation improvements
Act 153 of 1996	Counties, cities, villages and townships	Park acquisition or improvement	By resolution of legislative body, or upon petition by (1) owners of 2/ 3 of the land in special assessment district and (2) 2/ 3 of the land owners	No	None	None	Not specified

Source: Michigan Statutes Annotated; CRC tabulation. In addition to the substantive statutes listed above, there are a number of procedural statutes. These include: Public Act 38 of 1883, which authorizes the establishment of special assessment districts when land is transferred from any city, township, or village to another city, township, or village and there is an outstanding special assessment at the time of the transfer; Public Act 162 of 1962, which prescribes notice of special assessment hearings requirements which supersede those of any charter or other statute; and Public Act 225 of 1976, which permits the deferment of special assessments imposed on homesteads owned and occupied by persons 65 years of age or older.

Municipal Report

Organization of City and Village Government in Michigan

Updated January 2004

This Municipal Report examines the organization of city and village government in Michigan, forms of government and the development of local home rule.

Systems of Government for Michigan Municipalities, by the late Arthur W Bromage, Professor Emeritus of Political Science, University of Michigan, explains the various structural forms of government available to cities and villages. The minimum area and population standards for each classification are detailed. The chief characteristics of each organizational form and other municipal practices in Michigan are related to nationwide historic trends.

Caution should be taken in using statistical information in this report. Incorporation and form of government changes number upward to a dozen a year. The statistical information, therefore, is accurate as of January 2004.

Systems of Government for Michigan Municipalities[1]

The present status of cities and villages in Michigan is the result of historical tradition, of the home rule provisions of the Constitutions of 1908 and 1963, of the home rule acts of 1909, and the initiative of individual communities.

During the nineteenth century, the State Legislature recognized the need to incorporate by special acts the densely settled communities within the basic pattern of counties and townships. The system of local government written into Michigan's 1908 and 1963 Constitutions recognized the continuing existence of counties and townships, with the voluntary incorporation of the more densely settled areas as cities and villages. An innovation in the 1908 Constitution was a provision for city and village home rule charters – a change which was to have many repercussions.

Village

The basic difference between a city and a village is that whenever and wherever an area is incorporated as a village, it stays within the township. The villagers participate in township affairs and pay township taxes in addition to having their own village government. Incorporation as a city, however, removes an area from township government. City dwellers participate in county elections and pay county taxes, as do villagers, but are removed from township units.

Villages in Michigan are organized primarily to establish local regulatory ordinances and to provide local services such as fire and police protection, public works and utilities. Certain of the local duties required by the state are not demanded of the village but are performed by the embracing township including assessing property; collecting taxes for counties and school districts; and administering county, state and national elections.

[1] Article by the late Arthur W. Bromage, Professor Emeritus of Political Science, the University of Michigan. Revised by the League's general counsel William L Steude in 1994. Updated January 2004.

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Most of the villages (212 of 260) are still governed under the general village law. Charters for villages are the exception, although any village may adopt a home rule document under 1909 PA 278, as amended, which is a companion to the 1909 Home Rule City Act (1909 PA 279). No special act villages exist, because the General Law Village Act of 1895 brought all then existing villages under its provisions. General law villages may make amendments to their basic law by home rule village act procedures. Such amendments, however, may not extend to a change in the form of government.

City

A city, being withdrawn from the township, must provide the basic, state-required duties as well as its own services. In addition to being responsible for assessing property and collecting taxes for county and school purposes, the city is also solely responsible for registration of voters and conduct of all elections within its boundaries.

The greater independence of the city, in maintaining local regulations and functions and state-imposed duties in one integrated unit, accounts for the creation of many small cities in Michigan during recent decades. The trend has also developed in villages to seek incorporation as cities whereby they achieve a separation of jurisdiction from the township.[2]

In January 2004, Michigan had 273 incorporated cities and 260 incorporated villages - a total of 533 municipalities. Of this total number, 313 had adopted home rule charters.

In 1895, adoption of the Fourth Class City Act created two types of cities: 1) fourth class cities (3,000 to 10,000 population), and 2) "special charter" cities (all cities not falling in the 3,000-10,000 population range). Over the course of a century, all but one of the "special charter" cities (Mackinac Island) has reincorporated as a home rule city.

The Michigan Legislature altered fourth class cities by enacting 1976 PA 334 (see also OAG 5525, 7/13/1979). This legislation designated all fourth class cities as home rule cities – however, they are governed by the Fourth Class City Act not a tailor-made charter written by an elected charter commission. Currently, seven cities continue to be governed by the Fourth Class City Act.

[2] Michigan Municipal League, Municipal Report, *Impact of Changing From a Village to a City* (Michigan Municipal League, 1994, 2003 Revised)

Standards of Incorporation

For incorporation of a home rule village, a population of 150 is the minimum, but there must be a minimum density of 100 to the square mile. There is no statutory requirement that a village must become a city when it experiences a rapid growth in population. Once incorporated, villages may seek reincorporation as fifth class home rule cities, providing their population is between 750 and 2,000. Alternatively, they may seek reincorporation as home rule cities if their population exceeds 2,000 with a density of 500 per square mile. For many years the Home Rule City Act required 2,000 population and density of 500 per square mile for city incorporation. A 1931 amendment permitted fifth class city incorporation at 750 to 2,000 population with the same 500 per square mile density, but authorized villages within this range to reincorporate as cities regardless of density.

There is no basic difference between a fifth class home rule city and a home rule city, except the population differential and the statutory requirements that fifth class home rule cities hold their elections on an at-large basis. If all the territory of an organized township is included within the boundaries of a village or villages, the village or villages, without boundary changes may be incorporated as a city or cities as provided in 1982 PA 457.

Unincorporated territory may be incorporated as a fifth class home rule city provided the population ranges from 750 to 2,000 and there is a density of 500 persons per square mile. The same density rule applies to the incorporation of territory as a home rule city if the area has a population of more than 2,000. There are no other methods of city incorporation today. A new city must be incorporated under the Home Rule City Act.

State Boundary Commission

Under 1968 PA 191, the State Boundary Commission must approve all petitions for city and village incorporation. The Boundary Commission is composed of three members appointed by the Governor. When the Commission sits in any county, the three members are joined by two county representatives (one from a township and one from a city), appointed by the probate judge.

In reviewing petitions for incorporation, the Boundary Commission is guided by certain statutory criteria: population; density; land area and uses; valuation; topography and drainage basins; urban growth factors; and business, commercial and industrial development. Additional factors are the need for governmental services; present status of services in the area to be incorporated; future needs; practicability of supplying such services by incorporation; prob-

able effect on the local governmental units remaining; relation of tax increases to benefits; and the financial capability of the proposed municipality (city or village). In other words, Boundary Commission review centers on the feasibility of the proposed city or village.

After review on the basis of criteria, the Boundary Commission may deny or affirm the petition. (Affirmative action may include some revision of the proposed boundaries on the Commission's initiative.) Once the Boundary Commission has issued an order approving incorporation, a petition may be filed for a referendum on the proposal. The referendum permits the voters to accept or reject the incorporation. If incorporation is approved by the voters, the incorporation may be finally accomplished only through the existing process of drafting and adopting a city or village charter.[3]

Home Rule

Home rule generally refers to the authority of a city
Home rule generally refers to the authority of a city
or village under a state's constitution and laws to draft and adopt a charter for its own government. This contrasts with legislative establishment of local charters by special act, which result in mandated charters from the state capitol. Home rule frees cities and villages to devise forms of government and exercise powers of local self-government under locally prepared charters adopted by local referendum.

Constitutional home rule is self-executing in some states and not so in others. Non-self-executing home rule, which Michigan wrote into its 1908 Constitution, leaves it up to the state Legislature to implement the home rule powers. Michigan's Legislature did this by enacting the Home Rule City Act and the Home Rule Village Act, both of 1909.

In turning to home rule when it did, Michigan became the seventh state to join in a movement which now includes 37 states. It was more than a national trend which motivated the Michigan Constitutional Convention early in this century. Under the special act system of the nineteenth century, Michigan cities were, according to one observer writing closer to the time, "afflicted by their charters with an assortment of governmental antiquities."[4]

The Legislature, under Article VII (Sections 21-22) of the 1963 Michigan Constitution, must provide for the incorporation of cities and villages by general law. Such general laws of incorporation must limit their rate of taxation and restrict their borrowing of money and their contracting of debt. The voters of each city and village have power to frame, adopt and amend charters in accordance with these general laws. Through regularly constituted authority, namely their established representative government, they may pass laws and ordinances pertaining to municipal concerns subject to the Constitution and general laws.

By January 2004, 265 cities and 48 villages have adopted home rule charters. The total of 313 charters so adopted makes Michigan one of the leading home rule states in the nation.

Charters

The Michigan Municipal League, versed in the needs of cities and villages, renders informational assistance through its charter inquiry service. A few Michigan attorneys have become specialists in drafting charters. The quality of city and village charters has improved steadily. No longer is it necessary for elected home rule charter commissioners to search for "model" charters elsewhere, since many good charters exist in Michigan itself.[5]

With some exceptions, Michigan charters have been influenced by nationwide trends in municipal practices such as the short ballot, the small council, election of council members-at-large, nonpartisan nominations and election of council members. Chief executives of either the appointed kind (a manager) or the elected type (a mayor) are favored. Localities have shown their ingenuity in searching for what is most appropriate to their needs. No longer is the Legislature burdened with enacting individual charters. The responsibility lies with locally elected charter commissioners, subject to legal review by the Governor under statutory requirements. Since charters must be adopted only by local referendum, the voters

[3] 1970 PA 219 provides that all annexation proposals, as well as proposed incorporations and consolidations, also come before the State Boundary Commission. For further information, contact the State Boundary Commission at 116 W Allegan, Lansing MI 48933.

[4] Robert T. Crane, *Municipal Home Rule in Michigan*, Proceedings of the Fourth Annual Convention of the Illinois Municipal League (Urbana, 1917), pp.62-65.

[5] For Michigan, classification as a home rule state, see Arthur W. Bromage, "The Home Rule Puzzle," *National Municipal Review* XLVI, pp118-123, 130 (March, 1957).

themselves make the final determination about the design of their government.

In the process of charter drafting and in the local referendum, civic energies have been released. Charter commissioners, elected by their fellow citizens, have shown themselves progressive yet careful when carrying out their trust.

Form of Government: Cities

Michigan cities have used all major forms of government: weak mayor and council, strong mayor and council, commission, and council-manager. During the nineteenth century, special act charters were frequently of the weak mayor-council plan, as was the Fourth Class City Act of 1895. This form of government was exemplified by an elected mayor with limited administrative authority, election of councilmembers on a ward system, partisan elections, elected administrative officials and administrative boards to supervise city departmental operations.

By January 2004, 265 Michigan cities had home rule charters drafted by locally elected charter commissions and adopted by local referendum.

In 89 home rule cities, variations of the mayor-council system predominated. With the coming of home rule, experimentation began with the commission plan in the Battle Creek Charter of 1915, and with the strong mayor system in the Detroit Charter of 1918. Major Michigan cities were quick to draft and adopt council-manager charters in Jackson (1915), in Grand Rapids (1917) and in Kalamazoo (1918). As in many other states, Michigan cities experimented with government by commission earlier in this century, but the movement was halted as council-manager charters became popular. Michigan has among its home rule cities a few examples of the strong mayor plan, exemplified by the charters of Detroit and Dearborn. The latter is an unusual example of a home rule charter which provides for a very complete integration of the administrative hierarchy under an elected mayor. The Dearborn charter (1942) gives the mayor a pervasive authority to appoint and remove administrative officers, a veto power, an executive budget in terms of preparation and control and other means of executive leadership and administrative supervision.

The City of Flint, with a population of 124,943, is the only large Michigan city to follow the lead of certain other large cities – San Francisco, New Orleans, Philadelphia, and New York City – in providing some kind of chief administrative officer under a strong mayor. Detroit is more appropriately classified as strong mayor in type, such as Cleveland, Denver and Omaha. The strong mayor charter in Detroit does not provide for any form of chief administrative officer under the mayor. Yet experimentation has begun on a moderate scale in Michigan with providing some form of assistance to mayors apart from the departmental level.

Form of Government: Villages

General Law Villages

Of the 260 villages in Michigan, 48 have home rule charters and 212 are governed under the General Law Village Act (1895 Act 3). The general law village, the most common by far, has the typical weak mayor-council form of government.

In the general law village the chief executive, known as a president, comes closest in formal powers to a weak mayor. The president serves as a member of the council and as its presiding officer. With the consent of the council he/she appoints a street administrator, and such other officers as the council may establish. Comprising the council itself are six trustees besides the president. Three trustees are elected annually to serve for two-year terms, and a president is elected annually. A recent election option has been given to villages providing a change to either three trustees to be elected every biennial election with a term of four years or the election of all six trustees every biennial election with a term of two years. Other directly elected officers are the clerk and treasurer. Appointed and ex officio boards can include the boards of registration, election commissioners, election inspectors and cemetery trustees.

1998 Revisions to the GLV Act

Public Acts 254 and 255 were signed into law by the Governor on July 7, 1998, revising the General Law Village (GLV) Act which has governed villages since 1895. The GLV Act is still the statutory charter for 212 villages. The new act is basically a rewrite of language rather than an expansion of authority. The act explicitly confirms the power of a village to amend the GLV Act locally as provided by the Home Rule Village Act. The most significant changes to the act are that by ordinance. A village council may:

1. change from an elected to an appointed clerk, or treasurer, or both, and

2. reduce the number of trustees from six to four.

An ordinance making any such change in the council's size, or appointment of elected administrative officials, requires a two-thirds vote of the council. The amendment is effective 45 days after its adoption, subject to a referendum if a petition is signed by 10 percent of the registered voters within that 45-day period. The council's authority to make

such changes by ordinance, subject to the referendum, parallels the council's existing authority to provide for a village manager by ordinance, subject to referendum.

Home Rule Villages

The Home Rule Village Act requires that every village so incorporated provide for the election of a president, clerk and legislative body, and for the election or appointment of such other officers and boards as may be essential. However, the president need not be directly elected by the people but may be elected by the village council. Of the 48 home rule villages, 19 have a village manager position.

The home rule village form of government offers flexibility that is not found in the 1895 statewide General Law Village Act provisions. Home rule village charters in Michigan are as diverse as the communities that adopt them. For example:

- Almont has a council of seven. Four councilmembers are elected at each regular village election. The three candidates receiving the highest number of votes are elected for three years and the candidate receiving the fourth highest number of votes is elected for two years. The council elects a president and appoints a village manager.

- Cement City has a council of five. At each regular village election three councilmembers are elected. The two candidates receiving the highest number of votes are elected for four years and the candidate receiving the third highest number of votes is elected for two years.

- Hopkins has a board of trustees of six. Trustees are elected to two-year terms of office. The president, clerk, treasurer and assessor are all elected to one-year terms of office.

- Lake Orion has a village manager elected by the council on the basis of training and ability. The manager holds office at the pleasure of the council.

- Milford has a village manager who is the chief administrative officer of the village. The manager is charged with the responsibility of supervising and managing all the services of the village and with the responsibility for enforcing the ordinances of the village, the village charter and applicable state laws.

- Oxford has a village manager who is the chief administrative officer for the village. The manager prepares the budget of the village for consideration by the council. He/she has the right to take part in the discussion of all matters coming before the council but has no vote.

Appendix A

Incorporation Status for 273 Cities and 260 Villages (as of January 2004)

	Cities			Villages		
Population Range	Number in Range	Home Rule	Home Rule Fourth Class City Act	Special Charter	Home Rule	General Law
Over 50,000	25	25				
25,000-50,000	20	20				
10,000-24,999	44	43			1	
5,000-9,999	53	51			2	
2,000-4,999	113	78	2		9	24
750-1,999	140	45	1		11	83
Under 750	138	3	4	1	25	105
Total	533	265	7	1	48	212

Appendix B

Home Rule Cities in Michigan (as of January 2004)

	Population		Population		Population
Adrian	21,574 *	Croswell	2,467 *	Grosse Pointe Farms	9,764 *
Albion	9,144 *	Crystal Falls	1,791 *	Grosse Pointe Park	12,443 *
Algonac	4,613 *	Davison	5,536 *	Grosse Pointe Woods	17,080 *
Allegan	4,838 *	Dearborn	97,775	Hamtramck	22,976
Allen Park	29,376 *	Dearborn Heights	58,264	Hancock	4,323 *
Alma	9,275 *	Detroit	951,270	Harbor Beach	1,837 *
Alpena	11,304 *	DeWitt	4,702 *	Harbor Springs	1,567 *
Ann Arbor	114,024 *	Dowagiac	6,147 *	Harper Woods	14,254 *
Auburn	2,011 *	Durand	3,933 *	Harrison	2,108
Auburn Hills	19,837 *	East Grand Rapids	10,764 *	Harrisville	514
AuGres	1,028 *	East Jordan	2,507 *	Hart	1,950 *
Bad Axe	3,462 *	East Lansing	46,525 *	Hartford	2,476 *
Bangor	1,933 *	East Tawas	2,951 *	Hastings	7,095 *
Battle Creek	53,364 *	Eastpointe	34,077 *	Hazel Park	18,963 *
Bay City	36,817 *	Eaton Rapids	5,330 *	Highland Park	16,746 *
Beaverton	1,106 *	Ecorse	11,229	Hillsdale	8,233 *
Belding	5,877 *	Escanaba	13,140 *	Holland	35,048 *
Belleville	3,997 *	Essexville	3,766 *	Houghton	7,010 *
Benton Harbor	11,812 *	Evart	1,738 *	Howell	9,232 *
Berkley	15,531 *	Farmington	10,423 *	Hudson	2,499 *
Bessemer	2,148 *	Farmington Hills	82,111 *	Hudsonville	7,160 *
Big Rapids	10,849 *	Fennville	1,459	Huntington Woods	6,151 *
Birmingham	19,291 *	Fenton	10,582 *	Imlay City	3,869 *
Bloomfield Hills	3,940 *	Ferndale	22,105 *	Inkster	30,115 *
Boyne City	3,503 *	Ferrysburg	3,040 *	Ionia	10,569 *
Bridgman	2,428 *	Flat Rock	8,488	Iron Mountain	8,154 *
Brighton	6,701 *	Flint	124,943 *	Iron River	3,386 *
Bronson	2,421 *	Flushing	8,348 *	Ironwood	6,293 *
Brown City	1,334 *	Frankenmuth	4,838 *	Ishpeming	6,686 *
Buchanan	4,681 *	Frankfort	1,513 *	Ithaca	3,098 *
Burton	30,308	Fraser	15,297 *	Jackson	36,316 *
Cadillac	10,000 *	Fremont	4,224 *	Kalamazoo	77,145 *
Carson City	1,190 *	Gaastra	339 *	Keego Harbor	2,769 *
Caspian	997 *	Galesburg	1,988	Kentwood	45,255
Cedar Springs	3,112 *	Garden City	30,047 *	Kingsford	5,549 *
Center Line	8,531 *	Gaylord	3,681 *	Laingsburg	1,223
Charlevoix	2,994 *	Gibraltar	4,264 *	Lake Angelus	326
Charlotte	8,389 *	Gladstone	5,032 *	Lake City	923 *
Cheboygan	5,295 *	Gladwin	3,001 *	Lansing	119,128
Chelsea	4,398*	Gobles	815	Lapeer	9,072 *
Clare	3,173 *	Grand Blanc	8,242 *	Lathrup Village	4,236 *
Clarkston	962 *	Grand Haven	11,168 *	Leslie	2,044 *
Clawson	12,732 *	Grand Ledge	7,813 *	Lincoln Park	40,008
Clio	2,483 *	Grand Rapids	197,800 *	Linden	2,861 *
Coldwater	12,967 *	Grandville	16,263 *	Litchfield	1,458 *
Coleman	1,296	Grant	881 *	Livonia	100,545 *
Coloma	1,595	Grayling	1,952 *	Lowell	4,013 *
Coopersville	3,910 *	Greenville	7,935 *	Ludington	8,357 *
Corunna	3,381 *	Grosse Pointe	5,670 *	Luna Pier	1,483 *

Mackinac Island	523 *	Otsego	3,933 *	South Haven	5,021 *
Madison Heights	31,101 *	Owosso	15,713 *	South Lyon	10,036 *
Manistee	6,586 *	Parchment	1,936 *	Southfield	78,296 *
Manistique	3,583 *	Perry	2,065	Southgate	30,136 *
Manton	1,221 *	Petersburg	1,157	Springfield	5,189 *
Marine City	4,652 *	Petoskey	6,080 *	Standish	1,581 *
Marlette	2,104 *	Pinconning	1,386 *	Stanton	1,504
Marquette	19,661 *	Plainwell	3,933 *	Stephenson	875
Marshall	7,459 *	Pleasant Ridge	2,594 *	Sterling Heights	124,471 *
Marysville	9,684 *	Plymouth	9,022 *	Sturgis	11,285 *
Mason	6,714 *	Pontiac	66,337	Swartz Creek	5,102 *
McBain	584	Port Huron	32,338 *	Sylvan Lake	1,735 *
Melvindale	10,735 *	Portage	44,897 *	Tawas City	2,005 *
Memphis	1,129	Portland	3,789 *	Taylor	65,868
Menominee	9,131 *	Potterville	2,168 *	Tecumseh	8,574 *
Midland	41,685 *	Reading	1,134 *	Three Rivers	7,328 *
Milan	4,775 *	Reed City	2,430 *	Traverse City	14,532 *
Monroe	22,076 *	Richmond	4,897 *	Trenton	19,584 *
Montague	2,407 *	River Rouge	9,917	Troy	80,959 *
Montrose	1,619 *	Riverview	13,272 *	Utica	4,577
Morenci	2,398 *	Rochester	10,467 *	Vassar	2,823 *
Mount Clemens	17,312 *	Rochester Hills	68,825 *	Wakefield	2,085 *
Mount Morris	3,194 *	Rockford	4,626 *	Walker	21,842 *
Mount Pleasant	25,946 *	Rockwood	3,442 *	Walled Lake	6,713 *
Munising	2,539 *	Rogers City	3,322 *	Warren	138,247
Muskegon	40,105 *	Romulus	22,979	Watervliet	1,843 *
Muskegon Heights	12,049 *	Roosevelt Park	3,890 *	Wayland	3,939 *
Negaunee	4,576 *	Rose City	721	Wayne	19,051 *
New Baltimore	7,405	Roseville	48,129 *	West Branch	1,926 *
New Buffalo	2,200 *	Royal Oak	60,062 *	Westland	86,602
Newaygo	1,670 *	Saginaw	61,799 *	White Cloud	1,420 *
Niles	12,204 *	Saint Clair	5,802 *	Whitehall	2,884 *
North Muskegon	4,031 *	Saint Clair Shores	63,096 *	Whittemore	476
Northville	6,459 *	Saint Ignace	2,678 *	Williamston	3,441 *
Norton Shores	22,527 *	Saint Johns	7,485 *	Wixom	13,263 *
Norway	2,959 *	Saint Joseph	8,789 *	Woodhaven	12,530 *
Novi	47,386 *	Saint Louis	4,494 *	Wyandotte	28,006 *
Oak Park	29,793 *	Saline	8,034 *	Wyoming	69,368 *
Olivet	1,758	Sandusky	2,745 *	Yale	2,063 *
Omer	337	Saugatuck	1,065 *	Ypsilanti	22,362 *
Onaway	993 *	Sault Ste Marie	16,542 *	Zeeland	5,805 *
Orchard Lake Village	2,215	Scottville	1,266 *	Zilwaukee	1,799 *

* Home Rule City with a manager, superintendent or supervisor position

Appendix C

Home Rule Cities with Fourth Class City Act Charters (as of January 2004)

	Population
Beaverton	1,106
Harrisville	514
Omer	337
Rose City	721
Sandusky	2,745
Whittemore	476
Yale	2,063

Special Charter City

Mackinac Island	523

Note: All of the above communities operate under a mayor-council form of government unless indicated.

Appendix D

Home Rule Villages in Michigan (as of January 2004)

	Population		Population		Population
Allen	225	Edwardsburg	1,147	Mattawan	2,536 *
Almont	2,803 *	Ellsworth	483	Michiana	200 *
Alpha	198	Estral Beach	486	Milford	6,272 *
Barton Hills Village	335 *	Fountain	175 *	Otisville	882 *
Beulah	363	Franklin	2,937 *	Oxford	3,540 *
Beverly Hills	10,437 *	Free Soil	177	Powers	430
Bingham Farms	1,030 *	Goodrich	1,353 *	Prescott	286
Birch Run	1,653 *	Grand Beach	221	Ravenna	1,206
Carleton	2,562	Grosse Pointe Shores	2,823 *	Rosebush	379
Carney	225	Holly	6,135 *	Sanford	943
Caseville	888	Honor	299	Shoreham	860
Cement City	452	Hopkins	592	South Rockwood	1,284
Chatham	231	Lake Isabella	1,243 *	Spring Lake	2,514 *
Clarksville	317	Lake Orion	2,715 *	Sterling	533
Copper City	205	Lennon	517	Turner	139
Eastlake	441	Martin	435	Wolverine Lake	4,415 *

* Home Rule Village with manager position

Appendix E

General Law Villages in Michigan (as of January 2004)

	Population		Population		Population
Addison	627	Constantine	2,095 *	Kingsley	1,469 *
Ahmeek	157	Copemish	232	Kingston	450
Akron	461	Custer	318	Lake Ann	276
Alanson	785	Daggett	270	Lake Linden	1,081
Applegate	287	Dansville	429	Lake Odessa	2,272 *
Armada	1,537	Decatur	1,838 *	Lakeview	1,112 *
Ashley	526	Deckerville	944 *	Lakewood Club	1,006
Athens	1,111	Deerfield	1,005	L'Anse	2,107 *
Augusta	899	DeTour Village	421	Laurium	2,126 *
Baldwin	1,107	Dexter	2,338 *	Lawrence	1,059
Bancroft	616	Dimondale	1,342 *	Lawton	1,859
Baraga	1,285 *	Douglas	1,214 *	Leonard	332
Baroda	858	Dryden	815	LeRoy	267
Barryton	381	Dundee	3,522 *	Lexington	1,104 *
Bear Lake	318	Eagle	130	Lincoln	364
Bellaire	1,164	Eau Claire	656	Luther	339
Bellevue	1,365 *	Edmore	1,244 *	Lyons	726
Benzonia	519	Elberta	457	Mackinaw City	859 *
Berrien Springs	1,862	Elk Rapids	1,700 *	Mancelona	1,408 *
Blissfield	3,223 *	Elkton	863	Manchester	2,160
Bloomingdale	528	Elsie	1,055	Maple Rapids	643
Boyne Falls	370	Emmett	251	Marcellus	1,162
Breckenridge	1,339 *	Empire	378	Marion	836
Breedsville	235	Fairgrove	627	Maybee	505
Britton	699	Farwell	855	Mayville	1,055
Brooklyn	1,176	Fife Lake	466	McBride	232
Buckley	550	Forestville	127	Mecosta	440
Burlington	405	Fowler	1,136	Melvin	160
Burr Oak	797	Fowlerville	2,972 *	Mendon	917 *
Byron	595	Freeport	444	Merrill	782
Caledonia	1,102 *	Fruitport	1,124	Mesick	447
Calumet	879	Gagetown	389	Metamora	507
Camden	550	Gaines	366	Middleville	2,721 *
Capac	1,775	Galien	593	Millersburg	263
Caro	4,145 *	Garden	240	Millington	1,137 *
Carsonville	502	Grass Lake	1,082	Minden City	242
Casnovia	315	Hanover	424	Montgomery	386
Cass City	2,643 *	Harrietta	169	Morley	495
Cassopolis	1,740 *	Hersey	374	Morrice	882
Central Lake	990	Hesperia	954	Muir	634
Centreville	1,579 *	Hillman	685 *	Mulliken	557
Chesaning	2,548 *	Homer	1,851 *	Nashville	1,684
Clayton	326	Howard City	1,585 *	New Era	461
Clifford	324	Hubbardston	394	New Haven	3,071
Climax	791	Jonesville	2,337 *	New Lothrop	603
Clinton	2,293 *	Kaleva	509	Newberry	2,686 *
Colon	1,227	Kalkaska	2,226 *	North Adams	514
Columbiaville	815 *	Kent City	1,061 *	North Branch	1,027
Concord	1,101	Kinde	534	Northport	648

Oakley	339	Quincy	1,701 *	Suttons Bay	589
Onekama	647	Reese	1,375 *	Tekonsha	712
Onsted	813	Richland	593	Thompsonville	457
Ontonagon	1,769 *	Romeo	3,721 *	Three Oaks	1,329
Ortonville	1,535 *	Roscommon	1,133 *	Tustin	237
Otter Lake	437	Rothbury	416	Twining	192
Ovid	1,514	Saint Charles	2,215 *	Ubly	873
Owendale	296	Sand Lake	492	Union City	1,804 *
Parma	907	Saranac	1,326	Unionville	605
Paw Paw	3,363 *	Schoolcraft	1,587 *	Vandalia	429
Peck	599	Sebewaing	1,974	Vanderbilt	587
Pellston	771	Shelby	1,914 *	Vermontville	789
Pentwater	958 *	Shepherd	1,536	Vernon	847
Perrinton	439	Sheridan	705	Vicksburg	2,320
Pewamo	560	Sherwood	324	Waldron	590
Pierson	185	South Range	727	Walkerville	254
Pigeon	1,207 *	Sparta	4,159 *	Webberville	1,503
Pinckney	2,141 *	Springport	704 *	Westphalia	876
Port Austin	737	Stanwood	204	White Pigeon	1,627
Port Hope	310	Stevensville	1,191 *	Wolverine	359
Port Sanilac	658	Stockbridge	1,260 *	Woodland	495
Posen	292	Sunfield	591		

* General Law Village with manager position

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Michigan Department of Treasury, LPS
2748 (1-00), Formerly L-2419

OFFICE USE ONLY

File No. _____

SENIOR CITIZEN OR TOTALLY AND PERMANENTLY DISABLED PERSON'S AFFIDAVIT REQUESTING SPECIAL ASSESSMENT DEFERMENT

1. First name & initial (if joint return, first names & initials of both)	Last name		2a. Your Social Security No.	3a. Your date of birth
Home address (number and street or RR#)			2b. Spouse's Social Security No.	3b. Spouse's date of birth
City, town or post office	State	ZIP Code	4. Home telephone No. ( )	

PART I - ELIGIBILITY DETERMINATION *(This part to be completed by applicant)*

See instructions on reverse side

5. Are you (a) citizen(s) of the United States? ☐ YES ☐ NO
6. Have you been (a) resident(s) of Michigan for five years or more? ☐ YES ☐ NO
7. Have you been the sole owner(s) of the homestead for five or more years? ☐ YES ☐ NO
8. What is the type or purpose of the special assessment? _____
9. When is the next installment payment due on the special assessment? ____ | ____ | ____ (Month | Day | Year)
10. Total household income for the past calendar year $ _____
11. a. Is there a mortgage or land contract on your homestead? ☐ YES ☐ NO
    b. Has the mortgagee or land contract holder on your homestead consented to this request? (A copy of the written consent MUST BE ATTACHED) ☐ YES ☐ NO
    c. Are you totally and permanently disabled and receiving benefits under Social Security? ☐ YES ☐ NO

12. I (we) declare under penalty of perjury that I (we) qualify for the deferment of special assessments on this homestead as defined in P.A. 225 of 1976, as amended; that I (we) have examined this affidavit and to the best of my (our) knowledge and belief it is true, correct and complete; and I (we) acknowledge that the amount of the assessment deferred will be subject to an interest rate of 1/2 of 1 percent per month or fraction of a month (6 percent per year) when the deferment is repaid to the State. **IF THIS DEFERMENT IS AUTHORIZED, THE STATE WILL PLACE A LIEN ON YOUR PROPERTY.**

Signature	Date	Spouse's Signature	Date

PART II - DEFERRED TAX ASSESSMENT COMPUTATION *(To be completed by local assessor)*

See instructions on reverse side

13. Original amount of special assessment (must be $300.00 or more to qualify; attach tax bill) $ _____
14. Amount paid on special assessment by owner $ _____
15. a. Amount of assessment to be deferred (line 13 less line 14) $ _____
    b. Amount of line 15a which is delinquent (attach tax bill) to:
    Local Unit $ _____
    County $ _____
16. Complete legal description of owned and occupied homestead:

_____

17. I have examined the above affidavit and determined that the amount claimed is correct. The above named applicant(s) is (are) aware of the 1/2 of 1 percent per month or portion of a month interest provision. The consent of the mortgagee or land contract holder, if applicable, is attached and the requirements of P.A. 225 of 1976, as amended, have been satisfied by the applicant(s).

Assessing Officer Signature	County	
City, Village or Township	Federal Employer I.D. No.	Assessor Telephone No. ( )

PURPOSE

The purpose of P.A. 225 of 1976, as amended, is to defer payment of special assessments for senior citizens who qualify under the act. (For a description of special assessments see instructions for line 8.)

The State of Michigan will pay the entire balance owing of the special assessment, including delinquent, current and future installments. At the time of payment, a lien will be recorded in favor of the State of Michigan. The lien will be subject to interest at 1/2 of 1 percent per month or fraction of a month (6 percent per year), when repaid to the State. The lien will be removed when the deferment, plus interest, is repaid by the taxpayer or the taxpayer's estate.

Senior citizens who meet the qualifications must repay the special assessment on his and/or her homestead when:

A. The homestead or any part thereof is sold,

B. The homestead is transferred to another,

C. A contract to sell is entered into,

D. One year has elapsed following the owner's death, subject to further order by the Probate Court.

(**NOTE:** P.A. 403 of 1980, as amended, provides for interest on the amount of deferment, at the rate of 1 percent per month or fraction of a month, if A, B, C or D should apply. Interest will be computed from the date of conveyance, transfer or contractual agreement.)

QUALIFICATIONS

To qualify for the special assessment deferment you or your spouse (if jointly owned) must:

A. Be 65 years or older at the time of filing of this affidavit.

(**Exception**: If you or your spouse are totally or permanently disabled, the age requirement is waived by authority of P.A. 360 of 1978, as amended.)

B. Have been a Michigan resident for 5 years or more and must have owned and occupied the homestead for 5 years or more.

C. Be a citizen of the United States.

D. Have a total household income not in excess of $8,000.00. This amount shall be increased to $10,000.00 for the determination of eligibility for a deferment after December 31, 1982. Starting January 1, 1984, household income eligibility will be determined each year by the annual average increase or decrease of the Detroit Consumer Price Index. Household income, as defined by the Income Tax Act, P.A. 281 of 1967, is the sum of federal adjusted gross income plus all income specifically excluded or exempt from the computation of federal adjusted gross income.

E. Have a special assessment of $300.00 or more.

INSTRUCTIONS FOR SECTION I:

(To be completed by the applicant)

Lines 1-4: Enter your complete name (or names, if owned jointly), homestead address, social security number(s), date(s) of birth and home telephone number.

Lines 5-7: Enter your response by checking the appropriate boxes.

Line 8: Enter the type or purpose of the special assessment on the line provided. A special assessment is an assessment against real property calculated on a benefit or ad valorem basis. Some examples of special assessments are assessments for curbs, gutters, sewers, water, connection fees to sewers or water, sidewalks, street paving and drains. Special assessments **DO NOT** include charges for current service.

Line 9: Enter the date of the special assessment for which the affidavit is being made.

Line 10: Enter total household income from your Michigan Homestead Property Tax Credit Claim.

Line 11: Check the appropriate box. If the homestead is mortgaged or under land contract, written consent of the mortgagee or land contract holder allowing applicant to defer the special assessment must be attached. Indicate if you or your spouse are totally or permanently disabled.

Line 12: Sign and date the affidavit after reviewing all answers.

INSTRUCTIONS TO SECTION II:

(To be completed by the assessor)

Line 13: Enter the original amount of the special assessment, including connection fees and all delinquent, current and future installments. To qualify for deferment this amount must be $300.00 or more, excluding interest.

Line 14: Enter the total amount which has been paid on the special assessment by the owner(s).

Line 15: Subtract line 14 from line 13 and enter the result on line 15a. This is the amount of the lien which will be placed on the homestead. This lien may be removed at any time by paying the full amount of the assessment deferred, plus 1/2 of 1 percent interest per month or fraction of a month. Payments should be made payable to the State of Michigan and mailed to:

Local Property Services Division
Michigan Department of Treasury
Treasury Building
Lansing, Michigan 48922

Enter on appropriate line 15b the amount of the special assessment included on line 15a which is delinquent.

Line 16: Enter the description of the homestead as recorded in tax assessment records.

Line 17: Sign and date this affidavit after reviewing each item to determine that the affidavit is filled out completely and correctly. Enter the county and the city, village or township for which you are the assessing officer. Enter your Local Unit Federal Employer Identification Number and your office telephone number.

When special assessments are due, submit affidavit and tax statements to the address above.

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TOWNSHIP AND VILLAGE PUBLIC IMPROVEMENT AND PUBLIC SERVICE ACT
Act 116 of 1923

AN ACT to authorize certain township or village public improvements and services; to prescribe penalties and provide remedies; and to repeal acts and parts of acts.

History: 1923, Act 116, Eff. Aug. 30, 1923;—Am. 1925, Act 263, Eff. Aug. 27, 1925;—Am. 1927, Act 58, Imd. Eff. Apr. 21, 1927;—Am. 1929, Act 232, Eff. Aug. 28, 1929;—Am. 1931, Act 140, Imd. Eff. May 21, 1931;—Am. 1935, Act 68, Imd. Eff. May 18, 1935;—Am. 1937, Act 318, Imd. Eff. July 27, 1937;—Am. 1941, Act 201, Eff. Jan. 10, 1942;—Am. 1945, Act 239, Eff. Sept. 6, 1945;—Am. 1947, Act 150, Imd. Eff. June 2, 1947;—Am. 1952, Act 43, Imd. Eff. Apr. 1, 1952;—Am. 1957, Act 227, Eff. Sept. 27, 1957;—Am. 1961, Act 33, Imd. Eff. May 18, 1961;—Am. 1989, Act 82, Imd. Eff. June 20, 1989;—Am. 1998, Act 159, Eff. Mar. 23, 1999.

The People of the State of Michigan enact:

41.411 Township board, common council, or board of trustees of incorporated village; powers and duties; short title.

Sec. 1. (1) In township lands, the township board or common council or board of trustees of an incorporated village may do 1 or more of the following:

(a) Make public improvements and provide public service by constructing bridges over natural or artificial waterways; grading, paving, curbing, stoning, graveling, macadamizing, or cinderizing streets; treating the streets with chloride or other suitable dust laying process or material; laying storm sewers to care for surface water in the streets; destroying weeds; providing street markers and lighting; contracting for public transportation facilities; providing police protection or contracting for police protection; establishing and maintaining garbage and mixed refuse systems or plants for the collection and disposal of garbage and mixed refuse or contracting for such collection and disposal for not to exceed 30 years; constructing or acquiring and maintaining sanitary sewers and sewage disposal plants or equipment; constructing filtration plants; constructing sidewalks; purchasing or constructing waterworks; purchasing fire apparatus and equipment; constructing and maintaining housing facilities for fire apparatus and equipment; making extensions of water mains to provide water for fire protection and domestic uses; trimming and spraying trees and shrubbery; providing and maintaining soil and beach erosion control measures including, but not limited to, the construction of breakwaters, retaining walls, and sea walls, in or for township lands or waters adjacent or contiguous to township lands; establishing and conducting chemical beach treatment service necessary for the control of aquatic nuisances such as swimmers' itch or contracting with others to provide the services.

(b) Levy and collect special assessments to pay the cost of an improvement or service and issue bonds in anticipation of the collection of the special assessments, upon filing the petition and subject to the terms and conditions provided in sections 2 to 5.

(2) In an incorporated village, the common council or board of trustees is vested with and shall perform the powers and duties vested by this section and sections 2 to 5 in the township board in areas outside of the incorporated village.

(3) The township board or common council or board of trustees of an incorporated village may purchase, accept by gift or devise, or condemn private property. If the property is to be acquired by condemnation, the provisions of Act No. 149 of the Public Acts of 1911, as amended, being sections 213.21 to 213.25 of the Michigan Compiled Laws; the uniform condemnation procedures act, Act No. 87 of the Public Acts of 1980, being sections 213.51 to 213.77 of the Michigan Compiled Laws; or other appropriate provisions of law may be adopted and used for the purpose of instituting and prosecuting the condemnation proceedings.

(4) This act shall be known and may be cited as the “township and village public improvement and public service act”.

History: 1923, Act 116, Eff. Aug. 30, 1923;—Am. 1925, Act 263, Eff. Aug. 27, 1925;—Am. 1927, Act 58, Imd. Eff. Apr. 21, 1927;—Am. 1929, Act 232, Eff. Aug. 28, 1929;—CL 1929, 2385;—Am. 1931, Act 140, Imd. Eff. May 21, 1931;—Am. 1937, Act 318, Imd. Eff. July 27, 1937;—Am. 1941, Act 201, Eff. Jan. 10, 1942;—Am. 1945, Act 239, Eff. Sept. 6, 1945;—Am. 1947, Act 150, Imd. Eff. June 2, 1947;—CL 1948, 41.411;—Am. 1952, Act 43, Imd. Eff. Apr. 1, 1952;—Am. 1957, Act 227, Eff. Sept. 27, 1957;—Am. 1961, Act 33, Imd. Eff. May 18, 1961;—Am. 1967, Ex. Sess., Act 1, Imd. Eff. Nov. 3, 1967;—Am. 1989, Act 82, Imd. Eff. June 20, 1989.

41.412 Special assessment district; creation, enlargement, and discontinuance; petitions; assessment.

Sec. 2. Upon the filing of petitions verified both as to signature and ownership, signed by record owners of land to be made into a special assessment district in which an improvement or service specified in section 1 is desired by the owners of the land, the township board may construct and maintain the improvement or provide the service, determine the cost of the improvement or service, and create, define, and establish a

special assessment district within all or within and comprising not less than 80% of the area. The cost of the improvement or service shall be levied upon the district. However, the record owners of not less than 51% of the land actually created into the special assessment district by the township board must have signed the petitions. A district established and assessed may be enlarged through a petition, circulated and signed as required for an original district, but covering only the area to be added to create the enlarged district. Benefits of an improvement or service may be extended to the added part, and the entire enlarged district may be assessed for the improvement or service, as provided for an original district. If a service has been instituted and no assessment bonds for the service are outstanding, the service may be discontinued upon petition by owners of 51% of the lands.

History: 1923, Act 116, Eff. Aug. 30, 1923;—Am. 1927, Act 58, Imd. Eff. Apr. 21, 1927;—CL 1929, 2386;—Am. 1941, Act 201, Eff. Jan. 10, 1942;—Am. 1947, Act 150, Imd. Eff. June 2, 1947;—CL 1948, 41.412;—Am. 1989, Act 82, Imd. Eff. June 20, 1989.

41.413 Cost of proposed improvement or service; special assessment bonds; special assessment taxes; proceedings; insufficiency of special assessment fund; advancement of township funds; reimbursement.

Sec. 3. Before commencing an improvement or service authorized by section 1, the township board shall obtain from competent sources maps, plans, and estimates of the proposed improvement or service, shall determine by resolution the cost of the proposed improvement or service, and shall provide for the making of a special assessment upon each parcel of land in the special assessment district by benefits and for the issuing and sale of special assessment bonds in anticipation of the collection of the special assessment taxes. The special assessment bonds shall not be issued before the final confirmation of the assessment roll by the township board. A proceeding relating to the making, levying, and collection of a special assessment authorized by this section and to issuing bonds in anticipation of the collection of the special assessment shall conform, as near as may be, to a proceeding for levying a special assessment and issuing special assessment bonds by a village for a similar improvement or service, as set forth in Act No. 3 of the Public Acts of 1895, as amended, being sections 61.1 to 74.22 of the Michigan Compiled Laws. If the special assessment fund is insufficient to pay the bonds and interest on the bonds when due and the bonds were issued subsequent to April 21, 1927, the township board may advance the amount necessary to pay the bonds and shall be reimbursed from the assessments when collected or by reassessment of the deficiency if necessary. However, as to bonds issued subsequent to July 1, 1951, the township board may, at the time of issuance, pledge the full faith and credit of the township for the payment of the bonds, and if the special assessment fund is insufficient to pay the bonds and interest on the bonds when due, the township board shall advance the amount necessary to pay the bonds and shall be reimbursed from the assessments when collected or by reassessment of the deficiency against the special assessment district, if necessary.

History: 1923, Act 116, Eff. Aug. 30, 1923;—Am. 1927, Act 58, Imd. Eff. Apr. 21, 1927;—CL 1929, 2387;—Am. 1934, 1st Ex. Sess., Act 24, Imd. Eff. Mar. 28, 1934;—CL 1948, 41.413;—Am. 1951, Act 32, Imd. Eff. May 3, 1951;—Am. 1989, Act 82, Imd. Eff. June 20, 1989.

41.413a Waterworks; control and operation; election and terms of members of board of public service commissioners; vacancy; member as resident of district; "annual township election" defined; employees; violation of §§ 168.1 to 168.992 applicable to petitions; penalties; dissolution of board; records.

Sec. 3a. (1) A waterworks established under sections 1 to 5 and any other service provided under sections 1 to 5 for a district having a waterworks may be under the control of and operated by a board of public service commissioners, except that in a village such an improvement or service shall be under the control of and operated by the legislative body of the village. The board of public service commissioners shall consist of 5 commissioners elected at the annual township election by the qualified electors residing in the district. A vacancy on the board of public service commissioners shall be filled by the remaining members of the board until the next annual township election, at which election the vacancy shall be filled for the unexpired term. A member of the board of public service commissioners shall be a resident of the district. As used in this section, "annual township election" means an election held on the first Tuesday after the first Monday in November every year.

(2) The township clerk shall call a special township election, upon the filing with the clerk of a petition signed by 25 registered electors of the district, for the election of the members of the board of public service commissioners to hold office until the first annual township election. At the first annual township election held under this section, 2 commissioners shall be elected for a term of 3 years, 2 commissioners shall be elected for a term of 2 years, and 1 commissioner shall be elected for a term of 1 year. After the first annual township election, a commissioner shall be elected for a term of 3 years. The commission may hire necessary

employees to carry out the purpose of sections 1 to 5. The provisions of this section do not apply to a waterworks facility constituting only a part of a general township water system. A petition under this subsection, including the circulation and signing of the petition, is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488. A person who violates a provision of the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, applicable to a petition described in this subsection is subject to the penalties prescribed for that violation in the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

(3) A board of public service commissioners may dissolve itself, alone or together with the district, upon satisfaction of all of the following requirements:

(a) The board of public service commissioners shall prepare a financial report of the assets and liabilities of the district. The financial report shall include a description of obligations of the district, an accounting of money held by the district, an appraisal or inventory of other assets of the district, and a description of any encumbrances on assets of the district. The board of public service commissioners shall file a copy of the financial report with the township clerk of the township where the district is located.

(b) The board of public service commissioners shall hold a public hearing on the issue of the dissolution. In addition to satisfying the requirements of the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, the board of public service commissioners shall publish notice of the hearing in a newspaper of general circulation in the township where the district is located not less than 10 days before the hearing. The notice shall give the time, date, location, and purpose of the hearing and state that a copy of the financial report is available for public inspection at the office of the township clerk.

(c) After the hearing, the board of public service commissioners shall prepare a plan for the transfer of the assets and liabilities of the district to the township where the district is located. The plan shall not impair the rights of holders of special assessment bonds issued pursuant to section 3 or the rights of property owners served by the waterworks.

(d) The township board of the township where the district is located shall adopt a resolution agreeing to the dissolution of the board of public service commissioners, alone or together with the district, in accordance with the plan under subdivision (c).

(e) After the township board adopts a resolution under subdivision (d), the board of public service commissioners shall adopt a consistent resolution to dissolve itself, alone or together with the district, in accordance with the plan under subdivision (c).

(4) As its last act before the effective date of dissolution, a board of public service commissioners shall file its records with the clerk of the township where the district is located, for safekeeping and reference.

History: Add. 1935, Act 68, Imd. Eff. May 18, 1935;—Am. 1937, Act 318, Imd. Eff. July 27, 1937;—Am. 1941, Act 201, Eff. Jan. 10, 1942;—CL 1948, 41.413a;—Am. 1989, Act 82, Imd. Eff. June 20, 1989;—Am. 1992, Act 177, Imd. Eff. July 27, 1992;—Am. 1998, Act 159, Eff. Mar. 23, 1999.

41.413b Lighting in residential areas; special assessments; basis.

Sec. 3b. Special assessments levied under this act for lighting purposes in township residential areas shall be based on benefit received by the property owner and may be determined on the equivalent front footage basis or may be levied equally on each parcel of property to be assessed.

History: Add. 1971, Act 164, Eff. Mar. 30, 1972.

41.414 Special assessment installments; limitations; collection; appeal; tapping works to supply water outside of village or district; restrictions; special assessment after December 31, 1998; "taxable value" defined; finding of invalid assessment.

Sec. 4. (1) For a special assessment levied before January 1, 1999 for the cost of an improvement or service specified in section 1, the special assessment installments for 1 year shall not be levied on property in excess of 15% of that property's assessed valuation. For a special assessment levied after December 31, 1998 for the cost of an improvement or service specified in section 1, the special assessment installments for 1 year shall not be levied on property in excess of 15% of that property's taxable value. For a special assessment levied before January 1, 1999, the total assessment installments for a year for a combination of improvements or services specified in section 1, regardless of the year in which the assessment installments are levied, shall not exceed 45% of the property's assessed valuation. For a special assessment levied after December 31, 1998, the total assessment installments for a year for a combination of improvements or services specified in section 1, regardless of the year in which the assessment installments are levied, shall not exceed 45% of the property's taxable value. The collection of the special assessments shall be by installments as provided by the general law village act, 1895 PA 3, MCL 61.1 to 74.25. However, assessments for paving, for street markers and lampposts, or for a combination of projects authorized by section 1 that includes paving may be divided into a number of annual installments not exceeding 10. Assessments for the construction of filtration plants,

for the construction or extension of sanitary sewers or water mains to provide water for fire protection and domestic uses, or for a combination of projects authorized by section 1 that includes the construction or extension of sanitary sewers or water mains to provide water for fire protection and domestic uses may be divided into a number of annual installments not exceeding 20. Assessments for the purchase or construction of waterworks or sewage disposal plants may be divided into a number of annual installments not exceeding 40.

(2) An appeal may be taken from the assessment of the supervisor to the board of public service commissioners, which shall act as a board of review and have the same powers and duties and be governed by the same procedures and the same legal consequences as the board of review provided for in the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

(3) If a village or district is served by a waterworks, water reservoir, or aqueduct to a source of water supply established without expense to the township at large, the works shall not be tapped for the purpose of supplying water outside of the village or district if the tapping would seriously deplete or imperil the water supply or pressure of the village or district. The works shall not be tapped in any case without the consent of the board of public service commissioners. If a village or district is served by a public improvement or service described in section 1 that has been established and is being operated without expense to the township, no part of a tax or assessment shall be levied by the township upon the village or district for the purpose of establishing or operating a similar improvement or facility for other parts of the township.

(4) After December 31, 1998, any ad valorem special assessment levied under this act shall be levied on the taxable value of the property assessed.

(5) As used in this section, "taxable value" means that value determined under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.

(6) If the levy of an ad valorem special assessment on the property's taxable value is found to be invalid by a court of competent jurisdiction, the levy of the ad valorem special assessment shall be levied on the property's state equalized value.

History: 1923, Act 116, Eff. Aug. 30, 1923;—Am. 1927, Act 58, Imd. Eff. Apr. 21, 1927;—Am. 1929, Act 232, Eff. Aug. 28, 1929;—CL 1929, 2388;—Am. 1931, Act 204, Eff. Sept. 18, 1931;—Am. 1937, Act 318, Imd. Eff. July 27, 1937;—Am. 1941, Act 201, Eff. Jan. 10, 1942;—Am. 1947, Act 110, Eff. Oct. 11, 1947;—CL 1948, 41.414;—Am. 1989, Act 82, Imd. Eff. June 20, 1989;—Am. 1998, Act 542, Imd. Eff. Jan. 20, 1999.

Compiler's note: For provisions of Act 3 of 1895, referred to in this section, see § 61.1 et seq.

41.415 Special assessments levied against platted corner lots; payment by township.

Sec. 5. The governing body of a township, by resolution, may agree to pay up to 1/3 of the cost of the special assessments levied against any platted corner lot for the payment of public improvements authorized under sections 1 to 4.

History: Add. 1959, Act 178, Eff. Mar. 19, 1960;—Am. 1989, Act 82, Imd. Eff. June 20, 1989.

41.416 Borrowing money; motion; application; referendum; issuing bonds; use of money borrowed.

Sec. 6. On a township board's own motion or after an application has been filed with the township board signed by at least 20% of the registered electors of the township, and subject to the referendum required in section 6a, the township board of an organized township may borrow money, not exceeding 5% of the assessed valuation of the township according to the assessed valuation of all the real and personal property of the township for the preceding December 31, on the faith and credit of the township. The township may issue bonds for the repayment of money borrowed under this section. The money borrowed shall be used for 1 or more of the following purposes:

(a) Acquiring a site for, erecting, and furnishing a town hall, fire station, or library.

(b) Making additions and improvements to an existing site, town hall, fire station, library, or other township public building.

(c) Purchasing and furnishing a building to be used for a town hall, fire station, library, or other township public building.

History: Add. 1989, Act 82, Imd. Eff. June 20, 1989.

41.416a Requirements of application filed pursuant to § 41.416; resolution; submission of proposition to electors of township; ballot; notices; calling special election.

Sec. 6a. (1) Upon the filing of an application with a township board pursuant to section 6, the board shall determine if the application meets the requirements of section 6. If the township board determines that the requirements of section 6 are met, the board shall by resolution provide for the submission of the proposition

to the electors of the township at the general election or a special election to be held within 90 days after the adoption of the resolution. The township board shall prescribe in the resolution the form of ballot to be used in voting upon the proposition, whether the proposition shall be voted upon at a special election to be called by the township board for that purpose or at the general election, and that the township clerk of the township give notice of the proposition and of the vote by posting notices signed by the clerk in not less than 3 public and conspicuous places in each election district of the township. Notice shall be given not less than 20 days before the general or special election and shall set forth the form of the ballot to be used.

(2) In addition to the other provisions of the resolution specified in subsection (1), if the proposition is to be voted upon at a special election, the township board shall call the special election.

History: Add. 1989, Act 82, Imd. Eff. June 20, 1989.

41.416b Conduct of election; canvass of vote.

Sec. 6b. The general election or special election to be held under section 6a shall be conducted and the vote shall be canvassed in the same manner as is provided by law for ordinary township elections.

History: Add. 1989, Act 82, Imd. Eff. June 20, 1989.

41.416c Issuance and sale of bonds in conformity with revised municipal finance act.

Sec. 6c. If a township votes in favor of borrowing money and issuing bonds as provided in sections 6 to 6b, the township board of the township may issue and sell the bonds in conformity with the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

History: Add. 1989, Act 82, Imd. Eff. June 20, 1989;—Am. 2002, Act 274, Imd. Eff. May 9, 2002.

41.416d Levy and collection of tax.

Sec. 6d. If bonds issued by a township under sections 6 to 6c have been sold, the township board of the township may in each year impose a tax upon the taxable property of the township for the purpose of paying the sums of money that become due before the collection of the taxes of the next succeeding year upon the principal of the bonds, or any part of the bonds, and the interest. The tax shall be levied and collected in the same manner as other township taxes are levied and collected.

History: Add. 1989, Act 82, Imd. Eff. June 20, 1989.

41.416e Tax for maintenance, upkeep, or repair of public buildings.

Sec. 6e. A township may, at a primary, general, or special election, vote a tax upon the property of the township not to exceed 1/20 of 1% of the assessed valuation of the township according to the assessed valuation of all the real and personal property of the township for the preceding year. The township board shall use the money raised by the tax for the maintenance, upkeep, or repair of the township hall, fire station, library, or other public buildings of the township.

History: Add. 1989, Act 82, Imd. Eff. June 20, 1989.

41.416f Library.

Sec. 6f. The township board of an organized township may purchase a site and building for a library or lease, construct, remodel, add to, and maintain a building or space for a library.

History: Add. 1989, Act 82, Imd. Eff. June 20, 1989.

41.417 Use of building by township for public purposes where real property becomes part of incorporated village or city.

Sec. 7. If a township is the owner of real property within the township where a building used for township purposes is located and, subsequent to the erection of the building, the real property becomes part of an incorporated village or city, the township may use the building for township purposes, including the holding of an election and the adoption of a resolution or other action by the township or its officers. The use of the building for township purposes is valid in all respects as though the building were located within the corporate limits of the township.

History: Add. 1989, Act 82, Imd. Eff. June 20, 1989.

41.417a Township or village scales.

Sec. 7a. A township board or village council may appropriate money to establish a township or village scale for the weighing of farm produce and for other purposes. Money appropriated shall be assessed, levied, and collected in the same manner as other expenses of the township or village are assessed, levied, and collected. The maintenance, management, and control of the scales shall be under the direction of the township board or village council. The expense connected with the scales shall be paid in the same manner as

other expenses of the township or village are paid.

History: Add. 1989, Act 82, Imd. Eff. June 20, 1989.

41.418 Weed control.

Sec. 8. Upon receipt of a petition signed by 25 individuals who reside and own real property within the township requesting the control of weeds in inland public lakes situated within the township, a township board may appropriate money from the contingent or general fund to control the weeds.

History: Add. 1989, Act 82, Imd. Eff. June 20, 1989.

41.418a Control of weeds in inland public lakes.

Sec. 8a. A township board may appropriate money from the contingent or general fund for entering into agreements with other townships in this state to control weeds in inland public lakes situated within more than 1 township of this state.

History: Add. 1989, Act 82, Imd. Eff. June 20, 1989.

41.418b Use of pesticide for weed control in inland lake; "pesticide" defined.

Sec. 8b. (1) A pesticide shall not be used for weed control in an inland lake except with the consent of, and under the supervision of, the department of natural resources.

(2) As used in this section, "pesticide" means that term as defined in section 8305 of part 83 (pesticide control) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being section 324.8305 of the Michigan Compiled Laws.

History: Add. 1989, Act 82, Imd. Eff. June 20, 1989;—Am. 1996, Act 35, Imd. Eff. Feb. 26, 1996.

41.419 Spraying of trees or shrubs.

Sec. 9. A township board may provide for the spraying of trees or shrubs within its jurisdiction for the prevention of Dutch elm disease or other diseases or insect pests destructive to trees or shrubs. The cost of the spraying may be paid from funds created specially for this purpose, money appropriated from other funds of the township, or both.

History: Add. 1989, Act 82, Imd. Eff. June 20, 1989.

PUBLIC IMPROVEMENTS
Act 188 of 1954

AN ACT to provide for the making of certain improvements by townships; to provide for paying for the improvements by the issuance of bonds; to provide for the levying of taxes; to provide for assessing the whole or a part of the cost of improvements against property benefited; and to provide for the issuance of bonds in anticipation of the collection of special assessments and for the obligation of the township on the bonds.

History: 1954, Act 188, Imd. Eff. May 5, 1954;—Am. 1974, Act 143, Imd. Eff. June 5, 1974;—Am. 1995, Act 139, Imd. Eff. July 10, 1995.

The People of the State of Michigan enact:

41.721 Public improvements by township board; bonds; special assessments to defray costs.

Sec. 1. The township board has the power to make an improvement named in this act, to provide for the payment of an improvement by the issuance of bonds as provided in section 15, and to determine that the whole or any part of the cost of an improvement shall be defrayed by special assessments against the property especially benefited by the improvement. The cost of engineering services and all expenses incident to the proceedings for the making and financing of the improvement shall be deemed to be a part of the cost of the improvement.

History: 1954, Act 188, Imd. Eff. May 5, 1954;—Am. 1974, Act 143, Imd. Eff. June 5, 1974;—Am. 1986, Act 180, Imd. Eff. July 8, 1986.

41.721a "Record owner" defined.

Sec. 1a. As used in this act, "record owner" means a person, sole proprietorship, partnership, association, firm, corporation, or other legal entity, possessed of the most recent fee title or a land contract vendee's interest in the land as shown by the records of the county register of deeds.

History: Add. 1986, Act 180, Imd. Eff. July 8, 1986.

41.722 Types of improvements authorized; approval; conditions.

Sec. 2. (1) The following improvements may be made under this act:

(a) The construction, improvement, and maintenance of storm or sanitary sewers or the improvement and maintenance of, but not the construction of new or expanded, combined storm and sanitary sewer systems.

(b) The construction, improvement, and maintenance of water systems.

(c) The construction, improvement, and maintenance of public roads.

(d) The acquisition, improvement, and maintenance of public parks.

(e) The construction, improvement, and maintenance of elevated structures for foot travel over roads in the township.

(f) The collection and disposal of garbage and rubbish.

(g) The construction, maintenance, and improvement of bicycle paths.

(h) The construction, maintenance, and improvement of erosion control structures or dikes.

(i) The planting, maintenance, and removal of trees.

(j) The installation, improvement, and maintenance of lighting systems.

(k) The construction, improvement, and maintenance of sidewalks.

(*l*) The eradication or control of aquatic weeds and plants.

(m) The construction, improvement, and maintenance of private roads.

(n) The construction, improvement, and maintenance of a lake, pond, river, stream, lagoon, or other body of water or of an improvement to the body of water. This subdivision includes, but is not limited to, dredging.

(o) The construction, improvement, and maintenance of dams and other structures that retain the waters of this state for recreational purposes.

(p) The construction, improvement, and maintenance of sound attenuation walls, pavement, or other sound mitigation treatments unless a written objection is filed in the same manner as provided under section 3 by the record owners of land constituting more than 20% of the total area in the proposed special assessment district. If a written objection is filed, then the township board shall not proceed with the improvement until a petition signed by the record owners of land constituting more than 50% of the total land area in the special assessment district as finally established is filed with the board.

(2) A road under the jurisdiction of either the state transportation department or the board of county road commissioners shall not be improved under this act without the written approval of the state transportation

department or the board of county road commissioners. As a condition to the granting of approval, the state transportation department or the board of county road commissioners may require 1 or more of the following:

(a) That all engineering with respect to the improvement be performed by the state transportation department or the board of county road commissioners.

(b) That all construction, including the awarding of contracts for construction, in connection with the improvement be pursuant to the specifications of the state transportation department or the board of county road commissioners.

(c) That the cost of the engineering and supervision be paid to the state transportation department or the board of county road commissioners from the funds of the special assessment district.

(3) A lake, pond, river, stream, lagoon, or other body of water under the jurisdiction of a county drain commissioner shall not be improved under this act without the written approval of the county drain commissioner of the county in which the lake, pond, river, stream, lagoon, or other body of water is located.

History: 1954, Act 188, Imd. Eff. May 5, 1954;—Am. 1958, Act 163, Eff. Sept. 13, 1958;—Am. 1964, Act 30, Imd. Eff. May 1, 1964;—Am. 1966, Act 116, Imd. Eff. June 22, 1966;—Am. 1974, Act 143, Imd. Eff. June 5, 1974;—Am. 1976, Act 148, Imd. Eff. June 16, 1976;—Am. 1986, Act 180, Imd. Eff. July 8, 1986;—Am. 1995, Act 139, Imd. Eff. July 10, 1995;—Am. 2002, Act 585, Imd. Eff. Oct. 14, 2002.

41.723 Written objections; petition; filing; signatures; determining record owners; determining sufficiency of petition; supplement to petition; validity of signatures.

Sec. 3. (1) The township board may proceed to carry out an improvement as provided in this act unless written objections to the improvement are filed with the township board at or before the hearing provided in section 4 by property owners as follows:

(a) For an improvement under section 2(1)(a), (b), (d), (e), (f), (h), (i), (j), (*l*), (n), or (o) by the record owners of land constituting more than 20% of the total land area in the proposed special assessment district.

(b) For an improvement under section 2(1)(c), (g), (k), or (m), by the record owners of land constituting more than 20% of the total frontage upon the road, bicycle path, or sidewalk.

(2) A township board may require the filing of a petition meeting the requirements of subsection (3) before proceeding with an improvement under this act.

(3) If written objections are filed as provided in subsection (1), or if the township board requires a petition before proceeding, the township board shall not proceed with the improvement until there is filed with the board a petition signed as follows:

(a) For an improvement under section 2(1)(a), (b), (d), (e), (f), (h), (i), (j), (*l*), (n), or (o) by the record owners of land constituting more than 50% of the total land area in the special assessment district as finally established by the township board.

(b) For an improvement under section 2(1)(c), (g), (k), or (m), by the record owners of land constituting more than 50% of the total frontage upon the road, bicycle path, or sidewalk.

(4) Record owners shall be determined by the records in the register of deeds' office as of the day of the filing of a petition, or if written objections are filed as provided in subsection (1), then on the day of the hearing. In determining the sufficiency of the petition, lands not subject to special assessment and lands within a public highway or alley shall not be included in computing frontage or an assessment district area. A filed petition may be supplemented as to signatures by the filing of an additional signed copy or copies of the petition. The validity of the signatures on a supplemental petition shall be determined by the records as of the day of filing the supplemental petition.

History: 1954, Act 188, Imd. Eff. May 5, 1954;—Am. 1957, Act 187, Imd. Eff. June 4, 1957;—Am. 1961, Act 143, Eff. Sept. 8, 1961;—Am. 1976, Act 113, Imd. Eff. May 14, 1976;—Am. 1976, Act 148, Imd. Eff. June 16, 1976;—Am. 1976, Act 332, Imd. Eff. Dec. 15, 1976;—Am. 1986, Act 180, Imd. Eff. July 8, 1986;—Am. 1995, Act 139, Imd. Eff. July 10, 1995.

41.724 Plans; cost estimate; resolution; designation of special assessment district; hearing; notice; periodic redeterminations of cost; objections; adding property to special assessment district; supplemental petition; filing by railroad companies; additional notice; affidavit of service.

Sec. 4. (1) Upon receipt of a petition or upon determination of the township board if a petition is not required under section 3, the township board, if it desires to proceed on the improvement, shall cause to be prepared plans describing the improvement and the location of the improvement with an estimate of the cost of the improvement on a fixed or periodic basis, as appropriate. Upon receipt of the plans and estimate, the township board shall order the same to be filed with the township clerk. If the township board desires to proceed with the improvement, the township board shall tentatively declare by resolution its intention to make the improvement and tentatively designate the special assessment district against which the cost of the

improvement or a designated part of the improvement is to be assessed.

(2) The township board shall fix a time and place to meet and hear any objections to the petition, if a petition is required, to the improvement, and to the special assessment district, and shall cause notice of the hearing to be given as provided in section 4a. The notice shall state that the plans and estimates are on file with the township clerk for public examination and shall contain a description of the proposed special assessment district. If periodic redeterminations of cost will be necessary without a change in the special assessment district, the notice shall state that such redeterminations may be made without further notice to record owners or parties in interest in the property.

(3) At the hearing, or any adjournment of the hearing which may be without further notice, the township board shall hear any objections to the petition, if a petition is required, to the improvement, and to the special assessment district. The township board may revise, correct, amend, or change the plans, estimate of cost, or special assessment district.

(4) Property shall not be added to the district unless notice is given as provided in section 4a, or by personal service upon the record owners of the property in the entire proposed special assessment district, and a hearing afforded to the record owners. If a petition is required because property is added to the special assessment district which makes the original petition insufficient, then a supplemental petition shall be filed containing sufficient additional signatures of record owners. If the nature of the improvement to be made is such that a periodic redetermination of costs will be necessary without a change in the special assessment district boundaries, the township board shall include in its estimate of costs any projected incremental increases. If at any time during the term of the special assessment district an actual incremental cost increase exceeds the estimate therefor by 10% or more, notice shall be given as provided in section 4a and a hearing afforded to the record owners of property to be assessed.

(5) Railroad companies shall file in writing with the secretary of state the name and post office address of the person upon whom may be served notice of any proceedings under this act. After the name and address has been filed, notice in addition to the notice by publication shall be given to the person by registered mail, or personally, within 5 days after the first publication of the notice. An affidavit of the service shall be filed by the township board with the proof of publication of the notice.

History: 1954, Act 188, Imd. Eff. May 5, 1954;—Am. 1974, Act 143, Imd. Eff. June 5, 1974;—Am. 1986, Act 180, Imd. Eff. July 8, 1986.

41.724a Notice of hearings in special assessment proceedings.

Sec. 4a. (1) If special assessments are made against property, notice of hearings in the special assessment proceedings shall be given as provided in this section.

(2) Notice of hearings in special assessment proceedings shall be given to each record owner of, or party in interest in, property to be assessed whose name appears upon the last township tax assessment records by first-class mail addressed to the record owner or party in interest at the address shown on the tax records, at least 10 days before the date of the hearing. The last township tax assessment records means the last assessment roll for ad valorem tax purposes that was reviewed by the township board of review, as supplemented by any subsequent changes in the names or the addresses of the owners or parties listed on that roll. If a record owner's name does not appear on the township tax assessment records, then notice shall be given by first-class mail addressed to the record owner at the address shown by the records of the county register of deeds at least 10 days before the date of the hearing. Notice shall also be published twice before the hearing in a newspaper circulating in the township. The first publication shall be at least 10 days before the date of the hearing. If a published notice includes a list of the property identification numbers of the property to be assessed, that list may provide either the individual property identification number for each parcel of property to be assessed or 1 or more sequential sets of property identification numbers, which include each parcel of property to be assessed. If a published notice includes a list of the property identification numbers of the property to be assessed, that published notice shall also include either a map depicting the area of the proposed special assessment district or a written description of the proposed special assessment district.

(3) If a person whose name and correct address do not appear upon the last township tax assessment records claims an interest in real property, that person shall immediately file his or her name and address with the township supervisor. This filing is effective only for the purpose of establishing a record of the names and addresses of those persons entitled to notice of hearings in special assessment proceedings. The supervisor shall immediately enter on the tax assessment records any changes in the names and addresses of record owners or parties in interest filed with the supervisor and at all times shall keep the tax assessment records current, complete, and available for public inspection.

(4) A township officer required to give notice of a hearing in special assessment proceedings may rely upon the last township tax assessment records in giving notice of the hearing by mail. The method of giving

notice by mail as provided in this section is declared to be the method that is reasonably certain to inform those to be assessed of the special assessment proceedings.

(5) Failure to give notice as required in this section shall not invalidate an entire assessment roll, but only the assessment on property affected by the lack of notice. A special assessment shall not be declared invalid as to any property if the owner or the party in interest of that property actually received notice, waived notice, or paid any part of the assessment. If an assessment is declared void by court decree or judgment, a reassessment against the property may be made.

(6) A special assessment hearing held before June 5, 1974 is validated, insofar as any notice of hearing is concerned, if notice was given by mail to the owners or parties in interest whose names appeared at the time of mailing on the last township tax assessment records. Any such special assessment hearing is validated as to any owner or party in interest who actually received notice of hearing, waived the notice, or paid any part of the special assessment.

History: Add. 1974, Act 143, Imd. Eff. June 5, 1974;—Am. 1986, Act 180, Imd. Eff. July 8, 1986;—Am. 2000, Act 331, Imd. Eff. Dec. 14, 2000.

41.725 Approval or determination by township board; levy of special assessment.

Sec. 5. (1) If, after the hearing provided for in section 4, the township board desires to proceed with the improvement, the township board shall approve or determine by resolution all of the following:

(a) The completion of the improvement.

(b) The plans and estimate of cost as originally presented or as revised, corrected, amended, or changed.

(c) The sufficiency of the petition for the improvement if a petition is required. After this determination, the sufficiency of the petition is not subject to attack except in an action brought in a court of competent jurisdiction within 30 days after the adoption of the resolution determining the sufficiency of the petition.

(d) The special assessment district including the term of the special assessment district's existence. If the nature of the improvement to be made is such that a periodic redetermination of cost will be necessary without a change in the special assessment district boundaries, the township board shall state that in the resolution and shall set the dates when the redeterminations shall be made. After finally determining the special assessment district, the township board shall direct the supervisor to make a special assessment roll in which are entered and described all the parcels of land to be assessed, with the names of the respective record owners of each parcel, if known, and the total amount to be assessed against each parcel of land, which amount shall be the relative portion of the whole sum to be levied against all parcels of land in the special assessment district as the benefit to the parcel of land bears to the total benefit to all parcels of land in the special assessment district. When the supervisor completes the assessment roll, the supervisor shall affix to the roll his or her certificate stating that the roll was made pursuant to a resolution of the township board adopted on a specified date, and that in making the assessment roll the supervisor, according to his or her best judgment, has conformed in all respects to the directions contained in the resolution and the statutes of this state.

(2) After December 31, 1998, an ad valorem special assessment levied under this act shall be levied on the taxable value of the property assessed.

(3) If the levy of an ad valorem special assessment on the property's taxable value is found to be invalid by a court of competent jurisdiction, the levy of the ad valorem special assessment shall be levied on the property's state equalized value.

(4) As used in this section and section 15b, “taxable value” means that value determined under section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.

History: 1954, Act 188, Imd. Eff. May 5, 1954;—Am. 1974, Act 143, Imd. Eff. June 5, 1974;—Am. 1986, Act 180, Imd. Eff. July 8, 1986;—Am. 1998, Act 544, Imd. Eff. Jan. 20, 1999.

41.726 Filing and review of special assessment roll; hearing; notice; adjournments; objections; confirmation, referral, or annulment; endorsement; finality; action contesting assessment.

Sec. 6. (1) When a special assessment roll is reported by the supervisor to the township board, the assessment roll shall be filed in the office of the township clerk. Before confirming the assessment roll, the township board shall appoint a time and place when it will meet, review, and hear any objections to the assessment roll. The township board shall give notice of the hearing and the filing of the assessment roll as required by section 4a.

(2) A hearing under this section may be adjourned from time to time without further notice. A person objecting to the assessment roll shall file the objection in writing with the township clerk before the close of the hearing or within such further time as the township board may grant. After the hearing the township

board, at the same or at a subsequent meeting, may confirm the special assessment roll as reported to the township board by the supervisor or as amended or corrected by the township board; may refer the assessment roll back to the supervisor for revision; or may annul it and direct a new roll to be made.

(3) If a special assessment roll is confirmed, the township clerk shall endorse on the assessment roll the date of the confirmation. After the confirmation of the special assessment roll, all assessments on that assessment roll shall be final and conclusive unless an action contesting an assessment is filed in a court of competent jurisdiction within 30 days after the date of confirmation.

History: 1954, Act 188, Imd. Eff. May 5, 1954;—Am. 1974, Act 143, Imd. Eff. June 5, 1974;—Am. 1986, Act 180, Imd. Eff. July 8, 1986.

41.727 Payment of special assessments in installments; amount of installment; extension; due dates; interest on unpaid installments; payment of future due installments; delinquent installment; penalty.

Sec. 7. (1) The township board may provide that special assessments are payable in 1 or more installments, but the amount of an installment shall not be less than 1/2 of any subsequent installment. The amount of each installment, if more than 1, need not be extended upon the special assessment roll until after confirmation of that assessment roll. Subject to the provisions of section 4(4), the amount of installments for improvements subject to periodic cost revision may be extended upon the special assessment roll by the township board without additional public hearings or public notice, provided that additional property is not added to the special assessment roll.

(2) The first installment of a special assessment shall be due on or before the time after confirmation as the township board shall fix. Subsequent installments shall be due at intervals of 12 months from the due date of the first installment or from a date the township board shall fix.

(3) All unpaid installments, prior to their transfer to the township tax roll as provided by this act, shall bear interest, payable annually on each installment due date, at a rate to be set by the township board, not exceeding 1% above the average rate of interest borne by special assessment bonds issued by the township in anticipation of all or part of the unpaid installments; or not exceeding 1% above the average rate of interest borne by bonds issued by a county, drainage district, or authority if the unpaid installments are to be applied to the payment of a contract obligation of the township to the county or authority or to the payment of an assessment obligation of the township to the drainage district; or, if bonds are not issued by the township, a county, a drainage district, or an authority, not exceeding 8% per annum, commencing in each case from a date fixed by the township board. Future due installments of an assessment against any parcel of land may be paid to the township treasurer at any time in full, with interest accrued through the month in which the final installment is paid.

(4) If an installment of a special assessment is not paid when due, then the installment shall be considered to be delinquent and there shall be collected, in addition to interest as provided by this section, a penalty at the rate of not more than 1% for each month, or fraction of a month, that the installment remains unpaid before being reported to the township board for reassessment upon the township tax roll.

History: 1954, Act 188, Imd. Eff. May 5, 1954;—Am. 1957, Act 187, Imd. Eff. June 4, 1957;—Am. 1974, Act 143, Imd. Eff. June 5, 1974;—Am. 1979, Act 173, Imd. Eff. Dec. 13, 1979;—Am. 1981, Act 57, Imd. Eff. June 4, 1981;—Am. 1986, Act 180, Imd. Eff. July 8, 1986.

41.728 Special assessments to constitute lien; character and effect.

Sec. 8. All special assessments contained in any special assessment roll, including any part thereof deferred as to payment, shall from the date of confirmation of such roll, constitute a lien upon the respective parcels of land assessed. Such lien shall be of the same character and effect as the lien created for township taxes and shall include accrued interest and penalties. No judgment or decree or any act of the township board vacating a special assessment shall destroy or impair the lien of the township upon the premises assessed for such amount of the assessment as may be equitably charged against the same, or as by a regular mode of proceeding might be lawfully assessed thereon.

History: 1954, Act 188, Imd. Eff. May 5, 1954.

41.729 Special assessments; collection by township treasurer, report of delinquencies.

Sec. 9. When any special assessment roll shall be confirmed the township board shall direct the assessments made therein to be collected. The township clerk shall thereupon deliver to the township treasurer such special assessment roll, to which he shall attach his warrant commanding the township treasurer to collect the assessments therein in accordance with the directions of the township board in respect thereto. Said warrant shall further require the township treasurer on the 1st day of September following the date when any

such assessments or any part thereof have become due to submit to the township board a sworn statement setting forth the names of the persons delinquent, if known, a description of the parcels of land upon which there are delinquent assessments and the amount of such delinquency, including accrued interest and penalties computed to September 1 of such year. Upon receiving such special assessment roll and warrant the treasurer shall proceed to collect the several amounts assessed therein as the same shall become due.

History: 1954, Act 188, Imd. Eff. May 5, 1954.

41.729a Deferred assessment; application; evidence of hardship; ordinance; deferred assessment as recorded lien.

Sec. 9a. (1) An owner of property who by reason of hardship is unable to contribute to the cost of an assessment for an improvement authorized in section 2(1)(a), (b), (c), (g), (h), or (n) may have the assessment deferred by application to the assessing officer. Upon receipt of evidence of hardship, the township may defer partial or total payment of the assessment.

(2) The township board may enact an ordinance to define hardship and to permit deferred or partial payment of an assessment pursuant to this section. As a condition of granting the deferred or partial payment of an assessment, the township board shall require that any deferred assessment constitute a recorded lien against the property.

History: Add. 1976, Act 148, Imd. Eff. June 16, 1976;—Am. 1995, Act 139, Imd. Eff. July 10, 1995.

41.730 Special assessments; delinquencies, reassessment.

Sec. 10. In case the treasurer shall, as above provided, report as delinquent any assessment or part thereof, the township board shall certify the same to the supervisor, who shall reassess on the annual township tax roll of such year in a column headed "special assessments" the sum so delinquent, with interest and penalties to September 1 of such year, and an additional penalty of 6% of the total amount. Thereafter the statutes relating to township taxes shall be applicable to such reassessments.

History: 1954, Act 188, Imd. Eff. May 5, 1954.

41.731 Division of lands; apportionment of uncollected assessments.

Sec. 11. Should any parcel of land be divided after a special assessment thereon has been confirmed, and before the collection thereof, the township board may require the supervisor to apportion the uncollected amounts between the several divisions thereof and the report of such apportionment when confirmed by the township board shall be conclusive upon all parties: Provided, That if the interested parties do not agree in writing to such apportionment, then before such confirmation notice of hearing shall be given to all the interested parties, either by personal service or by publication as above provided in case of an original assessment roll.

History: 1954, Act 188, Imd. Eff. May 5, 1954.

41.732 Special assessment roll; insufficiency, additional pro rata assessments; surplus, refunds.

Sec. 12. Should the assessments in any special assessment roll prove insufficient for any reason, including the noncollection thereof, to pay for the improvement for which they were made or to pay the principal and interest on the bonds issued in anticipation of the collection thereof, then the township board shall make additional pro rata assessments to supply the deficiency, but the total amount assessed against any parcel of land shall not exceed the value of the benefits received from the improvement. Should the total amount collected on assessments prove larger than necessary by more than 5% of the original roll, then the surplus shall be prorated among the properties assessed in accordance with the amount assessed against each and applied toward the payment of the next township tax levied against such properties, respectively, or if there be no such tax then it shall be refunded to the persons who are the respective record owners of the properties on the date of the passage of the resolution ordering such refund. Any such surplus of 5% or less may be paid into the township contingent funds disposed of as above provided.

History: 1954, Act 188, Imd. Eff. May 5, 1954.

41.733 Illegal special assessment; reassessment proceedings.

Sec. 13. Whenever any special assessment shall, in the opinion of the township board, be invalid by reason of irregularities or informalities in the proceedings, or if any court of competent jurisdiction shall adjudge such assessment to be illegal, the township board shall, whether the improvement has been made or not, whether any part of the assessment has been paid or not, have power to proceed from the last step at which the proceedings were legal and cause a new assessment to be made for the same purpose for which the former

assessment was made. All proceedings on such reassessment and for the collection thereof shall be conducted in the same manner as provided for the original assessment, and whenever an assessment or any part thereof levied upon any premises has been so set aside, if the same has been paid and not refunded, the payment so made shall be applied upon the reassessment.

History: 1954, Act 188, Imd. Eff. May 5, 1954.

41.734 Exempt corporations; agreement to pay assessment.

Sec. 14. The governing body of any public or private corporation whose lands are exempt by law may, by resolution, agree to pay the special assessments against such lands, and in such case the assessment, including all the installments thereof, shall be a valid claim against such corporation.

History: 1954, Act 188, Imd. Eff. May 5, 1954.

41.734a Assessment on platted corner lots; payment of portion by governing body.

Sec. 14a. The governing body of any township, by resolution, may agree to pay up to 1/3 of the cost of the special assessment levied against any platted corner lot for the payment of public improvements authorized under the provisions of this act.

History: Add. 1959, Act 196, Eff. Mar. 19, 1960.

41.735 Bonds.

Sec. 15. The township board may borrow money and issue the bonds of the township in anticipation of the collection of special assessments to defray all or any part of the cost of any improvement made under this act after the special assessment roll is confirmed. Bonds issued under this section shall not exceed the amount of the special assessments in anticipation of the collection of which they are issued. Bonds may be issued in anticipation of the collection of special assessments levied in respect to 1 or more public improvements, but no special assessment district shall be compelled to pay the obligation of any other special assessment district. The township board may pledge the full faith and credit of the township for the prompt payment of the principal of and interest on the bonds authorized under this section. The issuance of bonds under this section is subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

History: 1954, Act 188, Imd. Eff. May 5, 1954;—Am. 1974, Act 143, Imd. Eff. June 5, 1974;—Am. 2002, Act 229, Imd. Eff. Apr. 29, 2002.

41.735a Township improvement revolving fund; advances; interest.

Sec. 15a. As an alternate method of defraying the cost of an improvement made under this act, after the special assessment roll for the improvement is confirmed, the township board may pay the cost of the improvement from the township improvement revolving fund. The amount advanced shall not exceed the amount the board anticipates will be collected by the special assessments. The amount advanced by the township shall bear interest at a rate not exceeding 5% per annum.

History: Add. 1956, Act 109, Eff. Aug. 11, 1956;—Am. 1986, Act 180, Imd. Eff. July 8, 1986.

41.735b Township improvement revolving fund; transfer of funds; amount.

Sec. 15b. The township board of any township by resolution may create and designate a fund to be known as the township improvement revolving fund. Before January 1, 1999, the township board may transfer to the township improvement revolving fund from the general fund of the township in any 1 year an amount not exceeding 2 mills of the state equalized valuation of the real and personal property in the township and in each subsequent year may transfer from the general fund to the township improvement revolving fund until that fund equals 5 mills of the state equalized valuation of the real and personal property in the township. After December 31, 1998, the township board may transfer to the township improvement revolving fund from the general fund of the township in any 1 year an amount not exceeding 2 mills of the taxable value of the real and personal property in the township and in each subsequent year may transfer from the general fund to the township improvement revolving fund until that fund equals 5 mills of the taxable value of the real and personal property in the township. All interest charges collected are a part of the township improvement revolving fund. The township board may transfer funds from the township improvement revolving fund to the general fund when, in the judgment of the board, funds should be transferred.

History: Add. 1956, Act 109, Eff. Aug. 11, 1956;—Am. 1998, Act 544, Imd. Eff. Jan. 20, 1999.

41.735c Special assessments to defray certain obligations.

Sec. 15c. The township board may determine that the whole or any part of an obligation of the township assessed or contracted for pursuant to Act No. 342 of the Public Acts of 1939, as amended, being sections 46.171 to 46.187 of the Michigan Compiled Laws; Act No. 185 of the Public Acts of 1957, as amended, being

sections 123.731 to 123.786 of the Michigan Compiled Laws; Act No. 40 of the Public Acts of 1956, as amended, being sections 280.1 to 280.623 of the Michigan Compiled Laws; and Act No. 233 of the Public Acts of 1955, as amended, being sections 124.281 to 124.294 of the Michigan Compiled Laws, shall be defrayed by special assessments against the property specially benefited thereby and in such case, the special assessments may be levied and collected in accordance with this act except as herein provided. The requirements of section 3 with respect to requiring a petition and section 4 with respect to the hearing therein required shall not apply to any special assessments levied and collected in accordance with this section and the above described acts.

History: Add. 1974, Act 143, Imd. Eff. June 5, 1974.

41.736 Public improvements; powers granted to townships.

Sec. 16. The powers herein granted may be exercised by any township and shall be in addition to the powers granted by any other statute.

History: 1954, Act 188, Imd. Eff. May 5, 1954;—Am. 1961, Act 14, Imd. Eff. May 9, 1961.

41.737 Scope of act.

Sec. 17. The provisions of this act shall not apply to any obligations issued or assessments levied except in accordance with the provisions of this act after the effective date thereof, and shall not validate any proceedings or action taken by any township prior to the effective date of this act.

History: 1954, Act 188, Imd. Eff. May 5, 1954.

41.738 Use of interest earned from investments, money from bond proceeds, or money from interest and penalties on unpaid special assessment.

Sec. 18. Interest earned from the investment of money collected under a special assessment under this act or of money received as bond proceeds from a bond issued under this act, or money from interest or penalties charged and collected on an unpaid special assessment under this act shall only be used for the following:

(a) To pay for the improvement for which the special assessment is assessed.

(b) To pay the principal and interest of bonds that are issued for the improvement for which the special assessment is assessed.

(c) To pay the principal and interest of an advance from the township that is used for the improvement for which the special assessment is assessed.

History: Add. 1986, Act 180, Imd. Eff. July 8, 1986.

THE GENERAL LAW VILLAGE ACT (EXCERPT)
Act 3 of 1895

67.12 Public improvement; powers of council; expenses; assessment.

Sec. 12. The council may lay out, establish, open, make, widen, extend, straighten, alter, close, vacate, or abolish a highway, street, lane, alley, sidewalk, sewer, drain, water course, bridge, or culvert in the village if the council considers it to be a public improvement, or necessary for the public convenience. Private property required for these purposes may be taken in the manner provided in this act. The expense of the improvement may be paid by special assessments upon the property adjacent to or benefited by the improvement, in the manner provided by law for levying and collecting special assessments, or in the discretion of the council, a portion of such costs and expenses may be paid by special assessment, and the balance from the general highway fund.

History: 1895, Act 3, Imd. Eff. Feb. 19, 1895;—CL 1897, 2780;—CL 1915, 2651;—CL 1929, 1560;—CL 1948, 67.12;—Am. 1998, Act 255, Imd. Eff. July 13, 1998.

THE FOURTH CLASS CITY ACT (EXCERPT)
Act 215 of 1895

102.2 Thoroughfares; public improvements; condemnation; expenses, assessment.

Sec. 2. The council shall have authority to lay out, open, widen, extend, straighten, alter, close, vacate or abolish any highway, street or alley in the city, whenever they shall deem the same a public improvement; and if in so doing it shall be necessary to take or use private property, the same may be taken in the manner in this act provided for taking private property for public use. The expense of such improvement may be paid by special assessments upon the property adjacent to or benefited by such improvement, in the manner in this act provided for levying and collecting special assessments; or in the discretion of the council, a portion of such costs and expenses may be paid by special assessments as aforesaid, and the balance from the general street fund.

History: 1895, Act 215, Eff. Aug. 30, 1895;—CL 1897, 3174;—CL 1915, 3088;—CL 1929, 2012;—CL 1948, 102.2.

THE HOME RULE CITY ACT (EXCERPT)
Act 279 of 1909

117.4d Permissible charter provisions; assessing costs of public improvement and boulevard lighting system; definitions.

Sec. 4d. (1) Each city may in its charter provide:

(a) For assessing and reassessing the costs, or a portion of the costs, of a public improvement to a special district.

(b) For assessing the cost, or a portion of the costs, of installing a boulevard lighting system on a street upon the lands abutting the street. A city shall not establish a special assessment district for a boulevard lighting system if the district includes the entire city, unless the special assessments against the real property within the district are levied on other than an ad valorem basis.

(2) As used in this section:

(a) "Boulevard lighting system" means any design or method of providing light to a street.

(b) "Cost" includes necessary condemnation cost and necessary expenses incurred for engineering, financial, legal, or administrative services; operation and maintenance of a boulevard lighting system, whether that service is provided directly by the city or is provided by an investor-owned utility; and other services of a similar kind involved in the making and financing of the improvement and in the levying and collecting of the special assessments for the improvement. If the service is rendered by city employees, the city may include the fair and reasonable cost of rendering the service. The inclusion of a cost specified in this subdivision as part of the cost of an improvement for which special assessments have been levied before the effective date of the 1987 amendatory act amending this section is validated.

(c) "Street" means a public avenue, street, highway, road, path, boulevard, or alley or other access used for travel by the public.

History: Add. 1929, Act 126, Eff. Aug. 28, 1929;—CL 1929, 2234;—CL 1948, 117.4d;—Am. 1961, Act 124, Eff. Sept. 8, 1961;—Am. 1964, Act 27, Imd. Eff. Apr. 29, 1964;—Am. 1988, Act 201, Imd. Eff. June 29, 1988.

PRINCIPAL SHOPPING DISTRICTS AND BUSINESS IMPROVEMENT DISTRICTS
Act 120 of 1961

AN ACT to authorize the development or redevelopment of principal shopping districts and business improvement districts; to permit the creation of certain boards; to provide for the operation of principal shopping districts and business improvement districts; to provide for the creation, operation, and dissolution of business improvement zones; and to authorize the collection of revenue and the bonding of certain local governmental units for the development or redevelopment projects.

History: 1961, Act 120, Imd. Eff. May 26, 1961;—Am. 1984, Act 260, Imd. Eff. Dec. 13, 1984;—Am. 1992, Act 146, Imd. Eff. July 15, 1992;—Am. 1999, Act 49, Imd. Eff. June 15, 1999;—Am. 2001, Act 260, Eff. Mar. 1, 2002;—Am. 2003, Act 209, Imd. Eff. Nov. 26, 2003.

Popular name: Shopping Areas Redevelopment Act

The People of the State of Michigan enact:

CHAPTER 1
PRINCIPAL SHOPPING DISTRICT

125.981 Definitions; principal shopping district; business district; creation, appointment, and composition of board.

Sec. 1. (1) As used in this chapter:

(a) "Assessable property" means real property in a district area other than all of the following:

(*i*) Property classified as residential real property under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c.

(*ii*) Property owned by the federal, a state, or a local unit of government where property is exempt from the collection of taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

(*iii*) One or more classes of property owners whose property meets all of the following conditions:

(A) Is exempt from the collection of taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, other than property identified in subparagraph (*ii*).

(B) As a class has been determined by the legislative body of the local governmental unit not to be benefited by a project for which special assessments are to be levied.

(b) "Business improvement district" means 1 or more portions of a local governmental unit or combination of contiguous portions of 2 or more local governmental units that are predominantly commercial or industrial in use.

(c) "District" means a business improvement district or a principal shopping district.

(d) "Highways" means public streets, highways, and alleys.

(e) "Local governmental unit" means a city, village, or urban township.

(f) "Principal shopping district" means a portion of a local governmental unit designated by the governing body of the local governmental unit that is predominantly commercial and that contains at least 10 retail businesses.

(g) "Urban township" means a township that is an urban township as defined in section 2 of the local development financing act, 1986 PA 281, MCL 125.2152, and is a township located in a county with a population of more than 750,000.

(2) A local governmental unit with a master plan for the physical development of the local governmental unit that includes an urban design plan designating a principal shopping district or includes the development or redevelopment of a principal shopping district, or 1 or more local governmental units that establish a business improvement district by resolution, may do 1 or more of the following:

(a) Subject, where necessary, to approval of the governmental entity that has jurisdiction over the highway, open, widen, extend, realign, pave, maintain, or otherwise improve highways and construct, reconstruct, maintain, or relocate pedestrian walkways.

(b) Subject, where necessary, to approval of the governmental entity that has jurisdiction over the highway, prohibit or regulate vehicular traffic where necessary to carry out the purposes of the development or redevelopment project.

(c) Subject, where necessary, to approval of the governmental entity that has jurisdiction over the highway, regulate or prohibit vehicular parking on highways.

(d) Acquire, own, maintain, demolish, develop, improve, or operate properties, off-street parking lots, or structures.

(e) Contract for the operation or maintenance by others of off-street parking lots or structures owned by the local governmental unit, or appoint agents for the operation or maintenance.

(f) Construct, maintain, and operate malls with bus stops, information centers, and other buildings that will serve the public interest.

(g) Acquire by purchase, gift, or condemnation and own, maintain, or operate real or personal property necessary to implement this section.

(h) Promote economic activity in the district by undertakings including, but not limited to, conducting market research and public relations campaigns, developing, coordinating, and conducting retail and institutional promotions, and sponsoring special events and related activities. A business may prohibit the use of its name or logo in a public relations campaign, promotion, or special event or related activity for the district.

(i) Provide for or contract with other public or private entities for the administration, maintenance, security, operation, and provision of services that the board determines are a benefit to a district within the local governmental unit.

(3) A local governmental unit that provides for ongoing activities under subsection (2)(h) or (i) shall also provide for the creation of a board for the management of those activities.

(4) One member of the board of the principal shopping district shall be from the adjacent residential area, 1 member shall be a representative of the local governmental unit, and a majority of the members shall be nominees of individual businesses located within the principal shopping district. The board shall be appointed by the chief executive officer of the local governmental unit with the concurrence of the legislative body of the local governmental unit. However, if all of the following requirements are met, a business may appoint a member of the board of a principal shopping district, which member shall be counted toward the majority of members required to be nominees of businesses located within the principal shopping district:

(a) The business is located within the principal shopping district.

(b) The principal shopping district was designated by the governing body of a local governmental unit after July 14, 1992.

(c) The business is located within a special assessment district established under section 5.

(d) The special assessment district is divided into special assessment rate zones reflecting varying levels of special benefits.

(e) The business is located in the special assessment rate zone with the highest special assessment rates.

(f) The square footage of the business is greater than 5.0% of the total square footage of all businesses in that special assessment rate zone.

(5) If the boundaries of the principal shopping district are the same as those of a downtown district designated under 1975 PA 197, MCL 125.1651 to 125.1681, the governing body may provide that the members of the board of the downtown development authority, which manages the downtown district, shall compose the board of the principal shopping district, in which case subsection (4) does not apply.

(6) The members of the board of a business improvement district shall be determined by the local governmental unit as provided in this subsection. The board of a business improvement district shall consist of all of the following:

(a) One representative of the local governmental unit appointed by the chief executive officer of the local governmental unit with the concurrence of the legislative body of the local governmental unit in which the business improvement district is located. If the business improvement district is located in more than 1 local governmental unit, then 1 representative from each local governmental unit in which the business improvement district is located shall serve on the board as provided in this subdivision.

(b) Other members of the board shall be nominees of the businesses and property owners located within the business improvement district. If a class of business or property owners, as identified in the resolution described in subsection (8), is projected to pay more than 50% of the special assessment levied that benefits property in a business improvement district for the benefit of the business improvement district, the majority of the members of the board of the business improvement district shall be nominees of the business or property owners in that class.

(7) A local governmental unit may create 1 or more business improvement districts.

(8) If 1 or more local governmental units establish a business improvement district by resolution under subsection (2), the resolution shall identify all of the following:

(a) The geographic boundaries of the business improvement district.

(b) The number of board members in that business improvement district.

(c) The different classes of property owners in the business improvement district.

(d) The class of business or property owners, if any, who are projected to pay more than 50% of the special assessment levied that benefits property in that business improvement district.

History: 1961, Act 120, Imd. Eff. May 26, 1961;—Am. 1980, Act 287, Imd. Eff. Oct. 14, 1980;—Am. 1984, Act 260, Imd. Eff. Dec. 13, 1984;—Am. 1992, Act 146, Imd. Eff. July 15, 1992;—Am. 1999, Act 49, Imd. Eff. June 15, 1999;—Am. 2001, Act 261, Imd. Eff. Jan. 9, 2002;—Am. 2003, Act 209, Imd. Eff. Nov. 26, 2003.

Popular name: Shopping Areas Redevelopment Act

125.982 Principal shopping district project or business improvement project; methods or criteria for financing costs.

Sec. 2. (1) The cost of the whole or any part of a principal shopping district project or business improvement district project as authorized in this chapter may be financed by 1 or more of the following methods:

(a) Grants and gifts to the local governmental unit or district.

(b) Local governmental unit funds.

(c) The issuance of general obligation bonds of the local governmental unit subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(d) The issuance of revenue bonds by the local governmental unit under the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140, or under any other applicable revenue bond act. The issuance of the bonds shall be limited to the part or parts of the district project that are public improvements.

(e) The levying of special assessments against land or interests in land, or both.

(f) Any other source.

(2) Beginning January 1, 2000, the proceeds of a bond, note, or other obligation issued to finance a project authorized under this chapter shall be used for capital expenditures, costs of a reserve fund securing the bonds, notes, or other obligations, and costs of issuing the bonds, notes, or other obligations. The proceeds of the bonds, notes, or other obligations shall not be used for operational expenses of a district.

History: 1961, Act 120, Imd. Eff. May 26, 1961;—Am. 1980, Act 287, Imd. Eff. Oct. 14, 1980;—Am. 1984, Act 260, Imd. Eff. Dec. 13, 1984;—Am. 1992, Act 146, Imd. Eff. July 15, 1992;—Am. 1999, Act 49, Imd. Eff. June 15, 1999;—Am. 2001, Act 261, Imd. Eff. Jan. 9, 2002;—Am. 2003, Act 209, Imd. Eff. Nov. 26, 2003.

Popular name: Shopping Areas Redevelopment Act

125.983 District project as public improvement.

Sec. 3. A district project as authorized under this chapter is a public improvement. The use in this chapter of the term “public improvement” does not prevent the levying of a special assessment for the cost of a part of a district project that represents special benefits.

History: 1961, Act 120, Imd. Eff. May 26, 1961;—Am. 1992, Act 146, Imd. Eff. July 15, 1992;—Am. 1999, Act 49, Imd. Eff. June 15, 1999;—Am. 2001, Act 261, Imd. Eff. Jan. 9, 2002.

Popular name: Shopping Areas Redevelopment Act

125.984 Development or redevelopment of district; single improvement.

Sec. 4. The development or redevelopment of a district, including the various phases of the development or redevelopment, is 1 project and, in the discretion of the governing body of the local governmental unit, may be financed as a single improvement.

History: 1961, Act 120, Imd. Eff. May 26, 1961;—Am. 1992, Act 146, Imd. Eff. July 15, 1992;—Am. 1999, Act 49, Imd. Eff. June 15, 1999;—Am. 2003, Act 209, Imd. Eff. Nov. 26, 2003.

Popular name: Shopping Areas Redevelopment Act

125.985 Special assessments; levy; installment payments; maximum annual amounts; adjustment; special assessment bonds; full faith and credit; maturity; statutory or charter provisions; review; marketing and development plan.

Sec. 5. (1) If a local governmental unit elects to levy special assessments to defray all or part of the cost of the district project, then the special assessments shall be levied pursuant to applicable statutory or charter provisions or, if there are no applicable statutory or charter provisions, pursuant to statutory or charter provisions applicable to local governmental unit street improvements. If a local governmental unit charter does not authorize special assessments for the purposes set forth in this chapter, the charter provisions authorizing special assessments for street improvements are made applicable to the purposes set forth in this chapter, without amendment to the charter. The total amount assessed for district purposes may be made payable in not more than 20 annual installments as determined by the governing body of the local governmental unit, the first installment to be payable in not more than 18 months after the date of the confirmation of the special assessment roll.

(2) A special assessment shall be levied against assessable property on the basis of the special benefits to that parcel from the total project. There is a rebuttable presumption that a district project specially benefits all assessable property located within the district.

(3) This subsection applies to a principal shopping district only if the principal shopping district is designated by the governing body of a local governmental unit after July 14, 1992. The special assessments annually levied on a parcel under this chapter shall not exceed the product of $10,000.00 and the number of businesses on that parcel. A business located on a single parcel shall not be responsible for a special assessment in excess of $10,000.00 annually. When the special assessment district is created, a lessor of a parcel subject to a special assessment may unilaterally revise an existing lease to a business located on that parcel to recover from that business all or part of the special assessment, as is proportionate considering the portion of the parcel occupied by the business.

(4) The $10,000.00 maximum amounts in subsection (3) shall be adjusted each January 1, beginning January 1, 1994, pursuant to the annual average percentage increase or decrease in the Detroit consumer price index for all items as reported by the United States department of labor. The adjustment for each year shall be made by comparing the Detroit consumer price index for the 12-month period ending the preceding October 31 with the corresponding Detroit consumer price index of 1 year earlier. The percentage increase or decrease shall then be multiplied by the current amounts under subsection (3) authorized by this section. The product shall be rounded up to the nearest multiple of 50 cents and shall be the new amount.

(5) The local governmental unit may issue special assessment bonds in anticipation of the collection of the special assessments for a district project and, by action of its governing body, may pledge its full faith and credit for the prompt payment of the bonds. Special assessment bonds issued under this section are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The last maturity on the bonds shall be not later than 2 years after the due date of the last installment on the special assessments. Special assessment bonds may be issued pursuant to statutory or charter provisions applicable to the issuance by the local governmental unit of special assessment bonds for the improvement or, if there are no applicable statutory or charter provisions, pursuant to statutory or charter provisions applicable to the issuance by the local governmental unit of special assessment bonds for street improvements.

(6) If a district project in a district designated by the governing body of a local governmental unit after July 14, 1992 is financed by special assessments, the governing body of the local governmental unit shall review the special assessments every 5 years, unless special assessment bonds are outstanding.

(7) Before a local governmental unit levies a special assessment under this chapter that benefits property within a business improvement district, the business improvement district board shall develop a marketing and development plan that details all of the following:

(a) The scope, nature, and duration of the business improvement district project or projects.

(b) The different classes of property owners who are going to be assessed and the projected amount of the special assessment on the different classes.

(8) A local governmental unit that levies a special assessment under this chapter that benefits property within a business improvement district is considered to have approved the marketing and development plan described in subsection (7).

History: 1961, Act 120, Imd. Eff. May 26, 1961;—Am. 1980, Act 287, Imd. Eff. Oct. 14, 1980;—Am. 1984, Act 260, Imd. Eff. Dec. 13, 1984;—Am. 1992, Act 146, Imd. Eff. July 15, 1992;—Am. 1999, Act 49, Imd. Eff. June 15, 1999;—Am. 2001, Act 261, Imd. Eff. Jan. 9, 2002;—Am. 2003, Act 209, Imd. Eff. Nov. 26, 2003.

Popular name: Shopping Areas Redevelopment Act

125.986 Special assessments; off-street parking lots or structures.

Sec. 6. If off-street parking lots or structures are essential to the principal shopping district project, if 1 or more off-street parking lots or structures are already owned by the local governmental unit and were acquired through the issuance of revenue bonds, and if the remaining parking lots or structures are to be financed in whole or in part by special assessments and special assessment bonds, then the local governmental unit, to place all parking lots or structures on the same basis, may include as a part of the cost of parking lots or structures for the project the amount necessary to retire all or any part of the outstanding revenue bonds, inclusive of any premium not exceeding 5% necessary to be paid upon the redemption or purchase of those outstanding bonds. From the proceeds of the special assessments or from the sale of bonds issued in anticipation of the payment of the special assessments, the local governmental unit shall retire by redemption or purchase the outstanding revenue bonds. This section does not authorize the refunding of noncallable bonds without the consent of the holders of the bonds.

History: 1961, Act 120, Eff. May 26, 1961;—Am. 1992, Act 146, Imd. Eff. July 15, 1992;—Am. 2003, Act 209, Imd. Eff. Nov. 26,

2003.

Popular name: Shopping Areas Redevelopment Act

125.987 Additional powers.

Sec. 7. The powers granted by this chapter are in addition to and not in derogation of any other powers granted by law or charter.

History: Add. 1992, Act 146, Imd. Eff. July 15, 1992;—Am. 2001, Act 261, Imd. Eff. Jan. 9, 2002.

Popular name: Shopping Areas Redevelopment Act

CHAPTER 2
BUSINESS IMPROVEMENT ZONE

125.990 Definitions.

Sec. 10. As used in this chapter:

(a) "Assessable property" means real property in a zone area other than property classified as residential real property under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, or real property exempt from the collection of taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

(b) "Assessment" means an assessment imposed under this chapter against assessable property for the benefit of the property owners.

(c) "Assessment revenues" means the money collected by a business improvement zone from any assessments, including any interest on the assessments.

(d) "Board" means the board of directors of a business improvement zone.

(e) "Business improvement zone" means a business improvement zone created under this chapter.

(f) "Nonprofit corporation" means a nonprofit corporation organized under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, and which complies with all of the following:

(*i*) The articles of incorporation of the nonprofit corporation provide that the nonprofit corporation may promote a business improvement zone and may also provide management services related to the implementation of a zone plan.

(*ii*) The nonprofit corporation is exempt from federal income tax under section 501(c)(4) or 501(c)(6) of the internal revenue code of 1986.

(g) "Person" means an individual, partnership, corporation, limited liability company, association, or other legal entity.

(h) "Project" means any activity for the benefit of property owners authorized by section 10a to enhance the business environment within a zone area.

(i) "Property owner" means a person who owns, or an agent authorized in writing by a person who owns, assessable property according to the records of the treasurer of the city or village in which the business improvement zone is located.

(j) "7-year period" means the period in which a business improvement zone is authorized to operate, beginning on the date that the business improvement zone is created or renewed and ending 7 calendar years after that date.

(k) "Zone area" means the area designated in the zone plan as the area to be served by the business improvement zone.

(*l*) "Zone plan" means a set of goals, strategies, objectives, and guidelines for the operation of a business improvement zone, as approved at a meeting of property owners conducted under section 10d.

History: Add. 2001, Act 260, Eff. Mar. 1, 2002.

Popular name: Shopping Areas Redevelopment Act

125.990a Business improvement zone as public body corporate; powers; authority.

Sec. 10a. (1) A business improvement zone is a public body corporate and may do 1 or more of the following for the benefit of property owners located in the business improvement zone:

(a) Acquire, through purchase, lease, or gift, construct, develop, improve, maintain, operate, or reconstruct park areas, planting areas, and related facilities within the zone area.

(b) Acquire, construct, clean, improve, maintain, reconstruct, or relocate sidewalks, street curbing, street medians, fountains, and lighting within the zone area.

(c) Develop and propose lighting standards within the zone area.

(d) Acquire, plant, and maintain trees, shrubs, flowers, or other vegetation within the zone area.

(e) Provide or contract for security services with other public or private entities and purchase equipment or technology related to security services within the zone area.

(f) Promote and sponsor cultural or recreational activities.

(g) Engage in economic development activities, including, but not limited to, promotion of business, retail, or industrial development, developer recruitment, business recruitment, business marketing, business retention, public relations efforts, and market research.

(h) Engage in other activity with the purpose to enhance the economic prosperity, enjoyment, appearance, image, and safety of the zone area.

(i) Acquire by purchase or gift, maintain, or operate real or personal property necessary to implement this chapter.

(j) Solicit and accept gifts or grants to further the zone plan.

(k) Sue or be sued.

(2) A business improvement zone may contract with a nonprofit corporation or any other public or private entity and may pay a reasonable fee to the nonprofit corporation or other public or private entity for services provided.

(3) A business improvement zone has the authority to borrow money in anticipation of the receipt of assessments if all of the following conditions are satisfied:

(a) The loan will not be requested or authorized, or will not mature, within 90 days before the expiration of the 7-year period.

(b) The amount of the loan does not exceed 50% of the annual average assessment revenue of the business improvement zone during the previous year or, in the case of a business improvement zone that has been in existence for less than 1 year, the loan does not exceed 25% of the projected annual assessment revenue.

(c) The loan repayment period does not extend beyond the 7-year period.

(d) The loan is subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(4) The services provided by and projects of a business improvement zone are services and projects of the business improvement zone and are not services, functions, or projects of the municipality in which the business improvement zone is located. The services provided by and projects of a business improvement zone are supplemental to the services, projects, and functions of the city or village in which the business improvement zone is located.

(5) The business improvement zone has no other authority than the authority described in this act.

History: Add. 2001, Act 260, Eff. Mar. 1, 2002.

Popular name: Shopping Areas Redevelopment Act

125.990b Business improvement zone; establishment within city or village; assessable property; establishment of business improvement zone in city or village with business improvement zone located before effective date of act.

Sec. 10b. (1) Except as provided in subsection (4), 1 or more business improvement zones may be established within a city or village.

(2) The majority of all parcels included in a zone area, both by area and by taxable value, shall be assessable property. A zone area shall be contiguous, with the exception of public streets, alleys, parks, and other public rights-of-way.

(3) Except as provided in subsection (4), a business improvement zone may be established in a city or village even if the city or village has established a principal shopping district or business improvement district under chapter 1. Assessable property shall not be included in any of the following:

(a) More than 1 business improvement zone established under this chapter.

(b) Both a principal shopping district and a business improvement district established under chapter 1.

(4) If at the time of the effective date of the amendatory act that added this subsection a business improvement district established under chapter 1 is located in a city or village, a business improvement zone may not be established under this chapter within that city or village unless within 180 days of the effective date of the amendatory act that added this subsection or during July 2005 or during July every third year after 2005 the governing body of the city or village adopts a resolution authorizing the governing body to consider, as provided in section 10e, the establishment of a business improvement zone under this chapter.

History: Add. 2001, Act 260, Eff. Mar. 1, 2002.

Popular name: Shopping Areas Redevelopment Act

125.990c Initiation by delivery of petition; contents; filing; notice.

Sec. 10c. (1) A person may initiate the establishment of a business improvement zone by the delivery of a petition to the clerk of the city or village in which a proposed zone area is located. The petition shall include all of the following:

(a) The boundaries of the zone area.

(b) The signatures of property owners of parcels representing not less than 30% of the property owners within the zone area, weighted as provided in section 10f(2).

(c) A listing, by tax parcel identification number, of all parcels within the zone area, separately identifying assessable property.

(2) After a petition is filed pursuant to subsection (1), the clerk shall notify all property owners within the zone area of a public meeting of the property owners regarding the establishment of the business improvement zone to be held not less than 45 days or more than 60 days after the filing of the petition. The notice shall be sent by first-class mail to the property owners not less than 14 days prior to the scheduled date of the meeting. The notice shall include the specific location and the scheduled date and time of the meeting.

History: Add. 2001, Act 260, Eff. Mar. 1, 2002.

Popular name: Shopping Areas Redevelopment Act

125.990d Public meeting of property owners; adoption of zone plan; contents; adoption by majority vote; presentment to city or village clerk.

Sec. 10d. (1) At the meeting required by section 10c, the property owners may adopt a zone plan for submission to and approval by the governing body of the city or village in which the business improvement zone is located.

(2) A zone plan shall include all of the following:

(a) A description of the boundaries of the zone area sufficient to identify each assessable property included.

(b) The proposed initial board of directors, except for a director of the board who may be appointed by the city or village under section 10g(2).

(c) The method for removal, appointment, and replacement of the board.

(d) A description of projects planned during the 7-year period, including the scope, nature, and duration of the projects.

(e) An estimate of the total amount of expenditures for projects planned during the 7-year period.

(f) The proposed source or sources of financing for the projects.

(g) If the proposed financing includes assessments, the projected amount or rate of the assessments for each year and the basis upon which the assessments are to be imposed on assessable property.

(h) A listing, by tax parcel identification number, of all parcels within the zone area, separately identifying assessable property.

(i) A plan of dissolution for the business improvement zone.

(3) A zone plan shall be considered adopted by the property owners if a majority of the property owners voting at the meeting approve the zone plan. The votes of the property owners at the meeting shall be weighted in the manner indicated in section 10f(2).

(4) Any zone plan adopted under this section shall be presented to the clerk of the city or village in which the zone area is located.

History: Add. 2001, Act 260, Eff. Mar. 1, 2002.

Popular name: Shopping Areas Redevelopment Act

125.990e Public hearing of governing body; notice; approval or rejection; amendment; resubmission; assessment; election; publication of notice; assisting in conduct of election.

Sec. 10e. (1) If a zone plan is adopted and presented to the clerk of the city or village in accordance with section 10d, the governing body of the city or village shall within 45 days schedule a public hearing of the governing body to review the zone plan and any proposed assessment and to receive public comment. The clerk shall notify all owners of parcels within the zone area of the public hearing by first-class mail.

(2) At the public hearing, or at the next regularly scheduled meeting of the governing body of the city or village, the governing body shall approve or reject the establishment of the business improvement zone and the zone plan as adopted by the property owners under section 10d(3). If the governing body rejects the establishment of the business improvement zone and the zone plan, the clerk shall notify all property owners within the zone of a reconvened meeting of the property owners which shall be held not sooner than 10 days or later than 21 days after the date of the rejection by the governing body. The notice shall be sent by first-class mail to the property owners not less than 7 days prior to the scheduled date of the meeting and shall include the specific location and the scheduled date and time of the meeting, as determined by the person initiating the establishment of the business improvement zone under section 10c(1). At the reconvened meeting, the property owners may amend the zone plan if approved by a majority of the property owners as

provided in section 10d(3). The amended zone plan may be resubmitted to the clerk of the city or village without the requirement of a new petition under section 10c for approval or rejection at a meeting of the governing body of the city or village not later than 60 days after the amended zone plan is resubmitted to the clerk. If a zone plan is not rejected within 60 days of the date the amended zone plan is resubmitted to the clerk, the amended zone plan is considered approved by the governing body of the city or village. If the amended zone plan is rejected by the governing body, then the amended zone plan may not be resubmitted without the delivery of a new petition under section 10c.

(3) Approval of the business improvement zone and zone plan shall serve as a determination by the city or village that any assessment set forth in the zone plan, including the basis for allocating the assessment, is appropriate, subject only to the approval of the business improvement zone and the zone plan by the property owners in accordance with section 10f.

(4) If the governing body of the city or village approves the business improvement zone and zone plan or if the amended zone plan is considered approved under subsection (2), the clerk of the city or village shall set an election pursuant to section 10f not more than 60 days following the approval.

(5) The clerk of the city or village shall send to the property owners notice by first-class mail of the election not less than 30 days before the election and publish the notice at least twice in a newspaper of general circulation in the city or village in which the zone area is located. The first publication shall not be less than 10 days or more than 30 days prior to the date scheduled for the election. The second publication shall not be published less than 1 week after the first publication.

(6) The election described in this section and section 10f is not an election subject to the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

(7) The person who filed the petition under section 10c, the proposed board members, and the property owners may, at the option and under the direction of the clerk, assist the clerk of the city or village in conducting the election to keep the expenses of the election at a minimum.

History: Add. 2001, Act 260, Eff. Mar. 1, 2002.

Popular name: Shopping Areas Redevelopment Act

125.990f Voting; eligibility; conduct; question; weight; adoption of business improvement zone and zone plan; expenses; duration; compliance with state and federal laws; immunity of city or village.

Sec. 10f. (1) All property owners as of the date of the delivery of the petition as provided in section 10c are eligible to participate in the election. The election shall be conducted by mail. The question to be voted on by the property owners is the adoption of the zone plan and the establishment of the business improvement zone, including the identity of the initial board.

(2) Votes of property owners shall be weighted in proportion to the amount that the taxable value of their respective real property for the preceding calendar year bears to the taxable value of all assessable property in the zone area, but in no case shall the total number of votes assigned to any 1 property owner be equal to more than 25% of the total number of votes eligible to be cast in the election.

(3) A zone plan and the proposal for the establishment of a business improvement zone, including the identity of the initial board, shall be considered adopted upon the approval of more than 60% of the property owners voting in the election, with votes weighted as provided in subsection (2).

(4) Upon acceptance or rejection of a business improvement zone and zone plan by the property owners, the resulting business improvement zone or the person filing the petition under section 10c shall, at the request of the city or village, reimburse the city or village for all or a portion of the reasonable expenses incurred to comply with this chapter. The governing body of the city or village may forgive and choose not to collect all or a portion of the reasonable expenses incurred to comply with this chapter.

(5) Adoption of a business improvement zone and zone plan under this section authorizes the creation of the business improvement zone and the implementation of the zone plan for the 7-year period.

(6) Adoption of a business improvement zone and zone plan under this section and the creation of the business improvement zone does not relieve the business improvement zone from following, or does not waive any rights of the city or village to enforce, any applicable laws, statutes, or ordinances. A business improvement zone created under this chapter shall comply with all applicable state and federal laws.

(7) To the extent not protected by the immunity conferred by 1964 PA 170, MCL 691.1401 to 691.1415, a city or village that approves a business improvement zone within its boundaries is immune from civil or administrative liability arising from any actions of that business improvement zone.

History: Add. 2001, Act 260, Eff. Mar. 1, 2002.

Popular name: Shopping Areas Redevelopment Act

125.990g Board of directors; management of day-to-day activities; members; duties and responsibilities; reimbursement.

Sec. 10g. (1) The day-to-day activities of the business improvement zone and implementation of the zone plan shall be managed by a board of directors.

(2) The board shall consist of an odd number of directors and shall not be smaller than 5 and not larger than 15 in number. The board may include 1 director nominated by the chief executive of the city or village and approved by the governing body of the city or village.

(3) The duties and responsibilities of the board shall be prescribed in the zone plan and to the extent applicable shall include all of the following duties and responsibilities:

(a) Developing administrative procedures relating to the implementation of the zone plan.

(b) Recommending amendments to the zone plan.

(c) Scheduling and conducting an annual meeting of the property owners.

(d) Developing a zone plan for the next 7-year period.

(4) Members of the board shall serve without compensation. However, members of the board may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the board.

History: Add. 2001, Act 260, Eff. Mar. 1, 2002.

Popular name: Shopping Areas Redevelopment Act

125.990h Assessments.

Sec. 10h. (1) A business improvement zone may be funded in whole or in part by 1 or more assessments on assessable property, as provided in the zone plan. An assessment under this chapter shall be in addition to any taxes or special assessments otherwise imposed on assessable property.

(2) An assessment shall be imposed against assessable property only on the basis of the benefits to assessable property afforded by the zone plan. There is a rebuttable presumption that a zone plan and any project specially benefits all assessable property in a zone area.

(3) If a zone plan provides for an assessment, the treasurer of the city or village in which the zone area is located as an agent of the business improvement zone shall collect the assessment imposed by the board under the zone plan on all assessable property within the zone area in the amount authorized by the zone plan.

(4) Except as provided in subsection (7), assessments shall be collected by the treasurer of the city or village as an agent of the business improvement zone from each property owner and remitted promptly to the business improvement zone. Assessment revenue is the property of the business improvement zone and not the city or village in which the business improvement zone is located. The business improvement zone may, at the option and under the direction of the treasurer, assist the treasurer of the city or village in collecting the assessment to keep the expenses of collecting the assessment at a minimum.

(5) The business improvement zone may institute a civil action to collect any delinquent assessment and interest.

(6) An assessment imposed under this act is not a special assessment collected under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

(7) An assessment is delinquent if it has not been paid within 90 days after it was due as provided under the zone plan imposed under this chapter. Delinquent assessments shall be collected by the business improvement zone. Delinquent assessments shall accrue interest at a rate of 1.5% per month until paid.

(8) If any portion of the assessment has not been paid within 90 days after it was due, that portion of the unpaid assessment shall constitute a lien on the property. The lien amount shall be for the unpaid portion of the assessment and shall not include any interest.

History: Add. 2001, Act 260, Eff. Mar. 1, 2002.

Popular name: Shopping Areas Redevelopment Act

125.990i Audit.

Sec. 10i. (1) Expenses incurred in implementing any project or service of a business improvement zone shall be financed in accordance with the zone plan.

(2) Assessment revenues under section 10h are the funds of the business improvement zone and not funds of the state or of the city or village in which the business improvement zone is located. All money collected under section 10h shall be deposited in a financial institution in the name of the business improvement zone. Assessment revenues may be deposited in an interest generating account. The business improvement zone shall use the funds only to implement the zone plan.

(3) All expenditures by a business improvement zone shall be audited annually by a certified public accountant. The audit shall be completed within 9 months of the close of the fiscal year of the business

improvement zone. Within 30 days after completion of an audit, the certified public accountant shall transmit a copy of the audit to the board and make copies of the audit available to the property owners and the public.

(4) If an annual audit required by this section contains material exceptions and the material exceptions are not substantially corrected within 90 days of the delivery of the audit, the business improvement zone shall be dissolved in accordance with the zone plan upon approval of the dissolution by the governing body of the city or village in which the business improvement zone is located.

(5) The board shall publish an annual activity and financial report. The report shall be available to the public. Each year, every property owner shall be notified of the availability of the annual activity and financial report.

(6) As used in this section, "financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office located in this state under the laws of this state or of the United States.

History: Add. 2001, Act 260, Eff. Mar. 1, 2002.

Popular name: Shopping Areas Redevelopment Act

125.990j Zone plan amendment.

Sec. 10j. A zone plan may be amended. Amendments shall be effective if approved by a majority of the property owners voting on the amendment at the annual meeting of property owners or a special meeting called for that purpose, with the votes of the property owners weighted in accordance with section 10f(2). A zone plan amendment changing any assessment is effective only if also approved by the governing body of the city or village in which the business improvement zone is located.

History: Add. 2001, Act 260, Eff. Mar. 1, 2002.

Popular name: Shopping Areas Redevelopment Act

125.990k Expiration of 7-year period; special meeting to approve new zone plan; notice.

Sec. 10k. (1) Prior to the expiration of any 7-year period, the board shall notify the property owners of a special meeting by first-class mail at least 14 days prior to the scheduled date of the meeting to approve a new zone plan for the next 7-year period. Notice under this section shall include the specific location, scheduled date, and time of the meeting.

(2) Approval of the new zone plan at the special meeting by 60% of the property owners of assessable property voting at that meeting, with the vote of the property owners being weighted in accordance with section 10f(2), constitutes reauthorization of the business improvement zone for an additional 7-year period, commencing as of the expiration of the 7-year period then in effect. If the new zone plan reflects any new assessment, or reflects an extension of any assessment beyond the period previously approved by the city or village in which the business improvement zone is located, the new or extended assessment shall be effective only with the approval of the governing body of the city or village.

History: Add. 2001, Act 260, Eff. Mar. 1, 2002.

Popular name: Shopping Areas Redevelopment Act

125.990*l* Dissolution.

Sec. 10*l*. (1) Upon written petition duly signed by 20% of the property owners of assessable property within a zone area, the board shall place on the agenda of the next annual meeting, if the next annual meeting is to be held not later than 60 days after receipt of the written petition or a special meeting not to be held later than 60 days after receipt of the written petition, the issue of dissolution of the business improvement zone. Notice of the next annual meeting or special meeting described in this subsection shall be made to all property owners by first-class mail not less than 14 days prior to the date of the annual or special meeting. The notice shall include the specific location and the scheduled date and time of the meeting.

(2) The business improvement zone shall be dissolved upon a vote of more than 50% of the property owners of assessable property voting at the meeting. A dissolution shall not take effect until all contractual liabilities of the business improvement zone have been paid and discharged.

(3) Upon dissolution of a business improvement zone, the board shall dispose of the remaining physical assets of the business improvement zone. The proceeds of any physical assets disposed of by the business improvement zone and all money collected through assessments that is not required to defray the expenses of the business improvement zone shall be refunded on a pro rata basis to persons from whom assessments were collected. If the board finds that the refundable amount is so small as to make impracticable the computation and refunding of the money, it may be transferred to the treasurer of the city or village in which the business improvement zone is located for deposit in the treasury of the city or village to the credit of the general fund.

(4) Upon dissolution of a business improvement zone, any remaining assets of the business improvement zone shall be transferred to the treasurer of the city or village in which the business improvement zone is located for deposit in the treasury of the city or village to the credit of the general fund.

History: Add. 2001, Act 260, Eff. Mar. 1, 2002.

Popular name: Shopping Areas Redevelopment Act

125.990m Public meeting; compliance with open meetings act; public records; meeting location.

Sec. 10m. (1) The board shall conduct business at a public meeting held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(2) A meeting of property owners under section 10c shall be conducted at a public meeting held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(3) A writing prepared, owned, used, in the possession of, or retained by the business improvement zone in the performance of its duties under this chapter is a public record under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(4) All meetings of the board or property owners described in this act shall be conducted within the city or village in which the business improvement zone is or is to be located.

History: Add. 2001, Act 260, Eff. Mar. 1, 2002.

Popular name: Shopping Areas Redevelopment Act

ACQUISITION OF PARKS (EXCERPT)
Act 153 of 1996

141.322 Acquisition or improvement of parks; financing; establishment of special assessment district; petition; acquisition by condemnation prohibited; scope of powers.

Sec. 2. (1) The county board of commissioners of a county may acquire or improve a park, defray all or part of the cost of the park acquisition or improvement by special assessments, and finance the park acquisition or improvement by borrowing money and issuing bonds in anticipation of the collection of the special assessments, in the same manner as a board of county road commissioners proceeding under sections 1 to 17 of Act No. 246 of the Public Acts of 1931, being sections 41.271 to 41.287 of the Michigan Compiled Laws. However, the proceedings for the establishment of a special assessment district shall be initiated by filing with the county board of commissioners a petition meeting both of the following requirements:

(a) The petition is signed by record owners of land constituting not less than 2/3 of the total land area in the special assessment district as finally established.

(b) The petition is signed by 2/3 of the record owners of land in the special assessment district as finally established.

(2) The city council of a city organized under the fourth class city act, Act No. 215 of the Public Acts of 1895, being sections 81.1 to 113.20 of the Michigan Compiled Laws, may acquire or improve a park, defray all or part of the cost of the park acquisition or improvement by special assessments, and finance the park acquisition or improvement by borrowing money and issuing bonds in anticipation of the collection of the special assessments, in the same manner as authorized in an ordinance adopted under chapter XXIVA of Act No. 215 of the Public Acts of 1895, being sections 104A.1 to 104A.5 of the Michigan Compiled Laws. However, the proceedings for the establishment of a special assessment district shall be initiated by the filing of a petition meeting both of the following requirements:

(a) The petition is signed by record owners of land constituting not less than 2/3 of the total land area in the special assessment district as finally established.

(b) The petition is signed by 2/3 of the record owners of land in the special assessment district as finally established.

(3) The legislative body of a city organized under the home rule city act, Act No. 279 of the Public Acts of 1909, being sections 117.1 to 117.38 of the Michigan Compiled Laws, may acquire or improve a park, defray all or part of the cost of the park acquisition or improvement by special assessments, and finance the park acquisition or improvement by borrowing money and issuing bonds in anticipation of the collection of the special assessments, in the same manner as authorized for other public improvements in charter provisions adopted under sections 4a(7) and 4d of Act No. 279 of the Public Acts of 1909, being sections 117.4a and 117.4d of the Michigan Compiled Laws. However, the proceedings for the establishment of a special assessment district shall be initiated by the filing of a petition meeting both of the following requirements:

(a) The petition is signed by record owners of land constituting not less than 2/3 of the total land area in the special assessment district as finally established.

(b) The petition is signed by 2/3 of the record owners of land in the special assessment district as finally established.

(4) The legislative body of a village or the township board of a township may acquire or improve a park, defray all or part of the cost of the park acquisition or improvement by special assessments, and finance the park acquisition or improvement by borrowing money and issuing bonds in anticipation of the collection of special assessments, in the same manner as authorized by sections 1, 2, 3, and 4 of the township and village public improvement and public service act, Act No. 116 of the Public Acts of 1923, being sections 41.411, 41.412, 41.413, and 41.414 of the Michigan Compiled Laws. The proceedings for the establishment of a special assessment district shall be initiated by filing a petition meeting both of the following requirements:

(a) The petition is signed by record owners of land constituting not less than 2/3 of the total land area in the special assessment district as finally established.

(b) The petition is signed by 2/3 of the record owners of land in the special assessment district as finally established.

History: 1996, Act 153, Imd. Eff. Apr. 3, 1996.

PUBLIC IMPROVEMENT ASSESSMENTS
Act 234 of 1929

AN ACT making the sums of money levied upon any parcel of real estate, as an assessment for benefits derived from the construction of any public improvement, a personal obligation on the part of the owner of such parcel, and to provide for the collection thereof.

History: 1929, Act 234, Eff. Aug. 28, 1929.

The People of the State of Michigan enact:

211.501 Public improvement assessment; personal obligation; recovery.

Sec. 1. Whenever any parcel of real estate shall have been assessed by the proper body for the construction of any public improvement, and such assessment has not been paid and cannot be lawfully made a lien on the real estate, the amount of such assessment shall constitute a personal obligation against the owner of such real estate, and may be recovered in a suit in assumpsit against said owner, before any court of competent jurisdiction, maintained by the officer in whose hands the assessment roll shall have been placed for collection.

History: 1929, Act 234, Eff. Aug. 28, 1929;—CL 1929, 3741;—CL 1948, 211.501.

211.502 Public improvement assessment; personal obligation; installments.

Sec. 2. In case any such assessment set forth in section 1 hereof shall be payable in installments, each installment shall constitute a personal obligation of the owner of such parcel of land at the time such assessment roll shall be delivered to such collecting officer.

History: 1929, Act 234, Eff. Aug. 28, 1929;—CL 1929, 3742;—CL 1948, 211.502.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

PART 307
INLAND LAKE LEVELS

324.30701 Definitions.

Sec. 30701. As used in this part:

(a) "Commissioner" means the county drain commissioner or the county road commission in counties not having a drain commissioner, and, if more than 1 county is involved, each of the drain commissioners or drain commissioner and road commission in counties having no drain commissioner.

(b) "County board" means the county board of commissioners, and if more than 1 county is involved, the boards of commissioners of each of those counties.

(c) "Court" means a circuit court, and if more than 1 judicial circuit is involved, the circuit court designated by the county board or otherwise authorized by law to preside over an action.

(d) "Dam" means an artificial barrier, structure, or facility, and appurtenant works, used to regulate or maintain the level of an inland lake.

(e) "Delegated authority" means the county drain commissioner or any other person designated by the county board to perform duties required under this part.

(f) "Inland lake" means a natural or artificial lake, pond, impoundment, or a part of 1 of those bodies of water. Inland lake does not include the Great Lakes or Lake St. Clair.

(g) "Interested person" means the department and a person who has a record interest in the title to, right of ingress to, or reversionary right to land that would be affected by a permanent change in the natural or normal level of an inland lake.

(h) "Normal level" means the level or levels of the water of an inland lake that provide the most benefit to the public; that best protect the public health, safety, and welfare; that best preserve the natural resources of the state; and that best preserve and protect the value of property around the lake. A normal level shall be measured and described as an elevation based on national geodetic vertical datum.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at § 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

324.30702 Determination of normal inland lake level; motion or petition to initiate action; delegation of powers and duties by county board; maintenance.

Sec. 30702. (1) The county board of a county in which an inland lake is located may upon the board's own motion, or shall within 45 days following receipt of a petition to the board of 2/3 of the owners of lands abutting the inland lake, initiate action to take the necessary steps to cause to be determined the normal level of the inland lake.

(2) Unless required to act by resolution as provided in this part, the county board may delegate powers and duties under this part to that county's commissioner, road commission, or other delegated authority.

(3) If a court-determined normal level is established pursuant to this part, the delegated authority of the county or counties in which the lake is located shall maintain that normal level.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at § 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

324.30703 Preliminary study; costs; contents of study.

Sec. 30703. (1) Before proceeding on a motion made or a petition filed under section 30702, the county board may require that a preliminary study be conducted by a licensed professional engineer. The county board, by

resolution, may require a cash payment from the petitioners sufficient to cover the actual preliminary study costs or of $10,000.00, whichever is less.

(2) A preliminary study shall include all of the following:

(a) The feasibility of a project to establish and maintain a normal level of the inland lake

(b) The expediency of the normal level project.

(c) Feasible and prudent alternative methods and designs for controlling the normal level.

(d) The estimated costs of construction and maintenance of the normal level project.

(e) A method of financing initial costs.

(f) The necessity of a special assessment district and the tentative boundaries if a district is necessary.

(g) Other information that the county board resolves is necessary.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

Popular name: Act 451

324.30704 Initiating proceeding for determining normal inland lake level and establishing special assessment district; required finding; multicounty lake; joinder permitted.

Sec. 30704. (1) If the county board, based on the preliminary study, finds it expedient to have and resolves to have determined and established the normal level of an inland lake, the county board shall direct the prosecuting attorney or other legal counsel of the county to initiate a proceeding by proper petition in the court of that county for determination of the normal level for that inland lake and for establishing a special assessment district if the county board determines by resolution that one is necessary as provided in section 30711.

(2) If the waters of an inland lake are located in 2 or more counties, the normal level of the lake may be determined in the same manner if the county boards of all counties involved, by resolution, direct the prosecuting attorney or other legal counsel of 1 or more of the counties to institute proceedings. All counties may make a single preliminary study.

(3) The department may join a proceeding initiated under this section.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

324.30705 Special assessment bonds; lake level orders; proceedings; issuance of notes; full faith and credit.

Sec. 30705. (1) The special assessment district may issue bonds or lake level orders in anticipation of special assessments. All proceedings relating to the making, levying, and collection of special assessments authorized by this part and the issuance of bonds or lake level orders in anticipation of the collection of bonds or orders shall conform as nearly as possible to the proceedings for levying special assessments and issuing special assessment bonds or lake level orders as set forth in the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.

(2) The special assessment district may issue notes in anticipation of special assessments made against lands in the special assessment district or public corporation at large. The final maturity of the notes shall be not later than 10 years from their date. The notes are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(3) A county board by a vote of 2/3 of its members may pledge the full faith and credit of a county for payment of bonds or notes issued by a special assessment district.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 215, Imd. Eff. Apr. 29, 2002

Popular name: Act 451

324.30706 Initiation of proceedings by director of department.

Sec. 30706. If the department finds it expedient to have the normal level of an inland lake determined, the department may initiate by civil action on behalf of the state, in the court of any county in which the lake is located, a proceeding for determination of the normal level.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

Popular name: Act 451

324.30707 Hearing; notice; service; powers and duties of court.

Sec. 30707. (1) Upon filing of a civil action under this part, the court shall set a day for a hearing. The prosecuting attorney or other legal counsel of the county or counties or the department shall give notice of the hearing by publication in 1 or more newspapers of general circulation in the county and, if the waters of the inland

lake are situated in 2 or more counties, in 1 or more newspapers of general circulation in each of the counties in which the inland lake is located. The notice shall be published at least once each week for 3 successive weeks before the date set for the hearing.

(2) The commissioner shall serve a copy of the published notice of hearing by first-class mail at least 3 weeks prior to the date set for the hearing to each person whose name appears upon the latest city or township tax assessment roll as owning land within a tentative special assessment district at the address shown on the roll; to the governing body of each political subdivision of the state in which the lake is located; and to the governing body of each affected political subdivision of the state. If an address does not appear on the roll, then a notice need not be mailed to the person. The commissioner shall make an affidavit of mailing. The failure to receive a notice properly mailed shall not constitute a jurisdictional defect invalidating proceedings under this part.

(3) The prosecuting attorney or the legal counsel of the county shall serve notice on the department at least 21 days prior to the date of the hearing.

(4) In a determination of the normal level of an inland lake, the court shall consider all of the following:

(a) Past lake level records, including the ordinary high-water mark and seasonal fluctuations.

(b) The location of septic tanks, drain fields, sea walls, docks, and other pertinent physical features.

(c) Government surveys and reports.

(d) The hydrology of the watershed.

(e) Downstream flow requirements and impacts on downstream riparians.

(f) Fisheries and wildlife habitat protection and enhancement.

(g) Upstream drainage.

(h) Rights of riparians.

(i) Testimony and evidence offered by all interested persons.

(j) Other pertinent facts and circumstances.

(5) The court shall determine the normal level to be established and maintained, shall have continuing jurisdiction, and may provide for departure from the normal level as necessary to accomplish the purposes of this part. The court shall confirm the special assessment district boundaries within 60 days following the lake level determination. The court may determine that the normal level shall vary seasonally.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

324.30708 Maintenance of normal level; acquisition by gift, grant, purchase, or condemnation; contract for operation and maintenance of existing dam; dam in adjoining county; operation of pumps and wells.

Sec. 30708. (1) After the court determines the normal level of an inland lake in a proceeding initiated by the county, the delegated authority of any county or counties in which the inland lake is located shall provide for and maintain that normal level.

(2) A county may acquire, in the name of the county, by gift, grant, purchase, or condemnation proceedings, an existing dam that may affect the normal level of the inland lake, sites for dams, or rights in land needed or convenient in order to implement this part. A county may enter into a contract for operation and maintenance of an existing dam. The county may construct and maintain a dam that is determined by the delegated authority to be necessary for the purpose of maintaining the normal level. A dam may be acquired, constructed, or maintained in a county adjoining the county in which the lake is located.

(3) For the purpose of maintaining the normal level, a delegated authority may drill wells or pump water from another source to supply an inland lake with additional water, may lower the level of the lake by pumping water from the lake, and may purchase power to operate pumps, wells, or other devices installed as part of a normal level project.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

324.30709 Powers of department.

Sec. 30709. (1) After the court determines the normal level of an inland lake in a proceeding initiated by the department, the department may provide for and maintain that normal level.

(2) In a proceeding initiated by the department, the department has the same powers in connection with a normal level project as a county has under sections 30708, 30713, and 30718.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

324.30710 Condemnation of private property.

Sec. 30710. If the department or the delegated authority determines that it is necessary to condemn private property for the purpose of this part, the department or county may condemn the property in accordance with the uniform condemnation procedures act, Act No. 87 of the Public Acts of 1980, being sections 213.51 to 213.77 of the Michigan Compiled Laws.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

324.30711 Defraying project costs by special assessment; special assessment roll; reassessment.

Sec. 30711. (1) The county board may determine by resolution that the whole or a part of the cost of a project to establish and maintain a normal level for an inland lake shall be defrayed by special assessments against the following that are benefited by the project: privately owned parcels of land, political subdivisions of the state, and state owned lands under the jurisdiction and control of the department. If the county board determines that a special assessment district is to be established, the delegated authority shall compute the cost of the project and prepare a special assessment roll.

(2) If the revenues raised pursuant to the special assessment are insufficient to meet the computation of cost included in section 30712, or if these revenues are insufficient to meet bond obligations, the special assessment district may be reassessed without hearing using the same apportioned percentage used for the original assessment.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

Popular name: Act 451

324.30712 Computation of project costs.

Sec. 30712. (1) Computation of the cost of a normal level project shall include the cost of all of the following:

(a) The preliminary study.

(b) Surveys.

(c) Establishing a special assessment district, including preparation of assessment rolls and levying assessments.

(d) Acquiring land and other property.

(e) Locating, constructing, operating, repairing, and maintaining a dam or works of improvement necessary for maintaining the normal level.

(f) Legal fees, including estimated costs of appeals if assessments are not upheld

(g) Court costs.

(h) Interest on bonds and other financing costs for the first year, if the project is so financed.

(i) Any other costs necessary for the project which can be specifically itemized.

(2) The delegated authority may add as a cost not more than 15% of the sum calculated under subsection (1) to cover contingent expenses.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

324.30713 Contract with agency or corporation; provisions.

Sec. 30713. The delegated authority of a county in which an inland lake is located may contract with a state or federal government agency or a public or private corporation in connection with a project for the establishment and maintenance of a normal level. The contract may specify that the agency or corporation will pay the whole or a part of the cost of the project or will perform the whole or a part of the work connected with the project. The contract may provide that payment made or work done relieves the agency or corporation in whole or in part from assessment for the cost of establishment and construction of the project.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

324.30714 Special assessment roll; public hearing; notice; approval; appeal.

Sec. 30714. (1) A special assessment roll shall describe the parcels of land to be assessed, the name of the owner of each parcel, if known, and the dollar amount of the assessment against each parcel.

(2) The delegated authority shall set a time and place for a public hearing or hearings on the project cost and the

special assessment roll. Notice of a hearing shall be by both of the following:

(a) By publication of notice at least twice prior to the hearing in a newspaper that circulates in the special assessment district, the first publication to be at least 10 days before the hearing.

(b) As provided in Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws

(3) At or after a public hearing, the delegated authority may approve or revise the cost of the project or the special assessment roll. Before construction of a project is begun, the county board shall approve the cost and the special assessment roll by resolution.

(4) The special assessment roll with the assessments listed shall be final and conclusive unless appealed in a court within 15 days after county board approval.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

324.30715 Assessment payments; installments; amount; interest, penalty, and collection; lien; preliminary study payment credited.

Sec. 30715. (1) The county board may provide that assessments under this part are payable in installments.

(2) Assessment payments shall be sufficient to meet bond and note obligations of the special assessment district.

(3) Special assessments under this part shall be spread upon the county tax rolls, and shall be subject to the same interest and penalty charges and shall be collected in the same manner as county taxes.

(4) From the date of approval of the special assessment roll by the county board, a special assessment under this part shall constitute a lien on the parcel assessed. The lien shall be of the same character and effect as a lien created for county taxes.

(5) A payment for the cost of the preliminary study under section 30703 shall be credited against an assessment for the amount of the payment made by the person assessed.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

324.30716 Bonds and notes; issuance.

Sec. 30716. With approval of the county board and subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, the district may issue bonds or notes that shall be payable by special assessments under this part. Bonds or notes shall not be issued exceeding the cost of the lake level project that is being financed.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 216, Imd. Eff. Apr. 29, 2002

Popular name: Act 451

324.30717 Acceptance and repayment of advance.

Sec. 30717. The delegated authority may accept the advance of work, material, or money in connection with a normal level project. The obligation to repay an advance out of special assessments under this part may be evidenced by a note or contract. Notes and contracts issued under this section are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 217, Imd. Eff. Apr. 29, 2002

Popular name: Act 451

324.30718 Dam construction or maintenance; plans and specifications; approval by department; bids; work relief project.

Sec. 30718. Plans and specifications for a dam constructed or maintained under this part shall be prepared by a licensed professional engineer under the direction of the delegated authority. The plans and specifications shall be approved by the department before construction begins. The department shall review and approve or reject the plans and specifications within 30 days after they are received by the department. If the plans and specifications are rejected, the department shall propose changes in the plans and specifications that would result in their approval by the department. Bids for doing the work may be advertised in the manner the delegated authority directs. The contract shall be let to the lowest responsible bidder giving adequate security for the performance of the contract, but the delegated authority may reserve the right to reject any and all bids. The county may erect and maintain a dam as a work relief project in accordance with the law applicable to a work relief project.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

Popular name: Act 451

324.30719 Dam construction; underspill device; fish ladder.

Sec. 30719. (1) The department may require that a new dam that is proposed to be constructed be equipped with an underspill device for the release of cold bottom waters for the protection of downstream fish habitats.

(2) The department may require the installation of a fish ladder or other device to permit the free passage of fish.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

Popular name: Act 451

324.30720 Unauthorized change of level; penalty.

Sec. 30720. A person who is not authorized by a delegated authority or the department to operate a dam or other normal level control facility and who changes, or causes to change, the level of an inland lake, the normal level of which has been established under this part or any previous act governing lake levels, and for which the delegated authority or the department has taken steps to maintain the normal level, is guilty of a misdemeanor punishable by a fine of not more than $1,000.00 or imprisonment for not more than 1 year, or both, and shall be required to pay the actual cost of restoration or replacement of the dam and any other property including any natural resource that is damaged or destroyed as a result of the violation.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

Popular name: Act 451

324.30721 Establishment of normal inland lake level prohibited in certain cases.

Sec. 30721. A normal level shall not be established for an inland lake in either of the following cases:

(a) The inland lake is used as a reservoir for a municipal water supply system, unless a normal level determination is petitioned for by the governing body of the municipality.

(b) The state has title, flowage rights, or easements to all riparian land surrounding the inland lake, unless a normal level determination is petitioned for by the department.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

Popular name: Act 451

324.30722 Inspection; report; repairs; penalty; expenditure.

Sec. 30722. (1) The delegated authority of a county shall cause an inspection to be made of each dam on an inland lake within the county which has a normal level established under this part or under any previous act governing lake levels. The inspection shall be conducted by a licensed professional engineer. The inspection shall take place every third year from the date of completion of a new dam or every third year from the determination of a normal level for an existing dam. An inspection report shall be submitted promptly to the department in the form and manner the department prescribes.

(2) If a report discloses a need for repairs or a change in condition of the dam that relates to the dam's safety or danger to natural resources, the department shall conduct an inspection to confirm the report. If the report is confirmed and the public safety or natural resources are endangered by the risk of failure of the dam, the department may require the county either to repair or to replace the dam. Plans and specifications for the repairs or replacement shall be prepared by a licensed professional engineer under the direction of the delegated authority. The plans and specifications shall be approved by the department before construction begins. The department shall review and approve or reject the plans and specifications within 30 days after they are received by the department. If the plans and specifications are rejected, the department shall propose changes in the plans and specifications that would result in their approval by the department. If the dam is in imminent danger of failure, the department may order an immediate lowering of the lake level until necessary repair or replacement is complete.

(3) A person failing to comply with this section, or falsely representing dam conditions, is guilty of misconduct in office.

(4) If an inspection discloses the necessity for maintenance or repair, the delegated authority, without approval of the county board, may spend not more than $10,000.00 annually for maintenance and repair of each lake level project. An expenditure of more than $10,000.00 annually shall be approved by resolution of the county board.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995

Popular name: Act 451

324.30723 Other requirements not abrogated.

Sec. 30723. This part does not abrogate the requirements of other state statutes.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

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PART 309
INLAND LAKE IMPROVEMENTS

324.30901 Definitions.

Sec. 30901. As used in this part:

(a) "Benefit" or "benefits" means advantages resulting from a project to public corporations, the inhabitants of public corporations, the inhabitants of this state, and property within public corporations. Benefit includes benefits that result from elimination of pollution and elimination of flood damage, elimination of water conditions that jeopardize the public health or safety; increase of the value or use of lands and property arising from improving a lake or lakes as a result of the lake project and the improvement or development of a lake for conservation of fish and wildlife and the use, improvement, or development of a lake for fishing, wildlife, boating, swimming, or any other recreational, agricultural, or conservation uses.

(b) "Inland lake" means a public inland lake or a private inland lake.

(c) "Interested person" means a person who has a record interest in the title to, right of ingress to, or reversionary right to a piece or parcel of land that would be affected by a permanent change in the bottomland of a natural or artificial, public or private inland lake, or adjacent wetland. In all cases, whether having such an interest or not, the department is an interested person.

(d) "Local governing body" means the legislative body of a local unit of government.

(e) "Preliminary costs" includes costs of the engineering feasibility report, economic study, estimate of total cost, and cost of setting up the assessment district.

(f) "Private inland lake" means an inland lake other than a public inland lake.

(g) "Public inland lake" means a lake that is accessible to the public by publicly owned lands or highways contiguous to publicly owned lands or by the bed of a stream, except the Great Lakes and connecting waters.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30902 Petition for improvement of lake or wetland; local governing bodies' powers; lake boards.

Sec. 30902. (1) The local governing body of any local unit of government in which the whole or any part of the waters of any public inland lake is situated, upon its own motion or by petition of 2/3 of the freeholders owning lands abutting the lake, for the protection of the public health, welfare, and safety and the conservation of the natural resources of this state, or to preserve property values around a lake, may provide for the improvement of a lake, or adjacent wetland, and may take steps necessary to remove and properly dispose of undesirable accumulated materials from the bottom of the lake or wetland by dredging, ditching, digging, or other related work.

(2) Upon receipt of the petition or upon its own motion, the local governing body within 60 days shall set up a lake board as provided in section 30903 that shall proceed with the necessary steps for improving the lake or to void the proposed project.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30903 Lake board; composition; election of chairperson, treasurer, and secretary; quorum; concurrence of majority required; technical data; recommendations.

Sec. 30903. (1) The lake board shall consist of all of the following:

(a) A member of the county board of commissioners appointed by the chairperson of the county board of commissioners of each county affected by the lake improvement project; 1 representative of each local unit of government, other than a county, affected by the project, or, if there is only 1 such local unit of government, 2 representatives of that local unit of government, appointed by the legislative body of the local unit of government; and the county drain commissioner or his or her designee, or a member of the county road commission in counties not having a drain commissioner.

(b) A member elected by the members of the lake board serving pursuant to subdivision (a) at the first meeting of the board or at any time a vacancy exists under this subdivision. Only a person who has an interest in a land contract or a record interest in the title to a piece or parcel of land that abuts the lake to be improved

is eligible to be elected and to serve under this subdivision. An organization composed of and representing the majority of lakefront property owners on the affected lake may submit up to 3 names to the board, from which the board shall make its selection. The terms served by this member shall be 4 years in length.

(2) The lake board shall elect a chairperson, treasurer, and secretary. The secretary shall attend meetings of the lake board and shall keep a record of the proceedings and perform other duties delegated by the lake board. A majority of the members of the lake board constitutes a quorum. The concurrence of a majority in any matter within the duties of the board is required for the determination of a matter.

(3) The department, upon request of the lake board, shall provide whatever technical data it has available and make recommendations in the interests of conservation.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2004, Act 522, Eff. Mar. 1, 2005.

Popular name: Act 451

Popular name: NREPA

324.30904 Initiation of action by freeholders.

Sec. 30904. Action may be initiated under section 30902 relating to any private inland lake only upon petition of 2/3 of the freeholders owning lands abutting the lake.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30905 Preliminary costs; revolving funds; assessments.

Sec. 30905. The county board of commissioners may provide for a revolving fund to pay for the preliminary costs of improvement projects within the county. The preliminary costs shall be assessed to the property owners in the assessment district by the lake board after notice of the hearing is given pursuant to Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws, and shall be repaid to the fund where the project is not finally constructed.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30906 Institution of proceedings for lake improvement; conflicts with local ordinances and charters.

Sec. 30906. (1) Whenever a local governing body, in accordance with section 30902, considers it expedient to have a lake improved, it, by resolution, shall direct the lake board to institute proceedings as prescribed in this part.

(2) When the waters of any inland lake are situated in 2 or more local units of government, the improvement of the lake may be determined jointly in the same manner as provided in this part, if the local governing bodies of all local units of government involved determine it to be expedient in accordance with section 30902 and, by resolution, direct the lake board to institute proceedings as prescribed in this part. Where local ordinances and charters conflict, this part shall govern.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30907 Lake improvement; initiation by department.

Sec. 30907. If the department considers it expedient, in accordance with section 30902, to have a lake dredged or improved, the department may petition the local governing body or governing bodies in which the lake is located for an improvement of the lake. The department may also join with the local governing body of any local unit of government in instituting proceedings for improvements as set forth in this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30908 Lake board; determination of scope of project; establishment of special assessment districts; ministerial duties.

Sec. 30908. The lake board, when instructed by resolution of the local governing body, shall determine the scope of the project and shall establish a special assessment district, including within the special assessment

district all parcels of land and local units which will be benefited by the improvement of the lake. The local governing body may delegate to the lake board other ministerial duties including preparation, assembling, and computation of statistical data for use by the board and the superintending, construction, and maintenance of any project under this part, as the local governing body considers necessary.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30909 Engineering and economic reports; cost estimates.

Sec. 30909. (1) The lake board shall retain a licensed professional engineer to prepare an engineering feasibility report, an economic study report, and an estimate of cost. The report shall include, when applicable, recommendations for normal lake levels and the methods for maintaining those levels.

(2) The engineering feasibility report shall include the methods proposed to implement the recommended improvements, such as dredging, removal, disposal, and disposal areas for undesirable materials from the lake. The report shall include an investigation of the groundwater conditions and possible effects on lake levels from removal of bottom materials. A study of existing nutrients and an estimate of possible future conditions shall be included. Estimate of costs of right-of-way shall be included.

(3) The estimate of cost prepared under subsection (1) shall show probable assessments for the project. The economic report shall analyze the existing local tax structure and the effects of the proposed assessments on the local units of government involved. A copy of the report shall be furnished to each member of the lake board.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30910 Review of reports by board; determinations of practicability; public hearings; notice; determination.

Sec. 30910. Within 60 days after his or her receipt of the reports, the chairperson shall hold a meeting of the lake board to review the reports required under section 30909 and to determine the practicability of the project. The hearing shall be public, and notice of the hearing shall be published twice in a newspaper of general circulation in each local unit of government to be affected. The first publication shall be not less than 20 days prior to the time of the hearing. The board shall determine the practicability of the project within 10 days after the hearing unless it is determined at the hearing that more information is needed before the determination can be made. Immediately upon receipt of the additional information, the board shall make its determination.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30911 County contributions toward costs of improvement.

Sec. 30911. The county board of commissioners may provide up to 25% of the cost of a lake improvement project on any public inland lake.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30912 Approval of plans and cost estimates; sufficiency of petition; resolution; publication; assessment roll.

Sec. 30912. If the lake board passes a resolution in which it determines the project to be practicable, the lake board shall determine to proceed with the project, shall approve the plans and estimate of costs as originally presented or as revised, corrected, amended, or changed, and shall determine the sufficiency of the petition for the improvement. The resolution shall be published once in a newspaper of general circulation in each local unit of government to be affected. After the resolution has been published, the sufficiency of the petition shall not be subject to attack except in an action brought in a court of competent jurisdiction within 30 days after publication. The lake board, after finally accepting the special assessment district, shall prepare an assessment roll based upon the benefits to be derived from the proposed lake improvement, and the lake board shall direct the assessing official of each local unit of government to be affected to join in making an assessment roll in which shall be entered and described all the parcels of land to be assessed, with the names

of the respective owners of the parcels of land, if known, and the total amount to be assessed against each parcel of land and against each local unit of government to be affected, which amount shall be such relative portion of the whole sum to be levied against all parcels of land and local units of government in the special assessment district as the benefit to such parcel of land and local unit of government bears to the total benefit to all parcels of land and local units of government in the special assessment district. When the assessment roll has been completed, each assessing official shall affix to the assessment roll his or her certificate stating that it was made pursuant to a resolution of the lake board adopted on a specified date, and that in making the assessment roll he or she has, according to his or her best judgment, conformed in all respects to the directions contained in the resolution and the statutes of the state.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30913 Report of assessment to lake board; review; notice and hearing; confirmation.

Sec. 30913. The assessment roll shall be reported to the lake board by the assessing official of the local unit or units of government initiating the proceeding and filed in the office of the clerk of each local unit of government to be affected. Before confirming the assessment roll, the lake board shall appoint a time and place when it will meet and review the assessment roll and hear any objections to the assessment roll, and shall publish notice of the hearing and the filing of the assessment roll twice prior to the hearing in a newspaper of general circulation in each local unit of government to be affected, the first publication to be at least 10 days before the hearing. Notice of the hearing shall also be given in accordance with Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws. The hearing may be adjourned from time to time without further notice. Any person or local unit of government objecting to the assessment roll shall file his or her objection in writing with the chairperson before the close of the hearing or within such further time period as the lake board may grant. After the hearing, the lake board may confirm the special assessment roll as reported to it or as amended or corrected by it, may refer it back to the assessing officials for revision, or may annul it and direct a new roll to be made. When a special assessment roll has been confirmed, the clerk of each local unit of government shall endorse on the assessment roll the date of the confirmation. After confirmation, the special assessment roll and all assessments on the assessment roll shall be final and conclusive unless attacked in a court of competent jurisdiction within 30 days after notice of confirmation has been published in the same manner as the notice of hearing.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30914 Special assessments; installments; interest; penalties.

Sec. 30914. Upon the confirmation of the assessment roll, the lake board may provide that the assessments be payable in 1 or more approximately equal annual installments, not exceeding 30. The amount of each installment, if more than 1, need not be extended upon the special assessment roll until after confirmation. The first installment of a special assessment shall be due on or before such time after confirmation as the board shall establish, and the several subsequent installments shall be due at intervals of 12 months from the due date of the first installment or from such other date as the board shall establish. All unpaid installments, prior to their transfer to the tax roll of each local unit of government involved, shall bear interest, payable annually on each installment due date, at a rate to be set by the board, not exceeding 6% per annum, from such date as established by the board. Future due installments of an assessment against a parcel of land may be paid to the treasurer of each local unit of government at any time in full, with interest accrued to the due date of the next installment. If any installment of a special assessment is not paid when due, then it shall be considered to be delinquent and there shall be collected on the installment, in addition to interest as above provided, a penalty at the rate of 1/2 of 1% for each month or fraction of a month that it remains unpaid before being reported to the township board for reassessment upon the tax roll.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30915 Special assessments; liens.

Sec. 30915. All special assessments contained in any special assessment roll, including any part of the special assessment payment that is deferred, constitute a lien, from the date of confirmation of the roll, upon the respective parcels of land assessed. The lien shall be of the same character and effect as the lien created

for taxes in each local unit of government and shall include accrued interest and penalties. A judgment, decree, or any act of the board vacating a special assessment does not destroy or impair the lien upon the premises assessed for the amount of the assessment as may be equitably charged against the premises, or as by a regular mode of proceeding might be lawfully assessed on the premises.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30916 Special assessments; collections.

Sec. 30916. When any special assessment roll is confirmed, the lake board shall direct the assessments made in the roll to be collected. The clerk of each local unit of government involved shall then deliver to the treasurer of each local unit of government the special assessment roll, to which he or she shall attach his or her warrant commanding the treasurer to collect the assessments in the roll in accordance with the directions of the lake board. The warrant shall further require the treasurer, on September 1 following the date when any assessments or any part of an assessment have become due, to submit to the lake board a sworn statement setting forth the names of delinquent persons, if known, a description of the parcels of land upon which there are delinquent assessments, and the amount of the delinquency, including accrued interest and penalties computed to September 1 of the year. Upon receiving the special assessment roll and warrant, the treasurer shall collect the amounts assessed as they become due.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30917 Delinquent assessments; reassessment.

Sec. 30917. If the treasurer reports as delinquent any assessment or part of an assessment, the lake board shall certify the delinquency to the assessing official of each local unit of government, who shall reassess, on the annual tax roll of the local unit of government of that year, in a column headed “special assessments”, the delinquent sum, with interest and penalties to September 1 of that year, and an additional penalty of 6% of the total amount. Thereafter, the statutes relating to taxes shall be applicable to the reassessments in each local unit of government.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30918 Division of land parcels; uncollected assessment apportioned.

Sec. 30918. If any parcel of land is divided after a special assessment on the land has been confirmed and before the collection of the assessment, the lake board may require the assessment official to apportion the uncollected amounts between the divisions of the parcel of land, and the report of the apportionment when confirmed by the lake board shall be conclusive upon all parties. If the interested parties do not agree in writing to the apportionment, then, before confirmation, notice of hearing shall be given to all the interested parties, either by personal service or by publication as provided in the case of an original assessment roll.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30919 Additional special assessments.

Sec. 30919. If the assessments in any special assessment roll prove insufficient for any reason, including the noncollection of the assessment, to pay for the improvement for which they were made or to pay the principal and interest on the bonds issued in anticipation of the collection of the assessment, then the lake board shall make additional pro rata assessments to supply the deficiency, but the total amount assessed against any parcel of land shall not exceed the value of the benefits received from the improvement.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30920 Special assessments; invalidity and new assessments.

Sec. 30920. Whenever, in the opinion of the lake board, any special assessment is invalid by reason of irregularities or informalities in the proceedings, or if any court of competent jurisdiction adjudges such

assessment illegal, the lake board, whether the improvement has been made or not and whether any part of the assessment has been paid or not, may proceed from the last step at which the proceedings were legal and cause a new assessment to be made for the same purpose for which the former assessment was made. All proceedings on that reassessment and for the collection of the assessment shall be conducted in the same manner as provided for the original assessment. Whenever an assessment or any part of an assessment levied upon any premises has been set aside, if the assessment or part of an assessment has been paid and not refunded, the payment shall be applied upon the reassessment.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30921 Special assessments; exempt lands.

Sec. 30921. The governing body of any department of the state or any of its political subdivisions, municipalities, school districts, townships, or counties, whose lands are exempt by law, may by resolution agree to pay the special assessments against the lands, in which case the assessment, including all the installments of the assessment, shall be a valid claim against the local unit of government.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30922 Borrowing; issuance of lake level orders and bonds.

Sec. 30922. The lake board may borrow money and issue lake level orders or the bonds of the special assessment district in anticipation of the collection of special assessments to defray the cost of any improvement made under this part after the special assessment roll has been confirmed. The bonds or lake level orders shall not exceed the amount of the special assessments in anticipation of the collection of which they are issued. Collections on special assessments to the extent pledged for the payment of bonds or lake level orders shall be set aside in a special fund for the payment of the bonds or lake level orders. The issuance of special assessments bonds or lake level orders shall be governed by the general laws of this state applicable to the issuance of special assessments bonds or lake level orders and in accordance with the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. Bonds or lake level orders may be issued in anticipation of the collection of special assessments levied in respect to 2 or more public improvements, but no special assessment district shall be compelled to pay the obligation of any other special assessment district. The local governing body may pledge the full faith and credit of a local unit of government for the prompt payment of the principal of and interest on the bonds or lake level orders as they become due. The pledge of full faith and credit of the local unit of government shall be included within the total limitation prescribed by the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. Bonds and lake level orders issued under this part shall be executed by the chairperson and secretary of the lake board, and the interest coupons to be attached to the bonds and orders shall be executed by the officials causing their facsimile signatures to be affixed to the bonds and orders.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2002, Act 218, Imd. Eff. Apr. 29, 2002.

Popular name: Act 451

Popular name: NREPA

324.30923 Condemnation; commencement and conduct of proceedings.

Sec. 30923. Whenever the lake board determines by proper resolution that it is necessary to condemn private property for the purpose of this part, the condemnation proceedings shall be commenced and conducted in accordance with Act No. 149 of the Public Acts of 1911, being sections 213.21 to 213.25 of the Michigan Compiled Laws.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30924 Gifts and grants-in-aid; acceptance by lake board; contract or agreement.

Sec. 30924. (1) The lake board may receive and accept gifts or grants-in-aid for the purpose of implementing this part.

(2) The lake board may contract or make agreement with the federal government or any agency of the federal government whereby the federal government will pay the whole or any part of the costs of a project or will perform all or any part of the work connected with the project. The contract or agreement may include

any specific terms required by act of congress or federal regulation as a condition for the participation of the federal government.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30925 Gifts and grants-in-aid; acceptance by department.

Sec. 30925. The department in carrying out the purposes of this part may receive and accept, on behalf of the state, gifts and grants-in-aid.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30926 Advertising for bids; letting of contracts; work relief project.

Sec. 30926. (1) Except as provided in subsection (2), the chairperson of the lake board shall advertise for bids. A contract shall be let to the lowest bidder giving adequate security for the performance of the contract, but the lake board shall reserve the right to reject any and all bids.

(2) The lake board may let a contract with a local, incorporated, nonprofit homeowner association, the membership of which is open on a nondiscriminatory basis to all residents within the geographic area to be assessed or serviced, without advertising for public bids. The homeowner association shall give adequate security for the performance of the contract.

(3) The local governing body may improve a lake as a work relief project pursuant to applicable provisions of law.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30927 Costs of projects; computation; expenditures; representation by attorney.

Sec. 30927. (1) Within 10 days after the letting of contracts or, in case of an appeal, immediately after the appeal has been decided, the lake board shall make a computation of the entire cost of a project under this part that includes all preliminary costs and engineering and inspection costs incurred and all of the following:

(a) The fees and expenses of special commissioners.

(b) The contracts for dredging or other work to be done on the project.

(c) The estimated cost of an appeal if the apportionment made by the lake board is not sustained.

(d) The estimated cost of inspection.

(e) The cost of publishing all notices required.

(f) All costs of the circuit court.

(g) Any legal expenses incurred in connection with the project, including litigation expenses, the costs of any judgments or orders entered against the lake board or special assessment district, and attorney fees.

(h) Fees for any permits required in connection with the project.

(i) Interest on bonds for the first year, if bonds are to be issued.

(j) Any other costs necessary for the administration of lake board proceedings, including, but not limited to, compensation of the members of the lake board, record compilation and retention, and state, county, or local government professional staff services.

(2) In addition to the amounts computed under subsection (1), the lake board may add not less than 10% or more than 15% of the gross sum to cover contingent expenses, including additional necessary hydrological studies by the department. The sum of the amounts computed under subsection (1) plus the amount added under this subsection is considered to be the cost of the lake improvement project.

(3) A lake board shall not expend money for improvements, services, or other purposes unless the lake board has adopted an annual budget.

(4) A lake board may retain an attorney to advise the lake board in the proper performance of its duties. The attorney shall represent the lake board in actions brought by or against the lake board.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2004, Act 522, Eff. Mar. 1, 2005.

Popular name: Act 451

Popular name: NREPA

324.30928 Intervention by department.

Sec. 30928. Whenever a public inland lake is to be improved, the department may intervene for the protection and conservation of the natural resources of the state.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.30929 Lake board for public inland lake; dissolution.

Sec. 30929. A lake board for a public inland lake is dissolved if all of the following requirements are met:

(a) The governing body of each local unit of government in which all or part of the lake is located holds a public hearing on the proposed dissolution, determines that the lake board is no longer necessary for the improvement of the lake because the reasons for the establishment of the lake board no longer exist, and approves the dissolution of the lake board. The governing body of each local unit of government in which all or part of the lake is located may hold the public hearing on the dissolution of the lake board on its own initiative. The governing body of each local unit of government in which all or part of the lake is located shall hold a public hearing on the dissolution of the lake board upon petition of 2/3 of the freeholders owning land abutting the lake. Notice of the public hearing shall be published twice in a newspaper of general circulation in each local unit of government in which all or part of the lake is located. The first notice shall be published not less than 10 days before the date of the hearing.

(b) All outstanding indebtedness and expenses of the lake board are paid in full.

(c) Any excess funds of the lake board are refunded based on the last approved special assessment roll. However, if the amount of excess funds is de minimis, the excess funds shall be distributed to the local units of government in which all or part of the lake is located, apportioned based on the amounts assessed against each local unit of government and lands in that local unit on the last approved special assessment roll.

(d) The lake board determines that it is no longer necessary for the improvement of the lake, because the reasons for its establishment no longer exist, and adopts an order approving its dissolution.

History: Add. 2004, Act 522, Eff. Mar. 1, 2005.

Popular name: Act 451

Popular name: NREPA

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and

the beginning of the next

STATE OF MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH MICHIGAN TAX TRIBUNAL SMALL CLAIMS DIVISION	SPECIAL ASSESSMENT APPEAL PETITION FORM	DOCKET NUMBER

Failure to complete this form, including signature, and return it by filing deadline will result in **dismissal**.
If additional space is needed to provide the information requested, please use a separate sheet.

1. Petitioner(s) Name and Address
_____
_____
_____
Petitioner's Daytime Phone No._____

2. Agent or Attorney (if any) Name and Address
_____
_____
_____
Agent/Attorney Phone No._____

3. Location of Property:
County_____
City _____ OR Township _____

4. If Special Assessment is being levied by an entity other than the Township or City, specify the name of the assessing entity.

5. Specify the date of the hearing held to confirm the special assessment roll: _____
A. Did Petitioner protest the special assessment at that hearing? Yes ◯ No ◯ If no, please explain in the space provided why Petitioner believes the Tribunal has jurisdiction over this appeal.
B. Is the petition filed within 35 days of the hearing confirmation? Yes ◯ No ◯

6. Check the reason for appeal and explain in the space provided:

☐ The special assessment district was not properly formed.

☐ The benefit of the special assessment improvements to the property is not proportional to the cost of the improvements.

7. Provide the amount of special assessment levied and Petitioner's contention of the amount of the special assessment that should be levied for *each* parcel being appealed:

Parcel Number	Tax Year	Amount of Special Assessment Levied	Petitioner's Contention of the Special Assessment

8. Explain the basis of your appeal

9. Petitioner **is required** to pay a fee for the filing of the appeal. (See Filing Fee Schedule.) **Failure to remit a required fee** with this Form may result in **dismissal.** **Amount Paid: _____**

10.
If **not** using an agent or attorney, Petitioner is required to sign:_____

If using an agent or attorney, only agent or attorney is required to sign: _____

PLEASE RETURN THE ORIGINAL AND ONE COPY OF THIS COMPLETED FORM WITH TWO COPIES OF ANY ATTACHMENTS to: Michigan Tax Tribunal, PO Box 30232, Lansing, MI 48909.

Keep a copy of the Form and any original attachments for your records. The Department of Labor & Economic Growth will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability or political beliefs. If you need assistance with reading, writing, hearing, etc., under the Americans with Disabilities Act, you may make your needs known to this agency.

For further information, please contact the Tribunal at: PH: (517) 373-3003 Web Site: www.Michigan.gov/taxtrib E-mail: taxtrib@Michigan.gov TT268 Revised 01/05
1973 PA 186, As Amended

Local Government Services
> Forms / Instructions
> **Accounting Information**
> Local Unit Audit Reports
> Municipal Finance
> Revenue Sharing
> State Assessors Board
> State Tax Commission
> Tax Collection and Tax Reversion
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Reference Library
Inside Treasury

1993-1 Amending Special Assessments

Letter No. 01-93

March 12, 1993

TO: County Treasurers, County Drain Commissioners, Michigan Townships Association and Michigan Municipal League

FROM: Richard L. Baldermann, CPA
Administrator
Local Government Audit Division

RE: Correcting Special Assessment rolls and July/December Board of Review

This office has received several inquiries as to the proper procedure for correcting special assessment rolls after the confirmation hearing is completed and the lapse of the appeal period. Most of these questions concern the correcting of special assessments for house to house collection of garbage and refuse pick-up within the local governmental unit.

Several units are using the authority granted by PA 188 of 1954 (Michigan Compiled Law [MCL] 41.721), which is known as the "Township Public Improvement Act," to establish a special assessment district to finance the garbage and refuse pick-up within the local governmental unit.

There are other statutes that grant authority to local government units to establish special assessment districts and special assessment rolls to pay for drainage, lake improvements, department of public works projects for sewer, water, streets, sidewalks and various other improvements that benefit property. Special assessment districts and special assessments tax rolls can be established only after the publication of public hearings and individual notices to property owners of record, confirmation of the assessment rolls and a ten to thirty day appeal period (applicable appeal periods are addressed in the specific statute) to contest the inclusion or exclusion of property within the special assessment district or the amount of the special assessment. Special assessment districts and the assessment rolls are final and conclusive after confirmation and the lapse of the appeal period. One must look to the applicable special assessment statute for the specific procedures and time for notices, public hearings and appeals. In addition to the notices of hearings in the special assessment proceedings specified in the statute, charter or ordinance, additional notice shall be given to each owner of property to be assessed as provided in PA 162 of 1962. (MCL 211.741) (General Act providing required notices for all special assessment hearings).

Special Assessment Definition:

The Michigan Supreme Court, in the decision of St. Joseph Township v. Municipal Finance Commission (351 Mich 532) stated there is a recognized distinction between a general tax and a special assessment in that a special assessment is confined to local impositions upon property for the payment of the cost of public improvements in its immediate vicinity and levied with reference to special benefits to the property assessed.

The differences between a special assessment and a tax are that: (1) a special assessment can be levied only on land; (2) a special assessment cannot be made a personal liability on the person assessed; (3) a special assessment is based wholly on benefits; and (4) a special assessment is exceptional both as to time and locality (a defined area).

The imposition of a charge on all property, real and personal, in a prescribed area, is a tax and not an assessment, although the purpose is to make a local improvement on a street or highway. A charge imposed only on property owners benefited is a special assessment rather than a tax notwithstanding the statute calls it a tax. "Blake v. Metropolitan Chain Stores, 247 Mich 73, 77 (63 ALR 1386), quoting 1 Cooley on Taxation (4th ed), sec. 31, pp 106, 107.

The general consensus is that a special assessment is not a general or ad valorem tax. The procedures specified in section 53b, PA 206 of 1893 (MCL 211.53b) (July or December Board of Review) authorizes the correction of only the ad valorem base and tax, not a special assessment levy.

The consensus theory that MCL 211.53b correction procedures (July/December Board of Review) does not apply to PA 188 of 1954 special assessment rolls are addressed by the provisions of sections 4, 6 and 13 of PA 188. These sections provide:

Section 4 (2); (MCL 41.724[2])

If periodic redeterminations of costs will be necessary without a change in the special assessment district, the notice shall state that such redeterminations may be made without further notice to record owners or parties in interest in the property.

Section 6 of PA 188 of 1954 (MCL 41.726) provides that a public hearing, after notice as provided in section 4a (MCL 41.724a) of this Act, will be held to hear objections to the special assessment roll and subsection 3 (MCL 41.726 (3) provides that if the special assessment roll is CONFIRMED, after a public hearing, . . . all assessments on that assessment roll shall be final and conclusive unless an action contesting an assessment is filed in a court of competent jurisdiction within 30 days after the date of confirmation. (Please note item b. 1., on page 3 of this letter)

Section 13 (MCL 41.733) specifies:

Whenever any special assessment shall, in the opinion of the township board, be invalid by reason of irregularities or informalities in the proceedings, the township board shall . . . have power to proceed from the last step at which the proceedings were legal and cause a NEW assessment to be made for the same purpose for which the former assessment was made. All proceedings on such reassessment and for the collection thereof shall be conducted in the same manner as provided for the original assessment, ...

WE BELIEVE THAT THESE STATUTORY PROVISIONS PROHIBIT ANY CHANGE OF A CONFIRMED ASSESSMENT ROLL EXCEPT AFTER NOTICE TO EACH OWNER OF RECORD, THE PUBLICATION OF AND THE HOLDING OF A PUBLIC HEARING AS SPECIFIED IN SECTION 4a (MCL 41.724a) AND SECTION 13 (MCL 41.733) OF PA 188 of 1954 OR AN ORDER FROM THE MICHIGAN TAX TRIBUNAL.

Similar provisions addressing changes in special assessments are provided in most special assessment statutes. As always, there may be a few exceptions.

In summary, confirmed special assessment rolls:

a) Cannot be amended or corrected by a March, July or December Board of Review.

b) May be altered by the local unit only by following the procedures specified in the Act authorizing the special assessment, or other Acts pertaining to special assessments.

Payers of special assessments (except County Drain) may file protests (appeals) with the Michigan Tax Tribunal (MTT) without an appearance before the local Board of Review. Protests of special assessments by taxpayers must be filed with the MTT in writing within thirty days of the receipt of the confirmation notice. (MCL 205.701 et seq. as amended)

c) Descriptions may be added to or deleted from the confirmed special assessment roll only by following the specified statutory procedures that are stated in the Act authorizing the special

assessments or as otherwise provided by law. This includes the removal of unimproved parcels from a confirmed roll.

d) May be changed upon order of the MTT or a court of competent jurisdiction.

e) Containing county drain assessments under PA 40 (MCL 280.1 et seq.) may no longer be appealed to the Michigan Tax Tribunal, but shall be appealed to the Probate Court as specified by PA 172 of 1992. We suggest county drain commissioners consult with their legal advisor if the provisions of Attorney General's Opinion No. 2933, dated May 15, 1957 have been nullified by PA 172 of 1992. That opinion states that a PA 40 of 1956 drain assessment may be amended by resolution of the county board of commissioners.

Please call (517) 373-3227 or write our office at Michigan Department of Treasury, Local Audit and Finance Division, P.O. Box 30728, Lansing, MI 48909-8228, if you have any questions.

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STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 5358

September 6, 1978

STATE LANDS:

Subject to special assessments

DEPARTMENT OF NATURAL RESOURCES

Land subject to special assessments

DRAINS & DRAINAGE

Special assessments of state land

In the absence of a statute specifically authorizing it to do so, a municipality may not levy a special assessment against state property.

Howard A. Tanner, Director

Department of Natural Resources

Stevens T. Mason Building

Lansing, Michigan

You have requested my opinion as to whether the State may be assessed for benefits accruing to lands under jurisdiction of the Department of Natural Resources, over which a drain has been constructed under provisions of the Drain Code of 1956, 1956 PA 40; MCLA 280.1_ et seq_, MSA 11.1001_ et seq_.

In_ People, ex rel Auditor General_ v Ingalls, 238 Mich 423; 213 NW 713 (1927), the question arose whether the City of Detroit may impose special assessments against the State to cover the cost of sewers, street paving, sidewalks and street widening. Concluding that such assessment may not be imposed, the Supreme Court stated:

'The doctrine has been pretty well settled in this State and elsewhere that property owned by the State or by the United States is not subject to taxation unless so provided by positive legislation. And municipalities and State agencies are included in this class when their property is used for public purposes. The reason which supports this doctrine is that, if taxes were permitted to be levied against the sovereign, it would be necessary to tax itself in order to raise money to pay over to itself. This would be an idle thing to do. And, besides, it is rather incongruous that the creature should have the right to tax its creator without its consent. Out of this reason has grown an implied presumption that the State is exempt from all taxes unless the one asserting it can point to some legislation in support of it._ We are not

aware of any law, nor has any been called to our attention, which authorizes the city of Detroit to levy any tax or assessment against State property_. Unless it can do this, its contention must fail. . . .' (emphasis added) 238 Mich at 425

Thus, State lands are not subject to special assessment unless such assessment is explicitly authorized by statute. See also concurring opinion of Chief Justice Sharpe in_ Municipal Investors Ass'n_ v City of Birmingham, 298 Mich 314; 299 NW 90 (1941), aff'd 316 US 153, 86 Ed 1341; 62 S Ct 975 (1942); and II OAG 1958, No. 3099, p. 11, (January 13, 1958).

As neither 1956 PA 40,_ supra_, nor any other statute drawn to my attention, authorizes the imposition of any assessment for drainage purposes against State-owned lands under jurisdiction and control of the Department of Natural Resources ^(1) , it is my opinion that no special assessments for drainage purposes may be assessed against State-owned lands under jurisdiction and control of the Department of Natural Resources.

Frank J. Kelley

Attorney General

^

^(1) In contrast, see 1961 PA 146, Sec. 9, MCLA 281.69 MSA 11.300(9), providing for a special assessment of benefits against Department of Natural Resources for maintenance of normal lake levels; 1956 PA 40, Secs. 154, 321-327, 474, 526; MCLA 280.154, 280.321-280.327, 280.474 and 280.526; MSA 11.1154, 11.1321-11.1327, 11.1474 and 11.1526, relative to assessment of benefits for drains against State Highway Commission.

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 5706

May 13, 1980

AMBULANCES:

Financing of

CITIES:

Financing of ambulance service

CONSTITUTIONAL LAW:

Const 1963, art 9, Secs. 6 and 31

Const 1963, art 4, Secs. 24 and 25

TAX ASSESSMENTS:

Special assessments for ambulance services

A home rule city may provide ambulance services and finance such services by means of fees, general fund monies or taxes voted by the people for such services as required by Const 1963, art 9, Secs. 6 and 31.

In order for a home rule city to establish a special assessment district for the purpose of providing ambulance services, the electors must approve the special assessment district and vote taxes for such services.

1978 PA 368, authorizing a city to provide ambulance services, does not violate Const 1963, art 4, Secs. 24 and 25.

Honorable John C. Hertel

State Senator

The Capitol

Lansing, Michigan 48909

You have requested my opinion on several questions relating to the establishment and financing of an emergency ambulance system by a city, pursuant to the Public Health Code, 1978 PA 368, Sec. 20346; MCLA 333.20346; MSA 14.15(20346).

Your questions may be phrased as follows:

(1) Must a city create a special ambulance district?

(2) If the creation of a special district is necessary, must the voters approve the establishment and financing of such district?

(3) Does 1978 PA 368, Sec. 20346(2)(b), by its reference to and incorporation of 1951 PA 33, violate Const 1963, art 4, Sec. 24, in that the title and body of 1951 PA 33 does not refer to ambulance service?

(4) Does 1978 PA 368, Sec. 20346(2)(b) amend by implication 1951 PA 33, contrary to Const 1963, art 4, Sec. 25?

1978 PA 368, Sec. 20346,_ supra_, provides:

'(1) A local governmental unit ^(1) or combination thereof_ may operate an ambulance service_ or contract with a person to furnish ambulance service_ for the use and benefit of its residents_ and may pay for any or all of the cost thereof from any available funds.

'(2) A city, village, or township that operates an ambulance service or is a party to a contract or an interlocal agreement may defray any or all of its share of the cost by either or both of the following methods:

'(a) Collection of fees for services.

'(b) Special assessments created, levied, collected, and annually determined pursuant to a procedure conforming as near as possible to the procedure set forth in section 1 of Act No. 33 of the Public Acts of 1951, as amended, being section 41.801 of the Michigan Compiled Laws. This procedure does not prohibit the right of referendum set forth under Act No. 33 of the Public Acts of 1951, as amended, being sections 41.801 to 41.810 of the Michigan Compiled Laws. This subdivision shall not apply to a county.' ^(2) [Emphasis supplied.]

(1) Must a city create a special ambulance district?

1978 PA 368, Sec. 20346,_ supra_, authorizes a city to operate an ambulance service 'for the use and benefit of its residents.' While a city is authorized to provide such service, the legislature_ has not commanded_ the city to provide such service. If the city determines to provide ambulance service, it must be_ available_ to all the residents of the city. OAG, 1977-1978, No 5254, p ___ (January 17, 1978). It is my opinion, therefore, that a city in its discretion, may operate an ambulance service that will be available to all its residents.

(2) If the creation of a special district is necessary, must the voters approve the establishment and financing of such district?

1978 PA 368, Sec. 20346(2)(b),_ supra_, authorizes cities to defray the cost of ambulance service for its residents by (1) a collection of fees for services; (2) a special assessment method; or (3) a combination of both methods. If the city utilizes the fees for services method, no voter approval is required. If however, the city determines to employ the special assessments method, in whole or in part, the creation, levying, collection and determination of the assessment, pursuant to 1978 PA 368, Sec. 20346(2)(b),_ supra_, must conform 'as near as possible to the procedure set forth in section 1 of Act No. 33 of the Public Acts of 1951, as amended,' [1951 PA 33, MCLA 41.801_ et seq;_ MSA 5.2640(1)_ et seq_, governing fire protection for township and incorporated villages and cities under 15,000 population ^(3) . The procedures set forth in 1951 PA 33,_ supra_, apply to cities without regard to the 15,000 population limitation relative to cities, found in 1951 PA 33, Sec. 10,_ supra_, since the specific language of 1978 PA 368, Sec. 20346(2)(b),_ supra_, contains no population limitation.

1951 PA 33,_ supra_, Sec. 1(4), provides that:

'The question of raising money by special assessment may be submitted to the electors of the affected area in the township or townships by the township board, or township boards acting jointly, and shall be submitted by the township board or township boards acting jointly on the filing of a petition so requesting, signed by not less than 10% of the owners of the land in each of the affected townships, to be made into such a special assessment district, at a general election or special election called for that purpose by the township board or township boards acting jointly._ A special assessment district shall not be created unless approved by a majority vote of the electors voting on the question at the election_.' [Emphasis supplied.]

The underscored language of 1951 PA 33, Sec. 1(4),_ supra_, clearly requires approval of city electors prior to the establishment of the city ambulance service (see OAG, 1951-1952, No 1461, p 358 (September 18, 1951)), as the entire city must be provided ambulance service.

1978 PA 368, Sec. 20346,_ supra_, authorizes cities to operate an ambulance service 'for the use and benefit of its residents.' 1978 PA 368,_ supra_, Sec. 20102(4) provides that an 'ambulance operation' provides services for 'patients', who are defined in 1978 PA 368,_ supra_, Sec. 20306(2) as individuals. Thus, these provisions make it clear that a city's provision of ambulance service is meant to benefit_ persons_, and not property.

A 'special assessment', as that term is understood in the law, is an imposition or levy upon_ property_ for the payment of the costs of public improvements which confer a corresponding and special benefit upon the property assessed._ Fluckey_ v City of Plymouth, 358 Mich 447; 100 NW2d 486 (1960). In_ Blake_ v Metropolitan Chain Stores, 247 Mich 73, 76; 225 NW 587, 588 (1929), the Michigan Supreme Court defined 'special assessment' and distinguished it from 'taxes' as follows:

'A special assessment is laid on the property specially benefited by a local improvement in proportion to the benefit received for the purpose of defraying the cost of the improvement.

'The word 'taxes' presents to the mind exaction to defray the ordinary expenses of the government and the promotion of the general welfare of the country. It is not generally understood as applying to improvements, levied upon property with a resultant benefit thereto to the amount thereof.'

In_ St. Joseph Township_ v Municipal Finance Comm, 351 Mich 524; 88 NW2d 543 (1958), the Michigan Supreme Court cited with approval the following statement:

"While the word 'tax' in its broad meaning, includes both general taxes and special assessments, and in a general sense a tax is an assessment, and an assessment is a tax, yet there is a recognized distinction between them in that_ assessment is confined to local impositions upon property for the payment of the cost of public improvements in its immediate vicinity and levied with reference to special benefits to the property assessed_. The differences between a special assessment and a tax are that (1)_ a special assessment can be levied only on land;_ (2) a special assessment cannot (at least in most States) be made a personal liability of the person assessed; (3) a special assessment is based wholly on benefits; and (4) a special assessment is exceptional both as to time and locality._ The imposition of a charge on all property, real and personal, in a prescribed area, is a tax and not an assessment_,

although the purpose is to make a local improvement on a street or highway._ A charge imposed only on property owners benefited is a special assessment rather than a tax notwithstanding the statute calls it a tax.' Blake_ v Metropolitan Chain Stores, 247 Mich 73, 77, (63 ALR 1386), quoting 1 Cooley on Taxation (4th ed), Sec. 31, pp 106, 107.' 351 Mich 524, 532-533; 88 NW2d 543, 547-548. [Emphasis supplied.]

Accord:_ Johnson_ v City of Inkster, 401 Mich 263; 258 NW2d 24 (1977);_ Crampton_ v City of Oak Park, 362 Mich 503; 108 NW2d 16 (1961);_ City of Lansing_ v Jenison, 201 Mich 491; 167 NW 947 (1018),_ City of Detroit_ v Weil, 180 Mich 593; 147 NW 550 (1914);_ Capaldi Contracting_ v City of Fraser, 70 Mich App 227; 245 NW2d 575 (1976);_ Stybel Plumbing, Inc_ v Oak Park, 40 Mich App 108; 198 NW2d 782 (1972).

While a true special assessment is not subject to the general 15 mill limitation set forth in Const 1963, art 9, Sec. 6, ^(4) (_See Graham_ v City of Saginaw, 317 Mich 427; 27 NW2d (1947)), a general tax is subject to the limitations set forth therein._ Accord_, OAG, 1979-1980, No 5562, p ___ (September 17, 1979).

Since a municipality's ambulance service must benefit all its residents, and since the property specially assessed does not receive a corresponding special benefit not provided the general public (City of Lansing v Jenison, supra, 201 Mich 491, 497), the imposition or assessment levied against all real property within a city may not be characterized as a 'special assessment.'_ Cf Stevens_ v City of Port Huron, 149 Mich 536; 113 NW 291 (1907) (city may not specially assess for the sprinkling of streets since that service does not specially enhance the value of abutting property). Notwithstanding the fact that the statute denotes it as a special assessment, the levy in question is a 'general tax', which has been defined as

'. . . a tax levied for the benefit of the taxpayers of a municipality as a whole is a general tax. It is spread upon the property assessed upon the general tax roll.'

In re Petition of Auditor General, 226 Mich 170, 173; 197 NW 552, 553 (1924)

Since all real property within a city must be taxed to defray the cost of a city-wide ambulance system, such assessment is in the nature of a general_ ad valorem_ property tax, it is not a special assessment, and, therefore, is subject to the 15 mill limitation set forth in Const 1963, art 9, Sec. 6,_ supra_.

Const 1963, art 9, Sec. 31, added by the voters at the November 7, 1978, general election, and which became effective December 23, 1978, provides:

'Units of Local Government ^(5) 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_.' [Emphasis supplied.]

Thus, Const 1963, art 9, Sec. 31,_ supra_, requires that city electors must approve the levy of a tax to fund the provision of ambulance service established pursuant to 1978 PA 368, Sec. 20346(2)(b),_ supra_, where the tax to be levied does not fall within the city's tax limitations. OAG, 1979-1980, No 5506, p ___ (June 12, 1979) (p 3). Further, the general 15 mill limitation set forth in Const 1963, art 9, Sec. 6,_ supra_, may be increased up to a maximum 50 mills by the electors pursuant to Const 1963, art 2, Sec. 6. ^(6) In addition, Const 1963, art 9, Sec. 6,_ supra_, in its second paragraph states the 15 mill

limitation is not applicable to taxes imposed by a city, among other local units, whose tax limitations are provided by charter, or whose electors, pursuant to Const 1963, art 9, Sec. 31,_ supra_, vote to levy a tax (for ambulance service). OAG, No 5506,_ supra_.

Where a city votes to establish ambulance service under 1978 PA 368, Sec. 20346(2)(b), the city may not provide for such service by the issuance of special assessment bonds pursuant to 1951 PA 33, Sec. 1(2)(b),_ supra_, and 1951 PA 33,_ supra_, Sec. 3, ^(7) for the reason that any assessment for such service is a general tax, not a special assessment. ^(8) Thus, bonds issued to fund ambulance service must be general obligation bonds which must be approved by the electors prior to their issuance, pursuant to the second paragraph of Const 1963, art 9, Sec. 6,_ supra_, and 1951 PA 33, Sec. 1(4),_ supra_. Where the electors approve the issuance of general obligation bonds to fund a city ambulance service, the second paragraph of Const 1963, art 9, Sec. 6,_ supra_, is applicable. It provides that the general 15 mill limitation shall not apply

'. . . to taxes imposed for the payment of principal and interest on bonds approved by the electors . . ., which taxes may be imposed without limitation as to rate or amount. . . .'

Where a municipality levied a tax or issued bonds, pursuant to 1951 PA 33,_ supra_, prior to December 23, 1978, the presently-operative provisions of Const 1963, art 9, Secs. 6 and 31,_ supra_, which became effective December 23, 1978, are inapplicable. After December 23, 1978, the funding of ambulance services, as well as fire protection services, established on or after such date and funded pursuant to the provisions of 1951 PA 33,_ supra_, must be approved by majority vote of the electors where taxes are to be levied, or bonds are to be issued, pursuant to Const 1963, art 9, Secs. 6 and 31,_ supra_.

Therefore, in response to your second question, it is my opinion that under Const 1963, art 9, Secs. 6 and 31,_ supra_, city electors must approve the levying of and tax, or the issuance of bonds to finance the cost of a city-wide ambulance service, pursuant to 1978 PA 368, Sec. 20346(2)(b),_ supra_, and pursuant to the otherwise valid procedures set out in 1951 PA 33,_ supra_.

(3) Does 1978 PA 368, Sec. 20346(2)(b), by its reference to and incorporation of 1951 PA 33, violate Const 1963, art 4, Sec. 24, in that the title and body of 1951 PA 33 does not refer to ambulance service?

Const 1963, art 4, Sec. 24, provides in pertinent part that:

'No law shall embrace more than one object, which shall be expressed in its title. . . .'

This provision has been part of the Michigan Constitution since 1850. Advisory Opinion re Constitutionality of 1972 PA 294, 389 Mich 441, 463; 208 NW2d 469, 472 (1973). It seeks to promote two objectives: (1) that legislators approve statutes that they fully understand; and (2) that the public is aware of the laws of this state._ Adams_ v Wayne County Treasurer, 71 Mich App 275; 248 NW2d 232 (1976).

The purpose of 1951 PA 33,_ supra_, is expressed in its title as:

'AN ACT to provide fire protection for townships, and for certain areas in townships and incorporated villages and for cities under 15,000 population; to authorize contracting for fire protection; to authorize the purchase of fire extinguishing apparatus and equipment, and the maintenance and operation thereof; to provide for defraying the cost

thereof; to authorize the creation of special assessment districts, and for the levying and collecting of special assessments; to authorize the issuance of special assessment bonds in anticipation of the collection of special assessment taxes, to advance the amount necessary to pay such bonds, and providing for reimbursement of such advances by reassessment if necessary; and to repeal certain acts and parts of acts.'

The object embraced by the act, as set forth in its 10 sections, is the provision and financing of fire protection for municipalities. That object is clearly expressed in its title.

The title to the Public Health Code, 1978 PA 368,_ supra_, expresses its purpose, in relevant part, as

'AN ACT_ to protect and promote the public health;_ to codify, revise, consolidate, classify and add to the laws relating to public health . . .;_ to provide for the_ . . . administration, regulation,_ financing . . . of . . . health services . . .;_ to prescribe the powers and duties of governmental entities . . .; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care . . . services. . . .' [Emphasis supplied.]

Clearly, the principal object of 1978 PA 368,_ supra_, is the protection and promotion of public health, and the financing of ambulance services, as through 1951 PA 33,_ supra_, as previously addressed, is a component part of such purpose.

'An act may include all matters germane to its object. It may include all those provisions which directly relate to, carry out and implement the principal object. . . .'_ Vernor_ v Secretary of State, 179 Mich 157, 160; 146 NW 338 (1914);

See also OAG, 1979-1980, No 5485, p ___ (April 26, 1979).

Accordingly, it is my opinion that, 1978 PA 368, Sec. 20346(2)(b),_ supra_, by its reference to and incorporation of the provisions of 1951 PA 33,_ supra_, as previously discussed, does not violate Const 1963, art 4, Sec. 24,_ supra_. ^(9)

(4) Does 1978 PA 368, Sec. 20346(2)(b) amend by implication 1951 PA 33, contrary to Const 1963, art 4, Sec. 25?

Const 1963, art 4, Sec. 25, provides that:

'No law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be re-enacted and published at length.'

This provision has also been part of the Michigan Constitution since 1850._ Alan_ v Wayne County, 388 Mich 210, 273; 200 NW2d 628, 659 (1972). It seeks to avoid confusion and deception in the legislative process.

'This constitutional provision must receive a reasonable construction, with a view to give it effect. The mischief designed to be remedied was the enactment of amendatory statutes in terms so blind that legislators themselves were sometimes deceived in regard to their effect, and the public, from the difficulty in making the necessary examination and comparison, failed to become apprised of the changes made in the laws. An amendatory act which purported only to insert certain words, or to substitute one phrase for another in an act or section which was only referred to but not republished, was well calculated to mislead the careless as to its effect, and was, perhaps, sometimes drawn in that

form for that express purpose. Endless confusion was thus introduced into the law, and the constitution wisely prohibited such legislation. But an act complete in itself is not within the mischief designed to be remedied by this provision, and cannot be held to be prohibited by it without violating its plain intent.'_ People_ v Mahaney, 13 Mich 481, 496-497 (1865)

Where the legislature intends to revise, alter or amend statutes so that their operation is narrower or broader, Const 1963, art 4, Sec. 25,_ supra_, requires that the altered or amended provision be reenacted and published. Alan, supra, 388 Mich 210, 285. However, the legislature has both the power and the right to refer in one statute to provisions of another statute and to render them applicable and binding as though incorporated and reenacted therein so long as the sections referred to are germane._ Clay_ v Penoyer Creek Improvement Co, 34 Mich 204, 208-209 (1876), cited with approval in Alan, supra, 388 Mich 210, 273-274.

In_ Midland Township_ v State Boundary Commission, 401 Mich 641; 259 NW2d 326 (1977),_ appeal dismissed_, 435 US 1004, 98 S Ct 1873, 56 L Ed 2d 386 (1978), the decision and reasoning of Mahaney, supra, was approved.

Clearly, the financing of ambulance service according to the provisions of 1951 PA 33,_ supra_, as previously discussed is germane to the protection and promotion of public health enunciated by 1978 PA 368,_ supra_.

Thus, it is my opinion that, 1978 PA 368, Sec. 20346(2)(b),_ supra_, does not amend by implication 1951 PA 33,_ supra_, contrary to Const 1963, art 4, Sec. 25,_ supra_.

Frank J. Kelley

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Attorney General

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^(1) Defined in 1978 PA 368,_ supra_, Sec. 20306(1), as a county, city, village or township.

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^(2) The provisions of 1978 PA 368, Sec. 20346,_ supra_, are substantively identical to the provisions of 1976 PA 330, Sec. 12, as amended by 1978 PA 47; MCLA 257.1232; MSA 14.528(512), which section 20346,_ supra_, replaced. 1976 PA 330,_ supra_, was repealed by 1978 PA 368,_ supra_, Sec. 25101(a).

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^(3) 'Whenever reference is made in this act to township, such reference shall be deemed to mean and apply to townships and incorporated villages and cities under 15,000 inhabitants, . . .' 1951 PA 33,_ supra_, Sec. 10.

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^(4) As amended at the November 7, 1978 general election (effective December 23, 1978).

^

^(5) Defined in Const 1963, art 9, Sec. 33, as 'any political subdivision of the state, including, but not restricted to, school districts, cities, villages, townships, charter townships, counties, charter counties, authorities created by the state, and authorities created by other units of local government.'

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^(6) The first paragraph of Const 1963, art 9, Sec. 6, provides in pertinent part:

'These [15 and 18 mill] limitations may be increased to an aggregate of not to exceed 50 mills on each dollar of valuation, not to exceed 20 years at any one time, if approved by a majority of the electors, qualified under Section 6 of the Article II of this constitution, voting on the question.'

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^(7) See also 1895 PA 3, ch VIII, Sec. 35, added by 1974 PA 4; MCLA 68.35; MSA 5.1370(5); 1895 PA 3,_ supra_, ch IX, Sec. 6 as amended by 1974 PA 4; MCLA 69.6; MSA 5.1376; 1895 PA 3, ch IX,_ supra_, Secs. 21-23, as amended by 1974 PA 4; MCLA 69.21-69.23; MSA 5.1391-5.1393.

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^(8) Special assessment district bonds which do not pledge, as a secondary pledge, the full faith and credit of the municipality wherein the district is located, do not fall within the purview of Const 1963, art 9, Sec. 6,_ supra_, as the general taxing power is not thereby pledged, even contingently.

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See, eg, the home rule cities act, 1909 PA 279, Sec. 4-a(4)(a), as last amended by 1978 PA 634, MCLA 117.4a(4)(a); MSA 5.2074(4)(a); the charter townships act, 1947 PA 359, Sec. 14a, as last amended by 1979 PA 141, MCLA 42.14a; MSA 5.46(14a); the home rule villages act, 1909 PA 278, Sec. 26(i), MCLA 78.26(i); MSA 5.1536(i).

However, where special assessment district bonds contain a secondary pledge of the municipality's full faith and credit, the municipality's electors must approve issuance of the bonds, in which case taxes may be imposed without limitation as to rate of amount, in the event the municipality must honor its pledge. Const 1963, art 9, Sec. 6,_ supra_, (second paragraph). OAG, 1979-1980, No. 5631, p ___ (January 23, 1980)._ See, eg_, 1951 PA 33,_ supra_, Sec. 3.

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^(9) See 1951 PA 181, MCLA 41.851_ et seq;_ MSA 5.2640(31)_ et seq_ which provides a special assessment procedure similar to 1951 PA 33,_ supra_, whereby townships may establish a special assessment district for police protection; OAG, 1975-1976, No 5106, p 598, 599 (September 7, 1976).

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 6687

July 12, 1991

COUNTIES:

Property tax levies on captured assessed value

TAXATION:

Property tax levies on captured assessed value

Voted millages for specific purposes that are levied on the captured assessed value must be transmitted to the authorities created pursuant to 1980 PA 450 and 1975 PA 197.

Honorable Harry Gast

State Senator

The Capitol

Lansing, MI 48913

Dear Senator Gast:

You have requested my opinion regarding the operation of the "captured assessed value" provisions of the Tax Increment Finance Authority Act, 1980 PA 450, MCL 125.1801 et seq; MSA 3.540(201) et seq, and the statute providing for downtown development authorities, 1975 PA 197, MCL 125.1651a; MSA 5.3010(1a). Sections 1(a) and 2 of 1980 PA 450 authorize the creation of tax increment finance authorities. Section 2 of 1975 PA 197 authorizes the creation of downtown development authorities. You ask whether voted millages for specific purposes that are levied on the "captured assessed value" must be kept by the local governmental unit levying the tax or transmitted to the authorities created by 1980 PA 450 and 1975 PA 197. Examples in your letter of request include voter approved millages for drug enforcement, 911 (emergeny phone service) and senior citizen activities.

Section 13(1)(a) of 1980 PA 450 and section 14(1)(a) of 1975 PA 97 both define "captured assessed value." Subject to certain qualifications, "captured assessed value" is the amount by which the current assessed value of property exceeds the assessed value that existed at the time a tax increment financing plan was approved.

In Advisory Opinion on Constitutionality of 1986 PA 281, 430 Mich 93, 101-102; 422 NW2d 186 (1988), a tax increment financing plan was described as follows:

> [a] tax increment financing (TIF) plan allows a local government to finance public improvements in a designated area by capturing the property taxes levied on any increase in property values within the area. Under a TIF plan, a base year is established for the project area. In subsequent years, any increase in assessments above the base year level is referred to as the captured value. All, or a portion, of the property taxes levied on the captured value (SEV) is diverted to the area's development plan. [Department of Treasury, Analysis of Tax Increment Financing in Michigan for 1986 (April, 1987), p A-2.]

> Tax increment financing "is premised on the theory that, without the redevelopment project, property values would not increase," or "that increases in land values and assessments in the project area are caused by the redevelopment authority's own construction of economic activity in the district." [Footnotes omitted.]

In order to better illustrate your concern, one may consider the following example. Assume that a property with an assessed valuation of $100,000 becomes part of a tax increment finance district in 1988 and that, as of 1991, that property has increased in assessed value to $120,000. The $20,000 increase in assessed value is the "captured assessed value." Under the tax increment finance plan, local millages levied on the first $100,000 of assessed value for that property would be collected and retained by the local taxing authorities in the same manner as taxes on all other properties within the taxing district. The tax imposed upon the $20,000 "captured assessed value" of that same property, however, would be turned over to the tax increment finance authority. Your question is whether the same result must occur when the tax in question is a voter approved millage for a specific purpose.

Section 14(1) of 1980 PA 450 provides:

> The amount of tax increment to be transmitted to the authority by the municipal and county treasurers shall be that portion of the tax levy of all taxing bodies paid each year on real and personal property in the development area on the captured assessed value. [Emphasis added.]

Section 15(1) of 1975 PA 197 provides:

> The amount of tax increment to be transmitted to the authority by the municipal and county treasurers shall be that portion of the tax levy of all taxing bodies paid each year on real and personal property in the project area on the captured assessed value. [Emphasis added.]

In both instances, the Legislature has plainly commanded that "the tax levy of all taxing bodies" on the "captured assessed value" is to be transmitted to the authority. There are no statutory exceptions for special millage levies approved by the voters for limited purposes. There is simply no basis in the text of the statutory provisions in question to determine that these specially voted millages are exempt from capture under these statutes. If the language of a statute is plain and unambiguous, there is no room for judicial construction. City of Lansing v Township of Lansing, 356 Mich 641, 648-649; 97 NW2d 804 (1959).

In Advisory Opinion on Constitutionality of 1986 PA 281, supra, p 97, the court dealt with the tax increment financing plans authorized by the Local Development Financing Act, 1986 PA 281, MCL 125.2151 et seq; MSA 3.540(351) et seq. In doing so, the court observed that the Legislature had authorized tax increment financing plans in the past in 1980 PA 450 and 1975 PA 97, Id. p 99.

The comparable statutory provision in 1986 PA 281 concerning the millage to be transmitted to the authorities provides:

> The amount of tax increment that shall be transmitted to the authority by the city, village, township, school district, and county treasurers shall be that portion of the tax levy of all taxing jurisdictions paid each year on the captured assessed value of each eligible property included in a tax increment financing plan excluding millage specifically levied for the payment of principal and interest of obligations approved by electors or obligations pledging the unlimited taxing power of the local governmental unit. [Citation omitted.] [Emphasis added.]

Advisory Opinion on Constitutionality of 1986 PA 281, supra, p 103.

In this statutory provision, unlike the two quoted above from 1980 PA 450 and 1975 PA 97, the Legislature expressly provided that certain millage levied on the "captured assessed value" would not be transmitted to the local development financing authority. Thus, where the Legislature intended to exclude certain millage levied on the "captured assessed value" from being transmitted to an authority, it expressly provided for the exclusion.

In Advisory Opinion on Constitutionality of 1986 PA 281, supra, pp 111-115, the court concluded that transmitting the millage revenues levied on the "captured assessed value" to the authority was consistent with the first paragraph of Const 1963, art 9, Sec. 6. The court rejected the argument that this was an unlawful diversion of funds from the purposes for which they were approved by the voters and levied by the local governmental units. The court found it was within the power of the Legislature to alter the purposes for which tax revenues are expended and that the Legislature had done so.

It is my opinion, therefore, that voted millages for specific purposes which are levied on the "captured assessed value" must be transmitted to the authorities created pursuant to 1980 PA 450 and 1975 PA 197.

Frank J. Kelley

Attorney General

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State of Michigan, Department of Attorney General
Last Updated 04/12/2001 12:34:01

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Susan Weeber,
Petitioner,

v MTT Docket No. 295187

Twp. of Palmyra,
Respondent. Tribunal Judge Presiding
Jack Van Coevering

OPINION AND JUDGMENT

This matter was heard before Administrative Law Judge Peter M. Kopke, who issued a Proposed Judgment on February 22, 2005. No exceptions or written arguments to the Proposed Judgment have been filed. The Tribunal, pursuant to Section 26 of the Tax Tribunal Act, as amended by 1980 PA 437, has given due consideration to the case file, and adopts and incorporates by reference the findings of fact and conclusions of law in the Proposed Judgment as the final decision of the Tribunal.

MICHIGAN TAX TRIBUNAL

Entered: July 7, 2005 By: Jack Van Coevering

* * *

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

SUSAN MARIE WEEBER,
Petitioner,

v MTT Docket No. 295187

TOWNSHIP OF PALMYRA,
Respondent.

Tribunal Judge Presiding
Peter M. Kopke

PROPOSED OPINION AND JUDGMENT

I. INTRODUCTION

This special assessment matter came before the Michigan Tax Tribunal for hearing on October 19, 2004, in its Lansing, Michigan office. Petitioner, Susan Marie Weeber, represented herself. Respondent, Township of Palmyra, was represented by Timothy Voorhees, Palmyra Township Assessor. Both parties presented witnesses and offered stipulated facts that were admitted. Petitioner is appealing a special assessment of $11,324 imposed for the installation of a sanitary sewer that is needed to correct an environmental violation. Neither party filed a post-hearing brief. Based on the limited stipulated facts, and the hearing testimony, the Tribunal has rendered this Opinion and Judgment.

II. SYNOPSIS

Petitioner failed to meet her evidentiary burden. The Tribunal cannot render decisions without a certain minimal level of factual information regarding a dispute. The Michigan Supreme Court has made it very clear that in special assessment appeals, the minimal level of factual information needed is the cost of the assessment, and the value conferred on the property as a result of the subject improvement.

There is a very strong presumption that a municipality will act reasonably when implementing a special assessment. Without the necessary credible evidence, the Tribunal has no authority to ignore this presumption. Petitioner may very well have had a good argument, but the evidence needed by the Tribunal to render a judgment in her favor was never provided.

III. FINDINGS OF FACT

A. BACKGROUND INFORMATION ON THE SPECIAL ASSESSMENT

This special assessment improvement project was designed to address a long standing problem involving the discharge of untreated and partially treated sewage into the Raisin River. The Department of Environmental Quality first identified this problem nearly forty years ago and traced it back to faulty sewage systems in the Village of Palmyra and the nearby subdivision known as Manor Farms. After a formal complaint detailing the violations and their legal consequences was sent to the township in 1995, measured steps were taken to investigate and correct the problem. The result of the investigation was a plan to install a sewer system and a waste water treatment facility.

The sewer system comprises two areas of gravity sewers connected by a pressurized transmission line. The transmission line originates in the village area and then traverses to the northeast along US-223 to the Manor Farms subdivision. From there, it turns north and follows Humphrey Highway until it reaches the treatment facility abutting the Raisin River. This design created two separate special assessment districts with a section of unassessed parcels in between. These in between, unassessed parcels were not required to connect because they were not causing pollution, and connecting to the transmission line required additional special equipment. The system was designed to

accommodate the current residents, future development on existing vacant lots, and a small number of residents who may need the sewer in the future if their septic systems begin to fail. The community is largely agricultural and no significant changes or development are anticipated by the township.

The initial plan was altered to accommodate a request made by a single property owner, Glen Sliker. His property, which is zoned for agricultural use, was not included in the special assessment district and was not going to be serviced by the sewer. Based on documents submitted by both parties, it appears that Mr. Sliker hopes to be able to develop his land in the future. To that end, he requested an extension of the sewer line to his property. This extension and the resulting enlargement of the transmission line increased the cost of the project by approximately $10,000. Respondent alleges that the entire cost of this modification was paid by Mr. Sliker. The initial plan was also altered at the request of the County Road Commission to install drainage culverts. Petitioner contends that both modifications improperly increased the cost of her share of the project.

B. CASE HISTORY AND VALUATION DISCLOSURES

On December 15, 2003 the Tribunal issued two orders holding both Petitioner and Respondent in default for failing to submit their valuation disclosures. Both parties timely filed motions to set aside default and submitted valuation disclosures. Petitioner's valuation consisted of an appraisal conducted by Kelly Rinne of Pavilion Mortgage Company on May 30, 2002. This appraisal was conducted prior to the subject sewer system improvement and valued the property at $102,000. The tribunal was not provided with a valuation demonstrating a change in value of the property as a result of the new sewer system. While the appropriate time to submit such a valuation is prior to trial, Petitioner was on notice

that the filed valuation was insufficient. In the February 2, 2004 Order setting aside default, the Tribunal cited to the relevant case law and explained why Petitioner's valuation disclosure was insufficient. Petitioner neither motioned the Tribunal to accept a supplemented valuation nor presented evidence of the change in value at the hearing.

C. SUMMARY OF PETITIONER'S WITNESS TESTIMONY

Petitioner presented two witnesses, Richard E. Jackson, Palmyra Township Clerk, and Bradley H. Thomas, President of Progressive Engineering. Neither witness presented any testimony regarding the change in value of Petitioner's property as a result of the sewer project. Mr. Jackson responded to questions regarding the cost and sources of revenue for the changes requested by Mr. Sliker and the Road Commission. He explained that Mr. Sliker paid for the modifications that he requested, but the installation of culverts was included as part of the special assessments. Mr. Jackson next explained why some properties were assessed at zero. He stated that those properties were receiving no benefit, and they were excluded from the plan because they were not being cited by the DEQ. When questioned by Judge Kopke as to whether there were any properties connected to the sewer with a zero assessment, he firmly stated that there were no such properties.

Mr. Thomas talked at length about the technical decisions of the project. Mr. Thomas's firm, Progressive Engineering, designed the sewer system and the corresponding assessment roll. He first explained that the system was designed to eliminate the two DEQ non-compliance areas, the Village of Palmyra, and the Manor Farms subdivision. He stated that the only way to make the system economically feasible was to have a single treatment facility servicing the two polluting districts. This

required a transmission line to connect the village district to the Manor Farms district. The properties along the transmission line had the option to connect to the sewer, but were not required to do so because they were not causing the pollution problem. Mr. Thomas went on to discuss the changes that were made at the request of Mr. Sliker. Mr. Thomas stated that Mr. Sliker was informed that even if the requested changes were made, his property was not zoned for development, and more importantly, the treatment facility did not have the capacity to accommodate growth on his land. Mr. Thomas said that despite this information, Mr. Sliker elected to pay for the modifications to the system. The Sliker property was then assessed at zero because there is currently no development on the property. On further question from Judge Kopke, Mr. Thomas explained that the Sliker addition did not affect the subsidized financing from the State Revolving Fund because the addition was not financed; it was paid entirely upfront by Mr. Sliker. Later Mr. Thomas was recalled to discuss the changes requested by the County Road Commission. The commission requested certain steel culverts to be replaced by concrete culverts. Mr. Thomas explained that the project was designed with a certain level of built-in contingency expenses. The culvert replacements fell within this contingency budget.

D. SUMMARY OF RESPONDENT'S WITNESS TESTIMONY

Respondent called one witness, Stephen R. May, County Drain Commissioner. Mr. May first corroborated Mr. Thomas's testimony by stating that Mr. Sliker in fact made a payment to his office for the cost of the extension to the Sliker property. Next, Mr. May reported that even with the additions, the actual cost of the project was below the estimated cost.

IV. CONCLUSIONS OF LAW

A. STATUTORY AND CASE LAW CITATIONS

Townships are a creation of legislation and are limited to the authority granted to them in their enabling statutes. MCL 41.721 provides that townships have the authority to issue special assessments for certain types of improvement projects. "The township board has the power to make an improvement named in this act…, and to determine that the whole or any part of the cost of an improvement shall be defrayed by special assessments against the property especially benefited by the improvement." *Id*. Turning to MCL 41.722(1)(a), sanitary sewers are listed as one of the allowable types of improvement projects. "The construction, improvement, and maintenance of storm or sanitary sewers or the improvement and maintenance of, but not the construction of new or expanded, combined storm and sanitary sewer systems."

MCL 205.735(1) confers jurisdiction on the Tax Tribunal to hear special assessment appeals from a taxpayer so long as the taxpayer timely protested the assessment to the township at a forum designated for such protests.

In a special assessment case where the cost of the assessment was 2.6 times greater than the property's increase in value, the Supreme Court ruled that the cost of the assessment must be reasonably proportionate with the benefit and that the subject assessment was not reasonable. *Dixon Rd Group* v *City of Novi*, 426 Mich 390, 403; 395 NW2d 211 (1986). 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. The Court further stated that assessments should "generally be upheld" and that the only reason for invalidation is when there is a "substantial excess" between cost and benefit. *Id*. at 402, 403. Removal of a burden that corresponds to an increase in value can demonstrate a special benefit. *Id*. at 401.

In a case where the Tax Tribunal determined that a special assessment was invalid, the Supreme Court reversed based on the petitioners' failure to present sufficient evidence. *Kadzban* v *City of Grandville*, 442 Mich 495; 502 NW2d 299 (1993). The Court reiterated the point made in *Dixon Rd Group* that the judgment of the municipality is presumed to be valid. *Id*. at 505. The Court then stated that the petitioners have the burden of proving that an assessment is invalid, and that if the burden is not met, the Tribunal may not make a determination de novo of the benefit thereby substituting its judgment for that of the municipality. *Id*.

The *Kadzban* decision also explains the relationship between general taxes and special assessments. *Id*. at 500. The Court stated that while special assessments resemble general taxes, they are not themselves taxes. *Id*. Special assessments are remunerative, in that they seek repayment for benefits conferred on the assessed property. *Id*. (citing *Kuick* v *Grand Rapids*, 200 Mich 582, 588; 166 NW 979 (1918)).

The Court of Appeals has provided a very helpful clarification of the above Supreme Court holdings. *Ahearn* v *Bloomfield Charter Twp*, 235 Mich App 486, 496-97; 597 NW2d 858 (1999). The Court explained that the important fact needed by a court in a special assessment appeal is the increase in value as a result of the subject improvement. Simply providing a before and after assessment may not be sufficient because external factors, including the mere passage of time may result in an

increase in value of the property.

> Common sense dictates that in order to determine whether the market value of an assessed property has been increased as a result of an improvement, the relevant comparison is not between the market value of the assessed property after the improvement and the market value of the assessed property before the improvement, but rather it is between the market value of the assessed property with the improvement and the market value of the assessed property without the improvement. The former comparison measures the effect of time, while the latter measures the effect of the improvement.

Id. at 496-97 (emphasis in original).

B. ANALYSIS

While numerous exhibits were presented by each party prior to trial, nothing was submitted into evidence during trial. The Tribunal is forced to render its decision based on the testimony of the witnesses and the limited stipulated facts. None of the witnesses discussed whether the sewer project increased the value of Petitioner's property. Petitioner had the burden to present evidence, either documents or oral testimony, showing that her property did not increase in value to the extent of the special assessment cost.

The lack of evidence is significant in this case because the Michigan Supreme Court has made it very clear that the only means for a taxpayer to contest a special assessment is by showing that the benefit of the improvement is not proportional to the cost. Without credible evidence such as before and after valuations of the property which shows this change in value, the Tribunal has no means to determine that the assessment was improper. As instructed by *Dixon Rd Group* and *Kadzban*, the Tribunal must defer to the presumptively valid judgment of the township officials. It should be easy to understand that if in *Ahearn* where a before and after valuation was insufficient to show the increase in

value due to the benefit of the improvement project, then there is no way that a single valuation prior to the improvement would be sufficient.

Petitioner argues that the township did not create a uniform plan for the sewer project and that properties received non-uniform benefits. Respondent contends that like properties were treated similarly and the use of Residential Equivalent Units ensures that properties which produce greater amounts of waste pay a higher share of the cost. Petitioner's uniformity argument is not effective because unlike general taxation, special assessments are not a tax and therefore do not necessarily have to be uniform. *Kadzban* explained that the point of a special assessment is to recover costs incurred as a result of providing some benefit to a property. Therefore, if a particular property receives a smaller or perhaps nonexistent benefit, it should be assessed accordingly. Of course, this is simply a restatement of the reasoning from above; the Tribunal needs to have evidence of the benefit, or lack thereof, in order to make a determination of the validity of the assessment. The benefit is measured objectively by considering the change in value of the property. It should also be noted that even if the special assessment districts were drawn to include more properties, it does not necessarily follow that that per property cost would decrease. Adding additional properties would likely increase the total cost of installation. No evidence was presented to show that the inclusion of more properties in the special assessment districts would reduce Petitioner's assessment.

Even if Petitioner had presented sufficient evidence of the value of the sewer improvement, it does not necessarily follow that the Tribunal would have reached a different conclusion. While the $11,324 assessment seems high for a $102,000 home, it should be noted that the DEQ was threatening to impose fines against the township for the sewage violations that the subject assessment was levied to

correct. Had the township not acted, Petitioner as a resident of the township would likely have faced a portion of those fines. It is within the realm of possibilities that the cost of the fines would exceed the cost of the improvement. As explained in *Dixon Rd Group*, removal of a burden that causes an increase in value to the property may be considered when calculating the proportionality of the special assessment improvement.

C. CONCLUSION

A special assessment of over $11,000 on a property valued at $102,000 strikes the Tribunal as being rather high. Unfortunately for Petitioner, the evidence needed by the Tribunal to transform this suspicion into a judgment was never presented. The Tribunal has no way of knowing whether the $11,000 cost is anywhere proportionate to the benefit conferred on the property. The Tribunal has no authority to make a de novo determination of the benefit thereby substituting its judgment for that of the municipality.

V. JUDGMENT

IT IS ORDERED that the special assessment subject to this appeal is AFFIRMED.

IT IS FURTHER ORDERED that the parties shall have 21 days from date of entry of this Proposed Opinion and Judgment to file exceptions and written arguments with the Tribunal consistent with Section 81 of the Administrative Procedures Act (MCL 24.281). Exceptions and written arguments shall be limited to the evidence presented to the administrative law judge. This Proposed Opinion and Judgment, together with any exceptions and written arguments, shall be considered by the Tribunal in arriving at a final decision in this matter pursuant to Section 26 of the Tax Tribunal Act [MCL 205.726; MSA

7.650(26)].

MICHIGAN TAX TRIBUNAL

Entered: February 22, 2005

By: Peter M. Kopke, Adm. Law Judge

SELECTED JUDICIAL OPINIONS FOR SPECIAL ASSESSMENT CLASS

By Joe Turner, Michigan Property Consultants

Boundary Issues

Lawrence et al. v City of Grand Rapids 166 Mich. 134, 131 N.W. 581 (1911)

"It is the duty of the common council under the charter, when a special improvement is made, the beneftis accruing from which are regarded as local, to determine the boundaries of the district within which the property is supposed to be specially benefitted by the improvement"

"It is the duty of the board of assessors to apportion the cost of the improvement within the district upon all owners or occupants of lands or houses within said district in proportion as nearly as may be to the advantage each shall be deemed to acquire by the making of such public improvement."

"The carving out of a special assessment district in a city is a practical matter, depending wholly upon facts"

"We feel obliged to agree with the trial judge in the conclusion that the boundaries of the district were fixed by the common council without reference either to known or ascertainable facts; that the action was arbitrary and unwarranted. We are of opinion, also, that the bill of complaint, fairly interpreted, charges the creation of a district invalid because not including lands benefitted by the improvement."

Benefits Conferred

Lawrence v City of Grand Rapids (1911)

"The apportionment is wrong because the theory and method of apportionment was wrong. Whether we call the action of the assessors a mistake, or an abuse of discretion, the result is the same, and the legal injury to complainants is apparent." Pg 145

"The fact that the certificate of the assessors recites that an assessment in accordance with benefits was made, and the further fact that the council finally confirmed the roll, are not in such a conclusive case." Pg 145

Crampton v City of Royal Oak, 362 Mich 503, 108 N.W.2d 16 (1961)

"That all property within the assessment district would be benefited to some extent at least by the improvement...is a fair inference, but in the making of the assessment the amount charged to each parcel of land must be based on the benefits accruing thereto, determined in accordance with the general principles recognized in the cases above cited. Such is the intent of the law of the State, under which the city operates, and of the municipal charter. The commission and the city assessor were charged with the obligation of insuring a fair and equitable apportionment of the amount of the cost of the improvement to be raised within the assessment district."

"There is nothing in the record before us to suggest fraud or mistake, or that the action of the commission was arbitrary or capricious. Invariably when a special assessment district is created, as in the

instant case, opinions differ as to its proper extent and its inclusion, or non-inclusion, of specific property therein. The creating of the districts was within the legislative powers of the commission, and the presumption of validity attaches to the action taken." Pg 514

REQUIREMENT TO USE FACTS

Kadzban v City of Grandville, 442 Mich 495, 502 N.W.2d 299 (1993)

"the question whether and how much the value of land has increased as a result of certain improvements is factual, to be determined on the basis of evidence presented by the parties. As such, it is to be resolved by the trier of fact - in this case, the Tax Tribunal. On review, this Court will reverse a decision of the Tax Tribunal only if its decision is not supported by competent, material, and substantial evidence on the whole record." Page 502

"Although specific dollar amounts were not attached to each of these benefits, taken together they certainly make up more than a 'scintilla' of evidence in support of the city's position. In addition, the improvements were shown to be directly linked to significant increases in the marketability and the selling prices of plaintiff's properties...." Pg 506

Rogoski v city of Muskegon, 101 Mich App. 786, 300 N.W.2d 695 (1981)

"Whether a special benefit has been conferred upon the property and whether the benefit conferred corresponds to the assessment levied are controlling questions of fact." Pg 697

GENERAL PURPOSE TO BE SERVED IS IMPORTANT

Crampton v City of Royal Oak, 362 Mich 503, 108 N.W.2d 16 (1961)

"The argument, particularly stresses on behalf of appellant Oak Construction Company, that the defendant's project involved separate and distinct improvements is not in accord with the proofs or the objective sought to be attained by said project. The general purpose to be served is the improvement of the central business section of the city..." Pg 513

CONSIDER IMPACT OF PRE-EXISTING CONDITIONS

Fluckey et al v City of Plymouth 358 Mich. 447, 100 N.W. 2d 486 (1960)

"The idea that road improvements automatically carry with them special benefits to abutting property owners may have been true once"..."It was probably safe to say that every time such a surface was installed on a right-of-way, for the first time, the adjacent owners were specially benefitted...But the order has changed. Original paving of a dirt road without any change in its width of, say 20 feet, may be clearly of special benefit to abutting owners. One cannot say the same thing about the widening of a road in a residential district and its repavement when the pre-existing impervious hard surface was amply adequate for abutting owners." Pg

"The general levy of taxes is understood to exact contribution in return for general benefits of government, and it promises nothing to the persons taxed, beyond what may be anticipated from an administration of the laws for individual protection and the general public good. Special assessments on the other hand, are made upon the assumption that a portion of the community is to be specially and peculiarly benefited, in the enhancement of the value of property peculiarly situated as regards a contemplated expenditure of public funds; and, in addition to the general levy, they demand that special contributions, in consideration of the special benefit, shall be made by the persons receiving it. The justice of demanding the special contribution is supposed to be evident in the fact that the persons who are to make it, while they are made to bear the cost of a public work, are at the same time to suffer no pecuniary loss thereby; their property being increased in value by the expenditure to an amount at least equal to the sum they are required to pay." Pgs 453-454

"The point here is more fundamental; where, viewed in its entirety, no benefit upon abutting property owners has been conferred by the improvement, but rather a detriment suffered, a special assessment based upon the enhancement of the value of the property is a fraud in law upon such property owners." Pg 455

THERE MAY BE MINOR BENEFITS WHICH DON'T COUNT

SEE FLUCKEY ABOVE PAGE 455: "The doctrine of de minimis is fully applicable to alleged benefits conferred by the elimination of problems so nebulous."

Production Tool Supply Company v city of Roseville, 74 Mich App. 34, 253 N.W.2d 350 (1977)

"In his findings the trial judge, clearly and justifiably, rejected the proposition that elimination of dust from industrial property amounted to a special benefit. The trial judge made clear in his findings that while the plaintiff might benefit in some manner from the improvements, the evidence did not warrant the conclusion that plaintiff gained any special benefit." Pg 39

CONSIDER INDIRECTLY BENEFITTING PROPERTIES

Rice v Oakland County Drain Commissioner, 16 Mich App. 406, 168 N.W.2d 302 (1969)

Quoting from a circuit court hearing, "the court after listening to the testimony of witnesses regarding the formula for rating the assessment district, and more specifically, the contested assessment, feels that such assessment was not illegal Per se, and that some benefit will accrue to plaintiffs-appellants from the raising and stabilizing of the lake level even though such benefit might be an indirect nature." An assessment to be valid has to relate to a benefit which reasonably applies to the subject property.

PURPOSE OF THE IMPROVEMENT MUST BE CONSIDERED IN APPORTIONMENT

Crampton v City of Royal Oak, 362 Mich 503; 108 N.W. 2d 16 (1961)

"In a case of this nature, consideration must be given to the purposes to be attained by the public improvement sought."

"In some instances a fair and equitable apportionment of the cost of the improvement on the property within a special assessment district may be accomplished by following a method not at all applicable under other circumstances." Pg

Knott v City of Flint, 363 Mich 483 (1961)

"It cannot be successfully maintained that this improvement was made for the convenience and benefit of the abutting property owners; nor that the expense levied is in any reasonable ratio to the advantages accruing to the property in consequence of the improvement. The proofs in these cases, to the contrary, support the finding that the improvements were for the benefit of the general public, and resulted in actual burdens to the abutting owners."

"The completion of the projects doubtless operated to the benefit of the people of the State and of the city at large..

THOSE CHALLENGING THE ASSESSMENT MUST OVERCOME PRESUMPTION OF VALIDITY

Capaldi Contracting v city of Fraser, 70 Mich App 227, 245 N.W. 2d 575 (1976)

"The burden of proving that the assessed properties do not receive a benefit sufficient to justify the imposition of the assessment rests with the party challenging the assessment." Pg 230

USE OF PROPERTY IS IMPORTANT IN DETERMINING BENEFIT

Capaldi contracting v city of Fraser 70 Mich App. 227, N.W.2d 575 (1976)

Capaldi quoting from Crampton v city of Royal Oak, 362 Mich 503, 108 N.W.2d 16 (1961) "The use to which plaintiff's may put their properties now or may wish to put them in the future is not controlling of the question of resulting benefits or validity of the assessment." Pg 231

"The assessing authorities could use such a claimed 'potential use' to accomplish what zoning or condemnation proceedings could not readily achieve. By requiring a landowner to disprove that his land in every potential use receives inadequate special benefits anent the special assessment we would effectively take the landowner out of the equation...In the present case, the municipality could force plaintiffs to make a Hobson's choice: operate the airport but pay for an unnecessary sewer and drainage system, or develop the land as residential land, but suffer a loss on their investment..." Pg 233

DAMAGE CAUSED BY PUBLIC

Johnson v Inkster, 401 Mich 263 (1977)

"The principle that persons who 'are made to bear the cost of a public work, are at the same time to suffer no pecuniary loss thereby,' does not accommodate an assessment to defray the cost of rectifying conditions mainly brought about by the public at large and not 'specially and peculiarly related to the use or needs of persons residing in the assessment district. The plaintiffs' homes were not specially and peculiarly advantages by restoring safe and ready access to and from a road adequate to serve their needs and which would have remained adequate but for pre-emptive use emanating from outside the assessment district." Pgs 270 - 271

FOUNDATION FOR RIGHT TO SPECIALLY ASSESS

Williams v Mayor and City of Detroit 2 Mich 560; 1853 WL 3638 (Mich)

This 1853 Opinion discusses at length the origination and structure of a special assessment levy. This is especially true with regard to the devolution of the power to specially assess property from the Michigan Constitution. The reader may note frequent references to cases decided outside of the state of Michigan. It appears, that in the early days of Michigan's statehood, a body of case law and decisions originating within the state did not exist; therefore significant reliance upon decisions of judiciaries in other U.S. states existed. The reader may also note a more frequent reliance upon "dicta" expressed in the Latin language used in ancient Rome. Within the text of this opinion, there are also fascinating references to how the power of government is to be exercised and by whom. For example, "Having conferred this power unqualifiedly upon the two branches of te legislature, but being conscious of man's infirmities, and especially of that which often prompts those who are least qualified for the stations they happen to occupy, to love the exercise of power, and not infrequently to abuse it, it was deemed necessary to guard against such consequences, by imposing upon the legislature certain specific duties, and limiting, restraining, and regulating the exercise of their power in several important particulars." ....