

STATE OF MICHIGAN
COURT OF APPEALS

DONALD W. PEASE, WANDA M. PEASE,
DAVID A. PEASE, CHRISTINA PEASE,
WALTER MYERS, LELA MYERS, ORVILLE
MISHLER, EDNA MISHLER, PAULINE
LOUGHRIDGE, RICHARD CARNEY, JR., PETER
CARNEY, STANLEY HORSFALL, ERNEST
ROSENBERRY, DOROTHY ROSENBERRY,
EUNICE L. SIMMONS, ALBERT ASHLEY,
DEBORAH ASHLEY, and THOMAS A. PEASE,

UNPUBLISHED
July 6, 1999

Petitioners-Appellants,

v

ELDRED CONSOLIDATED DRAIN and
KALAMAZOO COUNTY DRAIN
COMMISSIONER,

Respondents-Appellees.

No. 206307
Tax Tribunal
LC Nos. 130315; 130321;
130356; 130360;
130365; 130517;
148775; 148778;
148837; 148910;
149079

Before: Markey, P.J., and Saad and Collins, JJ.

PER CURIAM.

Petitioners appeal as of right from a supplemental opinion and judgment entered by the Tax Tribunal on remand from this Court following a prior appeal. We affirm.

I

Special assessments were levied against petitioners in connection with the cleaning and reconstruction of the Eldred Consolidated Drain. Petitioners challenged the special assessments in the Tax Tribunal, which ultimately affirmed the drain commissioner's assessments following a four-day hearing. Petitioners then appealed to this Court as a result of the first appeal, and we reversed and remanded for further proceedings, explaining:

While it is correct that a drain commissioner is not required to use a definite mathematical formula when determining the amount of benefit and hence the amount of the assessment, see *In re Hurd-Marvin Drain*, 331 Mich 504; 50 NW2d 143 (1951), we believe that here, the drain commissioner's failure to keep any records indicating how he made his decisions regarding assessments, coupled with his inability to replicate the process at the hearing before the tribunal, deprived plaintiffs of a meaningful review of the assessment decisions. The commissioner claimed to have exercised his "best judgment," but because he did not quantify in some form the factors he considered, plaintiffs are unable to challenge potential errors in the formulation of their assessments. Accordingly, we remand the matter so that the commissioner can reassess the properties in a manner which permits potential aggrieved parties meaningful review. Toward this end, the factors supporting the assessments should be quantified and recorded in some fashion.

Given our resolution of plaintiffs' first issue, review of plaintiffs' remaining issues is unnecessary and would have no effect on the outcome. However, we are troubled by the apparent disparity between the alleged increase in value and the amount of certain assessments. In some cases, it appears that the assessments exceed the alleged increase in value by more than nine to one. Furthermore, it also appears that there were some parcels which were benefited by the project, but were not included in the district. On remand, we strongly suggest that these issues be carefully examined by the drain commissioner so that future litigation involving these issues can be avoided. [*Pease v Eldred Consolidated Drain*, unpublished opinion per curiam, issued February 14, 1997 (Docket No. 183897); footnotes omitted.]

On remand from this Court, the Tax Tribunal ordered the drain commissioner to reassess petitioners' properties in accordance with this Court's decision. The drain commissioner held a hearing, made some on-site visits and submitted a report. The Tax Tribunal subsequently issued a supplemental opinion and judgment, on remand, affirming the reassessments. Petitioners appeal once again.

II

Petitioners argue that the Tax Tribunal erroneously restricted its review to the question of whether the drain commissioner properly reassessed petitioners' properties in accordance with our decision. They argue that this error denied them due process. We disagree.

Our prior opinion suggested that the drain commissioner account for the alleged disparity between the assessments and the increase in value; however, we did not require the Tax Tribunal to undertake any specific measures in this regard. Rather, the only specific requirement of our previous opinion was that the commissioner "reassess the properties in a manner which permits potential aggrieved parties meaningful review." The Tax Tribunal satisfied this requirement when it found that the drain commissioner had quantified the factors used to determine the special assessment, and also found that the drain commissioner had used a legally acceptable method. With respect to the petitioners' claims that the property assessment increases were "unreasonably disproportionate to any increase in

market value for the subject properties resulting from the cleaning out of the Eldred Consolidated Drain”, we are satisfied that the Tax Tribunal took note of this issue and found that “none of the subject property assessments increased by application of the quantifying factors.” Accordingly, the Tax Tribunal satisfied the requirements of our previous opinion.

III

Petitioners further argue that contingencies, attorneys’ fees and the estimated cost of appeal of apportionments should not have been added to the assessments. We disagree. MCL 280.261; MSA 11.1261 of the drain code permits the estimated cost of an appeal in case the apportionment made by the commissioner shall not be sustained [§ 261(7)], attorney fees for legal services in connection with the drain [§ 261(11)], and an additional ten to fifteen percent of the gross sum to cover contingent expenses [§ 261(12)] to be included in the cost of construction of a drain. Those additional legal fees and other costs which were incurred after the initial assessment, including the cost of the appeal, would be apportioned equally to everyone in the district, according to their established percentage pursuant to § 243 of the drain code. Accordingly, the Tax Tribunal did not err in finding that § 243 permits respondents to add the additional costs to the reassessments.

Affirmed.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Jeffrey G. Collins