Township Law E-Letter

SPECIAL ASSESSMENTS FOR ROADS

Most Michigan residents can probably agree that something needs to be done to improve our crumbling roads. But after much talk in Lansing, we still do not have comprehensive reform for road funding. In August and November this year, many townships are going to the polls to seek or renew substantial road millages. But without state road reform or local millages, the only other alternative to fund road improvements is by the establishment of special assessment districts. This E-Letter will help you make sense of the special assessment process and answer whether special assessments may be right for your township’s roads.

What are Special Assessments?
Special assessments are charges imposed upon real property that receives a “special benefit” from a road improvement (which might include, grading, paving, resurfacing, rebuilding, or other improvements). The costs of the road improvement are spread among the “benefitting” parcels of land in proportion to the "special benefit" each parcel receives from the road improvement.

What is a “Special Benefit”?
To provide a "special benefit," a road improvement must increase the market value of the property that is specially assessed. The increase in property value does not need to be equal to the special assessment. But the amount of the special assessment against the property must be “reasonably proportional” to that the property’s increase in market value as a result of the road improvement.

A property owner can appeal the special assessment to the Tax tribunal based on lack of a sufficient “special benefit,” and the Tribunal must decide if the land derives a “special benefit” from the road improvement, which is a question of fact. Future benefits to the property can be a “special benefit,” so the increase in value does not have to be evaluated only in terms of the present use. If a potential purchaser would pay a greater price for the property in light of the road improvement than he would otherwise pay for the property, that is a basis for finding a “special benefit.” Unimproved lands may be excluded from a special assessment if no special benefit from the road improvement is found. Benefits to the public health and safety of the area are also taken into consideration by the Tribunal.

The Tribunal applies a "before and after" approach to determine benefit. They look at the value of the property without the road improvement and with the improvement. The difference equals the value of the road improvement which then be measured against the amount of the special assessment.

What are Special Assessment Districts?
The district is that part of a township that will receive a special benefit (different from the benefit to the public generally) from the road improvement. In the case of roads, the district usually includes those properties that front upon the roads proposed to be improved. A district may include an entire township in some circumstances, but in the context of roads that would require a very geographically broad area of road improvements and is not generally practical.
What is Public Act 188?
Act 188 is the Township Public Improvements Act. Act 188 is the principal tool used by townships to make public improvements that are financed by special assessments. Among other improvements, it provides township boards authority to make and specially assess improvements to either public or private roads.

How is a Special Assessment Initiated?
A township board may initiate a special assessment for road improvements itself, unless written objections are filed by record owners constituting 20% of the land owners holding more than 20% of total road frontage involved in the improvement.

A special assessment may also be initiated by a petition of the record owners of 50% of the total road frontage within the proposed district. This method must be used to initiate the special assessment if a 20% petition has been filed as noted above.

Although the township board can initiate a road improvement itself, it is common practice for the board to first require a 50% petition to assure that there is adequate interest in the project and the special assessment before it undertakes the cost of evaluating the proposed road project.

How are “Record Owners” Determined?
“Record owners” are the persons whose names appear on the most recent tax records of the township. For purposes of 50% and 20% petitions, each record owner of a parcel must sign in order for that parcel to be counted. This is important for properties that are owned jointly or held in trust. Act 188 does not require that the petitions be verified or that the addresses of signers be included. Notices must also be given to record owners.

What are the Steps in the Act 188 Special Assessment Process?
- **Petition.** As noted above, a road special assessment is usually initiated by a petition of the record owners of 50% of the total road frontage within the proposed district.

- **Initial Board Action.** After receiving a petition and tentatively determining that it is legally sufficient, the township board must: (1) Obtain proposed plans and estimates of cost of the road improvements; (2) Place those plans on file with the clerk for public inspection; (3) Tentatively establish the boundaries of the district; and (4) Adopt Resolution No. 1 to set the date, time and place for a public hearing on the petition, the cost estimate, the plans for the proposed improvement and the proposed district.

- **Notice of First Public Hearing.** Before holding the first public hearing, the township must publish a notice containing the necessary information about the project two times in a local newspaper. The first publication must be at least ten days before the hearing. The notice must also be mailed (first class) to all the record owners in the proposed district at least ten days before hearing. There is very specific language that the statute requires to be included in special assessment notices, so have the notices prepared or reviewed by your township attorney.

- **First Public Hearing.** At the first hearing, the township board considers objections to the petition, the plans, the cost estimates and the district boundaries. At the conclusion of the hearing, or sometimes at a
later meeting, the township board must adopt Resolution No. 2, which: (1) Determines whether the petition is legally sufficient; (2) Determines whether to proceed in establishing the district, and whether to approve the plans and cost estimates; and (3) Directs the supervisor to prepare a special assessment roll spreading a specified amount of the project costs among the parcels in that district.

- **Preparing the Draft Assessment Roll.** The supervisor, with such assistance as may be necessary, must prepare a draft assessment roll for the project to spread the costs among the benefitting properties. There are a number of possible methods to spread the costs of a road project, including an equal assessment for each benefitting parcel or assessments that are proportional to each parcel’s road frontage.

Remember that the amount assessed to each property must be reasonably proportional to that parcel’s special benefit from the project. When choosing the method of spreading the special assessment, this rule can be used as a check of the method applied.

Some parcels may be exempt from special assessment. Exempt parcels include tribal lands, federal and state-owned lands, and public school district property (unless the School Board consents to the assessment). Note that properties that are exempt from property taxation (charities, churches, etc) may not necessarily be exempt from special assessments.

Once the draft special assessment roll has been completed, it should be filed with the township clerk. The township board should then adopt Resolution No. 3, setting the second public hearing.

- **Notice of Second Public Hearing.** The notice requirements for the second public hearing are the same as for the first hearing.

- **Second Public Hearing.** At the second public hearing, the township board hears objections to the proposed special assessment roll. In order to challenge a special assessment, a person must appear and protest at the second public hearing or file a protest in writing at or before the second hearing. At the hearing the township board reviews the proposed roll, hears or reviews objections and makes any corrections.

At the conclusion of the public hearing, or at a later time, the township board adopts Resolution No. 4, which confirms the roll as submitted or as corrected. In the resolution confirming the roll, the township board: (1) Decides whether the special assessment is payable in a lump sum or in installments; (2) Decides when payments will be due; (3) establishes an interest rate on installments, if payable in installments; (4) Decides whether hardship deferments are permitted and establishes standards for such deferments; and (5) Specifies that if assessment installments are not paid when due, they become delinquent and are collectable in the same manner as delinquent property taxes.

An appeal to the Tax Tribunal may only be filed by a person who has protested the special assessment before the township board and must be filed within 35 days of the board’s confirmation of the roll.
Public Cost Sharing
Many townships and road commissions attempt to “leverage” their limited funds available for road improvements by offering to pay for some percentage of projects that principally financed by special assessments. This reduces the financial burden on the property owners in the district, and sometimes may be needed to get more than 50% of the frontage to agree to participate. It also reflects that many roads benefit the larger community and recognizes the public obligation to pay for the public benefits of the improvement.

Private Roads
As stated above, Act 188 can be used on private roads as well as public roads. Although residents along private roads frequently maintain their own roads without township assistance, some of the residents inevitably fail or refuse to share in the cost of such efforts. If the owners of more than 50% of the frontage of a private road want assistance in collecting a portion of the cost from all the benefitting owners, an Act 188 assessment district is one option available to them.

We Can Help
The lawyers of Fahey Schultz Burzych Rhodes PLC have been helping townships with special assessments for decades. Please contact us if you need any assistance.

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