

Order

Michigan Supreme Court
Lansing, Michigan

April 28, 2023

Elizabeth T. Clement,
Chief Justice

163072

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

PETERSEN FINANCIAL, LLC,
Plaintiff-Appellee,

v

SC: 163072
COA: 350208
Kent CC: 16-011820-CH

CITY OF KENTWOOD,
Defendant-Appellant,
and

KENT COUNTY TREASURER,
Defendant-Appellee.

On December 7, 2022, the Court heard oral argument on the application for leave to appeal the May 27, 2021 judgment of the Court of Appeals. On order of the Court, the application is again considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

VIVIANO, J. (*concurring*).

In this case, defendant, the city of Kentwood (the City), seeks to recover from plaintiff, Petersen Financial, LLC, special assessments owed by Petersen's predecessor in interest.¹ In 2004, the City and the predecessor in interest, along with others, entered into special assessment agreements in order to fund improvements in a district encompassing land owned by the predecessor. The agreement at issue provided that the special assessment would not exceed 10 years, meaning that all payments due to the city were owed by 2014. The predecessor failed to make all the required payments and the City foreclosed on the property in 2015, with title vesting in the Kent County Treasurer.

Herein lies the problem in this case: a foreclosure extinguishes "any lien for . . . special assessments, except future installments of special assessments" MCL 211.78k(5)(c). The overarching issue decided below was whether there were any "future installments of special assessments" owing at the time of foreclosure. To determine this, the Court of Appeals examined the language of the special assessment agreement itself, the special assessment roll, and various City ordinances and resolutions. The agreement was reflected in Resolution 96-04, which confirmed the special assessment roll. The roll itself provided that the term of the assessment ran until September 7, 2014, at which time any

¹ A special assessment is a "pecuniary exaction[] made by the government for a special purpose or local improvement, apportioned according to the benefits received[.]" *Wikman v Novi*, 413 Mich 617, 632 (1982).

unpaid principal and interest was due. Further, Kent County Ordinance § 50.10 stated that once a special assessment roll is confirmed, the roll is “final and conclusive” but can be amended to adjust payments to conform to the actual costs of the improvements.

In the summer of 2014, the City adopted Resolution 50-14, purporting to extend the special assessment for an additional year. Further, after the foreclosure, title vested in the Kent County Treasurer, who agreed with the City to amend the original special assessment agreement to extend the assessment period until 2024. If these attempts, by resolution and agreement, to extend the period were invalid, then there was no “future installment[]” and the assessment was extinguished by foreclosure and could not now be collected from Petersen, which eventually purchased the property after foreclosure.

The specific question raised in this case is whether, consistent with local ordinances and laws, the City had authority to extend the special assessment. I agree with the Court of Appeals, which concluded that the “efforts to extend the terms for payment of this assessment were invalid” *Petersen Financial, LLC v Kentwood*, 337 Mich App 460, 464 (2021). The Court of Appeals properly read the original special assessment agreement to provide that the special assessment period would be capped at 10 years. And, as noted, the special assessment roll itself provided for a 10-year period. Under Kent County Ordinance § 50.10, the original special assessment roll became “final and conclusive for the purpose of the improvement to which it applies, subject only to adjustment to conform to the actual cost of the improvement”² That ordinance controlled and could not be affected by a mere resolution, which is not equivalent to a law or ordinance.³ And the

² The dissent suggests that the payment term’s inclusion in the roll is irrelevant because nothing required it to be there. But whether it is required to be there or not, the term is in the present payment roll. A change to the payment term is a change to *this* roll, which Kent County Ordinance § 50.10 prohibits in these circumstances because the roll was “final and conclusive for the purpose of the improvement to which it applies” In other words, the attempted extension changes the terms of the special assessment for the improvement at issue, meaning that the original roll would not be “final and conclusive.”

³ See *Kalamazoo Muni Utilities Ass’n v Kalamazoo*, 345 Mich 318, 328 (1956) (“A resolution is not a law or an ordinance but merely the form in which a legislative body expresses a determination or directs a particular action. An ordinance prescribes a permanent rule for conduct of government, while a resolution is of special or temporary character.”); *Saginaw v Consumers’ Power Co*, 213 Mich 460, 469 (1921) (“[A]n ordinance may not be repealed or amended without action of equal dignity to that required in its enactment.”); *McCarthy v Village of Marcellus*, 32 Mich App 679, 688-689 (1971) (“An ordinance or resolution cannot be amended, repealed, or suspended by another act by a council of less dignity than the ordinance or resolution itself.”).

postforeclosure agreements could not revive special assessments extinguished by operation of state law. See MCL 211.78k(5)(c).

Contrary to the suggestion by the dissent, the conclusion reached in this case does not implicate the principle that “ ‘home rule cities enjoy not only those powers specifically granted, but they may also exercise all powers not expressly denied.’ ” *Sheffield v Detroit City Clerk*, 508 Mich 851, 852 (2021), quoting *Detroit v Walker*, 445 Mich 682, 690 (1994). For purposes of the present case, it can safely be assumed that the City generally had the power to extend the payment terms unless some particular law prohibited it from doing so. The case thus comes down to an analysis of the local agreements, resolutions, and ordinances, to determine if any of these sources limited the City’s power of extension. The Court of Appeals properly determined that these sources did limit such power.

But there is a larger issue that the parties have not raised—and therefore must be left to a future case—which calls into question whether the City could, by agreement or ordinance, limit its power to extend the special assessment period. I write to briefly address this issue. “There is a principle of constitutional law that ‘one legislature may not bind the legislative authority of its successors.’ ” Posner & Vermeule, *Legislative Entrenchment: A Reappraisal*, 111 Yale L J 1665, 1665 (2002) (citation omitted). “When cashed out in terms of constitutional doctrine,” the authors explain, “the principle means that legislatures may not enact entrenching statutes or entrenching rules: statutes or rules that bind the exercise of legislative power, by a subsequent legislature, over the subject matter of the entrenching provision.” *Id.* (italics omitted). This also applies to contractual arrangements that barter away the legislative body’s authority to exercise its power in the future. See Serkin, *Public Entrenchment Through Private Law: Binding Local Governments*, 78 U Chi L Rev 879, 892 (2011) (“The first and most obvious source of entrenchment through private law involves local governments entering into contractual precommitments that bind future governments.”); see also *Butchers’ Union Slaughter-House & Live-Stock Landing Co v Crescent City Live-Stock Landing & Slaughter-House Co*, 111 US 746, 751 (1884) (“[The legislature] cannot, by any contract, limit the exercise of those powers [i.e., the police powers] to the prejudice of the general wel[f]are” and cannot be allowed to “bargain[] away” the right to exercise the powers.).

The principle reflects democratic sentiments. It “is meant to ensure that each government can be democratically responsive to its own electorate and is not bound by the preferences of the past.” *Public Entrenchment*, p 881. “ ‘Future lawmakers have just as much power to depart from the decisions of their forebears as their forebears had to make the decision in the first place.’ ” *Id.* at 886 (citation omitted); see also 10A McQuillin, *Municipal Corporations* (3d ed), § 29:103 (“To allow a prior government or official to bind his successors by creating contracts or other commitments which extend beyond his term would be contrary to democracy.”). The United States Supreme Court has explained that the concept came from the common law, where Parliament was supreme and no written constitution limited its powers. *United States v Winstar Corp*, 518 US 839, 872 (1996)

(opinion of Souter, J.). Thus, there was some question whether the principle could apply in this country given “the constitutionally created potential for a legislature, under certain circumstances, to place effective limits on its successors, or to authorize executive action resulting in such a limitation.” *Id.* at 873. Nevertheless, the Supreme Court has “recognized that ‘a general law . . . may be repealed, amended or disregarded by the legislature which enacted it,’ and ‘is not binding upon any subsequent legislature[.]’ ” *Id.*, quoting *Manigault v Springs*, 199 US 473, 487 (1905).

We have recognized this general principle:

It is a fundamental principle that one Legislature cannot bind a future Legislature or limit its power to amend or repeal statutes. Absent the creation of contract rights, the later Legislature is free to amend or repeal existing statutory provisions. See *Detroit v Detroit & Howell Plank Rd Co*, 43 Mich 140, 145; 5 NW 275 (1880); *Stone v Mississippi*, 101 US 814, 816-818, 25 L Ed 1079 (1879). As we explained in *Atlas v Wayne Co Bd of Auditors*, 281 Mich 596, 599; 275 NW 507 (1937):

The act of one legislative body does not tie the hands of future legislatures. *Cooper, Wells & Co v City of St Joseph*, 232 Mich 255 [205 NW 86 (1925)]. The power to amend and repeal legislation as well as to enact it is vested in the legislature, and the legislature cannot restrict or limit its right to exercise the power of legislation by prescribing modes of procedure for the repeal or amendment of statutes; nor may one legislature restrict or limit the power of its successors One legislature cannot enact irrepealable legislation or limit or restrict its own power, or the power of its successors, as to the repeal of statutes; and an act of one legislature is not binding on, and does not tie the hands of, future legislatures.

We recently reiterated this principle in *Ballard v Ypsilanti Twp*, 457 Mich 564, 569; 577 NW2d 890 (1998):

[T]he Legislature, in enacting a law, cannot bind future Legislatures. *Malcolm v East Detroit*, 437 Mich 132, 139; 468 NW2d 479 (1991); citing *Harsha v Detroit*, 261 Mich 586; 246 NW 849 (1933).

Thus, as even plaintiffs concede, the 2001 Legislature was not bound to follow the guidelines in MCL 3.63(c) adopted by the 1999 Legislature. It could repeal, amend, or ignore them, as it pleased. [*LeRoux v Secretary of State*, 465 Mich 594, 615-616 (2002).]

See also *Studier v Mich Pub Sch Employees' Retirement Bd*, 472 Mich 642, 660-661 (2005) (discussing the caselaw, both federal and from this state).

There are some questions concerning the scope of this principle. The narrowest conception of it would apply “only [to] legislation made formally unrepealable by the legislation itself.” *Public Entrenchment*, p 887. A broader view of the principle risks encompassing nearly every government action, because “everything that a government does has some effect on the future and is therefore entrenching” *Id.* at 889. It appears that courts have delineated the scope of the rule based on the nature of the subject matter at issue. Thus, as a general matter, the only types of contracts that can bind successor legislative bodies are those involving nongovernmental functions. 56 Am Jur 2d, Municipal Corporations (Feb 2023 update), § 134. In other words, “[a] city board exercising legislative authority lacks the power to bind its successors with regard to governmental functions” *Id.*; see also 2A Ordinance Law Annotations, Contracts, Municipal (April 2023 update), § 9 (noting caselaw from across the country holding that municipal bodies cannot bind successors on matters relating to governance); 10A McQuillin, Municipal Corporations (3d ed), § 29:103 (“The general rule is that, if the contract involves the exercise of the municipal corporation’s business or proprietary powers, the contract may extend beyond the term of the contracting body and is binding on successor bodies if, at the time the contract was entered into, it was fair and reasonable and necessary or advantageous to the municipality.”); Griffith, *Local Government Contracts: Escaping from the Governmental/Proprietary Maze*, 75 Iowa L Rev 277, 305-316 (1990) (discussing this rule). The Court of Appeals has similarly adopted the rule that a municipal body could bind its successors by contracts with regard to business affairs or proprietary matters, but not governmental or legislative functions. *City of Hazel Park v Potter*, 169 Mich App 714, 722 (1988).

In the present case, an argument could be made that the principle against legislative entrenchment precluded the City from entering contracts or adopting ordinances that purported to limit its ability to extend special assessments. Although we have held that special assessments are not a tax, we have acknowledged that they “resemble[] a tax,” *Kadzban v Grandville*, 442 Mich 495, 500 (1993), and other authorities suggest that they are a tax, see 14 McQuillin, Municipal Corporations (3d ed, July 2022 update), § 38:1 (“Special assessments for local improvements are levied under a municipality’s taxing power. A special assessment is a tax, intended to offset the cost of local improvements which is selectively imposed on the beneficiaries of the improvements. As an exercise of the taxing power, a special assessment is subject to constitutional restrictions.”). To the extent that special assessments reflect the taxing power, they arguably relate to core legislative or governmental functions. The Supreme Court has treated the right of taxation as an attribute of sovereignty for purposes of the general doctrine against allowing

legislatures to contract away core powers. *Winstar*, 518 US at 874-875. Other sources likewise indicate that taxation powers fall into the class that cannot be alienated.⁴

If the special assessments are a core legislative or governmental function, then under the caselaw above, the ordinances and agreements at issue here might be challenged to the extent they attempt to constrain future legislative bodies in the exercise of that function. But the parties have not raised this issue, and it would be improper to resolve it now. In an appropriate future case, however, I believe this Court should explore the limits on a legislative body's ability to restrict its own actions into the future. Because I believe the Court of Appeals properly resolved the case on the issues presented by the parties, I agree with this Court's order denying leave to appeal.

WELCH, J. (*dissenting*).

The Court's denial of leave to appeal today leaves in place a published Court of Appeals opinion that provided Petersen Financial, LLC (Petersen), with a windfall of more than \$400,000 after it purchased a piece of property in Kentwood, Michigan, for less than \$40,000 at a foreclosure sale. The cost of this windfall, a special assessment that Petersen had prepurchase notice of and that was supposed to be paid by a private developer who previously owned the property, now falls on the backs of local taxpayers in Kentwood, Michigan. The question before the Court is whether Petersen, as the purchaser of a property following a tax foreclosure, is responsible for paying the unpaid balance of a special assessment previously levied against the property in connection with public improvements. Contrary to the Court of Appeals, I believe the trial court correctly concluded that the final payment date for the special assessment was lawfully extended and thus the future installments of the special assessment survived tax foreclosure under MCL 211.78k(5)(c). I therefore respectfully dissent.

I. FACTUAL BACKGROUND

⁴ 2A McQuillin, *Municipal Corporations* (3d ed, July 2022 update), § 10:43 (“[A] municipality cannot divest itself of its delegated power of . . . taxation . . .”); 19 Maryland Law Encyclopedia, *Revenue & Taxes* (Dec 2022 update), § 4 (“The taxing power is never presumed to be surrendered or relinquished by the state unless such an intention is expressed in clear and explicit language.”); *Local Government Contracts*, p 284 (“The judiciary has found that certain governmental activities are essential for governance or reserved for sovereign exercise alone and therefore unfit subjects for a municipal contract. These powers include a municipality’s power to tax . . .”); cf. *Public Entrenchment*, p 905 (“Financial entrenchment occurs whenever a government usurps for its own use the taxing and spending authority of future governments.”).

Beginning in 2004, the city of Kentwood and the developers who previously owned the property at issue entered into several contractual agreements related to infrastructure improvements that were intended to benefit property slated for a planned unit development. One such agreement was the Voluntary Special Assessment/Development Agreement (VSADA), dated September 7, 2004. The VSADA addressed, among other things, establishing and using a special assessment district to finance public infrastructure (roads, sidewalks, sewers, etc.) associated with the proposed planned unit development. While only a subset of the original land is at issue, the development plan covered 300 acres and included a plan to construct 1141 housing units and a commercial center. These agreements, which were recorded with Kent County's register of deeds, required the primary owner-developer to make installment payments to the city and provided that the contractual obligations were to run with the land.

According to Paragraph 2(b) of the VSADA, the owner-developer, on behalf of itself and its assigns and successors, "release[d], waive[d] and relinquish[ed] . . . any claims it may have against the City . . . arising out of the nature of the special assessment proceedings" or "any defects in notice or other procedure associated with the special assessments" Paragraph 2(e) provided that the city had authority, "by resolution," to establish "the final amount of any special assessment" and "the term of years for the special assessment and similar matters" and that this authority was "in its discretion." Paragraph (2)(e) also stated that "[w]ithout limiting the foregoing, it is the parties' intent" that "[t]he term of the special assessment will not exceed ten (10) years." Paragraph (2)(e)(5) reiterated that "the City's willingness to proceed with the establishment of a special assessment district is in reliance on the Owner's request for the same and agreement to waive any challenges to the special assessment and special assessment roll." In short, the VSADA made clear that the city agreed to construct public infrastructure improvements for the benefit of the developer's property only because the city was guaranteed repayment of those expenses over time.

Multiple resolutions were adopted by the Kentwood City Commission in accordance with the VSADA, culminating in Resolution 96-04 (titled "Resolution to Confirm the Special Assessment Roll"), which was adopted on September 7, 2004. Resolution 96-04 created and confirmed a special assessment roll, stated that "the special assessment roll shall be deferred consistent with the terms of the [VSADA]," approved a special assessment in the amount of \$1,942,070 for the various public improvements, deemed the special assessment "a lien on the property described," and required the assessment to be "collected consistent with the terms thereof and the [VSADA]" The resolution provided that annual payments were to be made over a 10-year period, with a final balloon payment due on September 7, 2014. The special assessment roll that was attached to and approved by Resolution 96-04—Roll A—described the real property that was subject to the special assessment. Resolution 96-04 and Roll A were subsequently amended by Resolutions 108-04 and 28-05 to change the amount of the total assessment and to reduce the area of the special assessment district; these amendments have not been

challenged by Petersen. After making payments for several years, the owner-developer became delinquent on base taxes and the special assessments. The delinquency was not cured. Thus, in accordance with the General Property Tax Act, MCL 211.1 *et seq.*, the property was forfeited and subject to foreclosure.

On July 15, 2014, before the final installment was due on the special assessment, and before the foreclosure of the subject property, the city commission adopted Resolution 50-14. This resolution extended the payment deadline of the special assessment for the subject property to September 7, 2015. Resolution 50-14 recognized the risk of foreclosure with the existing payment delinquency, acknowledged that the VSADA had been incorporated into Resolution 96-04, and noted that the VSADA provided that the “term of years” for the assessment would be determined “by resolution of the City Commission ‘in its discretion.’ ” Resolution 50-14 also stated that it was not “re-confirming the District’s special assessment roll,” but explained that extending the final payment date for the assessment was in the public interest for several stated reasons.

A judgment of foreclosure was entered on March 6, 2015, resulting in title to the subject property vesting with the Kent County Treasurer. In June 2015, the Kent County Treasurer and the city entered into an agreement titled “Amendment to Voluntary Special Assessment/Development Agreement” (the amended VSADA). The amended VSADA specified that the property remained subject to the VSADA. To make the property more attractive to a potential buyer, the city and the Kent County Treasurer agreed in the amended VSADA to extend the remaining future installments to September 7, 2024, at a 5.5% interest rate. The amended VSADA noted that it was changing only the payment date and was not reconfirming the special assessment roll.

The city passed Resolution 31-15 in June 2015, which extended the final payment date for the special assessment district on the subject property in accordance with the terms of the amended VSADA. Resolution 31-15 also noted that interest was still due and updated the total balance.

On November 4, 2015, Petersen purchased the subject property from the Kent County Treasurer at a tax sale for a mere \$36,500. A quitclaim deed was recorded on November 10, 2015. Petersen then filed this lawsuit in December 2016 seeking declaratory relief and damages for slander of title. Of note, Petersen sought a declaratory judgment that the tax foreclosure extinguished all past-due assessments and liens and that the VSADA, the amended VSADA, and related resolutions were invalid. Petersen also challenged the outstanding balance of \$403,620 and sought \$23,421.13 for money it had paid toward the assessment.

On remand from an earlier Court of Appeals decision confirming the circuit court’s jurisdiction over this action, the parties filed cross-motions for summary disposition. The circuit court granted summary disposition to the city and the Kent County Treasurer.

Specifically, the circuit court concluded that the city had levied a valid special assessment, that it had lawfully extended the payment term of that special assessment, and that future installments owed to the city survived the judgement of foreclosure. The circuit court also rejected Petersen's argument that the amended VSADA was an invalid contract.

The Court of Appeals reversed the circuit court and remanded for entry of judgment in Petersen's favor and for further proceedings. The Court of Appeals first held that Resolution 96-04, as opposed to the VSADA, lawfully levied a special assessment against the subject property and that future installments owed on a special assessment survive foreclosure. But the Court of Appeals then held that Resolution 50-14 did not lawfully extend the payment term of the special assessment because the city was not authorized by statute, ordinance, or city charter to amend the special assessment after confirmation of the roll. Thus, no future installments were owed at the time of foreclosure and any past due payment obligations were extinguished by the judgment of foreclosure.

II. ANALYSIS

I disagree with the Court of Appeals' conclusion that the city unlawfully extended the final payment date for the outstanding special assessment balance by way of Resolution 50-14. The city has implicit constitutional authority to amend prior legislative decisions by resolution through its city commission. This authority includes modifications to a prior resolution establishing the timeline for collecting special assessment payments. Neither a statute nor the city's charter or ordinances stripped the city of its power in this regard. While a local ordinance limited the city's ability to amend the actual special assessment roll after it was confirmed, the payment term for a special assessment is not a required element of a special assessment roll. Therefore, Resolution 50-14 was a valid extension of the special assessment payment term.

Article 7, § 22 of the Michigan Constitution provides that cities "have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law" and that "[n]o enumeration of powers granted to cities . . . in this constitution shall limit or restrict the general grant of authority conferred by this section." Article 7, § 34 further states that "[t]he provisions of this constitution and law concerning . . . cities . . . shall be liberally construed in their favor." The Home Rule City Act, MCL 117.1 *et seq.*, authorizes cities to levy and borrow against special assessments and sets out limitations on the special assessment power. This Court has previously held that "home rule cities enjoy not only those powers specifically granted, but they may also exercise all powers not expressly denied." *Detroit v Walker*, 445 Mich 682, 690 (1994). "Our municipal governance system has matured to one of general grant of rights and powers, subject only to certain enumerated restrictions instead of the earlier method of granting enumerated rights and powers definitely specified." *Id.* In other words, a city in Michigan has the ability and authority to take action so long as the action is not prohibited by law. Specific authority to take those actions is not required.

As a general matter, special assessments are permitted to fund physical improvements of property that will benefit certain property owners as opposed to the public at large. See, e.g., MCL 117.4a(7); MCL 117.4d; MCL 117.4g; MCL 117.5i; MCL 117.5j. A “special assessment” refers to “a levy upon property within a specified district. Although it resembles a tax, a special assessment is not a tax.” *Kadzban v Grandville*, 442 Mich 495, 500 (1993). Special assessments may be levied as permitted by statute, municipal charter, and applicable ordinances. *Wikman v Novi*, 413 Mich 617, 636-637 (1982); see also MCL 117.4d(1)(a). “They may be collected at the same time and in the same manner as other property taxes. If unpaid, they may become a lien on the property like other property taxes, or may be collected by an action against the owner of the property.” *Wikman*, 413 Mich at 635.

The city of Kentwood has provided itself with authority to levy special assessments through its city charter. Chapter 50 of the Kentwood City Ordinances (KCO) spells out this authority and the applicable procedures. As the Court of Appeals held, the city properly levied a special assessment against the subject property via Resolution 96-04. Special assessments usually run with the land such that when property is bought or sold, the obligation to pay the special assessment passes from one owner to another. However, MCL 211.78k(5)(c) provides that a judgment of foreclosure against real property “extinguish[es]” “all liens against the property, including any lien for unpaid taxes or special assessments, *except future installments of special assessments* and” a narrow class of liens recorded under MCL 324.101 to MCL 324.90106. (Emphasis added.)

Thus, if a special assessment remains unpaid at the time of foreclosure and there are no remaining future installments owed, then the judgment of foreclosure extinguishes any lien connected with the past-due amount and passes that financial burden from the owner of benefited, foreclosed property onto the citizenry of a city. In this case, the foreclosure of the subject property was to occur in March 2015, but the original payment term of the special assessment was due earlier, in September 2014. This is precisely why the city commission used its authority under Const 1963, art 7, § 22, to adopt Resolution 50-14 and extend by one year the initial 10-year payment term for the special assessment that was set by Resolution 96-04. Neither Petersen nor the Court of Appeals identified any constitutional provision or statute that prevented the city commission from exercising its resolution powers to extend the payment term. I have also been unable to locate such a limitation.

As a result, unless clearly limited by local laws (the city’s charter or ordinances), the liberal-construction principle contained in Const 1963, art 7, § 34 provided the city commission with implicit constitutional authority to use its resolution power to amend the payment term of the special assessment. See *Walker*, 445 Mich at 690. See also *Sheffield v Detroit City Clerk*, 508 Mich 851, 852 (2021); *id.* at 853, 862-865 (WELCH, J., concurring).

The Court of Appeals purported to find a limitation on the city's resolution power in a single sentence contained in a local ordinance, KCO § 50.10. The relevant portion of that ordinance provides: "Such [special assessment] roll shall have the date of confirmation endorsed thereon and *shall, from that date, be final and conclusive for the purpose of the improvement to which it applies*, subject only to adjustment to conform to the actual cost of the improvement, as provided in section 50-14." (Emphasis added.) I agree with the Court of Appeals that the *roll* became final and conclusive "for the purpose of the improvement to which it applies" once confirmed, but I disagree with the court's conclusion that extending the payment term was an amendment of the *roll* itself.

Initially, it is important to acknowledge that the Kentwood City Charter provides broad authority to the city and its officers to act in furtherance of the city's interests. Section 3.1 of the Kentwood City Charter authorizes the city and its officers to "exercise all municipal powers permitted in the management and control of municipal property or government, whether such powers are expressly identified or not, and may perform any lawful act to advance the interests of the city." Preventing the extinguishment of more than \$400,000 in debt from an unpaid special assessment for public improvements constructed at the city's expense is certainly a municipal concern related to municipal governance.⁵

Additionally, § 5.3 of the city charter requires that all "official" city commission actions "shall be by ordinance, resolution, order or motion" and that "[a]ction by resolution shall include all matters required or permitted by law to be so performed, as well as administrative matters." Specifically, in this matter, Resolution 96-04 adopted the terms of the VSADA. The VSADA, in turn, acknowledged the city's authority to set the payment terms "by resolution of the City Commission in its discretion."

The city's code of ordinances also separately addresses the due dates of special assessments, i.e., the number of installments or the term of the special assessment. Under KCO, § 50-11, "[a]ll special assessments, except such installments thereof as the city commission shall make payable at a future time as provided in this chapter, shall be due and payable upon confirmation of the special assessment roll." KCO, § 50-12 further

⁵ This Court has previously recognized:

It is wrong that a few should be taxed for the benefit of the whole, and it is equally wrong that the whole should be taxed for the benefit of a few. . . . [W]here taxation for any local object benefits only a portion of a city or town, that portion only should bear the burden. . . . General taxation for such local objects is manifestly unjust. It burdens those who are not benefited, and benefits those who are not burdened. [*Voigt v Detroit*, 123 Mich 547, 550-551 (1900) (quotation marks and citation omitted).]

expressly provides that the city commission, by resolution, “may provide for the payment of special assessments in annual installments,” but “[s]uch annual installments shall not exceed 20 in number, and the first installment shall be due upon confirmation of the roll or on such date as the city commission may determine.”

Notably, the city’s charter and ordinances do not describe the payment terms of a special assessment as being a part of the special assessment roll itself, nor is the payment term a mandatory part of the roll.⁶ The essential terms of the roll include the land, the owner, and the associated benefit valuations. See, e.g., KCO, § 50-7 (“The treasurer shall make a special assessment roll of all lots and parcels of land within the designated district benefitted by the proposed improvement and assess to each lot or parcel of land the proportionate amount benefitted thereby. The amount spread in each case shall be based upon the detailed estimate of the treasurer as approved by the city commission.”); *Black’s Law Dictionary* (11th ed) (defining “roll” in the context of a “tax roll” or “assessment roll” as “[a]n official list of the persons and property subject to taxation.”). This is also consistent with the definition of a “special assessment roll” that has been presented by the parties. See, e.g., 2 Steingold & Etter, *Michigan Municipal Law* (1980), § 11.7, p 11-19 (“The roll will set out the description of the properties to be assessed, . . . a valuation of the properties and the amount assessed against them.”). Additionally, extending the payment timeline for a special assessment does not alter the “improvement to which it applies” for purposes of KCO, § 50.10 or change the affected real property and thus does not offend the finality requirement provided by that ordinance.

Under the city’s ordinances, special assessment payment terms are something that the city commission can set by resolution so long as the resolution provides for no more than 20 annual installments. Here, the city commission’s extension of the payment term for the special assessment did not violate the city’s 20-year limitation, nor did it alter any required component of the special assessment roll such as the monetary value of the special

⁶ When an ordinance directs for an assessment roll to include something that is not mandated by statute, then such a requirement is mandatory. See *Beidler Mfg Co v Muskegon*, 63 Mich 44, 48 (1886); 16 Michigan Civil Jurisprudence, Local Improvements and Assessments, § 66. By contrast, when there is no requirement in either a statute or an ordinance that a specific piece of information must be included in the roll, the inclusion of such information is optional.

assessment or the affected property.⁷ As such, Resolution 50-14 lawfully extended the final payment date for the special assessment such that there were “future installments of a special assessment” owed that survived foreclosure under MCL 211.78k.

III. CONCLUSION

I would hold that Resolution 50-14 lawfully extended the final payment date for the special assessment that was set by Resolution 96-04 and that the future installments owed on the special assessment were not extinguished by foreclosure. Accordingly, I would reverse the judgment of the Court of Appeals and remand this case to that court for reconsideration of Petersen’s remaining arguments. I respectfully dissent.

BOLDEN, J., did not participate.

⁷ The Court of Appeals aptly noted that the ordinance provisions for increasing the amount of the assessment or issuing refunds, KCO, § 50.14; for making corrections to the roll pre confirmation, KCO, § 50.10; or for levying a “new assessment,” KCO, § 50.16, did not apply to this situation. I agree, but this misses the mark. None of these ordinances related to the length of payment term; something that is not itself a required part of the special assessment roll under KCO, § 50-7. Conversely, KCO, §§ 50-11 and 50-12 specifically authorize the city commission to make special assessments payable upon the confirmation of the roll or over a period up to 20 years. The concurrence suggests that the city commission would have had the authority to modify the payment term of the special assessment by resolution if it had not included this nonmandatory provision in both the assessment roll document and Resolution 96-04. Such reasoning elevates form over substance and strips an elected municipal body of authority to the detriment of local taxpayers. See *Wikman v Novi*, 413 Mich 617, 649 (1982) (rejecting the plaintiffs’ argument to limit the Tax Tribunal’s jurisdiction over a class of cases because it “would elevate form over substance”); *Knapp-Stiles, Inc v Dep’t of Revenue*, 370 Mich 629 (1963); *Nat’l Music Camp v Green Lake Twp*, 76 Mich App 608, 614 (1977) (“The substance of an arrangement rather than its form should be the guiding principle in determining ownership and tax exemption status.”). See also *PPL Corp v Comm’r of Internal Revenue*, 569 US 329, 340 (2013) (noting the Court’s continued adherence to the “substance over form” doctrine in matters of taxation).



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 28, 2023

Clerk