

COA Opinion: Michigan Tax Tribunal properly vacated a special assessment

22. October 2010 By Nicole Mazzocco

In *Michigan's Adventure, Inc. v. Dalton Township*, No. 292148, the Court of Appeals affirmed an order of the Michigan Tax Tribunal that vacated a special assessment by Dalton Township. The special assessment would have funded the installation of a sewer line on property owned by Michigan's Adventure. The Court found that Michigan's Adventure followed proper objection procedure when it protested the assessment at a hearing held for the purpose of confirming the special assessment roll, that its appeal to the Tax Tribunal was timely, and that the Tax Tribunal's decision to vacate the assessment was appropriate.

Because the Dalton Township special assessment was not imposed by a board of public works, the Court found that MCL § 123.743 governed the assessment and procedures for objections. That statute does not require written objections to a special assessment; an oral objection at a hearing is sufficient. The Court held that Michigan's Adventure met the statutory requirements for objections when a representative of Michigan's Adventure objected to both the special assessment district and the special assessment itself at a hearing regarding the improvement project.

Additionally, the Court held that the appeal by Michigan's Adventure to the Tax Tribunal was timely. First, it noted that MCL § 205.735(3) governed the timeline for appeal to the Tax Tribunal. Under that statute, a party appealing a special assessment must file an appeal with the Tax Tribunal within 35 days of the "final decision" as to that assessment. The Court of Appeals found that Dalton Township did not confirm its special assessment roll until sometime after July 10, 2006, so a "final decision" that would trigger the appeal deadline could not have occurred prior to July 10. Michigan's Adventure filed its petition with the Tax Tribunal on August 8, so it was well within the 35-day period, even though the Court did not determine exactly when the period began.

Finally, the Court affirmed the Tax Tribunal's decision to vacate the special assessment. The Court noted that a special assessment must meet two requirements: (1) "the improvement funded by the assessment must confer a benefit on the assessed property and not just the community as a whole," and (2) "the amount of the special assessment must be reasonably proportionate to the benefit derived from the assessment." This project would not raise the market value of the property owned by Michigan's Adventure, because the property does not need a sewer line currently and there is no way that a sewer line could add to the value of the land in the foreseeable future. Additionally, Michigan law mandates that the amount of a special assessment cannot exceed the amount reasonably necessary to cover the cost of the project funded by the assessment, but the assessment against

Michigan's Adventure was \$600,000 and the actual cost of the sewer line in front of the property was only \$60,000 to \$80,000. Consequently, the Court found that the Tax Tribunal properly vacated the special assessment.