STATE OF MICHIGAN

IN THE SUPREME COURT

PETERSEN FINANCIAL, LLC,

Plaintiff-Appellee,

v

CITY OF KENTWOOD,

Defendant-Appellant,

and

KENT COUNTY TREASURER,

Defendant.

SC No. 163072
COA No. 350208
LC No. 16-011820-CH
(Kent County Circuit Court)

APPENDIX TO
DEFENDANT-APPELLANT'S SUPPLEMENTAL
BRIEF ON APPEAL

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KENT COUNTY DOCKET SHEET

17th Circuit Court Name Search

Register of Actions

Confirmation of whether charges in criminal cases are misdemeanors or felonies is not available from the Kent County Circuit Court Clerk's Office.
Information is available at http://legislature.mi.gov/documents/mcl/pdf/mcl-chap750.pdf.

Case # 16-11820-CH

File Date: 12/28/2016

PETERSEN FINANCIAL LLC et al vs. CITY OF KENTWOOD et al

PETERSEN FINANCIAL LLC, - PLAINTIFF

Other Parties: CITY OF KENTWOOD, - DEFENDANT

Other Parties: KENT COUNTY TREASURER, - DEFENDANT

1	04/29/2022	HELD-TO BE CONTINUED The following event: MISCELLANEOUS MOTION scheduled for 04/29/2022 at 8:30 am has been resulted as follows: Result: HELD - TO BE CONTINUED Judge: QUIST, HONORABLE GEORGE JAY Location: ZOOM MEETING ID # 512 143 2298 HELD ON THE RECORD COURT REPORTER: FTR 12A Certificate #: 9476
2	04/27/2022	DEFENDANT CITY OF KENTWOOD'S RESPONSE TO PLAINTIFF'S MOTION FOR PAYMENT OF DISPUTED CHARGES INTO ESCROW AND POS JOSEPHINE ANTONIA DELORENZO (Attorney) on behalf of CITY OF KENTWOOD (DEFENDANT)
3	04/22/2022	DEF KENT COUNTY TREASURER'S CONCURRENCE IN DEF KENTWOOD'S RESPONSE TO PLA'S MOTION FOR PAYMENT OF DISPUTED CHARGES INTO ESCROW AND POS CRAIG A. PAULL (Attorney) on behalf of KENT COUNTY TREASURER (DEFENDANT)
4	04/19/2022	SCHEDULED Event: MISCELLANEOUS MOTION Date: 04/29/2022 Time: 8:30 am Judge: QUIST, HONORABLE GEORGE JAY Location: ZOOM MEETING ID # 512 143 2298 Result: HELD - TO BE CONTINUED
5	04/18/2022	MOTION FOR PAYMENT OF DISPUTED CHARGES INTO ESCROW, NOTICE OF HEARING (4/29/22 AT 8:30 AM) VIA ZOOM AND POS DONALD R. VISSER (Attorney) on behalf of PETERSEN FINANCIAL LLC (PLAINTIFF)
6	04/18/2022	MOTION FEE PAID Receipt: 1256500 Date: 04/18/2022
7	04/04/2022	ORDER FROM THE SUPREME COURT, DATED 4/1/22 (SC# 163072) (THE APPLICATION FOR LEAVE TO APPEAL THE 5/27/21 JUDGMENT OF THE COURT OF APPEALS IS CONSIDERED; THE CLERK DIRECTED TO SCHEDULE ORAL ARGUMENT ON THE APPLICATION)

8	08/19/2021	ORDER FROM THE SUPREME COURT, DATED 8/18/21 (SC #163072) (MOTION OF THE MUNICIPAL LEAGUE AND THE GOVERNMENT LAW SECTION OF THE STATE BAR OF MICHIGAN TO FILE A REPLY TO PLA-APPELLEE'S RESPONSE TO ITS BRIEF AMICUS CURIAE GRANTED)
9	08/18/2021	AMENDED OPINION / ORDER RE: PLA'S MOTION TO PERMIT DISCOVERY (DENIED)
10	08/18/2021	OPINION/ORDER RE: PLA'S MOTION TO PERMIT DISCOVERY, POS (DENIED)
11	08/18/2021	NOT HEARD, ORDER ENTERED The following event: MISCELLANEOUS MOTION scheduled for 08/20/2021 at 8:30 am has been resulted as follows: Result: NOT HEARD, ORDER ENTERED Judge: QUIST, HONORABLE GEORGE JAY Location: ZOOM MEETING ID # 512 143 2298
12	08/13/2021	DEFENDANT CITY OF KENTWOOD'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO PERMIT DISCOVERY AND POS MICHAEL S. BOGREN (Attorney) on behalf of CITY OF KENTWOOD (DEFENDANT)
13	08/13/2021	RESPONSE TO PLAINTIFF'S MOTION TO PERMIT DISCOVERY AND POS CRAIG A. PAULL (Attorney) on behalf of KENT COUNTY TREASURER (DEFENDANT)
14	08/09/2021	ORDER FROM THE SUPREME COURT, DATED 8/6/21 (SC #163072) (ORDER OF THE CHIEF JUSTICE, THE MOTION OF PLA-APPELLEE TO FILE A RESPONSE TO THE BRIEF AMICUS CURIAE FILED BY MICHIGAN MUNICIPAL LEAGUE AND THE GOVERNMENT LAW SECTION OF THE STATE BAR OF MICHIGAN IS GRANTED. THE RESPONSE SUBMITTED ON 8/4/21, IS ACCEPTED FOR FILING)
15	08/03/2021	SCHEDULED Event: MISCELLANEOUS MOTION (TO PERMIT DISCOVERY) Date: 08/20/2021 Time: 8:30 am Judge: QUIST, HONORABLE GEORGE JAY Location: ZOOM MEETING ID # 512 143 2298 Result: NOT HEARD, ORDER ENTERED
16	08/02/2021	PLAINTIFF'S MOTION TO PERMIT DISCOVERY, NOTICE OF MOTION (08/20/21 @ 08:30 AM VIA ZOOM), POS DONALD R. VISSER (Attorney) on behalf of PETERSEN FINANCIAL LLC (PLAINTIFF)
17	08/02/2021	MOTION FEE PAID Receipt: 1216357 Date: 08/02/2021
18	06/25/2021	DEFENDANT KENT COUNTY TREASURER'S BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION, POS CRAIG A. PAULL (Attorney) on behalf of KENT COUNTY TREASURER (DEFENDANT)
19	06/25/2021	DEFENDANT CITY OF KENTWOOD'S RESPONSE TO PLAINITFF'S MOTION FOR SUMMARY DISPOSITION AND POS MICHAEL S. BOGREN (Attorney) on behalf of CITY OF KENTWOOD (DEFENDANT)
20	06/09/2021	ORDER FOLLOWING CASE CONFERENCE, POS
21	06/09/2021	HELD The following event: INFORMATIONAL CONFERENCE scheduled for 06/09/2021 at 1:30 pm has been resulted as follows: Result: HELD Judge: QUIST, HONORABLE GEORGE JAY Location: ZOOM MEETING ID # 512 143 2298

22	06/09/2021	ADJOURNED WITHOUT DATE per document filed following event: MOTION FOR SUMMARY DISPOSITION scheduled for 06/18/2021 at 8:30 am has been resulted as follows: Result: ADJOURNED WITHOUT DATE Judge: QUIST, HONORABLE GEORGE JAY Location: ZOOM MEETING ID # 512 143 2298
23	06/07/2021	OPINION AND ORDER FROM COURT OF APPEALS (COA # 350208) (APPROVED FOR PUBLICATION 5/27/21)
24	06/07/2021	SCHEDULED Event: INFORMATIONAL CONFERENCE Date: 06/09/2021 Time: 1:30 pm Judge: QUIST, HONORABLE GEORGE JAY Location: ZOOM MEETING ID # 512 143 2298 Result: HELD
25	06/04/2021	NOTICE OF FILING APPLICATION FOR LEAVE TO APPEAL IN THE SUPREME COURT JOSEPHINE ANTONIA DELORENZO (Attorney) on behalf of CITY OF KENTWOOD (DEFENDANT)
26	06/04/2021	CLAIM OF APPEAL FEE Receipt: 1208077 Date: 06/04/2021
27	06/01/2021	CANCELLED The following event: CIVIL STATUS CONFERENCE scheduled for 06/02/2021 at 9:00 am has been resulted as follows: Result: CANCELLED Judge: QUIST, HONORABLE GEORGE JAY Location: ZOOM MEETING ID # 512 143 2298
28	06/01/2021	SCHEDULED Event: MOTION FOR SUMMARY DISPOSITION Date: 06/18/2021 Time: 8:30 am Judge: QUIST, HONORABLE GEORGE JAY Location: ZOOM MEETING ID # 512 143 2298 Result: ADJOURNED WITHOUT DATE
29	05/28/2021	PLA'S MOTION FOR SUMMARY DISPOSITION, NOTICE OF HEARING (6/18/21 @ 8:30 AM), BRIEF & POS DONALD R. VISSER (Attorney) on behalf of PETERSEN FINANCIAL LLC (PLAINTIFF)
30	05/28/2021	MOTION FEE PAID Receipt: 1207084 Date: 05/28/2021
31	05/27/2021	OPINION AND ORDER FROM COURT OF APPEALS, DATED 4/22/21 (REVERSED AND REMANDED)
32	04/26/2021	NOTICE TO APPEAR (CIVIL STATUS CONFERENCE 6-2-21 @ 9AM) & POS (VIA ZOOM) (MEETING ID: 512 143 2298) (PSWD: 135922)
33	04/26/2021	SCHEDULED Event: CIVIL STATUS CONFERENCE Date: 06/02/2021 Time: 9:00 am Judge: QUIST, HONORABLE GEORGE JAY Location: ZOOM MEETING ID # 512 143 2298 Result: CANCELLED
34	04/22/2021	OPINION AND ORDER FROM COURT OF APPEALS, DATED 4/22/21 (COA NO. 350208) (REVERSED AND REMANDED)
35	06/01/2020	CONTENT OF TRANSMISSION TO THE COURT OF APPEALS (COA # 350208)
36	06/01/2020	NOTICE OF TRANSMISSION TO THE COURT OF APPEALS DONALD R VISSER DAVID D OTIS & LINDA S HOWELL (COA # 350208)
37	09/25/2019	TRANSCRIPT OF MOTION FOR SUMMARY DISPOSITION, HELD JULY 19, 2019, BEFORE HON. GEORGE JAY QUIST (22 PGS)TRANSCRIBED BY: MARCEEDES LANGLOIS)
38	09/25/2019	NOTICE OF FILING OF TRANSCRIPT & AFFIDAVIT OF MAILING

39	09/23/2019	ORDER QUIETING TITLE
40	09/19/2019	CANCELLED - PER KELLY AT VISSERS OFFICE - PARTIES SETTLED The following event: MISCELLANEOUS MOTION scheduled for 09/20/2019 at 9:00 am has been resulted as follows: Result: CANCELLED Judge: QUIST, HONORABLE GEORGE JAY Location: 17TH CIRCUIT COURT- COURTROOM #12A
41	08/22/2019	MOTION FOR ENTRY OF ORDER QUIETING TITLE, NOTICE OF HEARING (9-20-19) AND POS DONALD R. VISSER (Attorney) on behalf of PETERSEN FINANCIAL LLC (PLAINTIFF)
42	08/22/2019	SCHEDULED Event: MISCELLANEOUS MOTION (VISSER) Date: 09/20/2019 Time: 9:00 am Judge: QUIST, HONORABLE GEORGE JAY Location: 17TH CIRCUIT COURT- COURTROOM #12A Result: CANCELLED
43	08/22/2019	MOTION FEE PAID Receipt: 1098486 Date: 08/22/2019
44	08/12/2019	CLAIM OF APPEAL DONALD R. VISSER (Attorney) on behalf of PETERSEN FINANCIAL LLC (PLAINTIFF)
45	08/12/2019	CLAIM OF APPEAL FEE Receipt: 1096420 Date: 08/12/2019
46	08/09/2019	REPORT/RECORDER'S CERTIFICATE OF TRANSCRIPT ON APPEAL
47	07/25/2019	ORDER AFTER REMAND RE: CTS I AND III OF PLA'S ORIGINAL COMPLAINT (PLA'S REQUEST FOR DECLARATORY RELIEF GRANTED; PLA. OWES NOTHING IN REGARD TO THE DAA OR LIA; PROPERTY AT ISSUE WILL NOT BE SUBJECT TO ANY LIEN OR ENCUMBRANCE CONNECTED TO THE DAA OR LIA), POS
48	07/25/2019	OPINION/ORDER AFTER REMAND RE: PLA'S AND DEFS' MOTIONS FOR SUMMARY DISPOSITION, POS (PLA'S MOTION FOR SUMMARY DISPOSITION DENIED; DEF'S MOTION FOR SUMMARY DISPOSITION GRANTED)
49	07/19/2019	HELD - TAKEN UNDER ADVISEMENT The following event: MOTION FOR SUMMARY DISPOSITION scheduled for 07/19/2019 at 9:00 am has been resulted as follows: Result: HELD - TAKEN UNDER ADVISEMENT Judge: QUIST, HONORABLE GEORGE JAY Location: 17TH CIRCUIT COURT- COURTROOM #12A HELD ON THE RECORD COURT REPORTER: FTR 12A Certificate #: 9476 VISSER, OTIS, HOWELL
50	07/19/2019	HELD - TAKEN UNDER ADVISEMENT The following event: MOTION FOR SUMMARY DISPOSITION scheduled for 07/19/2019 at 9:00 am has been resulted as follows: Result: HELD - TAKEN UNDER ADVISEMENT Judge: QUIST, HONORABLE GEORGE JAY Location: 17TH CIRCUIT COURT- COURTROOM #12A HELD ON THE RECORD COURT REPORTER: FTR 12A Certificate #: 9476 VISSER, OTIS, HOWELL
51	07/15/2019	RESPONSE IN OPPOSITION TO PLA'S RENEWED MOTION FOR SUMMARY DISPOSITION, POS DAVID K. OTIS (Attorney) on behalf of CITY OF KENTWOOD (DEFENDANT)
52	07/12/2019	PLA'S RESPONSE TO KENT COUNTY'S CONCURRENCE IN MOTION FOR SUMMARY DISPOSITION, POS DONALD R. VISSER (Attorney) on behalf of PETERSEN FINANCIAL LLC (PLAINTIFF)
53	07/11/2019	RESPONSE TO DEF'S MOTION FOR SUMMARY DISPOSITION, POS (CIVIL BOX 597) DONALD R. VISSER (Attorney) on behalf of PETERSEN FINANCIAL LLC (PLAINTIFF)

54	07/02/2019	SCHEDULED Event: MOTION FOR SUMMARY DISPOSITION (VISSER) Date: 07/19/2019 Time: 9:00 am Judge: QUIST, HONORABLE GEORGE JAY Location: 17TH CIRCUIT COURT- COURTROOM #12A Result: HELD - TAKEN UNDER ADVISEMENT
55	06/28/2019	PLAINTIFF'S RENEWED MOTION FOR SUMMARY DISPOSITION, NOTICE OF MOTION (07/19/19 @ 09:00 AM), BRIEF & POS (CIVIL BOX 597) DONALD R. VISSER (Attorney) on behalf of PETERSEN FINANCIAL LLC (PLAINTIFF)
56	06/28/2019	MOTION FEE PAID Receipt: 1088013 Date: 06/28/2019
57	06/27/2019	CANCELLED (PER KELLY AT D. VISSER'S OFFICE) The following event: MOTION TO COMPEL scheduled for 06/28/2019 at 9:00 am has been resulted as follows: Result: CANCELLED Judge: QUIST, HONORABLE GEORGE JAY Location: 17TH CIRCUIT COURT- COURTROOM #12A
58	06/24/2019	RETURN OF RECORD TO THE TRIAL COURT FROM COURT OF APPEALS
59	06/24/2019	NOTICE OF RECEIPT OF RECORD ON APPEAL FROM THE COURT OF APPEALS FILED
60	06/19/2019	POS (PLAINTIFF'S SECOND SET OF ITNERROGATORIES TO DEFENDANT KENTWOOD AND SECOND REQUEST FOR PRODUTION OF DOCUMENTS TO DEFENDANT KENTWOOD)
61	06/18/2019	DEFENDANT CITY OF KENTWOOD'S MOTION FOR SUMMARY DISPOSITON, NOTICE OF HEARING (07/19/19 @ 09:00 AM), BRIEF & POS DAVID K. OTIS (Attorney) on behalf of CITY OF KENTWOOD (DEFENDANT)
62	06/18/2019	DEF. KENT COUNTY TREASURER'S CONCURRENCE IN THE MOTION FOR SUMMARY DISPOSITION FILED BY DEF. CITY OF KENTWOOD, POS LINDA S. HOWELL (Attorney) on behalf of KENT COUNTY TREASURER (DEFENDANT)
63	06/18/2019	SCHEDULED Event: MOTION FOR SUMMARY DISPOSITION (OTIS) Date: 07/19/2019 Time: 9:00 am Judge: QUIST, HONORABLE GEORGE JAY Location: 17TH CIRCUIT COURT- COURTROOM #12A Result: HELD - TAKEN UNDER ADVISEMENT
64	06/18/2019	MOTION FEE PAID Receipt: 1085546 Date: 06/18/2019
65	06/13/2019	PLAINTIFF'S MOTION TO COMPEL COOPERATION WITH DISCOVERY, NOTICE OF HEARING (06/28/19 @ 09:00 AM) AND POS DONALD R. VISSER (Attorney) on behalf of PETERSEN FINANCIAL LLC (PLAINTIFF)
66	06/13/2019	SCHEDULED Event: MOTION TO COMPEL (VISSER) Date: 06/28/2019 Time: 9:00 am Judge: QUIST, HONORABLE GEORGE JAY Location: 17TH CIRCUIT COURT- COURTROOM #12A Result: CANCELLED
67	06/13/2019	MOTION FEE PAID Receipt: 1084687 Date: 06/13/2019
68	06/06/2019	ANSWER TO AMENDED COMPLAINT, AFFIRMATIVE DEFENSES, POS DAVID K. OTIS (Attorney) on behalf of CITY OF KENTWOOD (DEFENDANT)
69	06/04/2019	ANSWER TO PLA'S FIRST AMENDED COMPLAINT AND AFFIRMATIVE DEFENSES, POS CRAIG A. PAULL (Attorney) on behalf of KENT COUNTY TREASURER (DEFENDANT)
70	05/13/2019	FIRST AMENDED COMPLAINT, POS (13 PGS; ATTATCHMENTS = 122) DONALD R. VISSER (Attorney) on behalf of PETERSEN FINANCIAL LLC (PLAINTIFF)

71	04/26/2019	SCHEDULING ORDER
72	04/26/2019	HELD - PHONE CONF. - PARTIES AGREEDED ON SCHEDULING ORDER DATES The following event: CIVIL STATUS CONFERENCE scheduled for 04/26/2019 at 11:00 am has been resulted as follows: Result: HELD Judge: QUIST, HONORABLE GEORGE JAY Location: 17TH CIRCUIT COURT- COURTROOM #12A LINDA HOWELL, DAVID OITS, DONALD VISSER
73	04/03/2019	DEF. KENT COUNTY TREASURER'S ANSWERS TO PLA'S FIRST SET OF INTERROGATORIES PROOF OF SERVICE
74	04/03/2019	DEF. KENT COUNTY TREASURER'S ANSWERS TO REQUEST FOR DOCUMENTS PROOF OF SERVICE
75	03/04/2019	POS (PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANTS AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS)
76	03/04/2019	ANSWER TO PLA'S COMPLAINT AND AFFIRMATIVE DEFENSES, POS CRAIG A. PAULL (Attorney) on behalf of KENT COUNTY TREASURER (DEFENDANT)
77	02/28/2019	ANSWER TO COMPLAINT, AFFIRMATIVE DEFENSES, POS DAVID K. OTIS (Attorney) on behalf of KENT COUNTY TREASURER (DEFENDANT)
78	02/15/2019	ORDER FOLLOWING STATUS CONFERENCE, POS (DEF. SHALL FILE ANSWERS AND AFF. DEF. WITHING 21 DAYS FROM DATE OF ORDER; STATUS CONF. BY PHONE SET FOR 4/26/19 @ 11 AM)
79	02/15/2019	SCHEDULED Event: CIVIL STATUS CONFERENCE - PHONE CONFERENCE Date: 04/26/2019 Time: 11:00 am Judge: QUIST, HONORABLE GEORGE JAY Location: 17TH CIRCUIT COURT- COURTROOM #12A Result: HELD
80	02/15/2019	HELD The following event: CIVIL STATUS CONFERENCE scheduled for 02/15/2019 at 10:00 am has been resulted as follows: Result: HELD - DEFS ALLOWED 21 DAYS TO FILE ANSWER-COURT TO ISSUE ORDER Judge: QUIST, HONORABLE GEORGE JAY Location: 17TH CIRCUIT COURT- COURTROOM #12A HELD ON THE RECORD COURT REPORTER: FTR 12A Certificate #: VISSER, HOWELL, OTIS PRESENT
81	01/22/2019	NOTICE TO APPEAR (STATUS CONFERENCE) (2/15/19 @ 10 AM), POS
82	01/22/2019	SCHEDULED Event: CIVIL STATUS CONFERENCE Date: 02/15/2019 Time: 10:00 am Judge: QUIST, HONORABLE GEORGE JAY Location: 17TH CIRCUIT COURT- COURTROOM #12A Result: HELD
83	11/26/2018	OPINION AND ORDER FROM COURT OF APPEALS (AFFIRMED IN PART, AND REVERSED AND REMANDED IN PART FOR FURTHER PROCEEDINGS)
84	11/20/2018	OPINION AND ORDER FROM COURT OF APPEALS (AFFIRMED IN PART, REVERSED AND REMANDED, IN PART FOR FURTHER PROCEEDINGS)
85	03/26/2018	CONTENT OF TRANSMISSION TO THE COURT OF APPEALS (COA #339399)
86	03/26/2018	NOTICE OF TRANSMISSION TO THE COURT OF APPEALS DONALD R VISSER LINDA S HOWEELL & DAVID K OTIS (COA # 339399)

87	10/04/2017	NOTICE OF FILING OF TRANSCRIPT AND CERTIFICATE OF MAILING
88	10/04/2017	TRANSCRIPT OF ORAL ARGUMENTS HELD ON JUNE 30, 2017; RECORDED BY: FTR TRANSCRIBED BY: STACY DILWORTH [CER 8188] (13 PAGES)
89	07/31/2017	COPY OF CLAIM OF APPEAL FILED TO COURT OF APPEALS DATED 7/25/17
90	07/31/2017	CLAIM OF APPEAL FEE Receipt: 948860 Date: 07/31/2017
91	07/24/2017	REPORTER'S CERTIFICATE OF ORDER FOR TRANSCRIPT ON APPEAL (TO BE FURNISHED BY 10/23/17)
92	07/07/2017	OPINION AND ORDER RE: DEF'S MOTION FOR SUMMARY DISPOSITION AND POS FILED (DEF MOTIONSTO DISMISS COUNTS I, II, III, IV, V ARE GRANTED, PLNF'S MOTION FOR SUMMARY DISPOSITION IS DENIED) (DISMISSED WITH PREJUDICE)
93	06/30/2017	HELD - WRITTEN OPINION TO BE ISSUED The following event: ORAL ARGUMENTS scheduled for 06/30/2017 at 9:00 am has been resulted as follows: Result: HELD - WRITTEN OPINION TO BE ISSUED Judge: QUIST, HONORABLE GEORGE JAY Location: 17TH CIRCUIT COURT- COURTROOM #12A HELD ON THE RECORD COURT REPORTER: FTR 12A Certificate #: 8188
94	06/23/2017	REPLY BRIEF RE: SUMMARY DISPOSITION DONALD R. VISSER (Attorney) on behalf of PETERSEN FINANCIAL LLC (PLAINTIFF)
95	06/08/2017	ORDER FOLLOWING CASE CONFERENCE AND POS FILED
96	06/08/2017	SCHEDULED Event: ORAL ARGUMENTS Date: 06/30/2017 Time: 9:00 am Judge: QUIST, HONORABLE GEORGE JAY Location: 17TH CIRCUIT COURT- COURTROOM #12A Result: HELD - WRITTEN OPINION TO BE ISSUED
97	06/08/2017	HELD - OFF THE RECORD BY PHONE The following event: INFORMATIONAL CONFERENCE scheduled for 06/08/2017 at 11:00 am has been resulted as follows: Result: HELD Judge: QUIST, HONORABLE GEORGE JAY Location: 17TH CIRCUIT COURT- COURTROOM #12A
98	06/08/2017	SCHEDULED Event: INFORMATIONAL CONFERENCE Date: 06/08/2017 Time: 11:00 am Judge: QUIST, HONORABLE GEORGE JAY Location: 17TH CIRCUIT COURT- COURTROOM #12A Result: HELD
99	06/08/2017	ADJOURNED DUE TO OTHER REASONS The following event: MOTION FOR SUMMARY DISPOSITION scheduled for 06/09/2017 at 9:00 am has been resulted as follows: Result: ADJOURNED DUE TO OTHER REASONS Judge: QUIST, HONORABLE GEORGE JAY Location: 17TH CIRCUIT COURT- COURTROOM #12A
100	06/06/2017	MOTION FOR LEAVE TO FILE LATE SUPPLEMENTAL BRIEF & POS DONALD R. VISSER (Attorney) on behalf of PETERSEN FINANCIAL LLC (PLAINTIFF)
101	06/06/2017	MOTION FEE PAID Receipt: 938251 Date: 06/06/2017
102	05/26/2017	BRIEF IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION & POS LINDA S. HOWELL (Attorney) on behalf of KENT COUNTY TREASURER (DEFENDANT); MICHAEL S. BOGREN (Attorney) on behalf of CITY OF KENTWOOD (DEFENDANT)

103	05/22/2017	TRANSCRIPT FILED ON MOTION FOR SUMMARY DISPOSITION (23 PGS) (HELD ON 5/12/17 BEFORE JUDGE GEORGE JAY QUIST) (STACY DILWORTH COURT REPORTER)
104	05/12/2017	HELD - TO BE CONTINUED The following event: MOTION FOR SUMMARY DISPOSITION scheduled for 05/12/2017 at 9:00 am has been resulted as follows: Result: HELD - TO BE CONTINUED Judge: QUIST, HONORABLE GEORGE JAY Location: 17TH CIRCUIT COURT-COURTROOM #12A ON THE RECORD COURTROOM 12A Cert#: 8188
105	05/08/2017	SCHEDULED Event: MOTION FOR SUMMARY DISPOSITION Date: 06/09/2017 Time: 9:00 am Judge: QUIST, HONORABLE GEORGE JAY Location: 17TH CIRCUIT COURT- COURTROOM #12A Result: ADJOURNED DUE TO OTHER REASONS
106	05/05/2017	MOTION FOR SUMMARY DISPOSITION, NOTICE (6/9/17 AT 9:00) AND POS DONALD R. VISSER (Attorney) on behalf of PETERSEN FINANCIAL LLC (PLAINTIFF)
107	05/05/2017	RESPONSE IN OPPOSITION TO DEFS' MOTION FOR SUMMARY DISPOSITION AND BRIEF IN SUPPORT OF PL'S SUMMARY DISPOSITION MOTION & POS DONALD R. VISSER (Attorney) on behalf of PETERSEN FINANCIAL LLC (PLAINTIFF)
108	05/05/2017	MOTION FEE PAID Receipt: 931931 Date: 05/05/2017
109	04/20/2017	POS (DEFS CITY OF KENTWOOD AND COUNTY OF KENT MOTION AND BRIEF FOR SUMMARY DISPOSITION AND NOTICE OF HEARING)
110	04/18/2017	MOTION FOR SUMMARY DISPOSITION, NOTICE (5/12/17 AT9:000, BRIEF & POS LINDA S. HOWELL (Attorney) on behalf of CITY OF KENTWOOD, KENT COUNTY TREASURER (DEFENDANT); DAVID K. OTIS (Attorney) on behalf of CITY OF KENTWOOD, KENT COUNTY TREASURER (DEFENDANT)
111	04/18/2017	SCHEDULED Event: MOTION FOR SUMMARY DISPOSITION Date: 05/12/2017 Time: 9:00 am Judge: QUIST, HONORABLE GEORGE JAY Location: 17TH CIRCUIT COURT- COURTROOM #12A
112	04/18/2017	MOTION FEE PAID Receipt: 927741 Date: 04/18/2017
113	03/29/2017	SUMMONS RETURNED (3/27/17) KENT COUNTY TREASURER (DEFENDANT);
114	03/27/2017	SUMMONS RETURNED (3/16/17) CITY OF KENTWOOD (DEFENDANT);
115	03/22/2017	SUMMONS RETURNED (3/16/17) CITY OF KENTWOOD (DEFENDANT);
116	12/28/2016	SUMMONS ISSUED CITY OF KENTWOOD (DEFENDANT); KENT COUNTY TREASURER (DEFENDANT);
117	12/28/2016	ELECTRONIC FILING FEE Receipt: 903804 Date: 12/28/2016
118	12/28/2016	FILING FEES FOR NEW CASE Receipt: 903804 Date: 12/28/2016
119	12/28/2016	COMPLAINT (13 PAGES, EXHIBITS 111 PAGES) PETERSEN FINANCIAL LLC (PLAINTIFF);

COA 350208
MSC 163072

PETERSEN FINANCIAL LLC V CITY OF KENTWOOD

Lower Court/Tribunal

KENT CIRCUIT COURT

Judge(s)

QUIST GEORGE J

Docket | Case Documents

Case Information

Case Header

Case Number

COA #350208 | MSC #163072

Case Status

MSC	Pending on Application
COA	Case Concluded; File Open

Parties & Attorneys to the Case – Court of Appeals

1

PETERSEN FINANCIAL LLC

Plaintiff - Appellant

Attorney(s)

VISSER DONALD R
#27961, Retained

2

KENTWOOD CITY OF

Defendant - Appellee

Attorney(s)

DELORENZO JOSEPHINE A
#72170, Retained

3

KENT COUNTY TREASURER

Defendant - Appellee

Attorney(s)

PAULL CRAIG A
#76605, Corporate Counsel

Parties & Attorneys to the Case – Supreme Court

1

PETERSEN FINANCIAL LLC

Plaintiff

Attorney(s)

Donald R. Visser
#27961

2

KENTWOOD CITY OF
Defendant

Attorney(s)

Josephine Antonia DeLorenzo
#72170

3

KENT COUNTY TREASURER
Defendant

Attorney(s)

Craig A. Paull
#76605

4

MICHIGAN MUNICIPAL LEAGUE
Amicus Curiae

Attorney(s)

Gerald A. Fisher
#13462
Gregory T. Stremers
#45006

COURT OF APPEALS DOCKET SHEET

COLLAPSE ALL EXPAND ALL

08/13/2019	1 Claim of Appeal - Civil	+
07/25/2019	2 Order Appealed From	+
08/13/2019	3 Steno Certificate - Tr Request Received	+
08/13/2019	4 Docketing Statement MCR 7.204H	+
08/14/2019	5 Defective Holding File Letter	+
08/15/2019	6 Other	+
08/19/2019	7 Appearance - Appellee	+
08/19/2019	8 Appearance - Appellee	+
08/21/2019	9 Proof of Service - Generic	+
10/01/2019	10 Notice Of Filing Transcript	+
11/18/2019	11 Stipulation: Extend Time - AT Brief	+
12/16/2019	12 Motion: Extend Time - Appellant	+
12/24/2019	13 Submitted on Administrative Motion Docket	+
12/26/2019	15 Order: Extend Time - Appellant Brief - Grant	+
01/07/2020	16 Brief: Appellant	+

01/30/2020	17	Stipulation: Extend Time - AE Brief
03/04/2020	18	Motion: Extend Time - Appellee
03/17/2020	19	Submitted on Administrative Motion Docket
03/18/2020	20	Order: Extend Time - Appellee Brief - Grant
03/23/2020	21	Motion: Extend Time - Appellee
03/31/2020	22	Submitted on Administrative Motion Docket
04/01/2020	23	Order: Extend Time - Appellee Brief - Grant
04/21/2020	24	Brief: Appellees - Jointly Filed
04/21/2020	25	Noticed
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06/02/2020	27	Record Filed
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07/07/2020	34	Submitted on Administrative Motion Docket
07/08/2020	35	Order: Extend Time - Reply Brief - Grant
03/23/2021	44	Email Contact

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04/09/2021	45 Oral Argument Audio	+
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05/03/2021	52 Publication Request	+
05/04/2021	53 Proof of Service - Generic	+
05/18/2021	54 Costs Taxed Per MCR 7.219	+
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05/27/2021	56 Order: Publication Request - Granted	+
05/27/2021	57 Opinion - Per Curiam - Published After Release	+
06/02/2021	58 Other	+
06/02/2021	59 Application for Leave to SCt	+
06/28/2021	60 Supreme Court: Answer - SCt Application/Complaint	+
07/07/2021	61 Supreme Court: SCt Case Caption	+
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Order

Michigan Supreme Court
Lansing, Michigan

April 1, 2022

163072

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 order of the Court, the application for leave to appeal the May 27, 2021 judgment of the Court of Appeals is considered. We direct the Clerk to schedule oral argument on the application. MCR 7.305(H)(1).

The appellant shall file a supplemental brief within 42 days of the date of this order addressing whether the City of Kentwood lacked the express or implied power to extend the payment terms of the special assessment where the city established it via a valid agreement with the developer, confirmed it through a resolution, and reserved the power to extend its payment terms through legislative action. In the brief, citations to the record must provide the appendix page numbers as required by MCR 7.312(B)(1). Appellee Petersen Financial shall file a supplemental brief within 21 days of being served with the appellant's brief. A reply, if any, must be filed by the appellant within 14 days of being served with the appellee's brief. The parties should not submit mere restatements of their application papers.

Amici who appeared at the application stage are invited to file supplemental briefs amicus curiae. Other persons or groups interested in the determination of the issue presented in this case may move the Court for permission to file briefs amicus curiae.

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 1, 2022

Clerk

p0329

STATE OF MICHIGAN

COURT OF APPEALS

PETERSEN FINANCIAL, LLC,

Plaintiff-Appellant,

V

CITY OF KENTWOOD and KENT COUNTY TREASURER,

Defendants-Appellees.

UNPUBLISHED
April 22, 2021

No. 350208
Kent Circuit Court
LC No. 16-011820-CH

Before: MURRAY, C.J., and MARKEY and LETICA, JJ.

PER CURIAM.

This case involves the issue whether Petersen Financial, LLC (Petersen), as the purchaser of property following a tax foreclosure, became liable for the previous owner's obligations connected to public improvements benefiting the property or whether those obligations were extinguished by the judgment of foreclosure. Petersen filed the current action seeking a declaratory judgment that any obligations had been extinguished by the foreclosure judgment. In 2017, the trial court granted summary disposition to defendants City of Kentwood (the City) and Kent County Treasurer (the Treasurer), primarily on the basis that Petersen's claims fell within the exclusive jurisdiction of the Michigan Tax Tribunal. Petersen appealed, and this Court reversed the trial court's jurisdictional ruling and remanded for further proceedings. See *Petersen Fin LLC v City of Kentwood*, 326 Mich App 433; 928 NW2d 245 (2018). On remand, the parties filed cross-motions for summary disposition, and the trial court again granted summary disposition in favor of defendants, this time under MCR 2.116(C)(8) and (I)(2). Briefly stated, the trial court concluded that the obligation still at issue on remand involved "future installments" of a "special assessment," which survived foreclosure under MCL 211.78k(5)(c) of the General Property Tax Act (GPTA), MCL 211.1 *et seq*. Petersen appeals by right.

On appeal, we hold that although the City levied a "special assessment" through adoption of a resolution, efforts to extend the term for payment of this assessment were invalid; consequently, the special assessment was extinguished by the foreclosure because there were no "future installments" owing at the time of foreclosure. We also conclude that postforeclosure efforts to revive the extinguished assessment either by contract or resolution were void.

Accordingly, we reverse the grant of summary disposition to defendants and remand the case for entry of judgment in Petersen's favor, thereby removing the liens on the property.

I. FACTS

In our previous decision, we summarized the basic facts of this case as follows:

> This case concerns real property located within the city. Starting in 2004, the city and the property owner, along with others, entered into various special assessment agreements relative to several infrastructure improvements that were to benefit the property for purposes of a planned unit development. These agreements, which were recorded and involved the property owner making installment payments to the city, indicated that the contractual obligations contained therein constituted covenants that ran with the land and bound all successors in title. The city commission adopted multiple resolutions associated with the agreements and prepared and confirmed special assessment rolls for the improvements. Eventually, the property owner failed to pay the special assessments, a tax foreclosure action was commenced, a judgment of foreclosure was entered, the property owner failed to redeem the property or appeal the judgment, and title vested absolutely in the county treasurer as the foreclosing governmental unit. Subsequently, at a tax foreclosure sale, the county treasurer conveyed the property to [Petersen] pursuant to a quitclaim deed. [*Petersen Fin*, 326 Mich App at 437.]

Procedurally, in 2016 Petersen filed the current action seeking declaratory judgment to the effect that certain assessments had been extinguished by the foreclosure judgment and that Petersen owned the property free and clear of any obligations. Relevant to the current appeal, in Count II of the complaint, Petersen specifically challenged the continued existence and validity of a voluntary special-assessment/development agreement (VSADA) and related resolutions. In Count IV of the complaint, Petersen challenged the validity of an amendment to the VSADA (the amended VSADA) and related resolutions.[1] Monetarily, the outstanding obligation on the special assessment challenged by Petersen totaled $403,620. Later, Petersen also added Count V, a claim for a refund in the amount of $23,421.13, which Petersen asserted it had paid toward the assessment.

Following an appeal to this Court and remand for further proceedings regarding Counts II and IV, the parties filed cross-motions for summary disposition; the trial court denied Petersen's motion for summary disposition while granting summary disposition to defendants under MCR 2.116(C)(8) and (I)(2). The trial court concluded that the City levied a valid special assessment and that future installments remained owing as a result of an extension of the payment terms. Accordingly, the trial court ruled that the assessment obligation survived foreclosure under MCL 211.78k(5)(c). Additionally, the trial court rejected Petersen's arguments that the amended VSADA, signed after the foreclosure judgment was entered but before the foreclosure sale, was

[1] In our previous decision, we concluded that Petersen was entitled to judgment on Counts I and III of the complaint, which concerned two other assessments. See *Petersen Fin*, 326 Mich App at 447.

void as against public policy and for lack of consideration. In short, the trial court determined that the special assessment remained a valid encumbrance on the property. Petersen now appeals.

II. ANALYSIS

On appeal, Petersen argues that the trial court erred by denying its motion for summary disposition and granting summary disposition in favor of defendants. According to Petersen, the obligation in this case did not survive foreclosure under MCL 211.78k(5)(c) because there was no "special assessment," merely a contractual agreement. And even if there were a special assessment, Petersen asserts that there were no "future installments" because efforts to extend the final deadline for payment of the special assessment were invalid, and the special assessment was, therefore, past due at the time of the foreclosure judgment. On the basis of its assertion that the obligation was extinguished, Petersen also argues that postforeclosure efforts—while the property was owned by the Treasurer—to contractually revive the assessment were void as against public policy and for lack of consideration. Petersen asks that we remand for entry of judgment in its favor, removing any liens from the property and ordering a monetary refund to Petersen.

In contrast, defendants contend that the trial court's decision should be affirmed. According to defendants, the City levied a valid special assessment that survived foreclosure under MCL 211.78k(5)(c). Alternatively, defendants make the unpreserved argument that the obligation survived foreclosure as a "private deed restriction" under MCL 211.78k(5)(e). In either case, defendants assert that the obligation survived foreclosure and that a postforeclosure contract between the City and the Treasurer, as well as an additional resolution adopted by the City, were valid and enforceable. As an alternative basis to affirm, which was raised but not decided below, defendants also maintain that contractual waiver provisions preclude Petersen's challenges of the assessment.

A. STANDARDS OF REVIEW

We review de novo a trial court's ruling on a motion for summary disposition. *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 507; 667 NW2d 379 (2003). This Court also reviews de novo legal questions involving statutory interpretation, the construction of a contract, and the interpretation of a municipal resolution. *46th Circuit Trial Court v Crawford Co*, 476 Mich 131, 140; 719 NW2d 553 (2006).

B. OVERVIEW OF THE GPTA

Under the GPTA, a governmental unit may seize and sell real property to "satisfy the unpaid delinquent real-property taxes as well as any interest, penalties, and fees associated with the foreclosure and sale of [the property]." *Rafaeli, LLC v Oakland Co*, 505 Mich 429, 474; 952 NW2d 434 (2020); see also MCL 211.78a(1). In this context, the term "taxes" also includes "unpaid special assessments or other assessments that are due and payable up to and including the date of the foreclosure hearing . . . ." MCL 211.78a(1). Briefly stated, under the GPTA's tax-foreclosure process, "tax-delinquent properties are forfeited to the county treasurers; foreclosed on after a judicial foreclosure hearing; and, if not timely redeemed, sold at a public auction." *Rafaeli, LLC*, 505 Mich at 442.

At issue in this case is the effect of a foreclosure on encumbrances to the property, such as a special assessment. When seeking foreclosure, the foreclosing governmental unit must file a petition of foreclosure in circuit court, requesting "that a judgment be entered vesting absolute title to each parcel of property in the foreclosing governmental unit, without right of redemption." MCL 211.78h(1). See also *Rafaeli, LLC*, 505 Mich at 445. After filing of the petition and a judicial foreclosure hearing, a judgment of foreclosure must be entered by March 30. *Rafaeli, LLC*, 505 Mich at 445. "Unless the delinquent taxes, interest, penalties, and fees are paid on or before March 31, fee simple title to the property vests absolutely in the foreclosing governmental unit without any further redemption rights available to the delinquent taxpayer." *Id*. (citations omitted). "Thereafter, the foreclosing governmental unit's title to the property is not subject to any recorded or unrecorded lien." *Id*. (citation omitted).

In more detail, MCL 211.78k sets forth the requirements of a judgment of foreclosure and generally proclaims that title vests in the foreclosing governmental unit:

> (5) The circuit court shall enter final judgment on a petition for foreclosure filed under section 78h at any time after the hearing under this section but not later than the March 30 immediately succeeding the hearing with the judgment effective on the March 31 immediately succeeding the hearing for uncontested cases or 10 days after the conclusion of the hearing for contested cases. All redemption rights to the property expire on the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case 21 days after the entry of a judgment foreclosing the property under this section. The circuit court's judgment must specify all of the following:
>
> * * *
>
> (b) That fee simple title to property foreclosed by the judgment will vest absolutely in the foreclosing governmental unit, except as otherwise provided in subdivisions (c) and (e), without any further rights of redemption, if all forfeited delinquent taxes, interest, penalties, and fees, which delinquent taxes, interest, penalties, and fees may be reduced by the foreclosing governmental unit in accordance with section 78g(8), are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section.
>
> (c) *That all liens against the property, including any lien for unpaid taxes or special assessments, except future installments of special assessments* and liens recorded by this state or the foreclosing governmental unit under the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, *are extinguished*, if all forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section.

> (d) That, except as otherwise provided in subdivisions (c) and (e), the foreclosing governmental unit has good and marketable fee simple title to the property, if all forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section.
>
> (e) That all existing recorded and unrecorded interests in that property are extinguished, *except* a visible or recorded easement or right-of-way, *private deed restrictions*, interests of a lessee or an assignee of an interest of a lessee under a recorded oil or gas lease, interests in oil or gas in that property that are owned by a person other than the owner of the surface that have been preserved as provided in section 1(3) of 1963 PA 42, MCL 554.291, interests in property assessable as personal property under section 8(g), or restrictions or other governmental interests imposed under the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, if all forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section.
>
> * * *
>
> (6) Except as otherwise provided in subsection (5)(c) and (e), fee simple title to property set forth in a petition for foreclosure filed under section 78h on which forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section, will vest absolutely in the foreclosing governmental unit, and the foreclosing governmental unit will have absolute title to the property . . . . The foreclosing governmental unit's title is not subject to any recorded or unrecorded lien and must not be stayed or held invalid except as provided in subsection (7) or (9). [Emphasis added.]

"After foreclosure, and assuming the state, city, village, township, or county where the property is located does not purchase the property, the GPTA provides for one or more auction sales beginning on the third Tuesday in July immediately succeeding the entry of the judgment of foreclosure." *Rafaeli, LLC*, 505 Mich at 446 (citation omitted).

C. PREFORECLOSURE OBLIGATIONS

In this case, the property at issue was seized under the GPTA, and a judgment of foreclosure was entered for the satisfaction of all taxes, including special assessments due and payable up to the date of the foreclosure hearing. See MCL 211.78h; see also MCL 211.78a(1). Under MCL 211.78k(6), fee simple title vested absolutely in the Treasurer at the time of foreclosure, extinguishing all liens and existing interests in the property except as provided in MCL 211.78k(5)(c) and (e). As relevant to the arguments on appeal, MCL 211.78k(5)(c) and (e) provide

that "future installments of special assessments" and "private deed restrictions" are not extinguished by foreclosure. In light of these exceptions, the parties dispute whether Petersen, as the purchaser of the property at auction following foreclosure, became liable for the previous property owner's assessment obligation. There are three documents—(1) the VSADA, (2) Resolution 96-04, and (3) Resolution 50-14—relevant to this initial question whether there was a preforeclosure obligation relative to the property that survived foreclosure under MCL 211.78k.

1. THE VSADA

The first document, the VSADA, is a contract, and as a contract rather than a special assessment, the VSADA did not survive foreclosure under MCL 211.78k(5)(c), which only creates an exception for (1) future installments of (2) a special assessment.

The term "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 City of Grandville*, 442 Mich 495, 500; 502 NW2d 299 (1993). Unlike a tax to raise revenue for general governmental purposes, "a special assessment can be seen as remunerative; it is a specific levy designed to recover the costs of improvements that confer local and peculiar benefits upon property within a defined area." *Id*. Special assessments may be levied as permitted by statute, municipal charter, and applicable ordinances. *Wikman v City of Novi*, 413 Mich 617, 636-637; 322 NW2d 103 (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.

Considering the definition of "special assessment" and the manner in which it must be levied, it is clear that the VSADA is simply a contract between the City and the previous property owners. It is not a special assessment levied in accordance with the statutes, municipal charter, and ordinances that govern special assessments in Kentwood. On appeal, in disputing the assertion that foreclosure extinguished the VSADA under MCL 211.78k(5)(c), defendants emphasize that contracts between a governmental entity and a property owner regarding payment for improvements to the property are valid and enforceable. See *Grosse Ile Twp v New York Indemnity Co*, 260 Mich 643, 646; 245 NW 791 (1932). Certainly such a contract may be valid and enforceable. See *id*. Nonetheless, it does not follow that a contractual obligation to pay for property improvements constitutes a "special assessment," i.e., a levy upon property within a specified district to recover costs for improvements benefiting the property as permitted by statute, municipal charter, and applicable ordinances. See *Kadzban*, 442 Mich at 500; *Wikman*, 413 Mich at 636-637. To survive foreclosure under MCL 211.78k(5)(c), the obligation in question must be a "special assessment." Because the VSADA was not a special assessment, it did not survive foreclosure under MCL 211.78k(5)(c)'s exception for future installments of a special assessment.

Alternatively, defendants argue that the VSADA constituted a "private deed restriction" that survived foreclosure under MCL 211.78k(5)(e). The VSADA contained a provision indicating that it would be recorded with the Register of Deeds and that the obligations under the VSADA were "covenants that run with the land" and "bind all successors in title." Relying on *Lakes of the North Ass'n v TWIGA Ltd Partnership*, 241 Mich App 91; 614 NW2d 682 (2000), defendants contend that the VSADA's creation of an assessment as a covenant that ran with the land amounted to a private deed restriction that survived foreclosure under MCL 211.78k(5)(e).

This argument is, however, unpreserved. See *In re Application of Int'l Transmission Co*, 304 Mich App 561, 566-567; 847 NW2d 684 (2014).[2] Further, although defendants offer the conclusory assertion on appeal that covenants running with the land were created by the VSADA, defendants fail to address the requirements for establishing covenants that run with the land.[3] By failing to brief the merits of the issue, defendants have abandoned the claim that the VSADA constituted a covenant running with the land that survived foreclosure as a private deed restriction under MCL 211.78k(5)(e). See *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

Moreover, defendants' argument lacks merit. As stated in MCL 211.78k(5)(e), "all existing recorded and unrecorded interests in th[e] property are extinguished, except . . . private deed restrictions" and other exceptions not relevant to this case. In general, "[a] deed restriction represents a contract between the buyer and the seller of property." *Bloomfield Estates Improvement Ass'n, Inc v City of Birmingham*, 479 Mich 206, 212; 737 NW2d 670 (2007). In *Lakes of the North*, 241 Mich App at 93-94, 100, this Court more specifically concluded that for purposes of MCL 211.78k(5)(e),[4] private deed restrictions encompassed a maintenance assessment

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[2] In a footnote in a summary disposition brief, defendants made a cursory reference to MCL 211.78k(5)(e), stating, "Although Petersen's complaint focuses on future installments of special assessments, the City preserves the right to enforce any other obligation set forth in the VSADA or Amendment because such properly recorded private deed restrictions are not extinguished by foreclosure. MCL 211.78k[5](e)." Although purporting to have preserved the issue, defendants did not develop an argument related to MCL 211.78k(5)(e), and defendants did not ask the trial court for a ruling on this question. As a result, the trial court did not address or decide the issue. On these facts, defendants' perfunctory citation of MCL 211.78k(5)(e) was insufficient to preserve defendants' arguments regarding the statutory provision. See *Int'l Transmission Co*, 304 Mich App at 566-567 (finding that "cursory reference" to an issue in the footnote of a trial brief without "actually" making an argument was insufficient to preserve issue for appeal).

[3] This Court has explained:

> The essentials of such a covenant (i.e., a covenant running with the land) have been stated to be that the grantor and grantee must have intended that the covenant run with the land; the covenant must affect or concern the land with which it runs; and there must be privity of estate between the party claiming the benefit and the party who rests under the burden. [*Greenspan v Rehberg*, 56 Mich App 310, 320-321; 224 NW2d 67 (1974) (quotation marks and citation omitted).]

[4] Much of the analysis in *Lakes of the North*, 241 Mich App at 96-100, involved former MCL 211.67, which governed the case and provided that "encumbrances" on property were extinguished by foreclosure. The GPTA, however, had been recently amended, replacing MCL 211.67 with MCL 211.78k, and the Court in *Lakes of the North* decided to also take note of the "private deed restriction" language in MCL 211.78k(5)(e). The comments on private deed restrictions were thus obiter dicta. See *Wold Architects & Engineers v Strat*, 474 Mich 223, 232 n 3; 713 NW2d 750 (2006) ("Statements and comments in an opinion concerning some rule of law or legal proposition not necessarily involved nor essential to determination of the case in hand, are, however

established by a developer pursuant to a restrictive covenant that was recorded when the developer owned all of the lots in the subdivision. Given the panel's conclusion that the assessment constituted a private deed restriction, this Court determined that the obligation to pay prospective maintenance assessments survived foreclosure. *Lakes of the North*, 241 Mich App at 99-100. We note that the covenant in *Lakes of the North* specifically provided that " '[t]he developer being the owner of all the properties hereby covenants and each subsequent owner by acceptance of a land contract and/or a deed therefor, whether or not it shall be expressed in any such deed or contract is deemed to covenant and agree to pay to the Association . . . .' " *Id.* at 94.

Analogizing the special assessment here to the maintenance assessment in *Lakes of the North*, defendants argue that the obligation to pay the special assessment, as stated in the VSADA, constituted a covenant, i.e., a private deed restriction, that survived foreclosure under MCL 211.78k(5)(e). Simply put, we conclude that the VSADA did not constitute or include a private deed restriction. The VSADA was a contract, effectively containing a condition precedent to the developers' obligation to perform, which condition did occur by way of resolution, with a *public* entity as one of the parties to the contract and absent any entanglement with or connection to a *deed*. There was no document of conveyance associated with the VSADA, unlike in *Lakes of the North* where the maintenance-assessment covenants arose and became enforceable upon the purchase of real property by land contract or deed. The dicta in *Lakes of the North* provides no aid to defendants' position.

2. RESOLUTION 96-04

Although the VSADA did not create an assessment, the City Commission established a special assessment with the adoption of Resolution 96-04. Chapter X of the Kentwood City Charter authorized the City Commission to enact special assessments for public improvements, and Chapter 50 of the Kentwood City Ordinances (KCO) provided the procedures for levying a special assessment by resolution of the City Commission. In keeping with this authority, the City Commission adopted Resolution 96-04 to recover the costs for public improvements that conferred a peculiar benefit on the properties in the Ravines special-assessment district. See *Kadzban*, 442 Mich at 500. Resolution 96-04 established the special-assessment-district roll, set the amount and terms of the special assessment, and apportioned the special assessment among the parcels in the special-assessment district. In short, acting within its authority as provided by law, the City Commission adopted Resolution 96-04. In so doing, it levied a special assessment.

A special assessment is presumed to be valid. See *Kane v Williamstown Twp*, 301 Mich App 582, 586; 836 NW2d 868 (2013). And Petersen offered nothing in the trial court, or on appeal, to overcome this presumption or to demonstrate that Resolution 96-04 was invalid. In particular, Petersen mainly challenges the validity of the assessment on the basis that the obligation created by Resolution 96-04 could not actually be a special assessment because the City and the developers first entered into a contract—the VSADA—regarding the proposed improvements. But Petersen offers no authority for the proposition that the City cannot enter into a contract and also enact a valid special assessment. Clearly, the City has the authority to enter into contracts, see *Grosse Ile*

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illuminating, but obiter dicta and lack the force of an adjudication.") (quotation marks and citations omitted).

Twp, 260 Mich at 646, and the City also has the power to levy special assessments, see *Wikman*, 413 Mich at 636-637. Caselaw also demonstrates that a special assessment created by resolution is not invalid simply because there also exists a contract relating to the same improvements encompassed by the special assessment. See, e.g., *Thayer Lumber Co v Muskegon*, 157 Mich 424, 430-432; 122 NW 189 (1909) (finding a reassessment involving a resolution that specifically referred to a contract to be valid). In sum, there is no merit to Petersen's assertion that in light of the VSADA, Resolution 96-04 somehow created only a contractual obligation rather than a special assessment.[5]

Instead, Resolution 96-04 created a "special assessment," and whether this obligation survived foreclosure under MCL 211.78k(5)(c) requires a determination whether there remained "future installments" of the special assessment. Relevant to this "future installment" question, Resolution 96-04 set a 10-year term for the special assessment. Annual interest-only payments were due beginning in September 2005, and the final balloon payment, including principal and interest, was due in September 2014. The foreclosure in this case occurred in March 2015, which was *after* the final payment set by Resolution 96-04 came due. If Resolution 96-04 controlled the time for payment of the special assessment, it is clear that there was no "future installment" for purposes of MCL 211.78k(5)(c) because the assessment came due in full in September 2014, before the March 2015 foreclosure.

3. RESOLUTION 50-14

In our view, the pivotal question in this case is whether the City properly adopted Resolution 50-14, which purported to extend the final payment deadline from September 2014 to September 2015. The City Commission adopted Resolution 50-14 in July 2014, before the final payment came due in September 2014 and before the foreclosure in March 2015. Accordingly, if Resolution 50-14 validly extended the payment deadline to September 2015, then at the time of the foreclosure in March 2015 there remained a "future installment" on the special assessment.

The City Commission's authority relating to special assessments is defined by statute, ordinance, and city charter. See *Wikman*, 413 Mich at 636-637; see also *Whitney v Common Council of the Village of Hudson*, 69 Mich 189, 197; 37 NW 184 (1888) ("That the action of the common council must be within the power conferred; and when the mode is prescribed, either by charter or ordinance, that mode constitutes the measure of the power."). As noted, the Kentwood City Charter and KCO authorized the City Commission to adopt resolutions to levy special assessments. The procedures provided for a hearing, review of the assessment roll and changes thereto by the City Commission, and, ultimately, confirmation of the assessment roll. See KCO,

[5] In challenging the special assessment created by Resolution 96-04, Petersen, relying on an opinion from the Office of the Attorney General, OAG, 2001-2002, No. 7110 (June 17, 2002), also makes a cursory argument that the resolution could not have established a special assessment because special assessments are not recorded and the VSADA was recorded. In making this argument, Petersen again conflates the VSADA and Resolution 96-04. Even if a special assessment cannot be recorded, there is no indication that Resolution 96-04 was recorded. The existence and recording of the VSADA does not alter the validity of the special assessment created by Resolution 96-04.

Chapter 50. Notably, following the City Commission's review and any changes to the assessment roll that the Commission might make, KCO, § 50.10 provided for the City Commission's examination and confirmation of the assessment roll, providing as follows:

> The city commission shall meet at the time and place designated for the review of such special assessment roll, and at such meeting, or a proper adjournment thereof, shall consider all objections thereto submitted in writing. The city commission may correct such roll as to any special assessment or description of any lot or parcel of land or other errors appearing therein, or it may by resolution annul such assessment roll and direct that new proceedings be instituted. The same proceedings shall be followed in the making of the new roll as in the making of the original roll. If, after hearing all objections and making a record of such changes as the city commission deems justified, the city commission determines that it is satisfied with the special assessment roll and that assessments are in proportion to benefits received, it shall thereupon pass a resolution reciting such determinations, confirming such roll, placing it on file in the office of the clerk and directing the clerk to attach his warrant to a certified copy thereof within ten days, therein commanding the assessor to spread, and the treasurer to collect, the various sums and amounts appearing thereon as directed by the city commission. Such 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.]

As discussed, a valid special assessment was created by Resolution 96-04. Under KCO, § 50.10, once confirmed by the City Commission, the special assessment established by Resolution 96-04 became "final and conclusive" for purposes of the improvements related to the property in question. Once an assessment becomes final, a taxing authority, like a taxpayer, must abide by the rules and procedures applicable for challenging the assessment. See *Detroit Edison Co v Detroit*, 297 Mich 583, 591; 298 NW 290 (1941) ("Any action attacking the assessment, whether by the taxpayer, the taxing authorities, or the State tax commission, must be seasonably taken."). But in this case, defendants have not identified any legal basis for altering the payment terms of the assessment.

We note that the KCO makes provision for reassessment of or adjustments to a special assessment in particular circumstances, but none of the circumstances applied to the special assessment created by Resolution 96-04. For example, under KCO, § 50.14, adjustments can be made to increase an assessment or issue refunds if, after completion of the improvements, it is determined that the actual costs differed from the amount of the special assessment. But this provision did not apply to Resolution 50-14, which did not alter the amount of the special assessment to conform to actual costs. Alternatively, KCO, § 50.10 allows for the correction of errors or the annulment of the roll *before* confirmation of the roll; it does not provide for alterations after the assessment becomes final and conclusive. Finally, KCO, § 50.16 allows for "a new assessment" if the City Commission deems a special assessment "invalid or defective for any reason whatsoever" or if a court finds the assessment to be "illegal for any reason whatsoever." But even when KCO, § 50.16 applies, it requires that "[a]ll proceedings on such reassessment and for the collection thereof shall be made in the manner as provided for the original assessment."

The procedures for confirming a special assessment roll were *not* followed when adopting Resolution 50-14. To the contrary, Resolution 50-14 provided that it was made "[w]ithout re-confirming" the special assessment roll. In short, the KCO and City Charter, while generally authorizing the City Commission to establish a special assessment, did not provide authority for the City Commission's adoption of Resolution 50-14 to amend the terms of the special assessment once it became "final and conclusive" under KCO, § 50.10.[6] Cf. *Hudson Motor Car Co v Detroit*, 282 Mich 69, 81; 275 NW 770 (1937) ("After the tax rolls have been passed upon by local boards of review and are properly certified by them, no change may be made therein by the local board of review of by any local assessing officer.").

Rather than identify a statute or a provision in the City Charter or KCO that would have supported the City Commission's adoption of Resolution 50-14, the City argues on appeal that the VSADA authorized Resolution 50-14 because the VSADA indicated that the City Commission had discretion to set the terms of the special assessment. But, as discussed, the City Commission's authority to establish the special assessment did not derive from contract; rather, the power derived from statute, the municipal charter, and applicable ordinances. See *Wikman*, 413 Mich at 636-637. Indeed, the VSADA expressly acknowledged that "consistent with" the City's ordinances, the special assessment would be "determined by resolution of the City Commission in its discretion," and the VSADA did not purport to alter that discretion. In other words, the VSADA did not provide any independent authority for Resolution 50-14; instead, it merely recognized that the City Commission could exercise its discretion "consistent with" the City's ordinances. The fact remains that statutes, the City Charter, and the KCO governed the lawfulness of Resolution 50-14, and defendants have not advanced an argument under those authorities to justify the modification of the special assessment's terms after the special assessment became final and conclusive.

In sum, absent a legal basis for the adoption of Resolution 50-14, defendants' arguments that the City Commission legally extended the term of the special assessment lack merit. Without the extension in Resolution 50-14, the special assessment validly created by Resolution 96-04 came due in September 2014. Accordingly, all installments of the special assessment were due and payable before the foreclosure in March 2015. See MCL 211.78a(1). Thus, because there was no "future installment" of a "special assessment" owing at the time of foreclosure, the assessment did not survive foreclosure under MCL 211.78k(5)(c). The special assessment was extinguished, and the property passed to the Treasurer free from any assessment obligation. See MCL 211.75k(5).

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[6] Under the GPTA, in specified circumstances, to avoid foreclosure, a foreclosing governmental unit may enter into a payment plan or a foreclosure agreement. See generally MCL 211.78q. But it does not appear that Resolution 50-14 constituted a plan under MCL 211.78q. And defendants do not even refer to MCL 211.78q, let alone present an argument under the statute. Indeed, it appears that MCL 211.78q would have been the appropriate statute to invoke for purposes of altering the assessment payment plan for the financially distressed developers. Defendants have not otherwise identified, nor are we aware of, any statutory authority that would have permitted the City Commission to modify the special assessment after confirmation of the assessment roll.

D. POSTFORECLOSURE OBLIGATIONS

Following the foreclosure and while the Treasurer held title to the property, the City and the Treasurer entered into the amended VSADA, which sought to further extend the payment term for the now-extinguished special assessment to 2024. In addition, the City also adopted Resolution 31-15,[7] which likewise sought to extend the payment deadline on the assessment to 2024. Given the extinguishment of the special assessment, Petersen argues on appeal that the amended VSADA was void as against public policy and for lack of consideration. We agree and further conclude that Resolution 31-15 was invalid.

It is a "bedrock principle of American contract law that parties are free to contract as they see fit, and the courts are to enforce the agreement as written absent some highly unusual circumstance, such as a contract in violation of law or public policy." *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 51; 664 NW2d 776 (2003).

> [T]he determination of Michigan's public policy is not merely the equivalent of the personal preferences of a majority of this Court; rather, such a policy must ultimately be clearly rooted in the law. In ascertaining the parameters of our public policy, [the Court] must look to policies that, in fact, have been adopted by the public through our various legal processes, and are reflected in our state and federal constitutions, our statutes, and the common law. [*Rory v Continental Ins Co*, 473 Mich 457, 470-471; 703 NW2d 23 (2005) (quotation marks and citations omitted).]

To warrant invalidating a contract, the public policy must be "explicit," "well defined[,] and dominant." *Terrien v Zwit*, 467 Mich 56, 67-68; 648 NW2d 602 (2002) (quotation marks and citation omitted).

In this case, the GPTA as well as judicial decisions determining the effect of a tax foreclosure provide very definite rules that special assessments, except for future installments, are extinguished by foreclosure and that, once extinguished, the obligations cannot be revived by the taxing authority following foreclosure. To begin with, the fact that special assessments, except future installments, are extinguished by foreclosure is expressly stated in MCL 211.78k(5)(c). The GPTA also provides that as a result of foreclosure, fee simple title to the property vests "absolutely" in the foreclosing governmental unit, free from any recorded or unrecorded lien. MCL 211.78k(6). The foreclosure judgment encompasses "the forfeited unpaid delinquent taxes, interest, penalties, and fees due on each parcel of property," including "unpaid special assessments or other assessments that are due and payable up to and including the date of the foreclosure hearing." MCL 211.78k(5)(a); MCL 211.78a(1). Following foreclosure, the property may be sold by auction, and the proceeds are placed in an account for distribution by the foreclosing governmental unit in a manner provided by the GPTA, with the first priority being "to reimburse the delinquent tax revolving fund for the full amount of unpaid taxes, interest, and fees owed on the property." *Rafaeli, LLC*, 505 Mich at 446-447. In other words, the statutory scheme provides

[7] Resolution 31-15 does not appear to be part of the lower court record. Nevertheless, because it involves a public record, we may take judicial notice of it. See *Johnson v Dep't of Natural Resources*, 310 Mich App 635, 649; 873 NW2d 842 (2015); MRE 201 and 202.

for the extinguishment of a special assessment, and the taxing authority's sole means to recoup any portion of the delinquent assessment is provided for through reimbursement from the sale proceeds, *not* by again encumbering the property with an extinguished obligation.

The Legislature is empowered to set the terms for tax-foreclosure sales. See *Baker v State Land Office Bd*, 294 Mich 587, 602; 293 NW 763 (1940). And, as stated in MCL 211.78(1), by enacting the tax-foreclosure procedures set forth in the GPTA, the Legislature recognized "a continuing need to strengthen and revitalize the economy of this state and its municipalities by encouraging the efficient and expeditious return to productive use of property returned for delinquent taxes." The Michigan Supreme Court has similarly explained that foreclosure and sale for delinquent taxes serve "to secure a portion of the unpaid taxes, rather than nothing, and to restore lands to a taxpaying basis, instead of supinely allowing them to accumulate tax delinquencies with no hope of ever recovering them." See *Baker*, 294 Mich at 606. In this context, "the purpose for canceling past due taxes, assessments, and liens against foreclosed property is to attract prospective buyers and ultimately restore the property to the tax rolls." *Lakes of the North*, 241 Mich App at 98 (quotation marks and citation omitted). With regard to extinguished obligations, we note that it is the taxing unit that must bear any loss associated with cancellation of past-due taxes, assessments, and liens. *Wayne Co Chief Executive v Mayor of Detroit*, 211 Mich App 243, 244; 535 NW2d 199 (1995).

Notably, it is well settled by caselaw that once a special assessment has been extinguished by foreclosure, a governmental entity lacks the power to revive it. See *Wood v Village of Rockwood*, 328 Mich 507, 512; 44 NW2d 163 (1950); *Clark v Royal Oak*, 325 Mich 298, 310; 38 NW2d 413 (1949); *Keefe v Drain Comm'r of Oakland Co*, 306 Mich 503, 511-512; 11 NW2d 220 (1943), aff'd 322 US 393 (1944); *Muni Investors Ass'n v Birmingham*, 298 Mich 314, 325; 299 NW 90 (1941), aff'd 316 US 153 (1942). As recognized by the Michigan Supreme Court, to allow reassessment following foreclosure would defeat the purpose of the "remedial" tax-foreclosure legislation, and it "would once again give rise to the vicious circle of assessment based upon inflated valuation; refusal or inability of the owner to pay; followed by a sale of the premises pursuant to the State's sovereign power of enforcing the collection of taxes." *Muni Investors*, 298 Mich at 325. Indeed, the possibility of restoring foreclosed property "to the tax rolls would be considerably lessened because prospective buyers might well hesitate to assume such an obligation." *Keefe*, 306 Mich at 512. For these reasons, to effectuate the "obvious intent and purpose of the legislature to relieve owners from the weight of accumulated obligations," *Muni Investors*, 298 Mich at 325, as a result of a tax foreclosure, the property is "freed of the possibility of further assessments for benefits to the land by public improvements made prior to the [foreclosing governmental unit's] acquiring title," *Clark*, 325 Mich at 310.

In this case, recognizing that the special assessment created by Resolution 96-04 was extinguished by foreclosure under MCL 211.78k(5)(c), it follows that the amended VSADA effectively sought to extend or revive an extinguished assessment. But because the City cannot legally revive an extinguished assessment, see *Clark*, 325 Mich at 310, the amended VSADA must be declared void as against public policy. That is, by entering into a contract to extend the terms of an extinguished special assessment, the City violated the Legislature's mandate for the extinguishment of special assessments under MCL 211.78k(5)(c). The City in effect sought to contravene decisions from the Michigan Supreme Court expressly recognizing that an extinguished assessment may not be revived following foreclosure. The legal reality at this

juncture is that the extinguished special assessment could not lawfully be revived by any means. The City's attempt to contract for the unlawful revival of an extinguished special assessment was therefore void as a violation of public policy. See *Rory*, 473 Mich at 470-471.

In arguing to the contrary, defendants make several arguments. First, they assert that there was no violation of public policy because the special assessment in fact survived foreclosure under MCL 211.78k(5)(c). This argument lacks merit for the reasons already discussed. Second, defendants note that in addition to the amended VSADA, the City Commission adopted Resolution 31-15 in June 2015. Like the amended VSADA, Resolution 31-15 extended the term of the special assessment through September 2024. Resolution 31-15, however, does not aid defendants' position because the special assessment did not survive foreclosure and the fact remains that the City could not reassess the property. See *Clark*, 325 Mich at 310, and cases therein. Third, defendants emphasize that the City is a home-rule city with generally broad powers to contract and adopt resolutions regarding municipal concerns. That may be, but the City's powers are constitutionally limited by laws enacted by the Legislature.[8] See *Wayne Co Chief Executive*, 211 Mich App at 245, citing Const 1963, art 7, §§ 21-22. In other words, the fact that one of the contracting parties is a home-rule city does not excuse the parties from adhering to the laws of this state, nor does it allow the City to enter into contracts in violation of public policy. Instead, as a contract to revive an extinguished special assessment contrary to the directives and public policy embodied in the GPTA, the amended VSADA was void. See *Rory*, 473 Mich at 470-471.

E. WAIVERS

On appeal, defendants also assert that the trial court's decision should be affirmed because, regardless of the merits of Petersen's arguments, Petersen may not challenge the validity of the special assessment at this time because both the VSADA and amended VSADA contained waiver provisions in which the property owners agreed to waive challenges to the special assessment. We disagree.

Relevant to defendants' arguments, the VSADA provided:

> The Owner represents, covenants, and agrees that the property will benefit and be enhanced in value by at least the amount to be specially assessed . . . . The Owner hereby releases, waives, and relinquishes, on behalf of itself, its successors, and assigns any claims it may have against the City, its officers or employees based on or arising out of the nature of the special assessment proceedings provided for herein, any defects in notice or other procedure associated with the special assessments, or whether the owner contracted infrastructure improvements proportionately increase (relative to the amount of the special assessment) the value of the 44th LLC Property.

[8] Indeed, the amended VSADA in fact recognized that the power to extend the special assessment would be exercised "consistent with" the KCO.

Elsewhere, the VSADA stated: "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."

Even if we set aside the question whether the VSADA survived foreclosure (or whether the amended VSADA was void), defendants' reliance on the waiver provisions is misplaced in light of this Court's decision in *Petersen* regarding the nature of Petersen's claims at issue in this case. This Court observed that the case fundamentally involves "a legal question regarding the effect of a tax foreclosure judgment on overdue special assessment installment payments; it is a pure issue of statutory construction." *Petersen Fin LLC*, 326 Mich App at 444. In other words:

> [Petersen] is not challenging the factual basis or the amount of the underlying assessments arising from the special assessment agreements; rather, [Petersen] takes issue with the continuing enforceability of the assessments, at least in regard to outstanding past due installments, in light of the tax foreclosure, arguing that past debt was extinguished by the judgment of foreclosure. [*Id*. at 445-446.]

Resolution of that issue required "construction of the GPTA and the law of tax foreclosure, which has nothing to do with the factual underpinnings of the special assessment." *Id*. at 446.

In *Petersen*, we discussed the nature of Petersen's claims and concluded that the case was not within the exclusive jurisdiction of the Tax Tribunal. *Id.* at 436. But, given what is covered by the contractual waiver provisions, this same reasoning supports the conclusion that Petersen's challenges did not fall within the ambit of the contractual waiver provisions. This is so because Petersen's claims did not involve a challenge to the special-assessment terms or amounts; rather, they pertained to the continued enforceability of the special assessment under MCL 211.78k(5)(c) in light of the foreclosure. Such arguments were not claims regarding notice or special-assessment procedures, the amount of the assessment, or the benefit the property received from the improvements. Instead, they were assertions that MCL 211.78k(5)(c) extinguished the special assessment. As written, the waiver provisions did not encompass claims under MCL 211.78k(5)(c). Indeed, in our view, an attempt to contractually prevent extinguishment of a special assessment contrary to MCL 211.78k(5)(c) would be considered void as against public policy. See *Rory*, 473 Mich at 470-471. Defendants' waiver arguments lack merit.

F. REFUND REQUEST

Finally, Petersen asserts that the trial court erred by failing to order a refund in the amount of $23,421.13 which Petersen had paid toward the assessment. The trial court did not substantively reach this issue on its merits in light of the court's ruling that the special assessment survived foreclosure. We conclude that the appropriate course of action is to have the trial court address the issue in the first instance, now in the context of a judgment entered in Petersen's favor and that extinguishes the assessment.

III. CONCLUSION

In sum, although the City levied a valid special assessment with the passage of Resolution 96-04, its attempts to extend the payment deadline were invalid, and there was no legitimate future installment of a special assessment owing at the time of foreclosure. Accordingly, the special

assessment was extinguished by foreclosure under MCL 211.78k(5)(c), and once extinguished, the assessment could not be revived by contract or resolution. The trial court, therefore, erred by concluding that the special assessment survived foreclosure. As a result, we reverse the grant of summary disposition to defendants as well as the denial of summary disposition to Petersen with respect to the continued existence of a special assessment. We remand for entry of judgment in Petersen's favor, thereby removing any liens or encumbrances on the property related to the special assessment.[9] On remand, the trial court shall also entertain Petersen's request for a refund.

We reverse and remand for proceedings consistent with this opinion. We do not retain jurisdiction. As the prevailing party, Petersen may tax costs pursuant to MCR 7.219.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Anica Letica

[9] Given our resolution of these issues, we find it unnecessary to address Petersen's remaining arguments regarding summary disposition and law of the case.

STATE OF MICHIGAN

COURT OF APPEALS

PETERSEN FINANCIAL, LLC,

Plaintiff-Appellant,

V

CITY OF KENTWOOD and KENT COUNTY TREASURER,

Defendants-Appellees.

UNPUBLISHED
April 22, 2021
APPROVED FOR PUBLICATION
May 27, 2021
9:15 a.m.

No. 350208
Kent Circuit Court
LC No. 16-011820-CH

Before: MURRAY, C.J., and MARKEY and LETICA, JJ.

PER CURIAM.

This case involves the issue whether Petersen Financial, LLC (Petersen), as the purchaser of property following a tax foreclosure, became liable for the previous owner's obligations connected to public improvements benefiting the property or whether those obligations were extinguished by the judgment of foreclosure. Petersen filed the current action seeking a declaratory judgment that any obligations had been extinguished by the foreclosure judgment. In 2017, the trial court granted summary disposition to defendants City of Kentwood (the City) and Kent County Treasurer (the Treasurer), primarily on the basis that Petersen's claims fell within the exclusive jurisdiction of the Michigan Tax Tribunal. Petersen appealed, and this Court reversed the trial court's jurisdictional ruling and remanded for further proceedings. See *Petersen Fin LLC v City of Kentwood*, 326 Mich App 433; 928 NW2d 245 (2018). On remand, the parties filed cross-motions for summary disposition, and the trial court again granted summary disposition in favor of defendants, this time under MCR 2.116(C)(8) and (I)(2). Briefly stated, the trial court concluded that the obligation still at issue on remand involved "future installments" of a "special assessment," which survived foreclosure under MCL 211.78k(5)(c) of the General Property Tax Act (GPTA), MCL 211.1 *et seq*. Petersen appeals by right.

On appeal, we hold that although the City levied a "special assessment" through adoption of a resolution, efforts to extend the term for payment of this assessment were invalid; consequently, the special assessment was extinguished by the foreclosure because there were no

"future installments" owing at the time of foreclosure. We also conclude that postforeclosure efforts to revive the extinguished assessment either by contract or resolution were void. Accordingly, we reverse the grant of summary disposition to defendants and remand the case for entry of judgment in Petersen's favor, thereby removing the liens on the property.

I. FACTS

In our previous decision, we summarized the basic facts of this case as follows:

> This case concerns real property located within the city. Starting in 2004, the city and the property owner, along with others, entered into various special assessment agreements relative to several infrastructure improvements that were to benefit the property for purposes of a planned unit development. These agreements, which were recorded and involved the property owner making installment payments to the city, indicated that the contractual obligations contained therein constituted covenants that ran with the land and bound all successors in title. The city commission adopted multiple resolutions associated with the agreements and prepared and confirmed special assessment rolls for the improvements. Eventually, the property owner failed to pay the special assessments, a tax foreclosure action was commenced, a judgment of foreclosure was entered, the property owner failed to redeem the property or appeal the judgment, and title vested absolutely in the county treasurer as the foreclosing governmental unit. Subsequently, at a tax foreclosure sale, the county treasurer conveyed the property to [Petersen] pursuant to a quitclaim deed. [*Petersen Fin*, 326 Mich App at 437.]

Procedurally, in 2016 Petersen filed the current action seeking declaratory judgment to the effect that certain assessments had been extinguished by the foreclosure judgment and that Petersen owned the property free and clear of any obligations. Relevant to the current appeal, in Count II of the complaint, Petersen specifically challenged the continued existence and validity of a voluntary special-assessment/development agreement (VSADA) and related resolutions. In Count IV of the complaint, Petersen challenged the validity of an amendment to the VSADA (the amended VSADA) and related resolutions.[1] Monetarily, the outstanding obligation on the special assessment challenged by Petersen totaled $403,620. Later, Petersen also added Count V, a claim for a refund in the amount of $23,421.13, which Petersen asserted it had paid toward the assessment.

Following an appeal to this Court and remand for further proceedings regarding Counts II and IV, the parties filed cross-motions for summary disposition; the trial court denied Petersen's motion for summary disposition while granting summary disposition to defendants under MCR 2.116(C)(8) and (I)(2). The trial court concluded that the City levied a valid special assessment and that future installments remained owing as a result of an extension of the payment terms. Accordingly, the trial court ruled that the assessment obligation survived foreclosure under

[1] In our previous decision, we concluded that Petersen was entitled to judgment on Counts I and III of the complaint, which concerned two other assessments. See *Petersen Fin*, 326 Mich App at 447.

MCL 211.78k(5)(c). Additionally, the trial court rejected Petersen's arguments that the amended VSADA, signed after the foreclosure judgment was entered but before the foreclosure sale, was void as against public policy and for lack of consideration. In short, the trial court determined that the special assessment remained a valid encumbrance on the property. Petersen now appeals.

II. ANALYSIS

On appeal, Petersen argues that the trial court erred by denying its motion for summary disposition and granting summary disposition in favor of defendants. According to Petersen, the obligation in this case did not survive foreclosure under MCL 211.78k(5)(c) because there was no "special assessment," merely a contractual agreement. And even if there were a special assessment, Petersen asserts that there were no "future installments" because efforts to extend the final deadline for payment of the special assessment were invalid, and the special assessment was, therefore, past due at the time of the foreclosure judgment. On the basis of its assertion that the obligation was extinguished, Petersen also argues that postforeclosure efforts—while the property was owned by the Treasurer—to contractually revive the assessment were void as against public policy and for lack of consideration. Petersen asks that we remand for entry of judgment in its favor, removing any liens from the property and ordering a monetary refund to Petersen.

In contrast, defendants contend that the trial court's decision should be affirmed. According to defendants, the City levied a valid special assessment that survived foreclosure under MCL 211.78k(5)(c). Alternatively, defendants make the unpreserved argument that the obligation survived foreclosure as a "private deed restriction" under MCL 211.78k(5)(e). In either case, defendants assert that the obligation survived foreclosure and that a postforeclosure contract between the City and the Treasurer, as well as an additional resolution adopted by the City, were valid and enforceable. As an alternative basis to affirm, which was raised but not decided below, defendants also maintain that contractual waiver provisions preclude Petersen's challenges of the assessment.

A. STANDARDS OF REVIEW

We review de novo a trial court's ruling on a motion for summary disposition. *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 507; 667 NW2d 379 (2003). This Court also reviews de novo legal questions involving statutory interpretation, the construction of a contract, and the interpretation of a municipal resolution. *46th Circuit Trial Court v Crawford Co*, 476 Mich 131, 140; 719 NW2d 553 (2006).

B. OVERVIEW OF THE GPTA

Under the GPTA, a governmental unit may seize and sell real property to "satisfy the unpaid delinquent real-property taxes as well as any interest, penalties, and fees associated with the foreclosure and sale of [the property]." *Rafaeli, LLC v Oakland Co*, 505 Mich 429, 474; 952 NW2d 434 (2020); see also MCL 211.78a(1). In this context, the term "taxes" also includes "unpaid special assessments or other assessments that are due and payable up to and including the date of the foreclosure hearing . . . ." MCL 211.78a(1). Briefly stated, under the GPTA's tax-foreclosure process, "tax-delinquent properties are forfeited to the county treasurers; foreclosed on

after a judicial foreclosure hearing; and, if not timely redeemed, sold at a public auction." *Rafaeli, LLC*, 505 Mich at 442.

At issue in this case is the effect of a foreclosure on encumbrances to the property, such as a special assessment. When seeking foreclosure, the foreclosing governmental unit must file a petition of foreclosure in circuit court, requesting "that a judgment be entered vesting absolute title to each parcel of property in the foreclosing governmental unit, without right of redemption." MCL 211.78h(1). See also *Rafaeli, LLC*, 505 Mich at 445. After filing of the petition and a judicial foreclosure hearing, a judgment of foreclosure must be entered by March 30. *Rafaeli, LLC*, 505 Mich at 445. "Unless the delinquent taxes, interest, penalties, and fees are paid on or before March 31, fee simple title to the property vests absolutely in the foreclosing governmental unit without any further redemption rights available to the delinquent taxpayer." *Id*. (citations omitted). "Thereafter, the foreclosing governmental unit's title to the property is not subject to any recorded or unrecorded lien." *Id*. (citation omitted).

In more detail, MCL 211.78k sets forth the requirements of a judgment of foreclosure and generally proclaims that title vests in the foreclosing governmental unit:

> (5) The circuit court shall enter final judgment on a petition for foreclosure filed under section 78h at any time after the hearing under this section but not later than the March 30 immediately succeeding the hearing with the judgment effective on the March 31 immediately succeeding the hearing for uncontested cases or 10 days after the conclusion of the hearing for contested cases. All redemption rights to the property expire on the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case 21 days after the entry of a judgment foreclosing the property under this section. The circuit court's judgment must specify all of the following:
>
> * * *
>
> (b) That fee simple title to property foreclosed by the judgment will vest absolutely in the foreclosing governmental unit, except as otherwise provided in subdivisions (c) and (e), without any further rights of redemption, if all forfeited delinquent taxes, interest, penalties, and fees, which delinquent taxes, interest, penalties, and fees may be reduced by the foreclosing governmental unit in accordance with section 78g(8), are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section.
>
> (c) *That all liens against the property, including any lien for unpaid taxes or special assessments, except future installments of special assessments* and liens recorded by this state or the foreclosing governmental unit under the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, *are extinguished*, if all forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case

within 21 days of the entry of a judgment foreclosing the property under this section.

(d) That, except as otherwise provided in subdivisions (c) and (e), the foreclosing governmental unit has good and marketable fee simple title to the property, if all forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section.

(e) That all existing recorded and unrecorded interests in that property are extinguished, *except* a visible or recorded easement or right-of-way, *private deed restrictions*, interests of a lessee or an assignee of an interest of a lessee under a recorded oil or gas lease, interests in oil or gas in that property that are owned by a person other than the owner of the surface that have been preserved as provided in section 1(3) of 1963 PA 42, MCL 554.291, interests in property assessable as personal property under section 8(g), or restrictions or other governmental interests imposed under the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, if all forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section.

* * *

(6) Except as otherwise provided in subsection (5)(c) and (e), fee simple title to property set forth in a petition for foreclosure filed under section 78h on which forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section, will vest absolutely in the foreclosing governmental unit, and the foreclosing governmental unit will have absolute title to the property . . . . The foreclosing governmental unit's title is not subject to any recorded or unrecorded lien and must not be stayed or held invalid except as provided in subsection (7) or (9). [Emphasis added.]

"After foreclosure, and assuming the state, city, village, township, or county where the property is located does not purchase the property, the GPTA provides for one or more auction sales beginning on the third Tuesday in July immediately succeeding the entry of the judgment of foreclosure." *Rafaeli, LLC*, 505 Mich at 446 (citation omitted).

C. PREFORECLOSURE OBLIGATIONS

In this case, the property at issue was seized under the GPTA, and a judgment of foreclosure was entered for the satisfaction of all taxes, including special assessments due and payable up to the date of the foreclosure hearing. See MCL 211.78h; see also MCL 211.78a(1). Under

MCL 211.78k(6), fee simple title vested absolutely in the Treasurer at the time of foreclosure, extinguishing all liens and existing interests in the property except as provided in MCL 211.78k(5)(c) and (e). As relevant to the arguments on appeal, MCL 211.78k(5)(c) and (e) provide that "future installments of special assessments" and "private deed restrictions" are not extinguished by foreclosure. In light of these exceptions, the parties dispute whether Petersen, as the purchaser of the property at auction following foreclosure, became liable for the previous property owner's assessment obligation. There are three documents—(1) the VSADA, (2) Resolution 96-04, and (3) Resolution 50-14—relevant to this initial question whether there was a preforeclosure obligation relative to the property that survived foreclosure under MCL 211.78k.

1. THE VSADA

The first document, the VSADA, is a contract, and as a contract rather than a special assessment, the VSADA did not survive foreclosure under MCL 211.78k(5)(c), which only creates an exception for (1) future installments of (2) a special assessment.

The term "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 City of Grandville*, 442 Mich 495, 500; 502 NW2d 299 (1993). Unlike a tax to raise revenue for general governmental purposes, "a special assessment can be seen as remunerative; it is a specific levy designed to recover the costs of improvements that confer local and peculiar benefits upon property within a defined area." *Id*. Special assessments may be levied as permitted by statute, municipal charter, and applicable ordinances. *Wikman v City of Novi*, 413 Mich 617, 636-637; 322 NW2d 103 (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.

Considering the definition of "special assessment" and the manner in which it must be levied, it is clear that the VSADA is simply a contract between the City and the previous property owners. It is not a special assessment levied in accordance with the statutes, municipal charter, and ordinances that govern special assessments in Kentwood. On appeal, in disputing the assertion that foreclosure extinguished the VSADA under MCL 211.78k(5)(c), defendants emphasize that contracts between a governmental entity and a property owner regarding payment for improvements to the property are valid and enforceable. See *Grosse Ile Twp v New York Indemnity Co*, 260 Mich 643, 646; 245 NW 791 (1932). Certainly such a contract may be valid and enforceable. See *id*. Nonetheless, it does not follow that a contractual obligation to pay for property improvements constitutes a "special assessment," i.e., a levy upon property within a specified district to recover costs for improvements benefiting the property as permitted by statute, municipal charter, and applicable ordinances. See *Kadzban*, 442 Mich at 500; *Wikman*, 413 Mich at 636-637. To survive foreclosure under MCL 211.78k(5)(c), the obligation in question must be a "special assessment." Because the VSADA was not a special assessment, it did not survive foreclosure under MCL 211.78k(5)(c)'s exception for future installments of a special assessment.

Alternatively, defendants argue that the VSADA constituted a "private deed restriction" that survived foreclosure under MCL 211.78k(5)(e). The VSADA contained a provision indicating that it would be recorded with the Register of Deeds and that the obligations under the VSADA were "covenants that run with the land" and "bind all successors in title." Relying on

Lakes of the North Ass'n v TWIGA Ltd Partnership, 241 Mich App 91; 614 NW2d 682 (2000), defendants contend that the VSADA's creation of an assessment as a covenant that ran with the land amounted to a private deed restriction that survived foreclosure under MCL 211.78k(5)(e). This argument is, however, unpreserved. See *In re Application of Int'l Transmission Co*, 304 Mich App 561, 566-567; 847 NW2d 684 (2014).[2] Further, although defendants offer the conclusory assertion on appeal that covenants running with the land were created by the VSADA, defendants fail to address the requirements for establishing covenants that run with the land.[3] By failing to brief the merits of the issue, defendants have abandoned the claim that the VSADA constituted a covenant running with the land that survived foreclosure as a private deed restriction under MCL 211.78k(5)(e). See *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

Moreover, defendants' argument lacks merit. As stated in MCL 211.78k(5)(e), "all existing recorded and unrecorded interests in th[e] property are extinguished, except . . . private deed restrictions" and other exceptions not relevant to this case. In general, "[a] deed restriction represents a contract between the buyer and the seller of property." *Bloomfield Estates Improvement Ass'n, Inc v City of Birmingham*, 479 Mich 206, 212; 737 NW2d 670 (2007). In *Lakes of the North*, 241 Mich App at 93-94, 100, this Court more specifically concluded that for purposes of MCL 211.78k(5)(e),[4] private deed restrictions encompassed a maintenance assessment

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[2] In a footnote in a summary disposition brief, defendants made a cursory reference to MCL 211.78k(5)(e), stating, "Although Petersen's complaint focuses on future installments of special assessments, the City preserves the right to enforce any other obligation set forth in the VSADA or Amendment because such properly recorded private deed restrictions are not extinguished by foreclosure. MCL 211.78k[5](e)." Although purporting to have preserved the issue, defendants did not develop an argument related to MCL 211.78k(5)(e), and defendants did not ask the trial court for a ruling on this question. As a result, the trial court did not address or decide the issue. On these facts, defendants' perfunctory citation of MCL 211.78k(5)(e) was insufficient to preserve defendants' arguments regarding the statutory provision. See *Int'l Transmission Co*, 304 Mich App at 566-567 (finding that "cursory reference" to an issue in the footnote of a trial brief without "actually" making an argument was insufficient to preserve issue for appeal).

[3] This Court has explained:

> The essentials of such a covenant (i.e., a covenant running with the land) have been stated to be that the grantor and grantee must have intended that the covenant run with the land; the covenant must affect or concern the land with which it runs; and there must be privity of estate between the party claiming the benefit and the party who rests under the burden. [*Greenspan v Rehberg*, 56 Mich App 310, 320-321; 224 NW2d 67 (1974) (quotation marks and citation omitted).]

[4] Much of the analysis in *Lakes of the North*, 241 Mich App at 96-100, involved former MCL 211.67, which governed the case and provided that "encumbrances" on property were extinguished by foreclosure. The GPTA, however, had been recently amended, replacing MCL 211.67 with MCL 211.78k, and the Court in *Lakes of the North* decided to also take note of the "private deed restriction" language in MCL 211.78k(5)(e). The comments on private deed restrictions were thus

established by a developer pursuant to a restrictive covenant that was recorded when the developer owned all of the lots in the subdivision. Given the panel's conclusion that the assessment constituted a private deed restriction, this Court determined that the obligation to pay prospective maintenance assessments survived foreclosure. *Lakes of the North*, 241 Mich App at 99-100. We note that the covenant in *Lakes of the North* specifically provided that " '[t]he developer being the owner of all the properties hereby covenants and each subsequent owner by acceptance of a land contract and/or a deed therefor, whether or not it shall be expressed in any such deed or contract is deemed to covenant and agree to pay to the Association . . . .' " *Id.* at 94.

Analogizing the special assessment here to the maintenance assessment in *Lakes of the North*, defendants argue that the obligation to pay the special assessment, as stated in the VSADA, constituted a covenant, i.e., a private deed restriction, that survived foreclosure under MCL 211.78k(5)(e). Simply put, we conclude that the VSADA did not constitute or include a private deed restriction. The VSADA was a contract, effectively containing a condition precedent to the developers' obligation to perform, which condition did occur by way of resolution, with a *public* entity as one of the parties to the contract and absent any entanglement with or connection to a *deed*. There was no document of conveyance associated with the VSADA, unlike in *Lakes of the North* where the maintenance-assessment covenants arose and became enforceable upon the purchase of real property by land contract or deed. The dicta in *Lakes of the North* provides no aid to defendants' position.

2. RESOLUTION 96-04

Although the VSADA did not create an assessment, the City Commission established a special assessment with the adoption of Resolution 96-04. Chapter X of the Kentwood City Charter authorized the City Commission to enact special assessments for public improvements, and Chapter 50 of the Kentwood City Ordinances (KCO) provided the procedures for levying a special assessment by resolution of the City Commission. In keeping with this authority, the City Commission adopted Resolution 96-04 to recover the costs for public improvements that conferred a peculiar benefit on the properties in the Ravines special-assessment district. See *Kadzban*, 442 Mich at 500. Resolution 96-04 established the special-assessment-district roll, set the amount and terms of the special assessment, and apportioned the special assessment among the parcels in the special-assessment district. In short, acting within its authority as provided by law, the City Commission adopted Resolution 96-04. In so doing, it levied a special assessment.

A special assessment is presumed to be valid. See *Kane v Williamstown Twp*, 301 Mich App 582, 586; 836 NW2d 868 (2013). And Petersen offered nothing in the trial court, or on appeal, to overcome this presumption or to demonstrate that Resolution 96-04 was invalid. In particular, Petersen mainly challenges the validity of the assessment on the basis that the obligation created by Resolution 96-04 could not actually be a special assessment because the City and the developers

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obiter dicta. See *Wold Architects & Engineers v Strat*, 474 Mich 223, 232 n 3; 713 NW2d 750 (2006) ("Statements and comments in an opinion concerning some rule of law or legal proposition not necessarily involved nor essential to determination of the case in hand, are, however illuminating, but obiter dicta and lack the force of an adjudication.") (quotation marks and citations omitted).

first entered into a contract—the VSADA—regarding the proposed improvements. But Petersen offers no authority for the proposition that the City cannot enter into a contract and also enact a valid special assessment. Clearly, the City has the authority to enter into contracts, see *Grosse Ile Twp*, 260 Mich at 646, and the City also has the power to levy special assessments, see *Wikman*, 413 Mich at 636-637. Caselaw also demonstrates that a special assessment created by resolution is not invalid simply because there also exists a contract relating to the same improvements encompassed by the special assessment. See, e.g., *Thayer Lumber Co v Muskegon*, 157 Mich 424, 430-432; 122 NW 189 (1909) (finding a reassessment involving a resolution that specifically referred to a contract to be valid). In sum, there is no merit to Petersen's assertion that in light of the VSADA, Resolution 96-04 somehow created only a contractual obligation rather than a special assessment.[5]

Instead, Resolution 96-04 created a "special assessment," and whether this obligation survived foreclosure under MCL 211.78k(5)(c) requires a determination whether there remained "future installments" of the special assessment. Relevant to this "future installment" question, Resolution 96-04 set a 10-year term for the special assessment. Annual interest-only payments were due beginning in September 2005, and the final balloon payment, including principal and interest, was due in September 2014. The foreclosure in this case occurred in March 2015, which was *after* the final payment set by Resolution 96-04 came due. If Resolution 96-04 controlled the time for payment of the special assessment, it is clear that there was no "future installment" for purposes of MCL 211.78k(5)(c) because the assessment came due in full in September 2014, before the March 2015 foreclosure.

3. RESOLUTION 50-14

In our view, the pivotal question in this case is whether the City properly adopted Resolution 50-14, which purported to extend the final payment deadline from September 2014 to September 2015. The City Commission adopted Resolution 50-14 in July 2014, before the final payment came due in September 2014 and before the foreclosure in March 2015. Accordingly, if Resolution 50-14 validly extended the payment deadline to September 2015, then at the time of the foreclosure in March 2015 there remained a "future installment" on the special assessment.

The City Commission's authority relating to special assessments is defined by statute, ordinance, and city charter. See *Wikman*, 413 Mich at 636-637; see also *Whitney v Common Council of the Village of Hudson*, 69 Mich 189, 197; 37 NW 184 (1888) ("That the action of the common council must be within the power conferred; and when the mode is prescribed, either by charter or ordinance, that mode constitutes the measure of the power."). As noted, the Kentwood

[5] In challenging the special assessment created by Resolution 96-04, Petersen, relying on an opinion from the Office of the Attorney General, OAG, 2001-2002, No. 7110 (June 17, 2002), also makes a cursory argument that the resolution could not have established a special assessment because special assessments are not recorded and the VSADA was recorded. In making this argument, Petersen again conflates the VSADA and Resolution 96-04. Even if a special assessment cannot be recorded, there is no indication that Resolution 96-04 was recorded. The existence and recording of the VSADA does not alter the validity of the special assessment created by Resolution 96-04.

City Charter and KCO authorized the City Commission to adopt resolutions to levy special assessments. The procedures provided for a hearing, review of the assessment roll and changes thereto by the City Commission, and, ultimately, confirmation of the assessment roll. See KCO, Chapter 50. Notably, following the City Commission's review and any changes to the assessment roll that the Commission might make, KCO, § 50.10 provided for the City Commission's examination and confirmation of the assessment roll, providing as follows:

> The city commission shall meet at the time and place designated for the review of such special assessment roll, and at such meeting, or a proper adjournment thereof, shall consider all objections thereto submitted in writing. The city commission may correct such roll as to any special assessment or description of any lot or parcel of land or other errors appearing therein, or it may by resolution annul such assessment roll and direct that new proceedings be instituted. The same proceedings shall be followed in the making of the new roll as in the making of the original roll. If, after hearing all objections and making a record of such changes as the city commission deems justified, the city commission determines that it is satisfied with the special assessment roll and that assessments are in proportion to benefits received, it shall thereupon pass a resolution reciting such determinations, confirming such roll, placing it on file in the office of the clerk and directing the clerk to attach his warrant to a certified copy thereof within ten days, therein commanding the assessor to spread, and the treasurer to collect, the various sums and amounts appearing thereon as directed by the city commission. Such 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.]

As discussed, a valid special assessment was created by Resolution 96-04. Under KCO, § 50.10, once confirmed by the City Commission, the special assessment established by Resolution 96-04 became "final and conclusive" for purposes of the improvements related to the property in question. Once an assessment becomes final, a taxing authority, like a taxpayer, must abide by the rules and procedures applicable for challenging the assessment. See *Detroit Edison Co v Detroit*, 297 Mich 583, 591; 298 NW 290 (1941) ("Any action attacking the assessment, whether by the taxpayer, the taxing authorities, or the State tax commission, must be seasonably taken."). But in this case, defendants have not identified any legal basis for altering the payment terms of the assessment.

We note that the KCO makes provision for reassessment of or adjustments to a special assessment in particular circumstances, but none of the circumstances applied to the special assessment created by Resolution 96-04. For example, under KCO, § 50.14, adjustments can be made to increase an assessment or issue refunds if, after completion of the improvements, it is determined that the actual costs differed from the amount of the special assessment. But this provision did not apply to Resolution 50-14, which did not alter the amount of the special assessment to conform to actual costs. Alternatively, KCO, § 50.10 allows for the correction of errors or the annulment of the roll *before* confirmation of the roll; it does not provide for alterations after the assessment becomes final and conclusive. Finally, KCO, § 50.16 allows for "a new assessment" if the City Commission deems a special assessment "invalid or defective for any

reason whatsoever" or if a court finds the assessment to be "illegal for any reason whatsoever." But even when KCO, § 50.16 applies, it requires that "[a]ll proceedings on such reassessment and for the collection thereof shall be made in the manner as provided for the original assessment." The procedures for confirming a special assessment roll were *not* followed when adopting Resolution 50-14. To the contrary, Resolution 50-14 provided that it was made "[w]ithout re-confirming" the special assessment roll. In short, the KCO and City Charter, while generally authorizing the City Commission to establish a special assessment, did not provide authority for the City Commission's adoption of Resolution 50-14 to amend the terms of the special assessment once it became "final and conclusive" under KCO, § 50.10.[6] Cf. *Hudson Motor Car Co v Detroit*, 282 Mich 69, 81; 275 NW 770 (1937) ("After the tax rolls have been passed upon by local boards of review and are properly certified by them, no change may be made therein by the local board of review of by any local assessing officer.").

Rather than identify a statute or a provision in the City Charter or KCO that would have supported the City Commission's adoption of Resolution 50-14, the City argues on appeal that the VSADA authorized Resolution 50-14 because the VSADA indicated that the City Commission had discretion to set the terms of the special assessment. But, as discussed, the City Commission's authority to establish the special assessment did not derive from contract; rather, the power derived from statute, the municipal charter, and applicable ordinances. See *Wikman*, 413 Mich at 636-637. Indeed, the VSADA expressly acknowledged that "consistent with" the City's ordinances, the special assessment would be "determined by resolution of the City Commission in its discretion," and the VSADA did not purport to alter that discretion. In other words, the VSADA did not provide any independent authority for Resolution 50-14; instead, it merely recognized that the City Commission could exercise its discretion "consistent with" the City's ordinances. The fact remains that statutes, the City Charter, and the KCO governed the lawfulness of Resolution 50-14, and defendants have not advanced an argument under those authorities to justify the modification of the special assessment's terms after the special assessment became final and conclusive.

In sum, absent a legal basis for the adoption of Resolution 50-14, defendants' arguments that the City Commission legally extended the term of the special assessment lack merit. Without the extension in Resolution 50-14, the special assessment validly created by Resolution 96-04 came due in September 2014. Accordingly, all installments of the special assessment were due and payable before the foreclosure in March 2015. See MCL 211.78a(1). Thus, because there was no "future installment" of a "special assessment" owing at the time of foreclosure, the assessment did not survive foreclosure under MCL 211.78k(5)(c). The special assessment was

[6] Under the GPTA, in specified circumstances, to avoid foreclosure, a foreclosing governmental unit may enter into a payment plan or a foreclosure agreement. See generally MCL 211.78q. But it does not appear that Resolution 50-14 constituted a plan under MCL 211.78q. And defendants do not even refer to MCL 211.78q, let alone present an argument under the statute. Indeed, it appears that MCL 211.78q would have been the appropriate statute to invoke for purposes of altering the assessment payment plan for the financially distressed developers. Defendants have not otherwise identified, nor are we aware of, any statutory authority that would have permitted the City Commission to modify the special assessment after confirmation of the assessment roll.

extinguished, and the property passed to the Treasurer free from any assessment obligation. See MCL 211.75k(5).

D. POSTFORECLOSURE OBLIGATIONS

Following the foreclosure and while the Treasurer held title to the property, the City and the Treasurer entered into the amended VSADA, which sought to further extend the payment term for the now-extinguished special assessment to 2024. In addition, the City also adopted Resolution 31-15,[7] which likewise sought to extend the payment deadline on the assessment to 2024. Given the extinguishment of the special assessment, Petersen argues on appeal that the amended VSADA was void as against public policy and for lack of consideration. We agree and further conclude that Resolution 31-15 was invalid.

It is a "bedrock principle of American contract law that parties are free to contract as they see fit, and the courts are to enforce the agreement as written absent some highly unusual circumstance, such as a contract in violation of law or public policy." *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 51; 664 NW2d 776 (2003).

> [T]he determination of Michigan's public policy is not merely the equivalent of the personal preferences of a majority of this Court; rather, such a policy must ultimately be clearly rooted in the law. In ascertaining the parameters of our public policy, [the Court] must look to policies that, in fact, have been adopted by the public through our various legal processes, and are reflected in our state and federal constitutions, our statutes, and the common law. [*Rory v Continental Ins Co*, 473 Mich 457, 470-471; 703 NW2d 23 (2005) (quotation marks and citations omitted).]

To warrant invalidating a contract, the public policy must be "explicit," "well defined[,] and dominant." *Terrien v Zwit*, 467 Mich 56, 67-68; 648 NW2d 602 (2002) (quotation marks and citation omitted).

In this case, the GPTA as well as judicial decisions determining the effect of a tax foreclosure provide very definite rules that special assessments, except for future installments, are extinguished by foreclosure and that, once extinguished, the obligations cannot be revived by the taxing authority following foreclosure. To begin with, the fact that special assessments, except future installments, are extinguished by foreclosure is expressly stated in MCL 211.78k(5)(c). The GPTA also provides that as a result of foreclosure, fee simple title to the property vests "absolutely" in the foreclosing governmental unit, free from any recorded or unrecorded lien. MCL 211.78k(6). The foreclosure judgment encompasses "the forfeited unpaid delinquent taxes, interest, penalties, and fees due on each parcel of property," including "unpaid special assessments or other assessments that are due and payable up to and including the date of the foreclosure hearing." MCL 211.78k(5)(a); MCL 211.78a(1). Following foreclosure, the property may be sold by auction, and the proceeds are placed in an account for distribution by the foreclosing

[7] Resolution 31-15 does not appear to be part of the lower court record. Nevertheless, because it involves a public record, we may take judicial notice of it. See *Johnson v Dep't of Natural Resources*, 310 Mich App 635, 649; 873 NW2d 842 (2015); MRE 201 and 202.

governmental unit in a manner provided by the GPTA, with the first priority being "to reimburse the delinquent tax revolving fund for the full amount of unpaid taxes, interest, and fees owed on the property." *Rafaeli, LLC*, 505 Mich at 446-447. In other words, the statutory scheme provides for the extinguishment of a special assessment, and the taxing authority's sole means to recoup any portion of the delinquent assessment is provided for through reimbursement from the sale proceeds, *not* by again encumbering the property with an extinguished obligation.

The Legislature is empowered to set the terms for tax-foreclosure sales. See *Baker v State Land Office Bd*, 294 Mich 587, 602; 293 NW 763 (1940). And, as stated in MCL 211.78(1), by enacting the tax-foreclosure procedures set forth in the GPTA, the Legislature recognized "a continuing need to strengthen and revitalize the economy of this state and its municipalities by encouraging the efficient and expeditious return to productive use of property returned for delinquent taxes." The Michigan Supreme Court has similarly explained that foreclosure and sale for delinquent taxes serve "to secure a portion of the unpaid taxes, rather than nothing, and to restore lands to a taxpaying basis, instead of supinely allowing them to accumulate tax delinquencies with no hope of ever recovering them." See *Baker*, 294 Mich at 606. In this context, "the purpose for canceling past due taxes, assessments, and liens against foreclosed property is to attract prospective buyers and ultimately restore the property to the tax rolls." *Lakes of the North*, 241 Mich App at 98 (quotation marks and citation omitted). With regard to extinguished obligations, we note that it is the taxing unit that must bear any loss associated with cancellation of past-due taxes, assessments, and liens. *Wayne Co Chief Executive v Mayor of Detroit*, 211 Mich App 243, 244; 535 NW2d 199 (1995).

Notably, it is well settled by caselaw that once a special assessment has been extinguished by foreclosure, a governmental entity lacks the power to revive it. See *Wood v Village of Rockwood*, 328 Mich 507, 512; 44 NW2d 163 (1950); *Clark v Royal Oak*, 325 Mich 298, 310; 38 NW2d 413 (1949); *Keefe v Drain Comm'r of Oakland Co*, 306 Mich 503, 511-512; 11 NW2d 220 (1943), aff'd 322 US 393 (1944); *Muni Investors Ass'n v Birmingham*, 298 Mich 314, 325; 299 NW 90 (1941), aff'd 316 US 153 (1942). As recognized by the Michigan Supreme Court, to allow reassessment following foreclosure would defeat the purpose of the "remedial" tax-foreclosure legislation, and it "would once again give rise to the vicious circle of assessment based upon inflated valuation; refusal or inability of the owner to pay; followed by a sale of the premises pursuant to the State's sovereign power of enforcing the collection of taxes." *Muni Investors*, 298 Mich at 325. Indeed, the possibility of restoring foreclosed property "to the tax rolls would be considerably lessened because prospective buyers might well hesitate to assume such an obligation." *Keefe*, 306 Mich at 512. For these reasons, to effectuate the "obvious intent and purpose of the legislature to relieve owners from the weight of accumulated obligations," *Muni Investors*, 298 Mich at 325, as a result of a tax foreclosure, the property is "freed of the possibility of further assessments for benefits to the land by public improvements made prior to the [foreclosing governmental unit's] acquiring title," *Clark*, 325 Mich at 310.

In this case, recognizing that the special assessment created by Resolution 96-04 was extinguished by foreclosure under MCL 211.78k(5)(c), it follows that the amended VSADA effectively sought to extend or revive an extinguished assessment. But because the City cannot legally revive an extinguished assessment, see *Clark*, 325 Mich at 310, the amended VSADA must be declared void as against public policy. That is, by entering into a contract to extend the terms of an extinguished special assessment, the City violated the Legislature's mandate for the

extinguishment of special assessments under MCL 211.78k(5)(c). The City in effect sought to contravene decisions from the Michigan Supreme Court expressly recognizing that an extinguished assessment may not be revived following foreclosure. The legal reality at this juncture is that the extinguished special assessment could not lawfully be revived by any means. The City's attempt to contract for the unlawful revival of an extinguished special assessment was therefore void as a violation of public policy. See *Rory*, 473 Mich at 470-471.

In arguing to the contrary, defendants make several arguments. First, they assert that there was no violation of public policy because the special assessment in fact survived foreclosure under MCL 211.78k(5)(c). This argument lacks merit for the reasons already discussed. Second, defendants note that in addition to the amended VSADA, the City Commission adopted Resolution 31-15 in June 2015. Like the amended VSADA, Resolution 31-15 extended the term of the special assessment through September 2024. Resolution 31-15, however, does not aid defendants' position because the special assessment did not survive foreclosure and the fact remains that the City could not reassess the property. See *Clark*, 325 Mich at 310, and cases therein. Third, defendants emphasize that the City is a home-rule city with generally broad powers to contract and adopt resolutions regarding municipal concerns. That may be, but the City's powers are constitutionally limited by laws enacted by the Legislature.[8] See *Wayne Co Chief Executive*, 211 Mich App at 245, citing Const 1963, art 7, §§ 21-22. In other words, the fact that one of the contracting parties is a home-rule city does not excuse the parties from adhering to the laws of this state, nor does it allow the City to enter into contracts in violation of public policy. Instead, as a contract to revive an extinguished special assessment contrary to the directives and public policy embodied in the GPTA, the amended VSADA was void. See *Rory*, 473 Mich at 470-471.

E. WAIVERS

On appeal, defendants also assert that the trial court's decision should be affirmed because, regardless of the merits of Petersen's arguments, Petersen may not challenge the validity of the special assessment at this time because both the VSADA and amended VSADA contained waiver provisions in which the property owners agreed to waive challenges to the special assessment. We disagree.

Relevant to defendants' arguments, the VSADA provided:

> The Owner represents, covenants, and agrees that the property will benefit and be enhanced in value by at least the amount to be specially assessed . . . . The Owner hereby releases, waives, and relinquishes, on behalf of itself, its successors, and assigns any claims it may have against the City, its officers or employees based on or arising out of the nature of the special assessment proceedings provided for herein, any defects in notice or other procedure associated with the special assessments, or whether the owner contracted infrastructure improvements

[8] Indeed, the amended VSADA in fact recognized that the power to extend the special assessment would be exercised "consistent with" the KCO.

> proportionately increase (relative to the amount of the special assessment) the value of the 44th LLC Property.

Elsewhere, the VSADA stated: "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."

Even if we set aside the question whether the VSADA survived foreclosure (or whether the amended VSADA was void), defendants' reliance on the waiver provisions is misplaced in light of this Court's decision in *Petersen* regarding the nature of Petersen's claims at issue in this case. This Court observed that the case fundamentally involves "a legal question regarding the effect of a tax foreclosure judgment on overdue special assessment installment payments; it is a pure issue of statutory construction." *Petersen Fin LLC*, 326 Mich App at 444. In other words:

> [Petersen] is not challenging the factual basis or the amount of the underlying assessments arising from the special assessment agreements; rather, [Petersen] takes issue with the continuing enforceability of the assessments, at least in regard to outstanding past due installments, in light of the tax foreclosure, arguing that past debt was extinguished by the judgment of foreclosure. [*Id*. at 445-446.]

Resolution of that issue required "construction of the GPTA and the law of tax foreclosure, which has nothing to do with the factual underpinnings of the special assessment." *Id*. at 446.

In *Petersen*, we discussed the nature of Petersen's claims and concluded that the case was not within the exclusive jurisdiction of the Tax Tribunal. *Id.* at 436. But, given what is covered by the contractual waiver provisions, this same reasoning supports the conclusion that Petersen's challenges did not fall within the ambit of the contractual waiver provisions. This is so because Petersen's claims did not involve a challenge to the special-assessment terms or amounts; rather, they pertained to the continued enforceability of the special assessment under MCL 211.78k(5)(c) in light of the foreclosure. Such arguments were not claims regarding notice or special-assessment procedures, the amount of the assessment, or the benefit the property received from the improvements. Instead, they were assertions that MCL 211.78k(5)(c) extinguished the special assessment. As written, the waiver provisions did not encompass claims under MCL 211.78k(5)(c). Indeed, in our view, an attempt to contractually prevent extinguishment of a special assessment contrary to MCL 211.78k(5)(c) would be considered void as against public policy. See *Rory*, 473 Mich at 470-471. Defendants' waiver arguments lack merit.

F. REFUND REQUEST

Finally, Petersen asserts that the trial court erred by failing to order a refund in the amount of $23,421.13 which Petersen had paid toward the assessment. The trial court did not substantively reach this issue on its merits in light of the court's ruling that the special assessment survived foreclosure. We conclude that the appropriate course of action is to have the trial court address the issue in the first instance, now in the context of a judgment entered in Petersen's favor and that extinguishes the assessment.

III. CONCLUSION

In sum, although the City levied a valid special assessment with the passage of Resolution 96-04, its attempts to extend the payment deadline were invalid, and there was no legitimate future installment of a special assessment owing at the time of foreclosure. Accordingly, the special assessment was extinguished by foreclosure under MCL 211.78k(5)(c), and once extinguished, the assessment could not be revived by contract or resolution. The trial court, therefore, erred by concluding that the special assessment survived foreclosure. As a result, we reverse the grant of summary disposition to defendants as well as the denial of summary disposition to Petersen with respect to the continued existence of a special assessment. We remand for entry of judgment in Petersen's favor, thereby removing any liens or encumbrances on the property related to the special assessment.[9] On remand, the trial court shall also entertain Petersen's request for a refund.

We reverse and remand for proceedings consistent with this opinion. We do not retain jurisdiction. As the prevailing party, Petersen may tax costs pursuant to MCR 7.219.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Anica Letica

[9] Given our resolution of these issues, we find it unnecessary to address Petersen's remaining arguments regarding summary disposition and law of the case.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

PETERSEN FINANCIAL LLC,

Plaintiff,

vs

CITY OF KENTWOOD and KENT COUNTY TREASURER,

Defendants.

Case No. 16-11820-CH

OPINION/ORDER AFTER REMAND RE: PLAINTIFF'S AND DEFENDANTS' MOTIONS FOR SUMMARY DISPOSITION

At a session of said Court, held in the Kent County Courthouse in the City of Grand Rapids, on July 25, 2019,

Present: HON. GEORGE JAY QUIST
Circuit Judge

On remand from the Michigan Court of Appeals, and the Court being otherwise fully informed, it is hereby ordered and adjudged as follows:

OPINION AND ORDER

I. Issue Presented and Disposition

The Michigan Court of Appeals remanded this matter for further proceedings on Counts II and IV of Plaintiff's original complaint[1] regarding the enforceability of a voluntary special assessment/development agreement ("VSADA") and an amended voluntary special assessment/development agreement ("VSADA").

Plaintiff filed the instant Motion for Summary Disposition regarding the remaining Counts II and IV, as well as his amended Count V, pursuant to MCR 2.116(C)(9) and MCR 2.116(C)(10). After reviewing the material facts and applicable law, Plaintiff's motion is respectfully **DENIED**. Furthermore, the Court finds that Defendants are entitled to judgment in their favor pursuant to MCR 2.116(I)(2).

[1] Also Counts II and IV of Plaintiff's First Amended Complaint.

Defendants also filed a Motion for Summary Disposition pursuant to MCR 2.116 (C)(7) and MCR 2.116(C)(8). After reviewing the material facts and applicable law, Defendants' motion is **GRANTED** pursuant to MCR 2.116(C)(8).

II. Material Facts

This case arises out of a dispute about the enforceability of special tax assessments on a property purchased at a tax foreclosure sale. In summary, a developer purchased land in the City of Kentwood (the "City") in 2004 to create a residential housing community. On September 7, 2004, the developer entered a VSADA with the City to finance the community's infrastructure. (Plaintiff's Ex. 5). The same day, the City adopted Resolution 96-04, which created a special assessment district and confirmed a special assessment roll. Resolution 96-04 incorporated the terms of the VSADA by reference. (Plaintiff's Ex. 7).

A review of the VSADA reflects that it was an agreement/contract between the developer and the City which anticipated the adoption of a special assessment regarding the same. (Plaintiff's Ex 5, ¶ 2). In relevant part, the developer consented to the imposition of a special assessment and agreed to waive notice, hearing, and levies regarding the special assessment. (*Id.* ¶ 2(c)). Additionally, the VSADA stated that "the final amount of any special assessment, the term of years for the special assessment and similar matters associated with the establishment of a special assessment district …will be determined by resolution of the City Commission in its discretion." (*Id.* ¶ 2(e)). It went on to state that "without limiting the foregoing" it was the "parties intent that the special assessments" would not exceed a term of ten years. (*Id.*).

Both the VSADA and Resolution 96-04 indicated that interest-only installment payments would become "due and payable" annually. (*Id.* ¶ 2(g)(1); Plaintiff's Ex. 7, ¶ 3). Resolution 96-04 also stated that principal payments would become due upon certain governmental approvals consistent with the terms of the VSADA. (Plaintiff's Ex. 7, Attachment 1 (Roll A)). Resolution 96-04 went on to state that any unpaid principal and interest became "due in full" upon the termination date. (Id.). The termination date was not defined. However, the VSADA stated that the agreement would remain in effect until all obligations of the owner had been met. (Plaintiff's Ex. 5 , ¶ 6.)

The VSADA states that it is a covenant that runs with the land and shall bind all successors in title. (Plaintiff's Ex. 5, ¶ 7(e)). It was recorded with the Kent County Register of Deeds on September 17, 2004. (Instrument No. 20040917-0125700).

The developer became delinquent on base taxes and special assessments. On July 15, 2014, before the original term of the VSADA lapsed, the City adopted Resolution 50-14 pursuant to the discretionary authority conferred in ¶ 2(e) of the VSADA. It extended the payment term of the VSADA by one year. (Plaintiff's Ex. 11). Accordingly, all unpaid principal and interest was due on September 7, 2015.

The developer ultimately failed to bring the taxes or assessments current. Foreclosure became final on April 22, 2015, and the property was forfeited to the Kent County Treasurer (the "County").

On June 16, 2015, the City and the County, as the new owner of the property, entered an Amended VSADA (the "AVSADA"). (Plaintiff's Ex. 10). Pursuant to the discretionary authority conferred to the City in ¶ 2(e) of the VSADA, the City extended the date of payment of all unpaid principal and interest by ten years. Accordingly, all unpaid interest and principal was due on September 7, 2024. (*Id.* Recital G-H). The AVSADA was recorded with the Kent County Register of Deeds on June 23, 2015. (Instrument No. 20150623-0053765).

On November 4, 2015, Plaintiff purchased 40 acres of the property at a tax foreclosure sale. The City then attempted to collect the special assessment installments.

On December 22, 2016, Plaintiff filed a complaint pursuant to the General Property Tax Act ("GPTA.") Plaintiff and Defendants subsequently filed cross Motions for Summary Disposition. On July 7, 2017, the Court issued an opinion dismissing Plaintiff's counts regarding the special assessments, finding that the Michigan Tax Tribunal had exclusive jurisdiction. Plaintiff filed an appeal, and on November 20, 2018, the Court of Appeals reversed this Court's decision regarding jurisdiction and remanded the matter for further proceedings.

On May 13, 2019, Plaintiff filed its First Amended Complaint alleging four counts seeking declaratory relief of the special assessments and a fifth count seeking recovery of $23,421.13 Plaintiff allegedly paid in taxes and fees.

On June 28, 2019, Plaintiff filed a Renewed Motion for Summary Disposition pursuant to MCR 2.116(C)(9) and (10), again seeking declaratory relief regarding the special assessments. Defendants also filed a Motion for Summary Disposition pursuant to MCR 2.116(C)(7), arguing that Plaintiff's claims are barred by waiver and/or the statute of limitations, and that Plaintiff lacked standing to challenge the underlying contract. Defendants alternatively argue that they are entitled to summary disposition pursuant to MCR 2.116(C)(8) because Plaintiff failed to state a claim on which relief can be granted.

III. Standard of Review

Summary disposition may be granted under MCR 2.116(C)(7) when a claim is barred by the statute of limitations. All allegations in the complaint are accepted as true unless contradicted by the evidence. *Maiden v Rozwood*, 461 Mich 109, 119 (1999). However, if a question of fact exists to the extent that factual development could provide a basis for recovery, dismissal is inappropriate. *Id.*

A motion brought under MCR 2.116(C)(8) tests whether a plaintiff's complaint states a claim upon which relief can be granted. All factual allegations in support of the claim are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts and are construed in the light most favorable to the nonmoving party. *Adair v Michigan*, 470 Mich 105, 119 (2004). A motion under this subrule should be granted when the "claims are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* at 163.

Summary disposition under MCR 2.116(C)(9) is appropriate where the opposing party has failed to state a valid defense to the claim asserted against him. *Nicita v Detroit*, 216 Mich App 746, 750 (1996). The motion tests the sufficiency of a defendant's pleadings by accepting all well-pleaded allegations as true. *Lepp v Cheboygan Area Schools*, 190 Mich App 726, 730 (1991). If the defenses are "so clearly untenable as a matter of law that no factual development could possibly deny plaintiff's right to recovery," then summary disposition under this rule is proper. *Id*, quoting *Domako v Rowe*, 184 Mich App 137, 142 (1990).

Summary disposition under MCR 2.116(C)(10) is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of

law. In reviewing the motion, the Court considers the evidence in the light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 120 (1999). In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. *Quinto v Cross and Peters Co*, 451 Mich 358, 362 (1996). The burden then shifts to the nonmoving party to establish that a genuine issue of material fact exists. *Id.*

Summary disposition may be granted to the opposing party under MCR 2.116(I)(2) if the Court determines that the opposing party, rather than the moving party, is entitled to judgment as a matter of law.

IV. Law and Analysis

a. Plaintiff's Motion for Summary Disposition

Plaintiff argues that there is no genuine issue of material fact that the obligations owed on the property were extinguished by foreclosure. To support his claim, Plaintiff asserts that the VSADA and AVSADA are contracts. Accordingly, the obligation would be extinguished by the GPTA. MCL 211.78k(5)(e). Plaintiff further argues that even if a valid special assessment exists, all payments were "past due" at the time of foreclosure. Accordingly, the obligation would be extinguished by the GPTA. MCL 211.78k(5)(c). The Court respectfully disagrees with Plaintiff's analysis.

Nature of the Obligation

Under the GPTA, all existing recorded and unrecorded interests in a property are extinguished upon foreclosure. MCL 211.78k(5)(e).

Here, there is no dispute that the VSADA was an agreement/contract between the developer and the City. There is also no dispute that the City adopted Resolution 96-04, which incorporated the terms of the VSADA by reference. Plaintiff has not challenged the validity of the VSADA contract or the adoption of Resolution 96-04. Rather, he appears to argue that the City is precluded from entering a contract and adopting a resolution on the same matter. This argument is unsupported by law and is otherwise without merit.

Special assessments are "pecuniary exactions made by the government for a special purpose or local improvement, apportioned according to the benefit received." *Wikman v Novi,* 413 Mich 617, 632-633 (1982). They are levied in accordance with applicable municipal charters or ordinances and are collected in the same manner as taxes. If unpaid, they become a lien on the property that may be collected against the property owner. *Id.* at 635-637.

The plain language of Resolution 96-04 clearly states that it sought to recover the costs for public improvements that benefited the property to be developed. It created a special assessment district and confirmed a special assessment roll. It otherwise meets the definition of a special assessment. No evidence has been presented indicating that the City failed to follow proper procedure or lacked the authority to adopt the Resolution.

Based on the above analysis, it is Resolution 96-04, not the VSADA, that confirmed the special assessment. The mere fact that the Resolution incorporated the terms of a contract does not make the obligations imposed under the Resolution contractual in nature.

This conclusion is supported by the analysis offered by the Michigan Court of Appeals in the unpublished case of *Damghani v City of Kentwood*, 2019WL 1645208. That case involved the same parcel of land and the Resolution in dispute, as well as a similar VSADA. While unpublished case law is not binding, the Court finds it highly persuasive.

Because the obligation is a special assessment, it was not extinguished by foreclosure under MCL 211.78k(5)(e).

Enforceability

Plaintiff next argues that even if the obligation was a special assessment, it was past due at the time of foreclosure. To support his claim, Plaintiff asserts that the City lacked the authority to extend or amend the terms of the VSADA. Accordingly, the obligations became due on September 7, 2014, and no "future installments" remained due and owing at the time of foreclosure. Again, the Court respectfully disagrees.

The GPTA states, in part, that "all liens against the property, including any lien for unpaid taxes or special assessments, except future installments of special assessments" are extinguished by foreclosure. MCL 211.78k(5)(c).

Here, the resolution imposing the special assessment was governed by the terms of the VSADA. A review of the VSADA reflects that the City was granted discretionary authority to determine the term of years for the special assessment through the adoption of a resolution. It did so through the initial adoption of Resolution 96-04. It then extended the term through the adoption of Resolution 50-14. After the adoption of Resolution 50-14, principal and interest became due on September 7, 2015. There is no dispute that foreclose on the property became final on April 22, 2015, before the final balloon payment was due. Therefore, special assessment installments remained due and owing at the time of foreclosure. Such installments are not extinguished by MCL 211.78k(5)(e).

Plaintiff argues that Resolution 50-14 was a reassessment and that the City did not follow proper protocol in adopting said reassessment. This argument fails. A review of Resolution 50-14 reflects that it did not create a new assessment or re-confirm the special assessment roll; it merely extended the payment deadline. Because Resolution 50-14 was not a reassessment, the procedures cited by Plaintiff are inapplicable. However, even if the City failed to follow procedure, Plaintiff has not presented legal support for his claim that the Resolution would be voided in full.

Plaintiff also argues that the amended VSADA is unenforceable because the contract lacked consideration and was against public policy. Again, this argument fails. Plaintiff's claim is based on his assertion that the County did not receive compensation when it entered the contract. However, the only evidence to support this claim is a single interrogatory wherein the County indicated that consideration was established in Resolution 50-14. The fact that Plaintiff found this answer insufficient does not establish that no consideration was exchanged. Moreover, modifications to contracts do not require additional monetary consideration. "The fact that parties consider it to their advantage to modify their agreement is sufficient consideration." *Adell Broadcasting v Apex Media Sales*, 269 Mich App 6, 11 (2005). No other consideration for the amended agreement was necessary. *Id.*

Plaintiff's argument regarding public policy also fails. Plaintiff argues that because the AVSADA extends the lien on the subject property, it violates the general purpose of GPTA, which is to sell foreclosed property with no encumbrances. However, this argument ignores that the repayment term was extended before foreclosure by Resolution 50-14. As previously discussed, the GPTA specifically excludes future installments on special assessments from being extinguished by foreclosure.

Finally, Plaintiff argues that installments were clearly past due because Resolution 96-04 set forth certain "triggering dates" for payment of principal and interest, all of which occurred prior to foreclosure. Specifically, Plaintiff asserts that one triggering date regarding zoning occurred in 2004. However, no evidence was presented to support that assertion. Additionally, Plaintiff claims that the special assessment roll was deferred only as long as annual interest payments were made. Plaintiff asserts that because the developer defaulted on payments in 2011, the entire principal became due. The Michigan Court of Appeals previously rejected this very argument. (See *Damghani* at 8). Again, while unpublished case law is not binding, the Court finds it persuasive.

The Court acknowledges that discovery is still open in this matter. If this issue was presented by Defendants, Plaintiff could argue that the motion is premature. However, Plaintiff elected to file this motion pursuant subrule (C)(10) before the close of discovery. Accordingly, Plaintiff bears the initial burden of supporting his claim that no genuine issues of material fact remains in dispute regarding the triggering dates. He has failed to do so here.

Plaintiff's Amended Count V: Erroneous Payment

Plaintiff's amended complaint asserts that he was required to pay $23,421.13 in past due taxes and fees before he received title. He claims that said taxes and fees were a portion of the extinguished special assessment obligation. For the reasons more fully stated above, the special assessment installments were not past due at foreclosure and therefore were not extinguished. Accordingly, Plaintiff has not established that payment was erroneous.

Conclusion

The obligation at issue is a valid special assessment. Payments under the special assessment remained due and owing at the time of foreclosure. Accordingly, the obligation was not extinguished under the GPTA.

Based on the above analysis, Plaintiff's Motion for Summary Disposition must be **DENIED.** The Court further finds that Defendants are entitled to judgment in their favor on all counts pursuant to MCR 2.116(I)(2).

b. Defendants' Motion for Summary Disposition

Defendants filed a Motion for Summary Disposition pursuant to MCR 2.116(C)(7), arguing that Plaintiff's claims were barred by the statute of limitations and waiver. Defendants also assert that Plaintiff lacked standing to challenge the VSADA. The Court has already determined that Defendants are entitled to judgment on the merits. Therefore, these arguments are moot and require no further analysis.

Defendants also assert that they are entitled to summary disposition pursuant to MCR 2.116(C)(8). Specifically, the City asserts that it had ample authority to enter the VSADA and subsequently amend it. Moreover, it properly created a special assessment district and adopted Resolution 96-04 and 50-14. The Court agrees.

As more fully discussed in subsection "a" of this opinion, nothing prevented the City from entering into a contract and adopting a Resolution on the same matter. Similarly, nothing prevented the County, as the developer's successor in interest, from amending the VSADA prior to the expiration of its term. The City also presented legal support for its authority to create special assessment districts and corresponding tax rolls under the Home Rule Cities Act, the City Charter, and the City Ordinance Code.

Plaintiff does not challenge the City's authority to create a special assessment district under these authorities. Rather, Plaintiff asserts that the City failed to properly adopt Resolution 50-14 because it failed to reassess or reconfirm Resolution 96-04. However, Plaintiff fails to establish that such a reassessment or reconfirmation is necessary when Resolution 50-14 merely extended the balloon payment deadline pursuant to its discretionary authority.

Plaintiff also asserts the Court of Appeals specifically ruled the Plaintiff stated a claim on which relief could be granted. The Court disagrees. The Court of Appeals ruled that the legality and validity of the AVSADA needed to be addressed and resolved on remand. This Court has addressed that directive, analyzed Plaintiff's arguments regarding the same, and made findings.

Because the Court has determined that a valid special assessment was in place and that future installments of that assessment remained due at the time of foreclosure, Defendants are entitled to summary disposition pursuant to MCR 2.116(C)(8). Plaintiff's claims are unenforceable and further factual development will not justify recovery.

Conclusion and Judgment

Based on the above analysis, Plaintiff's motion is respectfully **DENIED**. Furthermore, the Court finds that Defendants are entitled to judgment in their favor pursuant to MCR 2.116(I)(2).

Defendants' motion is **GRANTED** pursuant to MCR 2.116(C)(8).

This Order resolves the last pending claim and closes the case.

JUL 25 2019

Date

GEORGE JAY QUIST

GEORGE JAY QUIST, Circuit Judge (P43884)

Attest: A true copy

Stacy Dilworth, Deputy Clerk

PROOF OF SERVICE

Service of a copy of this document was made by ordinary mail this date upon the parties who have appeared, or their attorneys of record.

JUL 25 2019

Date

STACY DILWORTH

Stacy Dilworth, Judicial Clerk

VISSER AND ASSOCIATES, PLLC
LEGAL AND MEDIATION SERVICES
2480 - 44TH STREET, S.E. – SUITE 150
KENTWOOD, MICHIGAN 49512
Telephone: (616) 531-9860
Facsimile: (616) 531-9870

April 28, 2021

Ms. Patricia A. Murray, Clerk
Michigan Court of Appeals
350 Ottawa Ave., NW
Grand Rapids, MI 49503

Re: Petersen Financial v City of Kentwood, et al.
Request for Publication
Docket No. 350208
Our File No. 16-464

Dear Ms. Murray:

Please accept this as a request for publication pursuant to MCR 7.215(D)(1). Appellant believes that this Court's Opinion warrants publication because it construes a portion of the General Property Tax Act ("GPTA") as a matter of first impression (MCR 7.215(B)(2)) and also involves a legal issue of significant public interest (MCR 7.215(B)(5)).

In regards to an issue of first impression, this Court's Opinion of April 22, 2021 addresses the intersection of two distinct factual scenarios with the General Property Tax Act: The intersection between the GPTA and post-foreclosure "cooperative" efforts between the foreclosing governmental unit and taxing authority to convey tax-foreclosed real estate subject to a contractual encumbrance.

Besides the appeal in Docket No. 350208, the substantive procedural aspects of a contractual assessment and the effect of a tax foreclosure on same was also presented in *Village of Sparta v Clark Hill*, Docket No. 352837, decided on December 22, 2020. As currently set, both cases are unpublished.

Unfortunately, the perceptions of some units of local government that local government is entitled to waive or disregard provisions of the GPTA as well as its charter or local ordinance is more widespread than the singular incident presented in this case. However, often the amounts involved are not as large as involved in this case and therefore not as likely to present itself for an appeal. As illustrated in this appeal, there is a paucity of precedential case law.

Both issues would also satisfy the requirements of MCR 7.215(B)(5) inasmuch as these issues have significant public interest. The issuance of the *Rafaeli v Oakland County*, 505 Mich App 429 (2020) by the Michigan Supreme Court on July 17, 2020 heightens the need for published clarification in this area to make clear that efforts to end-run the GPTA will not survive scrutiny.

Thank you for giving this matter your consideration.

Respectfully Submitted,

Donald R. Visser
Attorney for Appellant

DRV/kae

cc: Josephine DeLorenzo, Esq.
Craig A. Paull, Esq.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

* * * * *

PETERSEN FINANCIAL LLC,

Plaintiff,

-vs-

CITY OF KENTWOOD and
KENT COUNTY TREASURER,

Defendants.

Case No. 16-11820-CH

HON. GEORGE JAY QUIST
Circuit Court Judge

Donald R. Visser (P27961)
VISSER AND ASSOCIATES, PLLC
Attorneys for Plaintiff
2480 - 44th Street, SE - Ste. 150
Kentwood, MI 49512
(616) 531-9860

David K. Otis (P31627)
PLUNKETT COONEY
Attorneys for Defendant City of Kentwood
325 E. Grand River Ave., Ste. 250
East Lansing, MI 48823
(517) 324-5612

Craig A. Paull (P76605)
Linda S. Howell (P44006)
Kent County Corporate Counsel
Attorney for Kent County Treasurer
300 Monroe, NW - Ste. 303
Grand Rapids, MI 49503
(616) 632-7594

FIRST AMENDED COMPLAINT

COMES NOW Plaintiff, by and through its attorneys, Visser and Associates, PLLC, and for its First Amended Complaint against Defendants states as follows:

PARTIES AND JURISDICTION

1. Plaintiff, Petersen Financial LLC, is a limited liability company organized and existing under the laws of the State of Michigan with its principal office located in Kentwood, County of Kent, State of Michigan.

2. Defendant Kent County Treasurer is an elected official of Kent County, Michigan, a county organized by and within the State or Territory of Michigan.

3. Defendant City of Kentwood is a Michigan municipal corporation located in the County of Kent, Michigan.

4. Plaintiff seeks declaratory relief, as well as damages for its slander of title claim, as to certain real property situated in the City of Kentwood, County of Kent, State of Michigan, and described fully on the attached **Exhibit 1**, hereinafter referred to as the "Subject Property".

5. This case is within this Court's jurisdiction as Plaintiff seeks equitable relief, the amount in controversy exceeds Twenty-five Thousand Dollars ($25,000.00) exclusive of interest and costs, and it is otherwise within the jurisdiction of this Court pursuant to MCL 600.2932 as it involves real property located in Kent County, Michigan.

6. Venue is proper in this Court pursuant to MCL 600.1605.

FACTUAL BACKGROUND

7. On March 6, 2015, a Judgment of Foreclosure for the Subject Property ("the Judgment") was entered in Kent County Circuit Court Action No. 14-05292-CZ as provided by Section 78k of the General Property Tax Act (MCL 211.78k)("GPTA"). Notice of the Judgment was recorded in Instrument No. 20150506-0038676. See attached **Exhibit 2**.

8. Title in the Subject Property vested in the Kent County Treasurer on April 1, 2015 when it was not redeemed by the previous owners.

9. Plaintiff purchased the Subject Property at a tax foreclosure sale on November 10, 2015, and the Kent County Treasurer conveyed its interest in the Subject Property to Plaintiff. See attached **Exhibit 3**.

10. Pursuant to MCL 211.78(k) and MCL 211.78(m), the November 10, 2015 purchase was free and clear from all liens except any future installments of special assessments.

11. Despite the fact that the November 10, 2015 conveyance of the Subject Property was fee simple absolute, the City of Kentwood continues to cloud Plaintiff's title to the Subject

Property by improperly attempting to revive past installments for special assessments as well as contractual obligations that were extinguished upon the final Judgment of Foreclosure, thereby depriving Plaintiff of peaceful use and quiet enjoyment of his property and depriving him of the ability to develop or sell the Subject Property.

The Three "Special Assessments" at issue.

12. On March 18, 2004, the City of Kentwood entered into a Planned Unit Development Agreement ("PUD Agreement") with then-owners Ravines Capital Management, LLC (hereinafter "Ravines") and 44th Shaffer Avenue, LLC (hereinafter "Shaffer"). See attached **Exhibit 4**.

13. At that time, Shaffer owned nearly 300 contiguous acres of real property in Kentwood, Michigan, which included the Subject Property now belonging to Plaintiff (approximately 47.77 acres).

14. In the PUD Agreement, Ravines and Shaffer agreed to pay deferred special assessments on the property pursuant to the Deferred Assessment Agreement between the parties. *See Exhibit 4*, Section 13.

15. In the Deferred Assessment Agreement ("DAA"), dated March 18, 2004, and recorded in Instrument No. 20040402-0043212, Ravines and Shaffer agreed to pay $327,004.68 in deferred special assessments (created in 1981, 1983, 1995, and 2000) which were outstanding liens on the property. See attached **Exhibit 5**.

16. Shortly after entering into the PUD Agreement, on September 7, 2004, Shaffer entered into another contract with the City of Kentwood which addressed payment terms for infrastructure associated with the new development. See Voluntary Special Assessment/Development Agreement attached as **Exhibit 6** ("Voluntary SADA").

17. The terms of the Voluntary SADA included:

a. Shaffer was engaged by the City to design, construct, and install certain public improvements (*see Exhibit 6*, p.2);

b. Payments for the public improvements were to be made solely by the City of Kentwood (*see Exhibit 6*, p.5); and

c. The City of Kentwood would recoup the payments made for the public improvements by specially assessing the costs against the property (*see Exhibit 6*, p.6).

18. On September 7, 2004, the City Commission of the City of Kentwood passed Resolution No. 96-04 - A Resolution to Confirm the Special Assessment Roll ('the Resolution"). See **Exhibit 7**, attached.

19. Resolution 96-04 purported to approve the Voluntary SADA calling it the Ravines Special Assessment District (hereinafter "Ravines SAD"), and a resulting special assessment in the amount of $1,942,070.00.

20. The special assessment was to be paid in annual installments, of interest only payments, until certain trigger dates occurred which would then trigger the principal amount of the applicable phase to be due in full.

21. Upon information and belief, all the requirements for a valid special assessment were not fulfilled.

22. Subsequent to the agreements and the Resolution, Shaffer became delinquent in paying both the property taxes and asserted special assessment.

23. As a result of the delinquencies, a Judgment of Foreclosure was entered against the Subject Property. *See Exhibit 2.*

24. As a result of the tax foreclosure, and pursuant to the General Property Tax Act ("GPTA"), "all liens against the property, including any lien for unpaid taxes or **special**

assessments, except future installments of special assessments … are extinguished." (see MCL 211.78k(5)(c) (emphasis added)).

25. Defendants City of Kentwood and Kent County Treasurer have wrongfully attempted to recoup past due special assessment installments and continue to charge Plaintiff for same despite their having been extinguished pursuant to the Judgment of Foreclosure and Michigan law.

26. Pursuant to the GPTA, the estate interest conveyed to a foreclosing governmental unit in the Subject Property is fee simple absolute. *See* MCL § 211.78(k)(6).

27. Fee simple absolute title to the Subject Property absolutely vested in the Kent County Treasurer upon foreclosure on April 1, 2015.

28. Section 211.78m(2) of the GPTA mandates the foreclosing governmental unit to sell by auction the Subject Property as foreclosed by the Judgment of Foreclosure.

29. Section 211.78m(2) of the GPTA mandates the foreclosing governmental unit to convey the foreclosed property by deed.

30. Section 211.78m(2) of the GPTA mandates the deed by the foreclosing governmental unit "vest fee simple title" in the buyer's name.

31. Accordingly, upon the entry of a Judgment of Foreclosure, all previously owed installments of the special assessment levied on the Subject Property were extinguished.

32. The GPTA does not give the foreclosing governmental unit any authority to deviate from the express provision of the GPTA in the sale of foreclosed properties.

33. The Defendants' assertion that a significant outstanding special assessment balance is due to Defendants constitutes a restriction on Plaintiff's right of alienation of a vested estate in the Subject Property.

34. The assertion by Defendants that Kent County Treasurer conveyed the Subject Property to Plaintiff conditional upon and subject to past-due and extinguished special

assessment payments, would constitute a fee tail when collected by Defendant.

35. The Michigan Supreme Court established that any condition or restriction which suspends all power of alienation of such an estate, even for a single day, is unreasonable and void. See *Mandlebaum v McDonell*, 29 Mich 78 (1874).

36. Plaintiff was and remains restricted from selling, transferring, or otherwise alienating the Subject Property due to the interest asserted by the City of Kentwood.

37. Michigan law states that "every estate which would be adjudged a fee tail... shall for all purposes be adjudged a fee simple; and if no valid remainder be limited thereon, shall be a fee simple absolute." MCL § 554.3.

38. The restriction on the right of alienation of Plaintiff's vested estate constitutes a fee tail and is improper.

39. Michigan law requires all estate interests of fee tail to be converted to a fee simple, accordingly, Plaintiff's interest in the Subject Property should be converted to fee simple interest that is no longer subject to the improper remainder interest claimed by the City of Kentwood for any outstanding special assessment balance.

40. This Court has the power under MCR 2.605 to adjudicate the matters at issue and enter Judgment declaring the rights of all parties to this action.

COUNT I - DECLARATORY RELIEF
[Deferred Assessment Agreement – Instrument No. 20040402-0043212]

41. Plaintiff hereby incorporates all preceding paragraphs by reference as if fully restated herein.

42. The total amount of outstanding special assessment payments sought to be recovered under the DAA is $327,004.68. *See Exhibit 5* at 1.

43. The outstanding special assessment districts to which the DAA refers, were established by the City in 1981, 1983, 1995 and 2000. *Id.*

44. The Initial Payment in the amount of $110,827.68, "representing the portion of the deferred Special Assessments due and owing for certain sanitary sewer, watermain and detention pond improvements for approximately 1020 lineal feet of the Property along Shaffer Avenue, S.E." was to be paid to the City "concurrent with the execution of this Agreement" on March 12, 2004. *See Exhibit 5*, Section 2(A).

45. The Remainder in the amount of $216,177.00, was to be paid to the City no later than December 31, 2006 as evidenced in the following language in the DAA:

> "Regardless of the particular development schedule for the PUD pursued by 44th LLC or the Builders, any portion of the Special Assessment remaining unpaid as of December 31, 2006 shall be paid to the City with interest accrued to that date by 44th LLC or the Builders." *Exhibit 5*, Section B(5).

46. All payments under the DAA were due on or before December 31, 2006, more than eight years prior to the tax foreclosure, and therefore any unpaid amounts were clearly not future installments and were ALL extinguished by the 2015 Judgment of Foreclosure.

47. Upon information and belief, the City of Kentwood is not claiming any amount is due under the DAA.

48. Despite the fact that the City is not claiming amounts are due under the DAA, it is necessary to obtain a recordable order from this Court to clear Plaintiff's title.

WHEREFORE, Plaintiff respectfully requests the Court to enter an order for the following:

A. Declaring the Deferred Assessment Agreement is void and unenforceable against the Subject Property; and

B. Declaring the instruments recorded at 20040402-0043212, and 20050405-0039642 to be void and unenforceable against the Subject Property; and

C. Declaring that Plaintiff owns fee simple absolute title to, and is entitled to the quiet and peaceful possession of the Subject Property; and

D. Enjoining the Defendants from levying, assessing, invoicing, or attempting to collect any obligations that have already been extinguished on March 6, 2015 pursuant to the Judgment of Foreclosure and prevailing law; and

E. Granting all other appropriate and equitable relief that the Court deems proper, including Plaintiff's actual and reasonable attorney fees and costs.

COUNT II - DECLARATORY RELIEF
[Voluntary Special Assessment/Development Agreement – Instrum. No. 20040917-0125700]

49. Plaintiff hereby incorporates all preceding paragraphs by reference as if fully restated herein.

50. As identified in the Special Assessment Roll attached to Resolution No. 96-04, the total amount of special assessment payments sought to be recovered by Defendants under the Voluntary SADA is $1,749,570.00. *See Exhibit 7.*

51. The Special Assessment Roll, confirmed on September 7, 2004, identified the termination date of the roll as "10 years from confirmation of roll; i.e., September 7, 2014." The language in the roll continues to declare that "[a]ny unpaid principal and interest is due in full upon termination date." *Id.*

52. Irrespective of the payments' initial due dates, no amount had an installment payment date after September 7, 2014.

53. All payments under the Voluntary SADA were due on or before September 7, 2014, more than six months prior to the tax foreclosure, and therefore any unpaid amounts were clearly not future installments and were ALL extinguished by the 2015 Judgment of Foreclosure.

WHEREFORE, Plaintiff respectfully requests the Court to enter an order for the following:

A. Declaring the Voluntary Special Assessment/Development Agreement is void and unenforceable against the Subject Property; and

B. Declaring the instrument recorded at 20040917-0125700 to be void and unenforceable against the Subject Property; and

C. Declaring the Ravines Special Assessment District to be exterminated concerning the Subject Property, and to be void and unenforceable against the Subject Property.

D. Declaring that Plaintiff owns fee simple absolute title to, and is entitled to the quiet and peaceful possession of the Subject Property; and

E. Enjoining the Defendants from levying, assessing, invoicing, or attempting to collect any obligations that have already been extinguished on March 6, 2015 pursuant to the Judgment of Foreclosure and prevailing law; and

F. Granting all other appropriate and equitable relief that the Court deems proper, including Plaintiff's actual and reasonable attorney fees and costs.

COUNT III - DECLARATORY RELIEF
[Landscape/Irrigation Agreement – Instrument No. 20060126-0010084]

54. Plaintiff hereby incorporates all preceding paragraphs by reference as if fully restated herein.

55. As identified in the Special Assessment Roll confirmed by Resolution No. 8-06, the total amount of special assessment payments sought to be recovered by Defendants under the SA Landscape is $160,899.15. See attached **Exhibit 8**.

56. The Special Assessment Roll, confirmed on January 17, 2006, identified the termination date of the roll as "8 years from confirmation of roll." *See Exhibit 8*.

57. Irrespective of the payments initial due dates, no amount had an installment payment date after January 17, 2014.

58. The Judgment of Foreclosure was entered on the Subject Property on March 6, 2015. *See Exhibit 2.*

59. All payments under the SA Landscape were due on or before January 17, 2014, more than a year prior to the tax foreclosure, and therefore any unpaid amounts were clearly not future installments and were ALL extinguished by the 2015 Judgment of Foreclosure.

60. Upon information and belief, the City of Kentwood is not claiming any amount is due under the SA Landscape.

61. Despite the fact that the City is not claiming amounts are due under the SA Landscape, it is necessary to obtain a recordable order from this Court to clear Plaintiff's title.

WHEREFORE, Plaintiff respectfully requests the Court to enter an order for the following:

A. Declaring the Landscape/Irrigation Agreement is void and unenforceable against the Subject Property; and

B. Declaring the instrument recorded at 20060126-0010084 to be void and unenforceable against the Subject Property; and

C. Declaring the Pfieffer Woods Drive Landscaping Maintenance Special Assessment District to be exterminated concerning the Subject Property, and to be void and unenforceable against the Subject Property.

D. Declaring that Plaintiff owns fee simple absolute title to, and is entitled to the quiet and peaceful possession of the Subject Property; and

E. Enjoining the Defendants from levying, assessing, invoicing, or attempting to collect any obligations that have already been extinguished on March 6, 2015 pursuant to the Judgment of Foreclosure and prevailing law; and

F. Granting all other appropriate and equitable relief that the Court deems proper, including Plaintiff's actual and reasonable attorney fees and costs.

COUNT IV - DECLARATORY RELIEF
[Amendment to Voluntary Special Assessment/Development Agreement – Instrument No. 20150623-0053765]

62. Plaintiff hereby incorporates all preceding paragraphs by reference as if fully restated herein.

63. On June 23, 2015 and June 18, 2015 respectively, the Kent County Treasurer and the City of Kentwood, signed a document entitled Amendment to Voluntary Special Assessment/Development Agreement ("AVSADA") which was recorded as Instrument No. 20150623-0053765 with the Kent County Register of Deeds (see **Exhibit 9**).

64. The AVSADA is a cloud on Plaintiff's title.

65. There was no authority for the Defendants to enter into the AVSADA in an attempt to restore an assessment that had been voided by the GPTA.

66. There was no consideration for the AVSADA.

67. The AVSADA is against public policy.

WHEREFORE, Plaintiff respectfully requests the Court to enter an order for the following:

A. Declaring the Amendment to Voluntary Special Assessment/Development Agreement is void and unenforceable against the Subject Property; and

B. Declaring the instrument recorded at 20150623-0053765 to be void and unenforceable against the Subject Property; and

C. Declaring the Special Assessment/Development Agreement to be exterminated concerning the Subject Property, and to be void and unenforceable against the Subject Property.

D. Declaring that Plaintiff owns fee simple absolute title to, and is entitled to the quiet and peaceful possession of the Subject Property; and

E. Enjoining the Defendants from levying, assessing, invoicing, or attempting to

collect any obligations that have already been extinguished on March 6, 2015 pursuant to the Judgment of Foreclosure and prevailing law; and

F. Granting all other appropriate and equitable relief that the Court deems proper, including Plaintiff's actual and reasonable attorney fees and costs.

COUNT V – ERRONEOUS PAYMENT

68. Plaintiff hereby incorporates all preceding paragraphs by reference as if fully restated herein.

69. In the Summer of 2015, the City of Kentwood asserted that $23,189.24 was due as part of the taxes.

70. The description given to this bill was "SA Construction" and was in the amount of $23,189.24.

71. In addition to that amount, Plaintiff was required to pay "admin fees" of $231.89.

72. The City of Kentwood extracted those fees as a condition of Plaintiff receiving the deed to the property which he had purchased at the tax foreclosure sale.

73. The Judgment of Foreclosure extinguished all past due special assessments concerning the Subject Property, which includes the "SA Construction" and, therefore, the bill sent from the City of Kentwood was incorrect and invalid.

74. Plaintiff relied on the wrongful assertion by the City of Kentwood that the contested amounts were due and owing at the time of payment. The collection of the SA Construction fees and the related administrative fees was a collection on an amount that had been extinguished and therefore not owed.

WHEREFORE, Plaintiff respectfully requests the Court to order Defendants to refund the $23,421.13 payment made by Plaintiff to Defendants.

VISSER AND ASSOCIATES, PLLC

Dated: May 10, 2019

Donald R. Visser (P27961)
Attorneys for Plaintiff

PROOF OF SERVICE

A copy of this document was served upon all parties of record by electronic delivery and/or U.S. Mail on May 10, 2019, pursuant to MCR 2.107(C).

Kelly A. Eefsting

EXHIBIT 1

PART OF E 1/2 COM AT E 1/4 COR TH S 3D 35M 29S E ALONG E SEC LINE 60.07 FT TH S 88D 09M 27S W 40.01 FT TO W LINE OF SHAFFER AVE & BEG OF THIS DESC - TH S 3D 10M 02S E ALONG SD W LINE 1263.17 FT TH S 89D 54M 32S W 629.94 FT TH S 3D 10M 02S E 60.95 FT TH S 90D 00M 00S W 708.24 FT TH N 45D 00M 00S W 67.88 FT TH S 90D 00M 00S W 530.0 FT TH N 50D 00M 00S W 235.0 FT TH N 44D 18M 31S E 199.74 FT TH N 77D 07M 45S E 307.02 FT TH N 41D 46M 39S E 334.95 FT TH N 8D 47M 09S E 226.61 FT TH N 11D 02M 04S W 245.78 FT TH N 25D 03M 50S E 281.40 FT TO A PT ON E&W 1/4 LINE SD PT BEING 1290.96 FT S 89D 49M 02S W FROM E 1/4 COR TH N 70D 13M 01S E 266.80 FT TH S 75D 46M 26S E 333.65 FT TH S 69D 14M 04S E 227.04 FT TH N 88D 09M 27S E 467.76 FT TO BEG * SEC 22 T6N R11W 47.77 A.

EXHIBIT 2

Notice of Judgement of Foreclosure

Michigan Department of Treasury
3731 (3-04)

Required by section 78k(8) of The General Property Tax Act, 1893 PA 206, as amended, MCL 211.78k(8).

On March 6, 2015, in Civil Action No. 14-05292-CZ, in the Circuit Court of Kent County, the Kent County Treasurer entered a Judgement of Foreclosure in the Matter of the Petition of the County Treasurer against the property described below, vesting absolute title to the real property in the County of Kent, by the Kent County Treasurer, as provided by Section 78k of The General Property Tax Act, 1893 PA 206, as amended, MCL 211.78k, if not redeemed by April 1, 2015. Under the General Property Act, the Judgement of Foreclosure became final and unappealable on April 1, 2015.

Parcel No.	Property Forfeited to County Treasurer on March 3, 2014. Certificate of Forfeiture recorded on Instrument #
41-18-22-426-001	**201404100028284**
Property Address (if available): **4101 SHAFFER AVE SE KENTWOOD MI 49512**	Owner: **44TH/SHAFFER AVENUE LLC**

County: **KENT COUNTY** Local Unit Name: **CITY OF KENTWOOD** Local Unit Code: **65**

Legal Description of the Property:

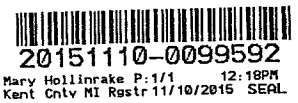
PART OF E 1/2 COM AT E 1/4 COR TH S 3D 35M 29S E ALONG E SEC LINE 60.07 FT TH S 88D 09M 27S W 40.01 FT TO W LINE OF SHAFFER AVE & BEG OF THIS DESC - TH S 3D 10M 02S E ALONG SD W LINE 1263.17 FT TH S 89D 54M 32S W 629.94 FT TH S 3D 10M 02S E 60.95 FT TH S 90D 00M 00S W 708.24 FT TH N 45D 00M 00S W 67.88 FT TH S 90D 00M 00S W 530.0 FT TH N 50D 00M 00S W 235.0 FT TH N 44D 18M 31S E 199.74 FT TH N 77D 07M 45S E 307.02 FT TH N 41D 46M 39S E 334.95 FT TH N 8D 47M 09S E 226.61 FT TH N 11D 02M 04S W 245.78 FT TH N 25D 03M 50S E 281.40 FT TO A PT ON E&W 1/4 LINE SD PT BEING (CONTINUED)

April 22, 2015	County Treasurer Signature: Kenneth D. Parish
Notary Public, State of Michigan, County of Kent My Commission Expires on October 5, 2018 Acting in the County of Kent Subscribed to and sworn before me on this 22nd day of April 2015 Denise M. Terpstra Denise M. Terpstra, Notary Public	Drafted by and when recorded, return to: County Treasurer for the County of Kent Address: **300 MONROE AVE NW PO BOX Y GRAND RAPIDS MI 49501**

***** CONTINUATION OF LEGAL - Property ID No 41-18-22-426-001 *****
1290.96 FT S 89D 49M 02S W FROM E 1/4 COR TH N 70D 13M 01S E 266.80 FT TH S 75D 46M 26S E 333.65 FT TH S 69D 14M 04S E 227.04 FT TH N 88D 09M 27S E 467.76 FT TO BEG * SEC 22 T6N R11W 47.77 A

EXHIBIT 3

FIRST AMENDED COMPLAINT



QUIT CLAIM DEED

Kenneth D. Parrish, acting in official capacity as the **KENT COUNTY TREASURER** of 300 Monroe NW, Grand Rapids, MI 49503

QUIT CLAIMS to

PETERSEN FINANCIAL LLC, a MICHIGAN Limited Liability Company, whose address is 2480 44th St., Suite 150 Kentwood, MI 49512

The following lands situated in KENTWOOD CITY, County of Kent, and State of Michigan, to wit:

PART OF E 1/2 COM AT E 1/4 COR TH S 3D 35M 29S E ALONG E SEC LINE 60.07 FT TH S 88D 09M 27S W 40.01 FT TO W LINE OF SHAFFER AVE & BEG OF THIS DESC - TH S 3D 10M 02S E ALONG SD W LINE 1263.17 FT TH S 89D 54M 32S W 629.94 FT TH S 3D 10M 02S E 60.95 FT TH S 90D 00M 00S W 708.24 FT TH N 45D 00M 00S W 67.88 FT TH S 90D 00M 00S W 530.0 FT TH N 50D 00M 00S W 235.0 FT TH N 44D 18M 31S E 199.74 FT TH N 77D 07M 45S E 307.02 FT TH N 41D 46M 39S E 334.95 FT TH N 8D 47M 09S E 226.61 FT TH N 11D 02M 04S W 245.78 FT TH N 25D 03M 50S E 281.40 FT TO A PT ON E&W 1/4 LINE SD PT BEING 1290.96 FT S 89D 49M 02S W FROM E 1/4 COR TH N 70D 13M 01S E 266.80 FT TH S 75D 46M 26S E 333.65 FT TH S 69D 14M 04S E 227.04 FT TH N 88D 09M 27S E 467.76 FT TO BEG * SEC 22 T6N R11W 47.77 A.

Further identified as permanent parcel ID number 41-18-22-426-001

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, for the sum of $36500 and no other consideration.

This property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan Right to Farm Act. If the land is unplatted, the grantor grants the grantee ALL available land divisions.

This instrument is exempt from Michigan Real Estate transfer taxes pursuant to MCL 207.505(h)(i) and MCL 207.526(h)(i) for County and State tax respectively. This form is issued under the authority of MCL 211.78 (m).

Dated November 4, 2015

Kenneth D. Parrish

Kenneth D. Parrish
Kent County Treasurer

STATE OF MICHIGAN
COUNTY OF KENT

The foregoing instrument was acknowledged before me this November 4, 2015 by Kenneth D. Parrish, acting in official capacity as the Kent County Treasurer, known to me to be the person who executed the same of their own free will.

Denise M. Terpstra

Denise M. Terpstra
Notary Public, Kent County
Acting in Kent County
State of Michigan
My commission expires 10/5/2018

Drafted by:
Martin J. Spaulding
622 W. Kalamazoo Ave.
Kalamazoo, MI 49007

EXHIBIT 4

51/10/14

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PLANNED UNIT DEVELOPMENT AGREEMENT

This Planned Unit Development Agreement (the "Agreement") is executed this 18th day of March, 2004, between the City of Kentwood, a Michigan municipal corporation, the address of which is 4900 Breton Avenue SE, PO Box 8848, Kentwood, Michigan 49518-8848 (the "City"), Ravines Capital Management, LLC, a Michigan limited liability company, the address of which is 301 Douglas Avenue, Holland, Michigan 49424 ("RCM") and 44th / Shaffer Avenue, LLC, a Michigan limited liability company, the address of which is 850 Stephenson Highway, Suite #200, Troy, MI 48083 (the "44th LLC")(44th LLC and RCM are, collectively, referred to herein as the "Developer").

RECITALS

A. The Developer owns approximately 300 acres of real property located at the northwest corner of 44th Street and Shaffer Avenue in the City of Kentwood, Kent County, Michigan (the "Property"), more specifically described on the attached **Exhibit A**, which is incorporated by reference.

B. The Property was zoned R1-C, single family residential. Developer requested the opportunity to develop the Property in phases having multiple uses including commercial uses and residential development of single family, townhouses and attached condominiums (the "Project"). To accomplish this, the Developer sought approval from the City to rezone the Property to a R-PUD1 designation, high density residential Planned Unit Development District ("PUD"). A copy of the preliminary PUD site plan, as required by the City's Zoning Ordinance, depicting the scope of the development (the "Project"), dated February 24, 2004 and on file with the City, is attached hereto as **Exhibit B** and incorporated by reference.

C. In its approval of the Developer's request to rezone and preliminary PUD site plan approval, the City Commission adopted certain conditions of approval, which were relied upon by the City Commission in granting its approval. The conditions adopted by the City Commission, along with the basis for the same, are attached as **Exhibit B1**, which is incorporated by reference. In the event of any conflict between the terms of this Agreement and Exhibit B1, the provisions of Exhibit B1 shall be deemed to control. For purposes of this Agreement development standards (e.g., types and density of housing units, front, rear and side yard setbacks, etc.) will be established for neighborhoods. The neighborhoods are defined in **Exhibit C**, which is incorporated by reference (the "Neighborhoods").

D. Developer contemplates the sale of all or portions of the Property to third party Builders ("Builder" or "Builders") who will succeed to and be responsible for complying with the obligations of Developer as to that portion of the Property purchased from Developer and Developer will have no further obligation with regard to the purchased Property. Wherever the term "Developer" is used, it shall mean during the period that Developer remains the owner of the portion of the Property effected and thereafter it shall mean the Builder or Builders.

E. In reliance on their mutual promises and in order to memorialize their understanding, the parties have determined to enter into this Agreement.

AGREEMENT

For good and valuable consideration including, but not limited to, the covenants and pledges contained herein and the City's willingness to forego the imposition of performance guarantees for certain site improvements, the sufficiency of which is acknowledged, the parties agree as follows:

Section 1. Compliance with Laws, Ordinances, Permits. Developer agrees to construct, install, and operate the Project in accordance with approvals received from governmental entities with applicable jurisdiction. In constructing the Project, Developer agrees to comply with all state and local laws, ordinances, and regulations as well as the terms of this Agreement and the City Zoning Ordinance as of February 3, 2004.

Section 2. Compliance with City Approvals. Without limiting the provisions of Section 1, the Developer agrees to design, develop, construct and operate the Project in accordance with any and all approvals and conditions of approval received from the City and/or its various bodies, officers, departments and commissions including, without limitation, any approved supplementary final phase plans approved pursuant to this Agreement as well as the terms and conditions of this Agreement. The parties agree that no variances from the Zoning Board of Appeals may be sought for the PUD plan conditions imposed in the approval granted by the City Commission; provided, however, that nothing herein shall be construed to prohibit the Developer from applying for variances for non-PUD plan conditions.

A. Final Plan Sequencing. Because the Project is a multi-phase development, prior to the issuance of foundation or building permits for any phase of the Project, the Developer shall submit for the review and approval of the City Planning Commission a final PUD site plan for the relevant phase. In their review of each proposed final PUD site plan, the Planning Commission and City Commission shall conduct and rely on the standards for review contained in Sections 12.12, 13.06(D) and 13.08 of the City Zoning Ordinance as of February 3, 2004. Approval of the final PUD site plans presented shall not be unreasonably withheld or delayed.

B. Amendments to Final Plans. Changes to a final PUD site plan shall be applied for by the Developer to the City in accordance with Section 12.13 of the Zoning Ordinance in effect as of February 3, 2004. Any major changes approved shall be: (1)

identified as a separate addendum to this Agreement which shall be signed by the City and the party requesting the change and recorded with the Kent County Register of Deeds and (2) noted on the final PUD site plan, which notation shall be signed by the Mayor of the City of Kentwood with the date of the approval of the amendment. Any change not considered a minor change shall be considered a major change. The Zoning Administrator, in accordance with Section 12.13 of the Zoning Ordinance as of February 3, 2004, shall determine whether the change is major or minor. Any approved minor change shall be noted on the final PUD site plan which notation shall be signed by the Zoning Administrator with the date of the approval of the amendment. "Minor changes" shall be determined in accordance with the standards contained in Section 13.05(I)2 of the Zoning Ordinance.

C. Zoning Administrator. For purposes of this agreement, the Zoning Administrator shall be the City of Kentwood's Director of Community Development.

D. Sale of Buildings. Consistent with Item No. 1.a. of Exhibit B1, the Developer shall prepare, for the review and approval of the City, restrictions for recording with the Kent County Register of Deeds, prohibiting the sale or conveyance of an entire condominium flat building (as so designated on Exhibit B), to a single person or entity or to a group of affiliated persons or entities.

Section 3. Condominium Development. The Project consists of five "Neighborhoods" plus a Commercial Corner as shown in Exhibit C. The Project will be subdivided into a minimum of five Neighborhoods via separate condominium projects. The Neighborhoods need not be constructed in any particular sequence or order. Neighborhood "A" and Neighborhoods "B1" through "B4" will each have separate condominium associations. The Commercial Corner will not be part of a condominium association.

A. Compliance with Legal Requirements. The parties acknowledge and agree that this Agreement is not, and shall not be interpreted as, any type of site condominium approval and that the Developer shall remain responsible for complying with all provisions of the Condominium Act, Act No. 59 of the Public Acts of 1978, as amended, and any associated City ordinances with respect to reviews and approvals. Lots (defined to include a site or volume condominium unit for purposes of this Agreement) within the Project have been approved for specific deviations from certain regulations contained in the Zoning Ordinance and do not require the approval of the City's Zoning Board of Appeals. Such deviations include:

i) Reduction in minimum lot size within Neighborhood A consistent with a certain plan on file in the offices of the City's Community Development Department dated January 6, 2004, final revisions February 24, 2004, which plan has been initialed by all parties hereto.

ii) Reduction in minimum lot width within Neighborhood A consistent with a certain plan on file in the offices of the City's Community Development Department dated January 6, 2004, final revisions February 24, 2004, which plan has been initialed by all parties hereto.

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Kent County MI Register SEAL

iii) Reduction in minimum front, side and rear yard setbacks within Neighborhood A consistent with a certain plan on file in the offices of the City's Community Development Department dated January 6, 2004, final revisions February 24, 2004, which plan has been initialed by all parties hereto.

iv) Reduction in road widths within Neighborhood A consistent with a certain plan on file in the offices of the City's Community Development Department dated January 6, 2004, final revisions February 24, 2004, which plan has been initialed by all parties hereto

v) Reduction in designated minimum road radii within the PUD to 200 feet.

vi) Overall Project density to 4.7 units per acre, as calculated with the City's Zoning Ordinance as of February 3, 2004.

vii) Reduction in perimeter setback to 15 feet on front and corner lots within the PUD including, without limitation, the setbacks in the Commercial Corner described in Exhibit I herein.

B. Common Area and Maintenance. The Project shall include community open spaces (the "Common Areas") as shown on Exhibit B. The Common Areas shall be irrevocably dedicated for the useful life of the residences, and retained as open space for park, recreation or other common uses. To ensure the long-term ownership, maintenance and control of the Common Areas, and prior to the issuance of any foundation or building permits for any phase of the Project, the Developer shall establish a condominium association(s), pursuant to Michigan law, comprised of the owners of units within the respective condominium projects (collectively, the "Condominium Association"). The Condominium Association's documentation shall be subject to the prior reasonable review and approval of the City to ensure adequate provisions for the on-going care and maintenance of the Common Areas. The documentation, whether contained in a master deed or otherwise, shall provide for the maintenance of Common Areas and site amenities by the association, indemnification of the City and its officers and employees, minimum insurance requirements for the association, adequate mechanisms to force financial participation by members of the association and restrictions on the ability to amend these requirements without the City's prior approval. Without limiting the foregoing, the City's review shall be based on the standards contained in Section 12.09(D)2 and 3.

C. Plaster Creek Trail. The Developer will provide the City with a perpetual ten foot wide easement for the construction, maintenance and upgrade of the Plaster Creek Trail system at a mutually agreeable location to be determined. If the Developer and City can not agree, then the easement will be located as shown on Exhibit B. The easement shall be in a form approved in advance by the City. The portion of the Plaster Creek Trail pathway to be dedicated for public use shall be paid for by the Developer, and constructed by the City consistent with the terms and standards consistent with Exhibit K, Section IV.A.. The easement shall be conveyed upon written request of the City. Developer shall also provide any temporary easements reasonably necessary to permit access to the above-described permanent easement area.

Section 4. Roads and Right of Way. **Exhibit D**, which is incorporated by reference, shows the proposed public road and right of ways for the Project, all as shown on Exhibit B. The parties acknowledge that this Agreement may be amended in the future to permit additional roads and rights of way to be dedicated and conveyed to the public, subject to the City's reasonable review and approval of the standards and construction of the roads and rights of way involved, but for the road width and radii approved herein.

A. Dedication of Rights-of-Way. Upon the completion of the construction of public rights-of-way as shown in **Exhibit D**, and inspection and approval of the same by the City Engineer, such rights-of-way shall be conveyed and dedicated to the City. The Developer shall execute any and all documents reasonably requested by the City to effectuate the provisions of this subsection.

B Pfeiffer Woods Drive Extension. The Developer shall construct a public East/West street through the Property as shown in **Exhibit D.** The street shall be constructed in accordance with the terms contained in **Exhibit D** and the Preliminary Phasing Plan in **Exhibit E,** which is incorporated by reference. The street shall be constructed to City specifications and, following inspection and approval by the City Engineer, shall be dedicated to the City. The Developer shall execute any and all documents reasonably requested by the City to effectuate the provisions of this subsection. Once the East/West Public Street has been installed, the Developer shall be permitted to construct residences or homes in all areas of the PUD subject to compliance with all terms and conditions of this Agreement.

C. Traffic Control Agreement. Concurrent with the execution of this Agreement, the parties shall enter into a separate written agreement granting the City jurisdiction and control over traffic and parking for the private roads in the PUD. The intent of the traffic control agreement shall be to comply with Item No. 9 of Exhibit B1.

Section 5. Construction Phasing. Within a Neighborhood as identified in **Exhibit C**, construction of the infrastructure shall occur consistent with the phased sequence identified in **Exhibit E.** To ensure that each Neighborhood is constructed in accordance with the approved phasing sequence, and to avoid the creation of blighted areas within the Project, the parties agree that, construction of each phase within a Neighborhood shall be initiated within twenty-four (24) months of the substantial completion of the immediately preceding phase. For purposes of the preceding sentence, "substantial completion" shall be defined as the issuance of certificates of occupancy for all dwelling units in the relevant phase. If construction is not initiated within twenty-four (24) months, all remaining undeveloped but disturbed areas of the Neighborhood for which final plan approval has been granted shall be graded and seeded. In addition, if construction of the underground utilities of a phase has not been initiated within twenty four (24) months of the completion of the last home in the immediately preceding phase, no further phase of development shall occur within the Neighborhood without the review and approval of a new final plan by the City. Nothing contained herein shall waive the necessity to comply with all applicable building and construction codes. Developer may construct homes within as many of the neighborhoods as it deems appropriate as long as it meets the other requirements of this Section and Section 6 below.

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Section 6. Emergency Access. So long as any construction is occurring on the Property, the Developer shall be responsible to provide and maintain, at its cost, a secondary emergency access route to the Property in a location approved in advance by the City Fire Chief. The emergency access shall be constructed to City specifications approved by the Fire Chief. The principal public roads serving the Project off of Shaffer Avenue and 44th Street, as shown on Exhibit B, may constitute the secondary emergency access called for herein.

Section 7. Road Improvements / Curb Cuts The parties agree that development of the Project will have an impact on vehicular and pedestrian traffic patterns along 44th Street. To lessen the adverse consequences of the Project on public infrastructure and for the benefit of owners, tenants and invitees of the Project, development of the parcels shall be subject to the limitations and agreements contained in **Exhibit F**, which is incorporated by reference. Certified funds or irrevocable letters of credit to be contributed by the Developer, will be held in an escrow account at Metropolitan Title Company in accordance with escrow instructions contained in **Exhibit L**, which is incorporated by reference.

Section 8. Stormwater. Subject to the terms and conditions contained in **Exhibit G**, which is incorporated by reference, the Developer shall also apply for and obtain the approval of the Kent County Drain Commission and the City.

Section 9. Public Utilities. Public electricity, telephone, gas, water and sanitary sewer service ("Public Utilities") shall be provided by the Developer to all parcels and lots in the Project. Public Utilities (except streetlights) shall be installed and maintained underground if required by the City. Cable television services shall be available to all residential properties in the Project and shall be installed, to the extent feasible, at the same time as the Public Utilities to avoid damaging newly installed infrastructure. Prior to the issuing any foundation or building permits for the Project the Developer shall provide all easements reasonably necessary, in such locations approved in advance by the relevant utility service provider. Easements for water and sanitary sewer service shall, at the City's request, name the City of Grand Rapids as a grantee or additional grantee. Prior to issuing any foundation or buildings permits for the Project, the Developer shall submit to the City Engineer and City of Grand Rapids, for their review and approval, line drawings. Thereafter, and before issuing any foundation or building permits for any phase of the Project, final construction drawings for that phase o the Project shall be submitted for the review and approval of the City Engineer and the City of Grand Rapids.

Section 10. Landscaping. Landscaping shall be incorporated and installed on the Property in accordance with a landscaping plan as provided for in Item No 15, Exhibit B1 (the "Landscaping Plan"). The Landscaping Plan shall be submitted to the Planning Commission prior to the issuance of any foundation or building permits for the Project. The Landscaping Plan shall include a designation of any trees and woodlands on the Property which are to be preserved and protected throughout construction of the Project and shall remain undisturbed. The Landscaping Plan shall further provide that in the event any such trees in excess of 6" caliper are damaged or destroyed during construction, Developer shall, at its sole expense, replace such trees with comparable trees in terms of variety and

caliper. Installation of the landscaping shall constitute a condition of approval of each final plan and shall be deemed an integral part of this Agreement. Any site or volume condominium master deed, which shall be subject to the prior review and approval of the City, which approval shall not be unreasonably withheld, shall include provision for the maintenance of all common landscaped areas on the Property shown on the Landscaping Plan which maintenance shall include, but is not limited to: mowing all turf areas, trimming trees and shrubs, watering all landscaped areas, and removing and replanting all diseased or dead plants in such areas.

Section 11. Commercial Corner Development Standards. The commercial corner shall be developed in accordance with the standards set for in **Exhibit I,** which is incorporated by reference.

Section 12. Neighborhood Architectural and Development Standards. The Neighborhoods within the Project shall be developed using the development standards included in **Exhibits "J" and "K",** which areas incorporated by reference. Additional development standards include:

A. Sidewalks

(1) The condominium associations shall maintain any sidewalks located within a site condominium.

(2) Public concrete sidewalks shall be constructed in accordance with Exhibit B at the Developer's sole expense, to City specifications and in compliance with City ordinances. Except as otherwise provided herein, sidewalks shall be constructed concurrent with the construction of each residential unit. The parties acknowledge and agree that no building permits will be issued for a particular phase of a Neighborhood unless all sidewalk improvements have been completed, to the City's reasonable satisfaction, in the immediately preceding phase. In the event that completion of the sidewalks in a particular phase is not completed as provided for herein, then the Developer shall, upon the request of the City, post an irrevocable letter of credit, in a form satisfactory to the City, in the amount of any unfinished public sidewalks in the Neighborhood.

B. Architectural Standards. In addition to Exhibits J and K, Neighborhoods within the Project shall be developed using the architectural standards agreed to and documented in the City's Planning Commission approval on January 13, 2004, as supplemented by the subcommittee as called for in Item No. 22 of Exhibit B1 and as amended to conform with the City Commissioners approval. The approved elevations, which are on file with the City's Community Development Department and signed by all parties, are for schematic purposes only and may change as market conditions and consumer preferences change. These elevations shall be used for evaluating the Developer's compliance with an architectural standards and are not intended to prevent the Developer from utilizing other architectural styles. Without limiting the foregoing, the parties agree that, consistent with Item No. 18 of Exhibit B1, all building elevations and

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housing types for all Neighborhoods shall be subject to the reasonable review and approval of the City.

C. Walkways. The Condominium Associations shall maintain all walkways/bike paths/nature trails constructed on the Property except for that trail dedicated to the City pursuant to Section 3.C.

Section 13. Deferred Assessments. Deferred special assessments on the Property shall be paid to the City consistent with the terms of a certain Deferred Assessment Agreement dated March 18, 2004 between the parties.

Section 14. Traffic Enforcement. Consistent with the terms of the Traffic Control Agreement referenced in Section 4.C. of this Agreement, the Developer shall grant the City the right to set and enforce speed limits and traffic regulations within the Project. The City will set parking limitations within the Project in consultation with the Developer.

Section 15. Fire and Safety. The City will provide fire, safety, and EMS services to the Project

Section 16. Amendments to the PUD Plan. The Preliminary and Final PUD site plan may be amended in the future consistent with the City's adopted ordinances. Any individual person or entity seeking to develop a particular Neighborhood may apply for an amendment without the consent of all owners or developers in the PUD.

Section 17. Violation of Agreement. The parties acknowledge that monetary damages for a breach of this Agreement would be inadequate to compensate the parties for the benefit of their bargain. Accordingly, the parties expressly agree that in the event of a violation of this Agreement, the non-breaching party shall be entitled to receive specific performance. Nothing herein shall be deemed a waiver of the City's rights to seek enforcement of this Agreement or zoning approvals previously granted, to the extent otherwise authorized by law. Notwithstanding the foregoing, in the event there is a violation(s) or alleged violation(s) of the terms or conditions of this Agreement by the Developer, then the City shall serve written notice upon the Developer setting forth the manner in which Developer has violated the Agreement, and such notice shall include a demand that the violation(s) be cured within a stated reasonable time period. Violations or alleged violations of the terms and conditions of this Agreement shall entitle the prevailing party, in the event of litigation to enforce this Agreement, to receive its reasonable attorney and consulting fees incurred. The City's enforcement of any provision of this Agreement shall be limited in its application to the particular Neighborhood involved.

Section 18. Amendment. Except as hereafter provided, this Agreement may only be amended in writing, signed by all parties. However, any amendment that only relates to a particular Neighborhood or to the Commercial Corner shall not require the signature of the owners of the other properties unless such amendment has an effect on their property.

Section 19. Recording and Binding Effect. The obligations under this Agreement are covenants that run with the land, and shall bind all successors in title. It is the

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parties' intent that this Agreement shall be recorded with the Kent County Register of Deeds. The City shall be responsible for all costs associated with recording the Agreement.

Section 20. Headings and Recitals. The parties acknowledge and agree that the headings and subheadings in this Agreement are for convenience only and shall have no bearing or effect. The parties further acknowledge and agree, however, that the Recitals hereto are and shall be considered an integral part of this Agreement proper to its correct understanding and interpretation.

Section 21. Miscellaneous.

A. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the enforceability or validity of the remaining provisions and this Agreement shall be construed in all respects as if any invalid or unenforceable provision were omitted.

B. Notices. Any and all notices permitted or required to be given shall be in writing and sent either by mail or personal delivery to the address first above given.

C. Waiver. No failure or delay on the part of any party in exercising any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude further exercise thereof or the exercise of any other right, power, or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

D. Governing Law. This Agreement is being executed and delivered and is intended to be performed in the State of Michigan and shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws thereof.

E. Authorization. The parties affirm that their representatives executing this Agreement on their behalf are authorized to do so and that all resolutions or similar actions necessary to approve this Agreement have been adopted and approved. The Developer further affirms that it is not in default under the terms of any land contract for all or part of the Property.

F. Liability of Developer. The term "Developer" as used in this Agreement so far as covenants, agreements, stipulations or obligations on the part of the Developer are concerned is limited to mean and include only the owner of the Property or portion thereof effected at the time in question. In the event of any sale, transfers or conveyance of the title to such fee, the Developer will automatically be freed and relieved from and after the date of such sale, transfer or conveyance of all personal liability for the performance of any covenants or obligations on the part of the Developer contained in this Agreement thereafter to be performed as to the Property or portion thereof sold, transferred or conveyed and the Developer's successor shall assume all commitments with respect to said covenants, agreements, stipulations or obligations as to the portion of the Property acquired from the Developer.

The parties have executed this Agreement on the day and year first above written.

WITNESSES:

Keith Van Beek
* Keith Van Beek

Jeff Slugett
* Jeff Slugett

CITY OF KENTWOOD

Richard Root, Mayor

Dan Kasunic, Clerk

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

On this 12th day of March, 2004, before me a Notary Public, personally appeared Richard Root and Dan Kasunic, the Mayor and Clerk, respectively, of the City of Kentwood, a Michigan municipal corporation, who, being first duly sworn, did say they signed this document on behalf of the City.

Julia E. Connor
* Julia E. Connor
Notary Public, Kent County, Michigan
My Commission Expires: 10-2-05

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44TH/SHAFFER AVENUE, LLC, a Michigan limited liability company

By: _____
Name: CRAIG S. WANDRIE

By: _____
Name: Michael J. Damone
Its: Manager

RAVINES CAPITAL MANAGEMENT, LLC,
a Michigan limited liability company

By: _____
Name: _____

By: See next page for Signature
Name: Michael L. Bosgraaf
Its: Manager

State of Michigan

County of Kent

On this 18th day of March, 2004, before me a Notary Public, personally appeared Michael J. Damone, the Manager of 44th/Shaffer Avenue, LLC, a Michigan limited liability company, who, being first duly sworn, did say he signed this document on behalf of the company.

_____
CRAIG S. WANDRIE
NOTARY PUBLIC, BARRY COUNTY
ACTING IN KENT COUNTY, MICHIGAN
MY COMMISSION EXPIRES
NOVEMBER 15, 2007

WITNESSES:

Craig S. Wandrie

RAVINES CAPITAL MANAGEMENT, LLC

By: _____
Its: Manager
MICHAEL L BOSGRAAF

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

On this 18th day of March, 2004, before me a Notary Public, personally appeared ~~the~~ Michael L. Bosgraaf of Ravines Capital Management, LLC a Michigan limited liability company, who, being first duly sworn, did say he signed this document on behalf of the company.

CRAIG S. WANDRIE
NOTARY PUBLIC, BARRY COUNTY
ACTING IN KENT COUNTY, MICHIGAN
MY COMMISSION EXPIRES
NOVEMBER 15, 2007

Notary Public, Kent County, Michigan
My Commission Expires: _____

Drafted By/Return To:
Jeff Sluggett
Law, Weathers & Richardson, PC
333 Bridge, NW, Suite 800
Grand Rapids, MI 49504
616-732-1751

List of Exhibits

Exhibit A – Legal Description of the Property

Exhibit B – Preliminary PUD Site Plan

Exhibit B1 – Conditions of Approval

Exhibit C – Definition of Neighborhood "Areas"

Exhibit D – Public and Private Roads

Exhibit E – Preliminary Phasing Plan

Exhibit F – Road Improvements/Curb Cuts

Exhibit G – Storm Water Detention

Exhibit H – Reserved

Exhibit I – Commercial Corner

Exhibit J – Neighborhood "A" – Architectural and Development Standards

Exhibit K – Neighborhood "B1, B2, B3 and B4" – Architectural and Development Standards

Exhibit L – Metropolitan Title Company - Escrow Instructions

Exhibit A

Legal Description of Property

Part of the NE 1/4 and part of the SE 1/4, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: BEGINNING at the NE corner of Section 22; thence S03°35'29"E 395.00 feet along the East line of said NE 1/4; thence S89°42'31"W 258.00 feet; thence S03°35'29"E 120.00 feet; thence N89°42'31"E 258.00 feet; thence S03°35'29"E 705.38 feet along the East line of said NE 1/4; thence N54°47'03"W 395.85 feet; thence S89°45'47"W 308.00 feet; thence S03°35'29"E 330.00 feet; thence N89°45'47"E 424.00 feet along the South line of the N 1/2 of the NE 1/4 of Section 22; thence S03°35'29"E 153.00 feet; thence N89°45'47"E 193.00 feet; thence S03°35'29"E 273.18 feet along the East line of said NE 1/4; thence S86°24'31"W 40.00 feet; thence S03°35'29"E 891.81 feet along the West line of Shaffer Avenue to the South line of said NE 1/4; thence S03°10'02"E 1324.40 feet along the West line of Shaffer Avenue; thence S89°54'32"W 629.94 feet along the North line of the S 1/2 of the SE 1/4 of Section 22; thence S03°10'02"E 550.00 feet; thence N89°54'32"E 629.94 feet; thence S03°10'02"E 325.92 feet along the West line of Shaffer Avenue; thence S82°24'32"W 10.03 feet; thence S03°10'02"E 372.08 feet along said West line; thence S43°24'59"W 34.36 feet; thence S90°00'00"W 1908.53 feet along the North line of 44th Street; thence N03°04'04"W 40.00 feet and S90°00'00"W 180.00 feet and S03°04'04"E 40.00 feet and S90°00'00"W 481.20 feet along said North line; thence N03°02'05"W 2590.11 feet along the West line of the SE 1/4 of Section 22 to the center of said Section; thence N03°29'48"W 2635.49 feet along the West line of the NE 1/4 of Section 22 to the N 1/4 corner of said Section; thence N89°42'31"E 2633.71 feet along the North line of said NE 1/4 to the place of beginning. This parcel contains 299.85 acres.

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Exhibit B

Preliminary PUD Site Plan

The Preliminary PUD site plan is attached. The Project is approved for the development of 1141 housing units plus a commercial corner.

This plan, dated January 6, 2004, was recommended for approval by the Kentwood Planning Commission on January 13, 2004 and approved by the Kentwood City Commission on February 3, 2004.

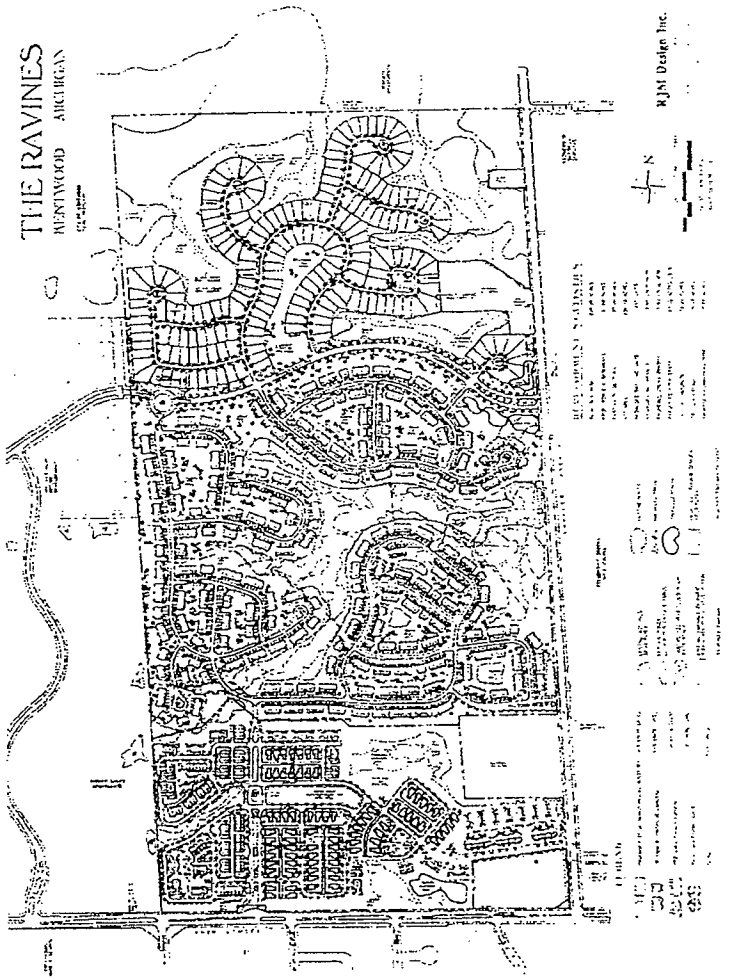

Exhibit B.1

KENTWOOD CITY COMMISSION
APPROVED
FINDINGS OF FACT
FEBRUARY 17, 2004

PROJECT:	The Ravines
APPLICATION:	41-03
REQUEST:	Preliminary PUD Approval for a 1,341 unit Planned Unit Development
LOCATION:	Northwest corner of 44th Street and Shaffer Avenue
HEARING DATE:	February 3, 2004

MOTION:

Motion by Brinks, supported by Clanton, to approve the preliminary Planned Unit Development site plan, for the property located at the northwest corner of 44th Street and Shaffer Avenue for The Ravines based on hearings, staff recommendations, Planning Commission proposed Findings of Fact dated January 27, 2004, with conditions 1 through 20 with the following revisions: Condition #6 to change the first sentence to read: "The utility locations, easements and pavement dimensions must be approved by the City Engineer and any appropriate government agency for all of the roads within the proposed PUD"; Condition 6(a) change first sentence to read "…. proposed to be 50 feet with a pavement width not to exceed 28 feet…."; Condition 11 Remove and refer to the Safety Committee; Condition 13 Remove last sentence and move remainder to create #1(d) and basis points 1 though 9, removing points #5 and #11.

Motion Carried.
Brown dissenting.

CONDITIONS:

1. Review and Approval of the PUD Statement and Development Agreement for the Ravines project by City Staff and the City Attorney's Office and by the Developer(s). The PUD Statement and Development Agreement shall include, but not be limited to, the following:

   a. Restrictions regarding the condominium flats to prohibit the sale of an entire building to a single owner.

   b. A list of deviations to the standards of Section 12.03 C, including the following: reduction in minimum lot size, reduction in minimum lot

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width and setbacks, reduction in minimum road radii, and the reduction in road widths.

c. The applicant shall add "overall project density" to the list of deviations for which deviations are requested.

d. Sidewalks and trails shall be provided as shown on the site plan. A nature trail shall also be constructed by the developer as shown on the site plan on the north side of the site.

2. Approval of the preliminary engineering plan by the City Engineer.

3. Approval of the preliminary plan by the Kentwood Fire Marshal.

4. Any proposed phasing must be noted on the site plan, along with anticipated timing of construction.

5. The following road improvements will be made by the Developer(s) of the proposed project:

a. The extension of Pfeiffer Woods Drive from the Developer's west property line to Shaffer Avenue. Any oversizing of the road, as determined by the City Engineer, will be paid by the City.

b. Improvements to 44th Street, including the proposed 44th Street entrance to the development and signalization of the intersection, as approved by City and Kent County Road Commission staff. The applicant has committed to make a $25,000 contribution towards the City's eventual application to the State of Michigan for a landscape improvement grant for the 44th Street median adjacent to the project.

c. Shaffer Avenue improvements and dedication of right-of-way for potential future right turn lane on Shaffer at 44th Street, as approved by City staff and consistent with the representations made to the City.

d. 44th/Shaffer intersection improvements will be funded by the Developer, Kent County and the City of Kentwood. The improvements shall include the provision of an indirect left turn on 44th Street at Shaffer. The Developer and City shall enter into an escrow agreement to set aside monies to pay for the cost of the west bound right turn lane on 44th Street east of Shaffer related to the indirect left turn project. The estimated amount of money placed in escrow shall be determined by the Kent County Road Commission and City staff provided that the developers' responsibility does not exceed $50,000. Developer has also offered to donate mineral rights for the properties that must be acquired by the City to allow for intersection improvements.

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6 The utility locations, easement and pavement dimensions must be approved by the City Engineer and any appropriate government agency for all of the roads within the proposed PUD. The roads within the PUD shall be private roads and private alleys (except for Pfeiffer Woods Drive) according to the following:

a. Within the Bosgraaf portion of the development (Neighborhood "A") road easements are proposed to be 50 feet with a pavement width not to exceed 28 feet, with the exception of the entryway from 44th Street which shall be constructed as a boulevard within a 106' easement and 22 foot widths as indicated on the site plan. Concrete rolled curbs will be provided on all private streets, but not on alleys. Alleys shall be 18 feet in width and shall not permit parking.

b. Within the Pulte portion of the development (Neighborhoods "B1, B2, B3, and B4") the road easements for the private roads shall be 50 feet and the pavement width shall be 24 feet. A minimum of one side of sidewalk shall be provided on all streets, in addition to the proposed nature paths.

7. Removal of the access driveway to Shaffer Avenue for the condo flat development north of the southernmost drive.

8. The location of the commercial access from the southernmost drive should be noted on the site plan. More parallel parking should be provided along the south side of the South Drive to reduce the parking needs north of the condo flats. Site distance issues for the garage areas must be addressed.

9. The Developer shall grant the City the right to direct and maintain traffic control devices and authorize enforcement of the devices, consistent with the November 11, 2003 attachment from the Kentwood Police Chief Richard Mattice.

10 A general conceptual site plan of the commercial portion of the development must be provided for City staff review and approval.

11. Deleted. (Referred to Safety Committee.)

12. Applicant shall obtain permits from the Department of Environmental Quality for wetland mitigation prior to the issuance of construction permits on the site

13. Deleted.

14. Review and approval by City staff of the design for the roundabout on Pfeiffer Woods Drive. Provide design criteria and level of service supplement for the traffic circle.

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15. Review and approval by staff of the preliminary landscaping plan for the site.

16. Review and approval by staff of the site amenities for all portions of the development.

17. Review and approval by staff of a lighting plan for the site.

18. Review and approval by staff of building elevations for all neighborhoods and housing types within the project.

19. City Commission approval of the rezoning of the site from R1-C to RPUD- High Density Residential Planned Unit Development.

20. City review and approval of the Master Deed to assure compliance with city requirements.

21. Berming for the large eight acre parcel as presented at public hearing.

22. A subcommittee as appointed by the Chair, staff and the developers for facade review.

BASIS

1. The PUD Statement and Development Agreement will address issues such as deviations from the ordinance requirements, the maintenance of open space and facilities, and other requirements made by the city. The review and approval of these documents will hold the development to these standards and give additional direction to the applicant as the project develops.

2. The Private Road Regulations of Section 18 in the Zoning Ordinance sets standards for private street pavements, easements, parking and sidewalk. The Ordinance allows deviation from these standards in the PUD zone district. The applicant has provided a site plan that indicates possible variation from some of these standards. These should be outlined in the development agreement for future reference.

3. Section 12.03 C indicates that allowable density shall be dictated by the Master Plan and shall be determined by the Planning Commission at the Preliminary PUD stage. The development is proposed at a density of approximately 4.97 units per acre. The Master Plan recommends a density of 4 units per acre; therefore the increase in density must be recognized as a deviation from the Ordinance.

4. The proposed project will have an impact on the area roadways. The applicant will be required to make improvements to the roadways in order to accommodate the projected traffic.

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5. Deleted.

6. The driveway north of the southernmost drive is not necessary. An additional connection to the south drive should be provided instead. This area should be redesigned to improve flow of vehicles.

7. State law limits police enforcement of traffic regulations on private roads unless consent of the private property owner is requested or given. With the consent given by the property owners, the Police Department would be permitted to determine the necessary traffic controls on parking and on the movement of pedestrians and vehicles. The city would be required to provide and maintain traffic control devices such as stop signs, speed limit signs, etc. The violation of the controls and devices would be a civil infraction that could be enforced. See Chief Mattice memo dated November 11, 2003.

8. The applicant has not provided a revised general plan of the proposed commercial area in the development. The plan could include general information on the location of driveways and the rough estimate of commercial square footage.

9. Representations made by the applicant as to the nature and operation of the facilities.

10. Discussion during the work sessions and public hearings.

Exhibit C

Definition of Neighborhood "Areas"

For the purpose of defining Development and Architectural Standards, the Project is divided into Neighborhoods. The Definition of the Neighborhoods is attached. The approved product types and densities for each neighborhood are as follows:

Neighborhood - A

Single Family - Up to 94 units
Ranch Condos - Up to 64 units
Town Homes - Up to 85 units
Condo Flats - Up to 72 units

Neighborhood - B

B1 - Multi-family town homes - Up to 248 units
B2 - Attached condominiums - Up to 190 units
B3 - Single Family Detached homes - Up to 210 units
B4 - Multi-family town homes - Up to 178 units

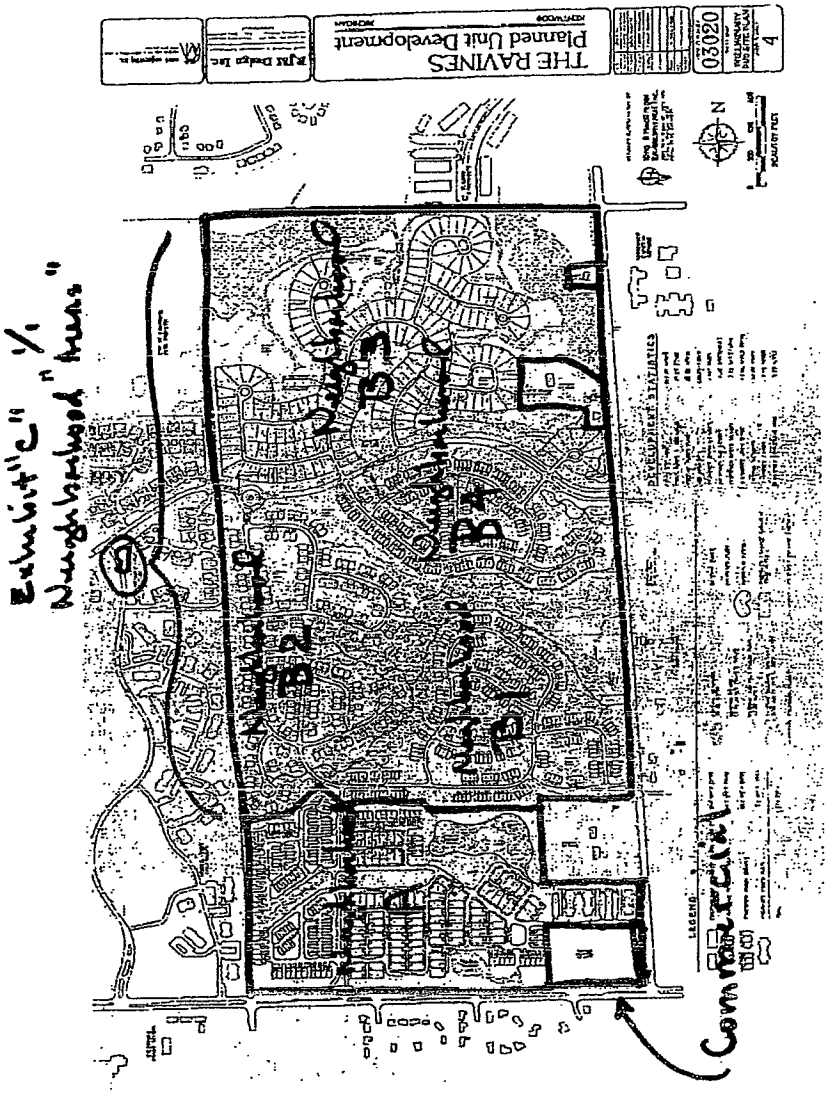

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Exhibit D

Public and Private Roads

Pfeiffer Woods Drive

The only public road within the Property will be Pfeiffer Woods Drive. Developer agrees to connect the street on the east and west property lines as shown on the following plan. The exact road configuration within the Property may be modified at Developer's discretion (subject to prior reasonable approval of the City Department of Public Works) to accommodate grading and wetland permitting constraints.

Cost Sharing:

Developer and the City agree to share the cost for Pfeiffer Woods Drive as follows. In accordance with the conditions of approval, the City shall pay the costs of any oversizing of this road required by the City Engineer within 30 days after inspection and approval of the road by the City and invoicing by the Developer. The Developer will pay for the remainder of the road.

Private Roads

Except for Pfeiffer Woods Drive, all roads within the Property shall be private.

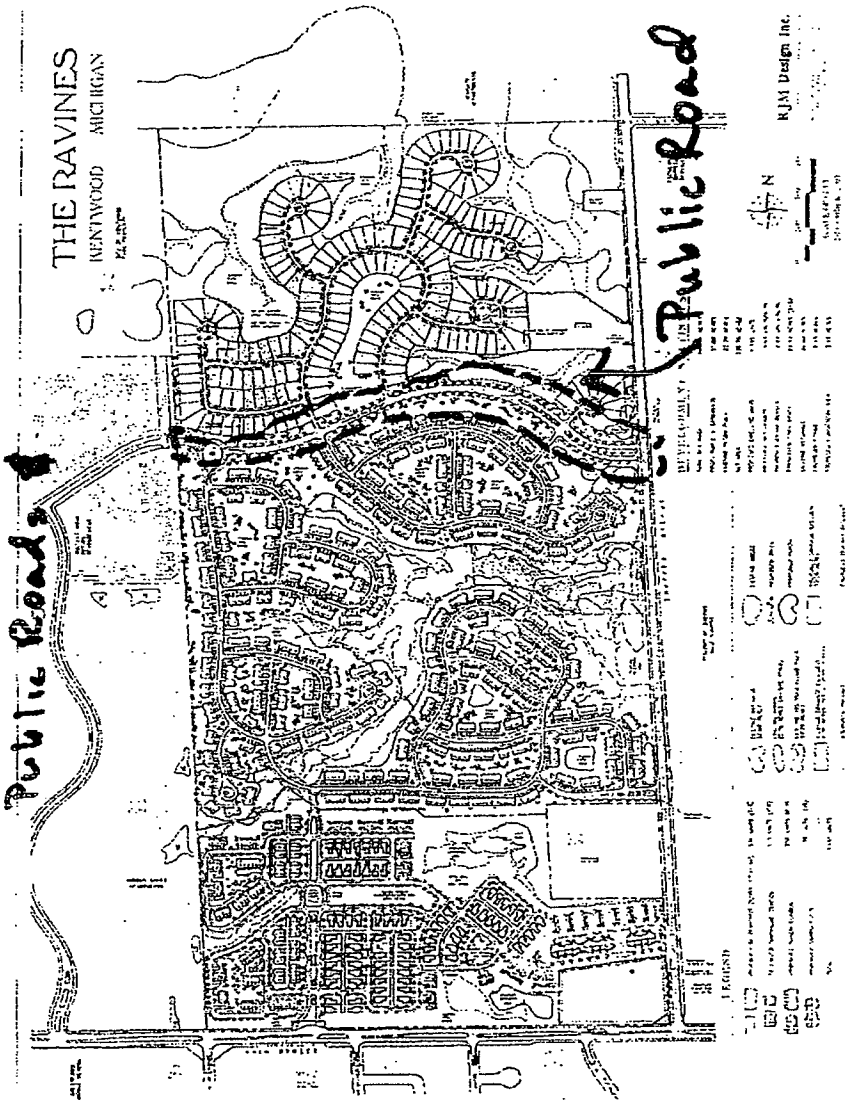
Road Radii:

Subject to modifications for grading and wetlands permitting, all road radii shall be as shown on Exhibit B. The City has approved a reduced road radii from 300' to 200' at such locations shown on the attached plan marked Exhibit D 2/2, as well as the general road layout and curves shown in that exhibit. If after final engineering design and permitting, additional variances are required, the Developer shall submit an application for variance to the City Service Committee for review. All road radii shall be a minimum of 200 feet.

Road Configurations

Road and alley configurations shall be generally as shown on Exhibit B. Modifications to the road and alley layouts (excluding 44th Street or Shaffer Avenue curb cut locations) to accommodate grading or wetlands permitting shall be allowed and shall be at the discretion of Developer (subject to prior reasonable approval of the City Department of Public Works) and shall meet the City's 2003 road standards as amended by the Service Committee. If any additional variances are required, Developer shall submit these requests to the City's Service Committee for review.

All roads shall be constructed in accordance with the provisions of Exhibit B1 including specifically, and not by way of limitation, Item Nos. 6.a and b. and 14.



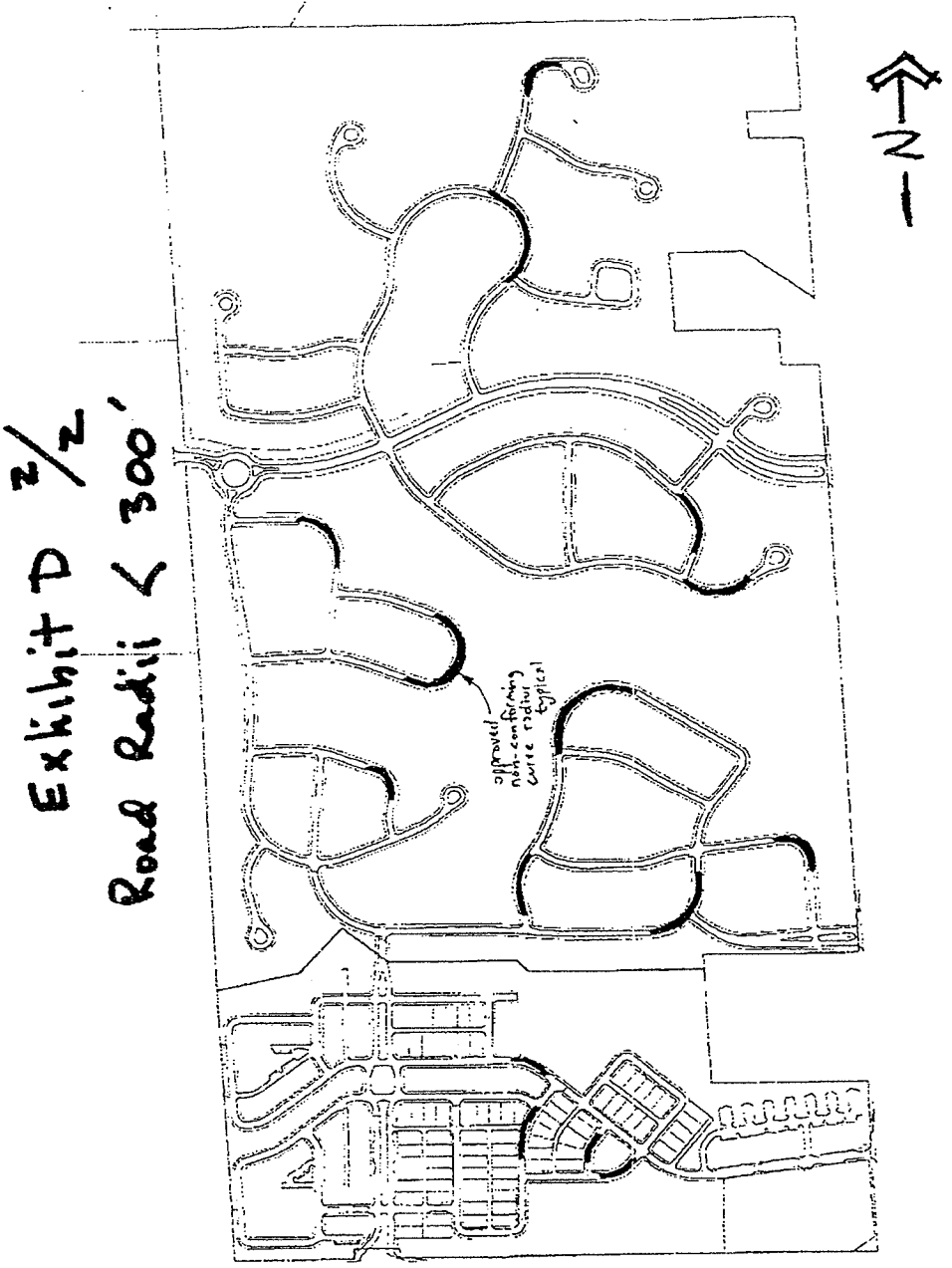


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Exhibit E

Preliminary Phasing Plan

The attached plan represents a tentative and preliminary phasing plan for the Project. This plan is provided without consideration to final grading plans and underground utility constraints or wetlands permitting and thus may be changed at Developer's sole discretion. Any change to this plan shall be reduced to writing and provided to the City as an addendum to this Agreement. It is expressly understood and agreed that the Developer or its successors may develop the Project in any sequence at the discretion and initiative of the owner of the particular portion of the Property being proposed for development.

As of the date of this Agreement, the Developer's anticipated phasing construction schedule is as follows:

Phase/Location	Construction Start
Neighborhood A	
Phase 1	Summer 2005
Phase 2	Summer 2006
Phase 3	Summer 2008
Neighborhood B1	
Phase 1	Summer 2007
Phase 2	Summer 2009
Neighborhood B2	
Phase 1	Summer 2006
Phase 2	Summer 2008
Neighborhood B3	
Phase 1	Summer 2005
Phase 2	Summer 2006
Phase 3	Summer 2007
Phase 4	Summer 2008
Neighborhood B4	
Phase 1	Summer 2006
Phase 2	Summer 2008

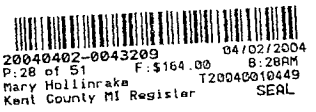

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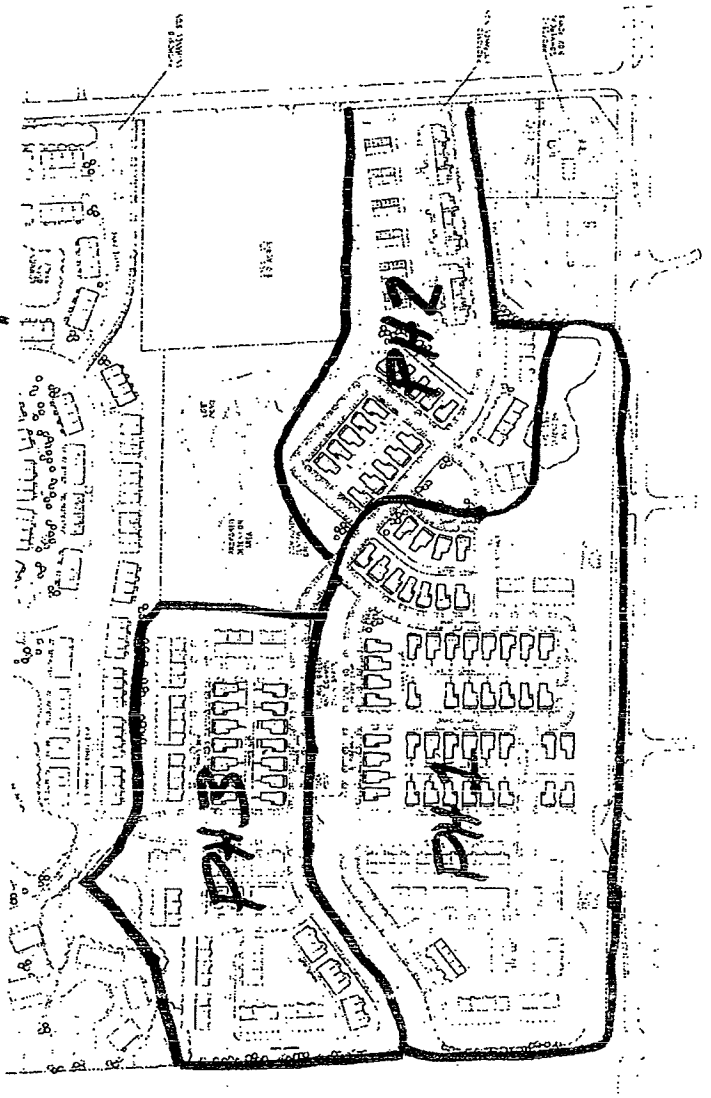
Exhibit "E" ½



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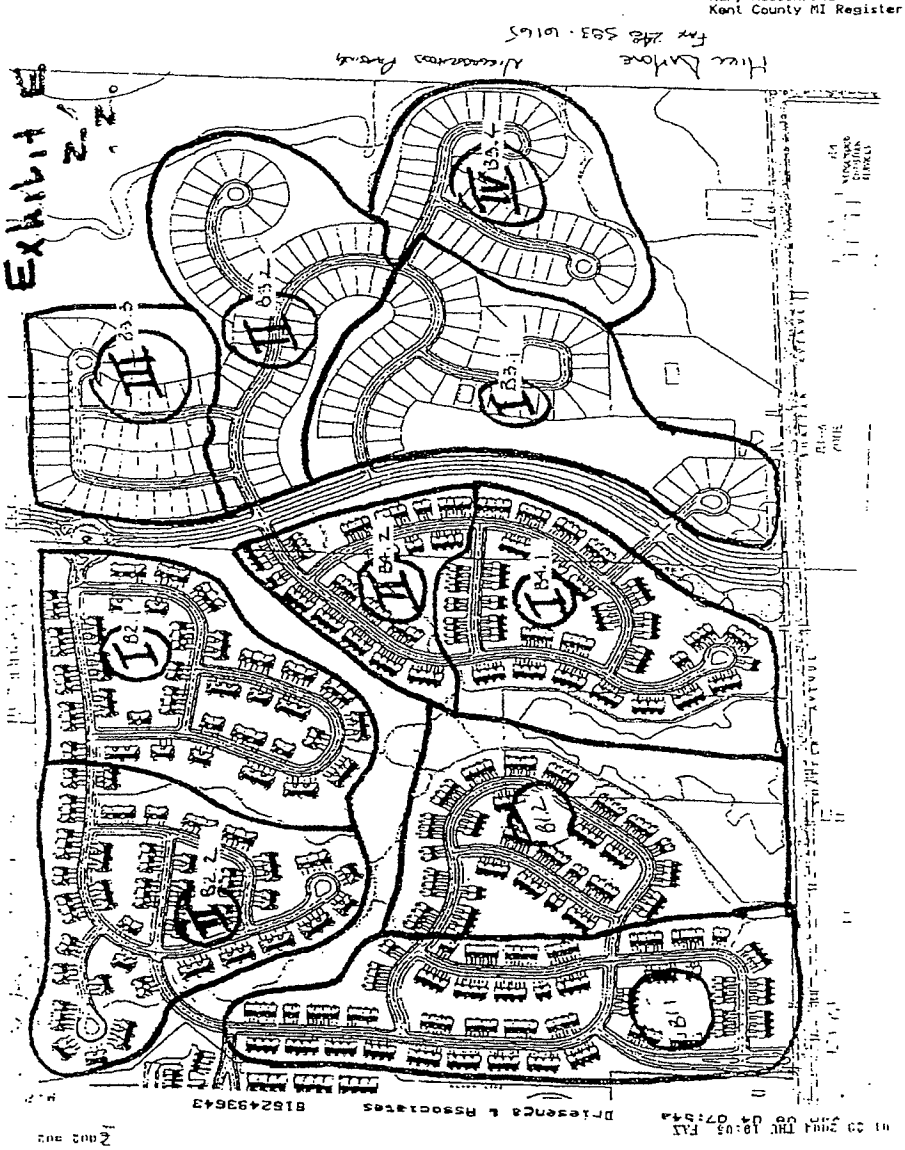

Exhibit F

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Road Improvements / Curb Cuts

Curb Cuts

No curb cuts onto 44th Street shall be permitted except as shown on Exhibit B. The Developer shall be responsible to apply for and obtain all approvals and permits necessary for the curb cuts onto 44th Street shown on Exhibit B from the Kent County Road Commission. Subject to the terms listed below, the Developer will make, at its expense, all improvements required by the Kent County Road Commission associated with the approval of those curb cuts.

Road Improvements

The Road Improvements are shown as Areas "A", "B", and "C" on the attached drawing. The City and Developer agree to share the cost of these improvements (provided that the Developer will not be responsible for making any additional contributions for these particular improvements by the City) as follows:

Area "A" - 44th Street Traffic Signal and Timing Changes

The City will install a traffic signal on eastbound 44th Street at the entrance to the Property. This location is identified as "A" on the attached drawing. This change will also require timing changes to the existing signal at 44th Street and Shaffer. The City has estimated the cost of these improvements to be $45,000. The Developer will pay for the cost of these improvements.

This money will be placed in an escrow account at Metropolitan Title Company not later than March 18, 2004 and will be distributed to the City after the improvements are complete.

The City will be responsible for design and construction of the improvements in 2006.

Area "B" - 44th Street and Shaffer Intersection Improvements

Developer will contribute $50,000 toward the cost of creating an indirect left turn from east bound 44th street to north bound Shaffer. This location is identified as Point "B" on the attached drawing.

This money will be placed in an escrow account at Metropolitan Title Company not later than March 18, 2004 and will be distributed to the City after the improvements are complete.

The City and the Kent County Road Commission will be responsible for constructing the improvements in 2006.

Developer will deed an additional ten feet of right of way along the west side of Shaffer from the corner of 44th Street to the south side of the southerly entrance/exit to Shaffer as shown on Exhibit B. A description of this property is included below. This deed will be placed in an escrow account at Metropolitan Title Company at Closing and will be distributed to the City upon request, prior to the start of construction of the intersection improvements.

Not later than April 1, 2004, Developer will deed the mineral and extraction rights, without reservation, to approximately 32.27 acres at the northeast corner of 44th and Shaffer to the City.

This deed will be placed in an escrow account at Metropolitan Title Company and will be distributed to the City upon request, prior to the start of construction of the intersection improvements.

Area "C" –Shaffer Road improvements at Pfeiffer Woods Drive

Developer will install and pay for appropriate acceleration and deceleration lanes on the west side of Shaffer at the Pfeiffer Woods Drive entrance constructed to City and Kent County Road Commission specifications. The Developer shall take all steps reasonably requested by the City or Kent County Road Commission to convey all interest in these improvements to the appropriate governmental agency. The City will pay for any additional by pass lanes or right of way required by the City on the east side of Shaffer Avenue.

44th Street Beautification

The City plans to submit an application for a landscape improvement grant to the State of Michigan. The Developer has agreed to contribute $25,000 toward the City's contribution. This money will be placed in an escrow account at Metropolitan Title Company not later than March 18, 2004 and will be distributed to the City when the grant is funded.

The City will be responsible for the design and installation of the improvements.

If City has not received grant and started the project within 5 years of March 18, 2004 the escrow shall be released to 44th LLC and/or RCM and not their successors.

Shaffer Avenue Changes

Should the City decide to reconfigure Shaffer Avenue from four lanes to three lanes with bike paths, the cost of these improvements shall be borne by the City.

Description of the Shaffer Right of Way to be dedicated at Closing:

Land situated in the City of Kentwood, Kent County, Michigan, described as:

Part of the SE ¼, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: Commencing at the SE corner of Section 22; thence N03°10'02" W 50.08 feet along the East line of said SE ¼ to the PLACE OF BEGINNING of this description; thence S90°00'00" W 75.08 feet; thence N43°24'59" E 34.36 feet; thence N03°10'02" W 372.08 feet; thence N 82°24'32" E 10.03 feet; thence S 03°10'02" E 328.53 feet; thence N 52°00'08" E 48.73 feet; thence S 03°10'02" E 99.92 feet along the East Line of the SE ¼ of Section 22 to the place of beginning.

Tax Parcel Identification Numbers: Part of 41-18-22-400-034, part of 41-18-22-400-036, part of 41-18-22-400-040 and part of 41-18-22-400-046.

Condominium Flat:

The Developer shall, consistent with Item No. 7 of Exhibit B1, remove the proposed access driveway to Shaffer Avenue for the condominium flat development north of the southernmost drive.

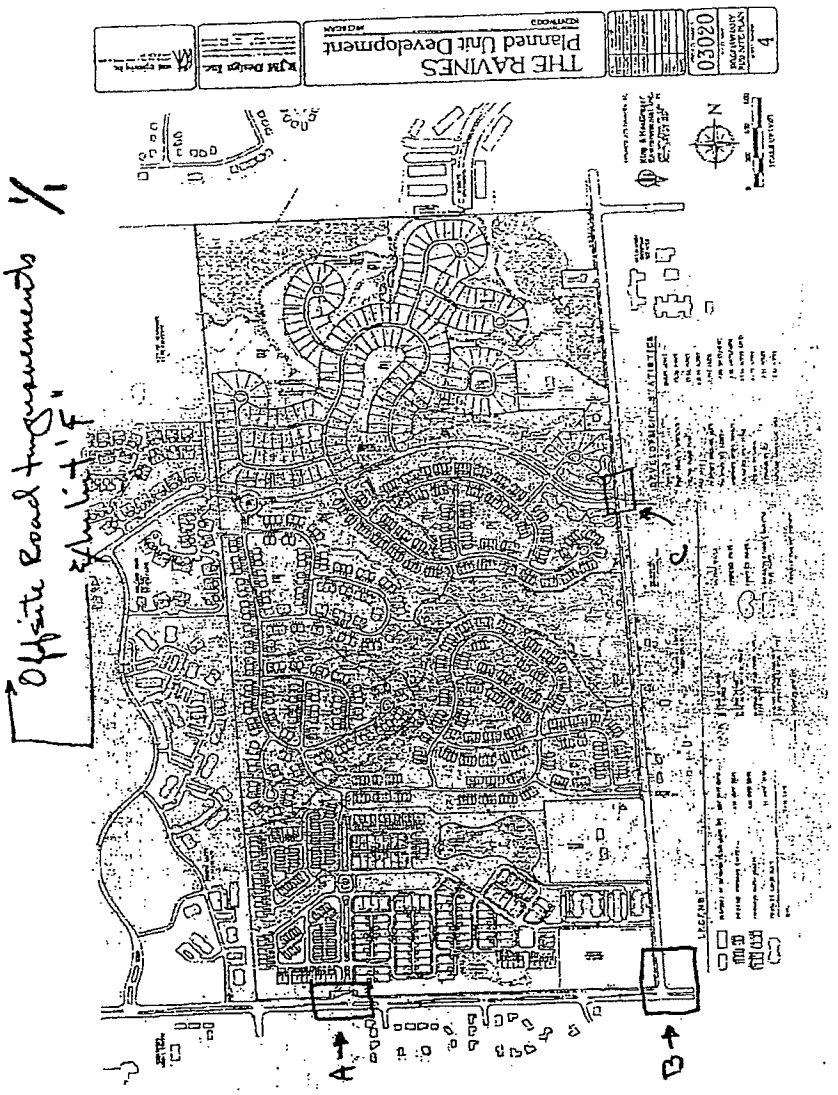

Exhibit G

Storm Water Detention

Reconfiguration of Drainage Easement

The City currently owns an easement for storm water detention on the Property shown generally as Point "C" on the attached drawing. This easement is described on page G-1 (the Current Easement) and the City has agreed to reconfigure the Current Easement into a new easement area described on Page G-2 (the New Easement).

Not later than March 18, 2004, the City will release the Current Easement. Simultaneously with this release, Developer will record the New Easement.

Developer shall have no obligation to grade, maintain or install improvements to the area contained within the New Easement area.

The City will be responsible for ongoing maintenance of the pond contained within the New Easement area.

Developer shall neither take any action nor install or construct any improvement within the New Easement that interferes with the City's ability to use the New Easement for storm water drainage purposes. The portion of the Property fronting Shaffer Avenue, immediately south to the master pond watershed will be required to have a detention pond within its own watershed; provided, however that this restriction shall not be construed to prohibit the Developer from seeking approval from the City Service Committee to amend these provisions.

The Developer will reimburse the City up to $5,000 for legal and engineering costs associated with the reconfiguration of the easement.

Other Detention Areas

Detention Areas "A", "B", "D" and "E" will be the responsibility of the Developer to permit, build and maintain.

The drainage area generally described as "F" will not require a detention pond and will be allowed to drain into the wetland at the north end of the Property.

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Exhibit 6A
Storm Water Detention

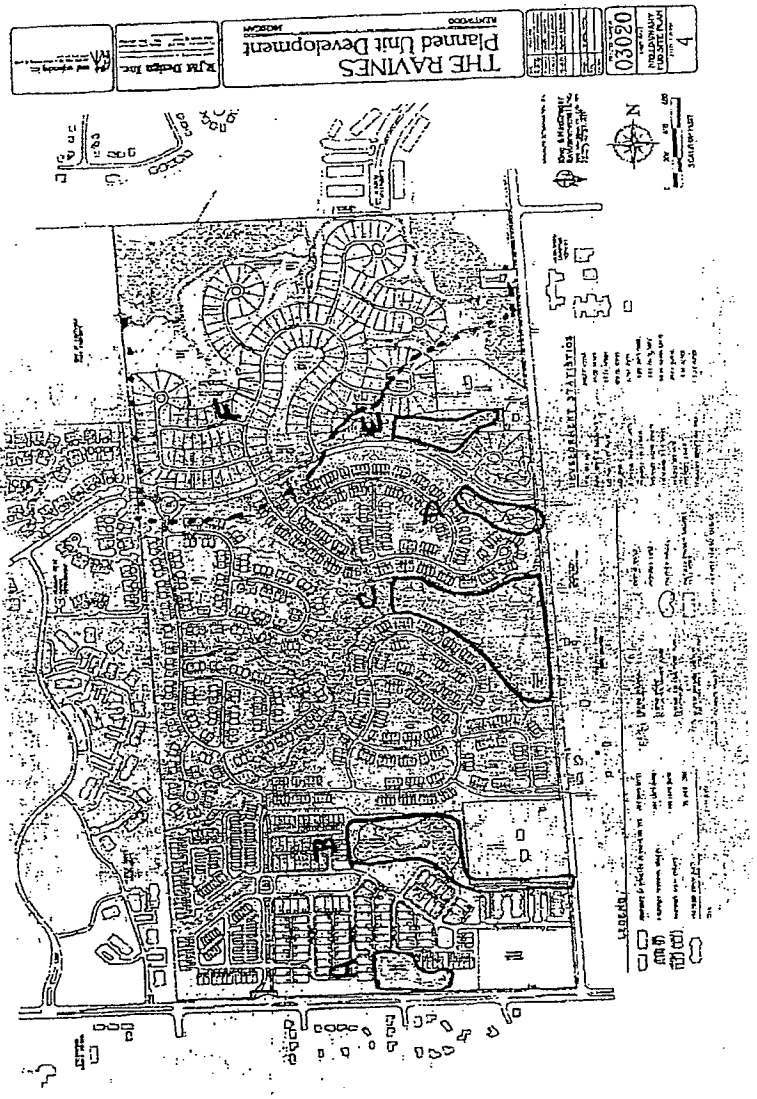

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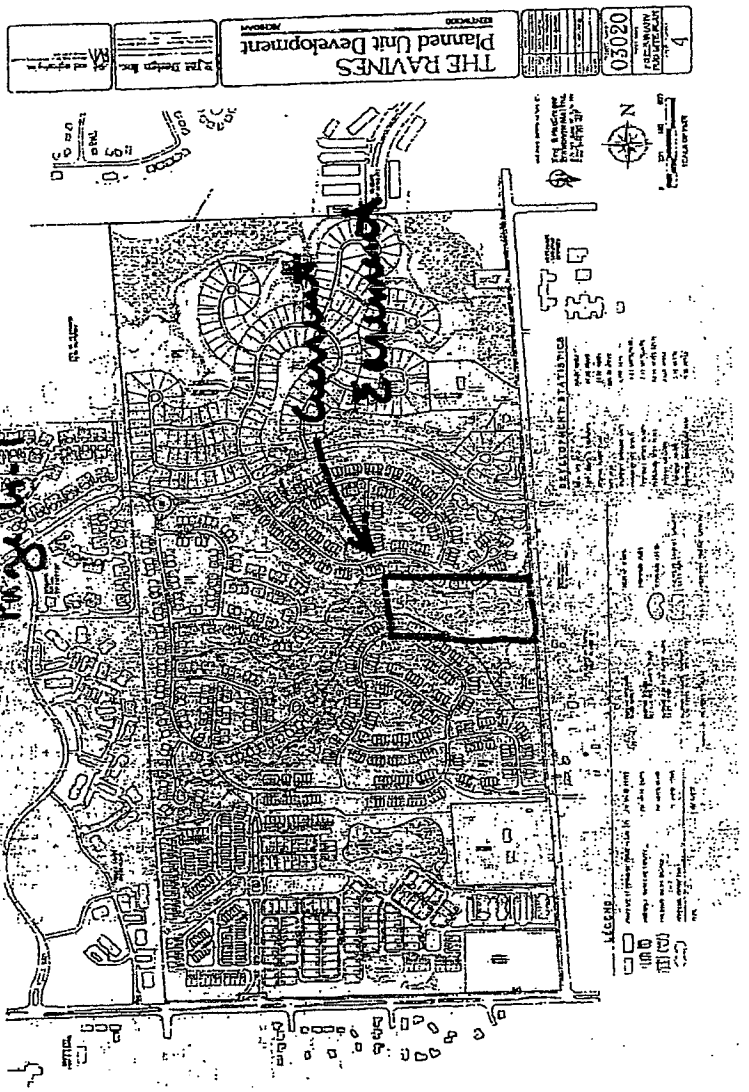
Exhibit 4
Page 1 of 1



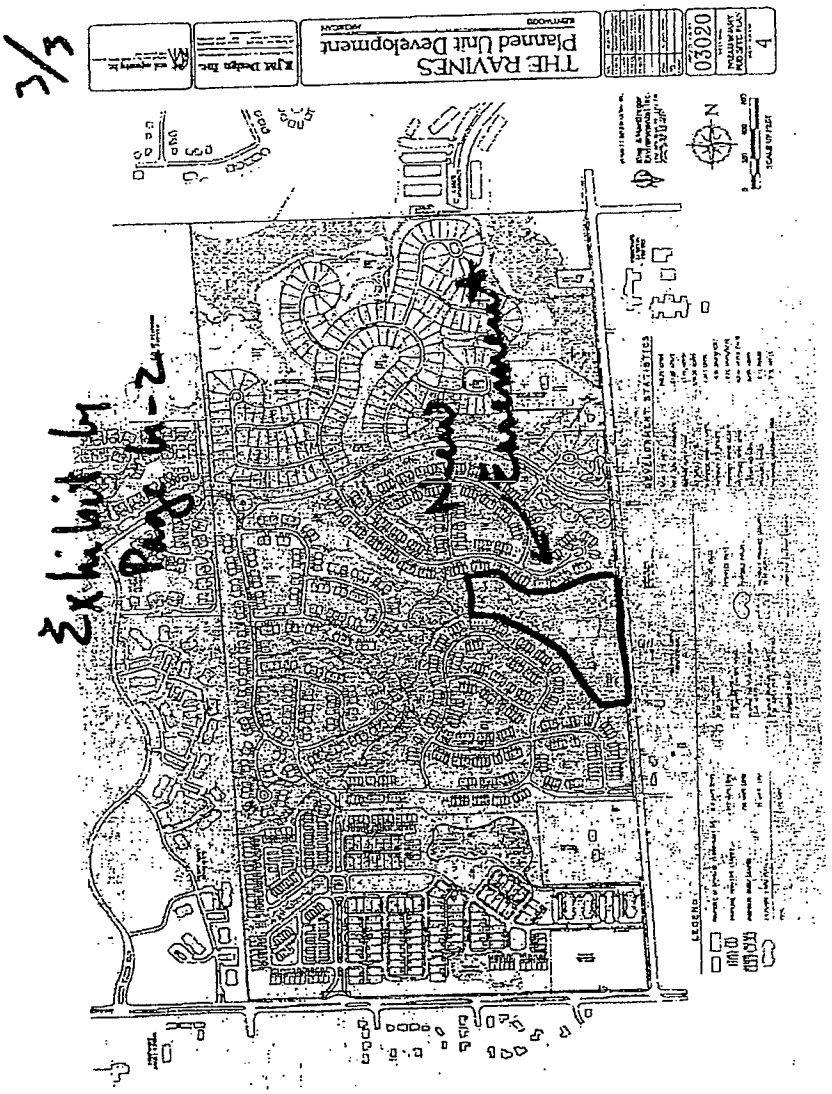


Exhibit I

Commercial Corner

Development Standards

The Commercial Corner's permitted uses, densities and parking requirements will meet the standards contained in the City's February 3, 2004 Zoning Ordinance.

Consistent with Item No .10 of Exhibit B1, any development of the Commercial Corner shall be subject to the review and approval by the City staff of a conceptual site plan. The Developer shall submit a conceptual site plan within 6 months of the execution of this Agreement for informational planning purposes.

Curb Cuts

The Commercial Corner will be permitted one curb cut on 44th Street at approximately the center of the 44th street frontage. Any deviation in terms of additional curb cuts onto 44th Street shall be subject to the review and approval of the City and Kent County Road Commission.

The Commercial Corner will also be permitted two curb cuts on the entrance drive located on the north side of the commercial property. The specific locations of these curb cuts will be at the discretion of the Developer.

There will be no curb cuts permitted on Shaffer Avenue.

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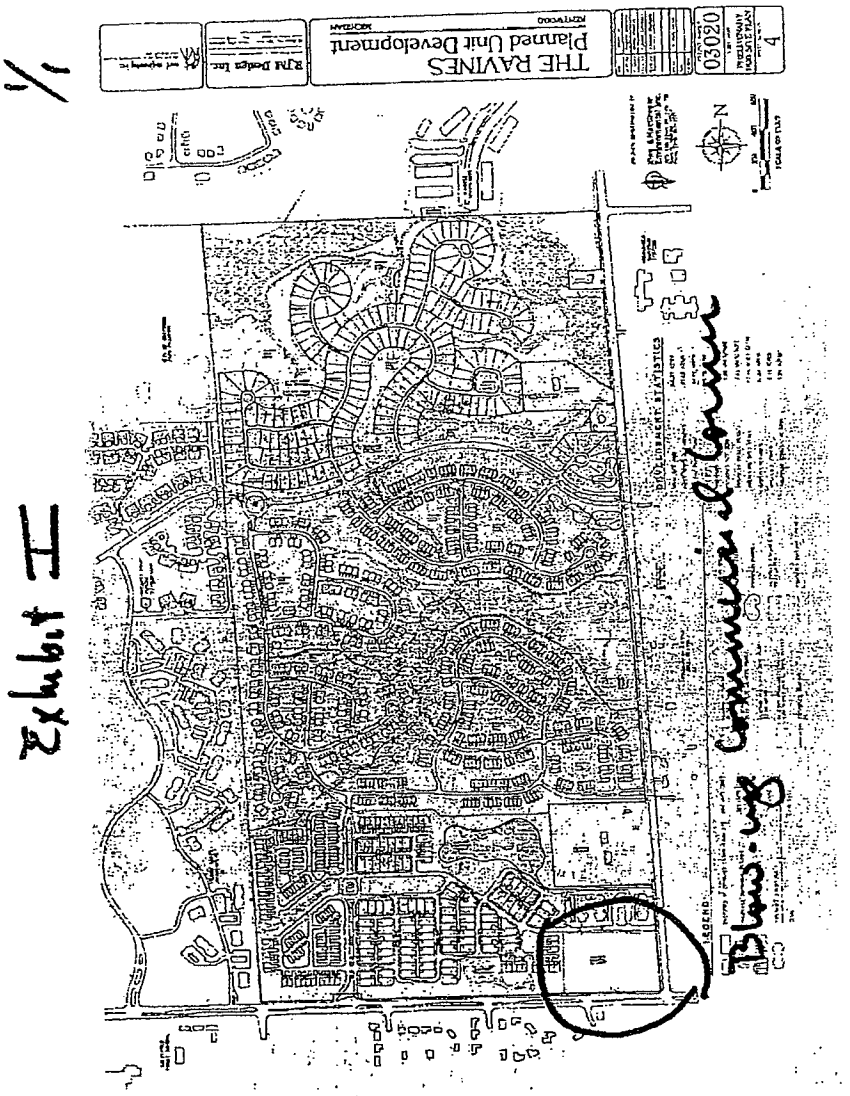

Exhibit J

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Neighborhood "A"- Architectural Standards & Schematic Elevations

The following architectural Standards shall apply to the dwelling units constructed in this neighborhood:

Home floor plans and front elevations will be consistent to plans submitted January 27, 2004.

Front Elevations:

Vinyl Siding, Vinyl Shakes, Vinyl Horizontal Siding, Stone as per Plan, Brick as per plan, and front porches all may be used separately or as a combination.

Side and Rear Facades:

The side and rear facades of the dwelling units in this neighborhood shall be permitted to be 100% vinyl. Other materials shall be permitted at discretion of the Developer.

Maximum Height:

Maximum Height of Single Family homes, Carriage Homes, Ranch Condominiums, and Villa Flats will not exceed three stories plus roof above grade.

Square Footage:

The minimum square footage for condominiums will not be less than 850 sq. ft.
The minimum square footage for single-family homes will not be less than 1,000 sq. ft.

Accessory Lofts/Mother-In Law Suites:

Lofts or Mother-In law suites will be allowed above the garages of Single Family Homes and will be considered an integral part of the home. These lofts or suites shall not be constructed in such a manner or include amenities such that they become additional dwelling units under applicable city ordinances.

Floor Plans:

Floor plan designs shall be at the sole discretion of the Developer.

The elevations that follow are provided as a representative sample of the elevations to be constructed within this neighborhood. These sample elevations combined with the narrative above, shall provide the builder and the Zoning Administrator with a guide as to acceptable elevations within the neighborhood. If a conflict between the sample elevations and the narrative arises, the narrative shall control.

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This neighborhood will be a multi-year, multi phase development. As such, these elevations will be modified as new phases are developed, consumer preferences change, and new types of building materials are developed.

The Zoning Administrator shall have the reasonable ability to approve building elevations, however, if the builder and Zoning Administrator can not agree, builder shall have the right to appeal the Zoning Administrator's decision to both the Planning Commission and the City Commission.

Mix and Variation of Building Elevations:

The builder shall have the right to control the mix and variation of building elevations within this neighborhood provided, however, that no home shall be located immediately adjacent to or across from a similar home in terms of front yard elevations.

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Exhibit K

NEIGHBORHOOD ARCHITECTURAL REQUIREMENTS & DEVELOPMENT STANDARDS – Neighborhoods B1, B2, B3 and B4

I. **Neighborhood B1 & B4**

Home Type: B1 - 250 Attached 2 story Townhomes and Stacked Ranches
B4 - 178 Attached 2 story Townhomes and Stacked Ranches

Units per Building: Cannot Exceed 5 units per building, and the number of 5 unit Buildings may not exceed 30% of the buildings in the neighborhood.

Building Setbacks: The Developer reserves the right to exceed the following minimum standards.

Front: 20 Feet as measured from edge of Road Pavement
Side: 20 Feet between buildings
Rear: 30 Feet between buildings. However, unenclosed porches/decks may encroach 10 feet into the 30 foot setback.

Architectural Requirements:

- Each building type (defined by number of units in the building) must have at least three different facade designs (elevations) used throughout the neighborhood.
- The neighborhood must have at least 4 pre-determined color packages that are repeated throughout the neighborhood. Each color package will have a different primary face color and a different accent color scheme used for doors, trim, shutters, and other architectural details. Additionally, at least two shingle colors will be used in the 4 color packages. All the color packages will make use of at least 4 accent colors, and a color package will not be repeated on consecutive buildings on any side of a street.
- Garages doors will all contain a windowed panel, and no garage door may be identical in style to one next to it in any building.
- All buildings will contain some brick or stone on the façade.
- The architectural detail and front façade styling must achieve the standard set by the black and white Architectural renderings provided to the Kentwood Planning Commission in January 2004, and on file with the Kentwood Planning Department.

Amenity: No constructed amenity is required in this neighborhood

II. **Neighborhood B2**

Home Type: 190 Attached single story Condominiums

Units per Building: 2 & 3 unit buildings are approved.

Building Setbacks: The Developer reserves the right to exceed the following minimum standards.

Front: 20 Feet as measured from edge of Road Pavement
Side: 20 Feet between buildings
Rear: 30 Feet between buildings. However, unenclosed porches/decks may encroach 10 feet into the 30 foot setback.

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Architectural Requirements:

- Each building type (defined by number of units in the building) must have at least three different facade designs (elevations) used throughout the neighborhood.
- The neighborhood must have at least 4 pre-determined color packages that are repeated throughout the neighborhood. Each color package will have a different primary face color and a different accent color scheme used for doors, trim, shutters, and other architectural details. Additionally, at least two shingle colors will be used in the 4 color packages. All the color packages will make use of at least 4 accent colors, and a color package will not be repeated on consecutive buildings on any side of a street.
- Garages doors will all contain a windowed panel, and no garage door may be identical in style to one next to it in any building.
- All buildings will contain some brick or stone on the façade.
- The architectural detail and front façade styling must achieve the standard set by the black and white Architectural renderings provided to the Kentwood Planning Commission in January 2004, and on file with the Kentwood Planning Department.

Amenity: No constructed amenity is required in this neighborhood

III. Neighborhood B3

Home Type: 208 Detached single family homes
Units per Building: Cannot Exceed 1 unit per building.
Building Setbacks: The Developer reserves the right to exceed the following minimum standards.

Front: 20 Feet as measured from edge of Road Pavement
Side: 5 Feet minimum with no less than 12 Feet between buildings
Rear: 30 Feet. However, unenclosed porches/decks may encroach 10 feet into the 30 foot setback.

Architectural Requirements:

- Each floor plan must have at least three different facade designs (elevations) used throughout the neighborhood.
- The neighborhood must have at least 20 pre-determined color packages that are used throughout the neighborhood. Color packages will make use of at least four different primary face colors and at least four different accent colors used for doors, trim, shutters, and other architectural details. Additionally, at least two shingle colors will be used in the neighborhood. The same floor plan, façade and color package may not be repeated within 2 homes on either side of any building on the same side of the street, and a color package will not be repeated on consecutive buildings on any side of a street.
- Garages doors will be upgraded carriage style steel doors (with or without window panels).
- Homes may have, but are not required to have brick or stone on them.

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- The architectural detail and front façade styling must achieve the standard set by the black and white Architectural renderings provided to the Kentwood Planning Commission in January 2004, and on file with the Kentwood Planning Department.

Amenity: This neighborhood will have a constructed community center benefiting Neighborhoods B1, B2, B3, & B4. It is described in more detail below.

IV. AMENITIES

COMMUNITY CENTER

- Will be located in Neighborhood B3
- Will be constructed for and made available to neighborhoods B1, B2, B3, & B4
- Operating Expenses will be paid by the neighborhoods and/or residents using the facility
- The facility will include at least 5,000 square feet of useable indoor space, a swimming pool, and a changing area.

A. INTERNAL TRAIL NETWORK

1. The Developer shall, at its sole cost and expense, construct an internal trail network as shown on Exhibit B. With respect to these trails, the trails may be constructed of one or more of the following materials: crushed aggregate, gravel, woodchips or, if agreed to by the parties, other materials.

2. The Developer shall also make a contribution to the City in the amount of $50,000.00 towards the cost of constructing a ten (10) foot wide nature trail along the northern boundary of the Property as shown on Exhibit B (the Plaster Creek Trail referenced in Section 3.C. of the Agreement). The Developer shall post with the City irrevocable letter of credit in the amount of 50,000.00 and No/100 Dollars ($50,000.00), to cover the contribution provided for herein. The letter of credit must be posted at such time as the easement for the trail is requested by the City.

2. Easements shall be supplied to the City, as reasonably requested, to assure public access to the nature trail.

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Exhibit L

Metropolitan Title Company - Escrow Instructions

This Escrow Agreement, dated this 16 day of March, 2004, is by and among the City of Kentwood, a Michigan municipal corporation, whose address is 4900 Breton Avenue, S.E., P.O. Box 8848, Kentwood, Michigan 49518-8848 (the "City"), 44th/Shaffer Avenue, LLC, a Michigan limited liability company, whose address is 850 Stephenson Highway, Suite 200, Troy, Michigan 48083 ("Shaffer"), Ravines Capital Management, LLC, a Michigan limited liability company, whose address is 301 Douglas Avenue, Holland, Michigan 49424 ("RCM"), and Metropolitan Title Company, whose address is 5730 Eagle Drive, S.E., Grand Rapids, Michigan 49512 ("Escrow Agent"). Shaffer and RCM are sometimes hereinafter collectively referred to as the "Developer").

Pursuant to a Planned Unit Development Agreement by and between the City and the Developer, dated March 18, 2004 (the "Agreement"), the parties have reached various agreements with regard to a Planned Unit Development (the "PUD") to be constructed in the City. A copy of the Agreement is delivered herewith to the Escrow Agent.

NOW, THEREFORE, the parties hereto agree as follows:

1. The City and the Developer hereby appoint Metropolitan Title Company as Escrow Agent to act in accordance with the terms and conditions of this Escrow Agreement, and Escrow Agent hereby accepts its appointment as such and agrees to act as Escrow Agent.

2. With this Escrow Agreement, the Developer has delivered to the Escrow Agent the following sums:

a. Forty Five Thousand Dollars ($45,000.00) for design, installation and/or construction of a traffic signal on eastbound 44th Street at the entrance to the Property, such sums being contributed by the following parties in the following amounts:

i. Four Thousand Five Hundred Dollars ($4,500.00) by Shaffer;

ii. Ten Thousand Three Hundred Fifty Dollars ($10,350.00) by RCM; and

iii. Thirty Thousand One Hundred Fifty Dollars ($30,150.00) by Shaffer.

b. Fifty Thousand Dollars ($50,000.00) toward the cost of creating an indirect left turn from east bound 44th street to north bound Shaffer Avenue, such sums being contributed by the following parties in the following amounts:

i. Five Thousand Dollars ($5,000.00) by Shaffer;

ii. Eleven Thousand Five Hundred Dollars ($11,500.00) by RCM; and

iii. Thirty Three Thousand Five Hundred Dollars ($33,500.00) by Shaffer.

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c. Twenty Five Thousand Dollars ($25,000.00) toward 44th Street beautification, such sums being contributed by the following parties in the following amounts:

i. Two Thousand Five Hundred Dollars ($2,500.00) by Shaffer;

ii. Five Thousand Seven Hundred Fifty Dollars ($5,750.00) by RCM; and

iii. Sixteen Thousand Seven Hundred Fifty Dollars ($16,750.00) by Shaffer.

The funds shall be held in a non-interest bearing escrow account and released from escrow to the City in accordance with the terms of Exhibit F to the Agreement. The City will make a written request to the Escrow Agent for each set of funds to be released with copies of the request to Shaffer and RCM. In the event that the Escrow Agent receives no written objections from Shaffer or RCM (with a copy to the City) within ten (10) calendar days of such request, the funds requested will be released to the City.

3. With this Escrow Agreement, the Developer has delivered to the Escrow Agent the following Quit Claim Deeds:

a. With the delivery hereof, a deed of an additional ten (10) feet of right of way along the west side of Shaffer Avenue from the corner of 44th Street to the south side of the southerly entrance/exit to Shaffer Avenue.

b. A deed for the mineral and extraction rights to approximately 32.27 acres at the north east corner of 44th Street and Shaffer Avenue.

The deeds shall be held in escrow and released from escrow to the City in accordance with the terms of Exhibit F to the Agreement. The deeds will be released to the City upon its written request to the Escrow Agent (with a copy to Shaffer).

4. In the event that Escrow Agent has not released all of the money held in escrow to the City on or before March _____, 2009, it shall notify the City of its intent to return any remaining monies to Shaffer and RCM, not their successors, as applicable in proportion to the amount originally deposited by Shaffer and RCM. In the event that the Escrow Agent receives no written objections from the City (with copies to Shaffer and RCM) within ten (10) calendar days of such notification, the money held in escrow will be released to Shaffer and RCM. In the event that Escrow Agent has not released both deeds to the City on or before March _____, 2009, it shall notify the City of its intent to return any unreleased deed to Shaffer. In the event that the Escrow Agent receives no written objections from the City (with a copy to Shaffer) within ten (10) calendar days of such notification, the unreleased deed(s) held in escrow will be released to Shaffer.

5. All notices, requests, demands and other communications hereunder to and from the City, the Developer and Escrow Agent, shall be in writing and shall be either personally delivered, sent by recognized overnight courier or mailed by certified or registered mail, return receipt requested, at the addresses set forth above or to such other address as such party may designate by notice given in accordance with the provisions hereof. Any notice hereunder

directed to Escrow Agent may be given in counterpart. Such notice shall be deemed delivered as of the date it is received by the recipient.

6. Upon making such delivery and performing any other services provided herein in accordance with the terms and conditions of this Escrow Agreement, Escrow Agent will thereupon be released and acquitted from any further liability concerning the foregoing deposits, it being expressly understood that such liability in any event is limited by the terms and conditions set forth herein. By acceptance of this agency, Escrow Agent in no way assumes responsibility for the validity or authenticity of the subject matter of the foregoing deposits.

7. In the event of a dispute in regards to the Agreement or this Escrow Agreement, Escrow Agent shall be entitled to initiate an interpleader action in a court of competent jurisdiction and deposit all of the escrowed funds and/or documents for determination by the court of the proper disposition of such escrowed funds and/or documents. Upon any such deposit with the court, this escrow shall terminate.

8. In the event of an interpleader action or other litigation affecting Escrow Agent's duties under this Escrow Agreement, the City and the Developer agree to reimburse Escrow Agent for any reasonable expenses incurred, including attorneys' fees.

9. Any changes in the terms or conditions hereof may be made only in writing and signed by all parties or their duly authorized representatives. All of the covenants and agreements contained herein shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

10. For its services as herein set forth, the Escrow Agent is to be paid the sum of Four Hundred Fifty Dollars ($450.00), such sum to be equally split among the City, Shaffer and RCM.

(Signature pages follow)

IN WITNESS WHEREOF, this Escrow Agreement has been duly executed by the parties hereto as of the day and year first above written.

WITNESSES:

By: Keith Van Beek
Name: Keith Van Beek

By: Mary Bremer
Name: MARY BREMER

CITY OF KENTWOOD, a Michigan municipal corporation

By:
Name: Richard Root
Its: Mayor

By:
Name: Dan Kasunic
Its: Clerk

-4-

44TH/SHAFFER AVENUE, LLC, a Michigan limited liability company

By: _____
Name: GEORGE C. LAFAMORE

By: _____
Name: Michael J. Damone
Its: Manager

RAVINES CAPITAL MANAGEMENT, LLC, a Michigan limited liability company

By: _____
Name: GEORGE C. LAFAMORE

By: _____
Name: Michael L. Bosgraaf
Its: Manager

ESCROW AGENT'S ACKNOWLEDGMENT AND AGREEMENT

We hereby acknowledge receipt of the foregoing deposits and agree to act in accordance with the terms and conditions hereof.

METROPOLITAN TITLE COMPANY

By:
Name: Craig S. Wandrie

EXHIBIT 5

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Mary Hollinrake T20040010449
Kent County MI Register SEAL

1/5/8

(3)

DEFERRED ASSESSMENT AGREEMENT

This Deferred Assessment Agreement (the "Agreement") is executed this 18th day of March, 2004, between the City of Kentwood, a Michigan municipal corporation, the address of which is 4900 Breton Avenue SE, PO Box 8848, Kentwood, Michigan 49518-8848 (the "City"), Ravines Capital Management, LLC, a Michigan limited liability company, the address of which is 301 Douglas Avenue, Holland, Michigan 49424 ("RCM") and 44th/ Shaffer Avenue, LLC, a Michigan limited liability company, the address of which is 850 Stephenson Highway, Suite #200, Troy, MI 48083 ("44th LLC").

RECITALS

A. 44th LLC and RCM own approximately 300 acres of real property located at the northwest corner of 44th Street and Shaffer Avenue in the City of Kentwood, Kent County, Michigan (the "Property"), more specifically described on the attached Exhibit A, which is incorporated by reference.

B. In 1981, 1983, 1995 and 2000, special assessment districts were established by the City to finance certain public improvements benefiting particular properties in the City, including the Property. The special assessment rolls corresponding to the special assessment districts for the Property were confirmed by the City Commission.

C. In total, special assessments in the amount $327,004.68, were assessed against the Property (the "Special Assessments"). The Special Assessments are a lien on the Property.

D. Under the terms of the rolls confirming the Special Assessments, collection of the Special Assessments was deferred until certain developments occurred on the Property.

E. The Property was formerly zoned R1-C, single family residential. 44th LLC sought and received approval from the City to develop the Property in phases having multiple uses including commercial and residential development of single family, townhouses and attached condominiums (the "Project"). To accomplish this, the Property was rezoned, at 44th LLC's request, to a R-PUD1 designation, high density residential Planned Unit Development District ("PUD"). A preliminary PUD site plan, as required by the City's Zoning Ordinance, depicting the Project is attached as Exhibit B and incorporated by reference.

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F. 44th LLC contemplates the sale of all or portions of the Property to third party builders ("Builder" or "Builders") who will succeed to and be responsible for complying with the obligations of 44th LLC as to that portion of the Property purchased from 44th LLC, and 44th LLC will have no further obligation with regard to the purchased Property. Wherever the term "44th LLC" is used, it shall mean during the period that 44th LLC remains the owner of the portion of the Property affected and thereafter it shall mean the Builder or Builders.

G. To facilitate development of the Property in an orderly fashion, the parties have agreed to enter into this Agreement with respect to treatment of the outstanding deferred Special Assessments.

AGREEMENT

For good and valuable consideration including, but not limited to, the covenants and pledges contained herein and the City's willingness to forego payment of all Special Assessments upon any development of the Property, the sufficiency of which is acknowledged, the parties agree as follows:

Section 1. Acknowledgment of Lien. Notwithstanding the existence of the Agreement or any provision herein, 44th LLC and RCM acknowledge and agree that the deferred Special Assessments on the Property, in the total amount of $327,004.68, confirmed pursuant to City of Kentwood Resolution Nos. 38-81, 68-83, and 28-00 are and shall remain valid and enforceable liens that run with the Property.

Section 2. Payment Schedule. 44th LLC has requested, consistent with the terms of the resolution confirming the rolls for the Special Assessments, that it or its successors be permitted to pay the Special Assessments in three (3) installments, subject to the terms and conditions of this Agreement, and the City has agreed to this request.

A. Initial Payment. Concurrent with the execution of this Agreement, 44th LLC shall pay to the City the sum of $110,827.68, representing the portion of the deferred Special Assessments due and owing for certain sanitary sewer, watermain and detention pond improvements for approximately 1020 lineal feet of the Property along Shaffer Avenue, S.E., as shown on Exhibit B.

B. Remainder. The remainder of the outstanding deferred Special Assessment in the amount of $216,177.00 (the "Remainder") shall be paid to the City in accordance with the following terms and conditions and consistent with the following schedule:

(1) Not less than 60 days following the execution of this Agreement, 44th LLC shall post with the City an irrevocable letter of credit in the amount of $216,177.00, which letter of credit shall be in a form satisfactory to the City in its reasonable discretion. A combination of irrevocable letters of credit from qualified banks may be used by 44th LLC to satisfy this provision. The letter(s) of credit shall provide that the City may draw or demand for payment on the letter(s) of credit if an official designated by the City attests that payments for the Special Assessments due under the terms of this Agreement have not been made to the City as required herein. The letter(s) of credit shall further contain language providing that it (they) may not be revoked or rescinded without first providing the City with at least

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thirty (30) days prior written notice. The letter(s) of credit shall be released only upon the satisfactory payment of the Special Assessments as provided for herein; provided, however, that the letter(s) of credit shall be released proportionately as the Special Assessment payments called for herein are made to the City. The parties acknowledge and agree that no foundation or building permits shall be issued for any portion of the Project unless and until the letter(s) of credit referred to herein are posted with the City.

(2) For purposes of this Agreement the PUD shall be divided into three (3) distinct component development areas, as separately shown and described on Exhibit C, incorporated by reference. Prior to the time any foundation or building permit is issued within any of the development areas in the PUD (i.e., the Commercial Corner, Bosgraaf Parcel or 44th/Shaffer Parcel), a payment in the amount shown for the relevant development area on Exhibit C, plus interest then due and owing as provided for herein, shall be paid to the City by 44th LLC or the successor Builder.

(3) Interest shall accrue on each component constituting the Remainder, as collectively identified on Exhibit C, at the rate of ten percent (10%) per annum from the date of the execution of this Agreement. Any component of the Remainder that remains unpaid shall continue to accrue interest at the rate of ten percent (10%) per annum.

(4) The parties acknowledge and agree that the construction of Pfeiffer Woods Drive, or any portion of the same, by 44th LLC or the Builders shall not be construed to require a payment under the terms of this Agreement, it being the parties' interpretation that development of Pfeiffer Woods Drive is not a development triggering an obligation to pay any part of the Special Assessments. Similarly, the parties acknowledge and agree that the demolition of any structures existing on the Property as of the date of this Agreement shall not be construed to require a payment under the terms of this Agreement.

(5) Regardless of the particular development schedule for the PUD pursued by 44th LLC or the Builders, any portion of the Special Assessment remaining unpaid as of December 31, 2006 shall be paid to the City with interest accrued to that date by 44th LLC or the Builders.

Section 3. Violation of Agreement. Nothing herein shall be deemed a waiver of the City's rights to seek enforcement of this Agreement or zoning approvals previously granted, to the extent otherwise authorized by law. Violations of the terms and conditions of this Agreement shall entitle the prevailing party, in the event of litigation to enforce this Agreement, to receive its reasonable attorney and consulting fees incurred.

Section 4. Amendment. Except as hereafter provided, this Agreement may only be amended in writing, signed by all parties. However, any amendment that only relates to a component development area shall not require the signature of the owners of the other properties unless such amendment has an effect on their property.

Section 5. Recording and Binding Effect. The obligations under this Agreement are covenants that run with the land, and shall bind all successors in title. It is the parties' intent that this Agreement shall be recorded with the Kent County Register of Deeds. The City shall be responsible for all costs associated with recording the Agreement.

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Section 6. Headings and Recitals. The parties acknowledge and agree that the headings and subheadings in this Agreement are for convenience only and shall have no bearing or effect. The parties further acknowledge and agree, however, that the Recitals hereto are and shall be considered an integral part of this Agreement proper to its correct understanding and interpretation.

Section 7. Miscellaneous.

A. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the enforceability or validity of the remaining provisions and this Agreement shall be construed in all respects as if any invalid or unenforceable provision were omitted.

B. Notices. Any and all notices permitted or required to be given shall be in writing and sent either by mail or personal delivery to the address first above given.

C. Waiver. No failure or delay on the part of any party in exercising any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude further exercise thereof or the exercise of any other right, power, or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

D. Governing Law. This Agreement is being executed and delivered and is intended to be performed in the State of Michigan and shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws thereof.

E. Authorization. The parties affirm that their representatives executing this Agreement on their behalf are authorized to do so and that all resolutions or similar actions necessary to approve this Agreement have been adopted and approved. The Developer further affirms that it is not in default under the terms of any land contract for all or part of the Property.

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The parties have executed this Agreement on the day and year first above written.

WITNESSES:

Keith Van Beek
* Keith Van Beek

Jeff Scugget
* Jeff Scugget

CITY OF KENTWOOD

Richard Root, Mayor

Dan Kasunic, Clerk

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

On this 12th day of March, 2004, before me a Notary Public, personally appeared Richard Root and Dan Kasunic, the Mayor and Clerk, respectively, of the City of Kentwood, a Michigan municipal corporation, who, being first duly sworn, did say they signed this document on behalf of the City.

Julie E. Conner
* Julie E. Conner
Notary Public, Kent County, Michigan
My Commission Expires: 10-2-05

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WITNESSES:

Craig S. Wandrie
*

Craig S. Wandrie
*

44TH/SHAFFER AVENUE, LLC

By: Michael J Damone
Its: Member

MICHAEL J DAMONE

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

On this 18 day of March, 2004, before me a Notary Public, personally appeared ~~the~~ member of 44th/Shaffer Avenue, LLC, a Michigan limited liability company, who, being first duly sworn, did say he signed this document on behalf of the company.

* Michael J. Damone

*
Notary Public, Kent County, Michigan
My Commission Expires:_____

CRAIG S. WANDRIE
NOTARY PUBLIC, BARRY COUNTY
ACTING IN KENT COUNTY, MICHIGAN
MY COMMISSION EXPIRES
NOVEMBER 15, 2007

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Kent County MI Register SEAL

WITNESSES:

Craig S. Wandrie
*

Craig S. Wandrie
*

RAVINES CAPITAL MANAGEMENT, LLC

By: Michael L. Bosgraaf
Its: Manager

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

On this 18 day of March, 2004, before me a Notary Public, personally appeared the manager of Ravines Capital Management, LLC a Michigan limited liability company, who, being first duly sworn, did say he signed this document on behalf of the company.

* Michael L. Bosgraaf

*
Notary Public, Kent County, Michigan
My Commission Expires:_____

CRAIG S. WANDRIE
NOTARY PUBLIC, BARRY COUNTY
ACTING IN KENT COUNTY, MICHIGAN
MY COMMISSION EXPIRES
NOVEMBER 15, 2007

Drafted By/Return To:
Jeff Sluggett
Law, Weathers & Richardson, PC
333 Bridge, NW, Suite 800
Grand Rapids, MI 49504
616-732-1751

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Exhibit A

Legal Description of Property

Part of the NE 1/4 and part of the SE 1/4, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: BEGINNING at the NE corner of Section 22; thence S03°35'29"E 395.00 feet along the East line of said NE 1/4; thence S89°42'31"W 258.00 feet; thence S03°35'29"E 120.00 feet; thence N89°42'31"E 258.00 feet; thence S03°35'29"E 705.38 feet along the East line of said NE 1/4; thence N54°47'03"W 395.85 feet; thence S89°45'47"W 308.00 feet; thence S03°35'29"E 330.00 feet; thence N89°45'47"E 424.00 feet along the South line of the N 1/2 of the NE 1/4 of Section 22; thence S03°35'29"E 153.00 feet; thence N89°45'47"E 193.00 feet; thence S03°35'29"E 273.18 feet along the East line of said NE 1/4; thence S86°24'31"W 40.00 feet; thence S03°35'29"E 891.81 feet along the West line of Shaffer Avenue to the South line of said NE 1/4; thence S03°10'02"E 1324.40 feet along the West line of Shaffer Avenue; thence S89°54'32"W 629.94 feet along the North line of the S 1/2 of the SE 1/4 of Section 22; thence S03°10'02"E 550.00 feet; thence N89°54'32"E 629.94 feet; thence S03°10'02"E 325.92 feet along the West line of Shaffer Avenue; thence S82°24'32"W 10.03 feet; thence S03°10'02"E 372.08 feet along said West line; thence S43°24'59"W 34.36 feet; thence S90°00'00"W 1908.53 feet along the North line of 44th Street; thence N03°04'04"W 40.00 feet and S90°00'00"W 180.00 feet and S03°04'04"E 40.00 feet and S90°00'00"W 481.20 feet along said North line; thence N03°02'05"W 2590.11 feet along the West line of the SE 1/4 of Section 22 to the center of said Section; thence N03°29'48"W 2635.49 feet along the West line of the NE 1/4 of Section 22 to the N 1/4 corner of said Section; thence N89°42'31"E 2633.71 feet along the North line of said NE 1/4 to the place of beginning. This parcel contains 299.85 acres.

EXHIBIT B

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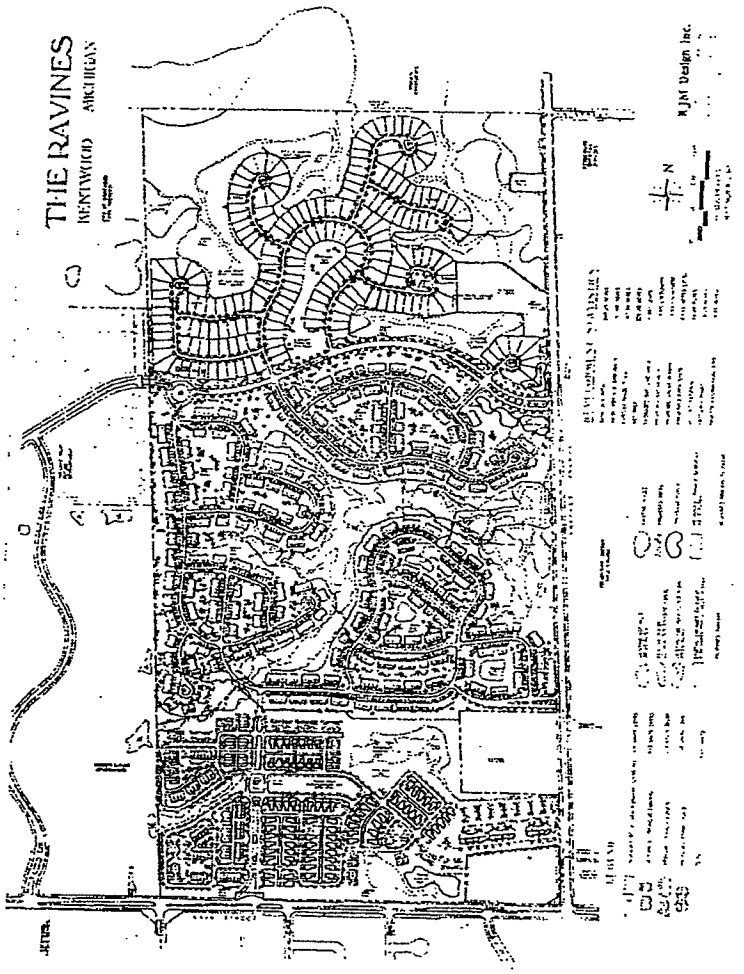

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EXHIBIT C -COMPONENT DEVELOPMENT AREAS

Commercial Corner Neighborhood

Legal Description

Part of the SE ¼, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: Commencing at the SE corner of Section 22; thence S 90°00'00"W 75.08 feet along the South line of said SE ¼; thence N03°10'02"W 50.08 feet to the North line of 44th Street and the PLACE OF BEGINNING of this description; thence S90°00'00"W 585.47 feet along said North line; thence N00°00'00"E 318.04 feet; thence N82°24'32"E 593.74 feet; thence S03°10'02"E 372.08 feet along the West line of Shaffer Avenue; thence S43°24'59"W 34.36 feet to the place of beginning. This parcel contains 4.92 acres.

Portion of Remainder: $32,700.42

Bosgraaf Parcel Neighborhood

Legal Description

Part of the SE ¼, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: Commencing at the S ¼ corner of Section 22; thence N03°02'05"W 50.07 feet along the West line of said SE ¼ to the PLACE OF BEGINNING of this description; thence N03°02'05"W 1150.11 feet along said West line; thence N77°56'20"E 333.73 feet; thence N42°36'50"E 260.00 feet; thence S50°00'00"E 235.00 feet; thence N90°00'00"E 530.00 feet; thence S45°00'00"E 67.88 feet; thence N90°00'00"E 708.24 feet; thence S03°10'02"E 489.05 feet; thence N89°54'32"E 629.94 feet; thence S03°10'02"E 325.92 feet along the West line of Shaffer Avenue; thence S82°24'32"W 603.77 feet; thence S00°00'00W 318.04 feet; thence S90°00'00"W 1323.06 feet along the North line of 44th Street; thence N03°04'04"W 40.00 feet and S90°00'00"W 180.00 feet and S03°04'04"E 40.00 feet and S90°00'00"W 481.20 feet along said North line to the place of beginning. This parcel contains 61.44 acres.

Portion of Remainder: $75,210.97

44th/Shaffer Parcel Neighborhood

Legal Description

Part of the NE ¼ and part of the SE ¼, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: BEGINNING at the NE corner of Section 22; thence S03°35'29"E 395.00 feet along the East line of said NE ¼; thence S89°42'31"W 258.00 feet; thence S03°35'29"E 120.00 feet; thence N89°42'31"E 258.00 feet; thence S03°35'29"E 705.38 feet along the East line of said NE ¼; thence N54°47'03"W 395.85 feet; thence S89°45'47"W 308.00 feet; thence S03°35'29E 330.00 feet; thence N89°45'47"E 424.00 feet along the south line of the N ½ of the NE ¼ of Section 22; thence S03°35'29"E 153.00 feet; thence N89°45'47"E 193.00 feet; thence S03°35'29"E 273.18 feet along the East line of said NE ¼; thence S86°24'31"W 40.00 feet; thence S03°35'29"E 891.81 feet along the West line of

Shaffer Avenue to the South line of said NE ¼; thence S03°10'02"E 1324.40 feet along the West line of Shaffer Avenue; thence S89°54'32"W 629.94 feet along the North line of the S ½ of the SE ¼ of Section 22; thence S03°10'02"E 60.95 feet; thence S90°00'00"W 708.24 feet; thence N45°00'00"W 67.88 feet; thence S90°00'00"W 530.00 feet; thence N50°00'00"W 235.00 feet; thence S42°36'50"W 260.00 feet; thence S77°56'20"W 333.73 feet; thence N03°02'05"W 1440.00 feet along the West line of the SE ¼ of Section 22 to the center of said Section; thence N03°29'48"W 2635.49 feet along the West line of the NE ¼ of Section 22 to the N ¼ corner of said Section; thence N89°42'31"E 2633.71 feet along the North line of said NE ¼ to the place of beginning. Subject to highway R.O.W. for Shaffer Avenue. This parcel contains 233.49 acres, including highway R.O.W.

Portion of Remainder: $108,265.19

EXHIBIT 6

16/13/14

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Mary Hollinrake T2004002B333
Kent County MI Register SEAL

VOLUNTARY SPECIAL ASSESSMENT/DEVELOPMENT AGREEMENT

This Voluntary Special Assessment/Development Agreement is made as of September 7, 2004 between the City of Kentwood, a Michigan municipal corporation, the address of which is 4900 Breton Avenue, SE, Kentwood, MI 49508 (the "City") and 44th/ Shaffer Avenue, LLC, a Michigan limited liability company, the address of which is 850 Stephenson Highway, Suite #200, Troy, MI 48083 ("44th LLC" or the "Owner").

RECITALS

A. 44th LLC currently owns or controls an approximately 233 acre site generally located at the northwest corner of 44th Street and Shaffer Avenue in the City, more specifically described on the attached Exhibit A, which is incorporated by reference (the "44th LLC Property").

B. The 44th LLC Property was formerly zoned R1-C, single family residential. 44th LLC sought and received approval from the City to rezone the 44th LLC Property as a phased high density residential Planned Unit Development project (the "Ravines"). A preliminary PUD site plan, as required by the City's Zoning Ordinance, depicting the Ravines is attached as Exhibit B and incorporated by reference.

C. 44th LLC contemplates the sale of all or portions of the 44th LLC Property to third party developers and builders ("Builder" or "Builders") who will succeed to and be responsible for complying with the obligations of 44th LLC as to that portion of the Property purchased from 44th LLC, and 44th LLC will have no further obligation with regard to the purchased Property. Wherever the term "44th LLC" is used, it shall mean during the period that 44th LLC remains the owner of the portion of the Property affected and thereafter it shall mean the Builder or Builders.

D. In order to develop the Ravines as approved, certain improvements must be made including, without limitation, certain public water, sanitary sewer and storm sewer/drainage improvements, streets, additional street lanes, curbs, gutters, sidewalks, and other public improvements to accommodate access and other needs. The City has no current plans to construct the improvements and has not budgeted funds for the same.

E. Consistent with prior City policies, the owner of a project, as the benefiting party, is responsible to install and pay for the types of public improvements outlined in Recital D, above. After such improvements are constructed and installed to City specifications, they are typically dedicated to the City or other governmental agency with appropriate jurisdiction.

F. Where appropriate, the City may specially assess the costs of public improvements against the property(ies) especially benefited.

G. The Owner concedes that the improvements outlined in Recital D, above, will benefit its parcels and represents that it owns more than fifty percent (50%) of the land proposed to be assessed for the public improvements as further described herein.

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Kent County MI Register SEAL

H. The City has determined that construction of the street and road improvements associated with the Ravines, and particularly construction of Pfeiffer Woods Drive, will facilitate vehicular movement within this area of the City and constitutes the installation of a necessary collector roadway as specified in the City's master plan.

I. Because the Owner will have one or more contractors working on their parcels that may also be capable of constructing the improvements outlined in Recital D, above, the parties believe certain economies can be achieved by allowing the Owner to cause those contractors to construct some of the improvements.

J. The City has determined that entering into this Agreement is otherwise in the best interests of the public health, safety and general welfare and that special circumstances exist including, but not limited to, the ability to utilize on-site contactors and engineers and to expedite construction of a needed collector roadway.

TERMS AND CONDITIONS

NOW, THEREFORE, in exchange for the consideration in and referred to by this Agreement, the sufficiency of which is acknowledged, the parties agree as follows:

1. Owner-Contracted Infrastructure Improvements. The parties agree that for purposes of coordination of construction and for purposes of minimizing costs, the public will be best served if the portion of the public improvements detailed in the attached Exhibit C (the "Owner-Contracted Infrastructure Improvements") are made by contractors retained by the Owner. Such an arrangement is authorized pursuant to City ordinances and resolutions where special circumstances are found to exist. Having found that such circumstances exist, the Owner is hereby engaged by the City to design, construct and install the Owner-Contracted Infrastructure Improvements on behalf of the City subject to the terms of this Agreement.

(a) Construction Plans and Specifications. The Owner shall cause to be prepared final plans and specifications for the Owner-Contracted Infrastructure Improvements which comply with all applicable laws, ordinances, rules and regulations. Such plans and specifications shall be submitted to the City Engineer for review and approval. If changes are requested by the City Engineer in writing, such changes shall be made before approval of the final plans and specifications for the Owner-Contracted Infrastructure Improvements (the "Owner-Contracted Infrastructure Improvements Plans"). Any approval shall be effective when in writing signed by the City Engineer. All City reviews shall be completed on a timely basis.

Without limiting the foregoing, the parties acknowledge that the reviews conducted by the City as provided for herein shall be limited to a determination of compliance with City laws, ordinances, rules and regulations and that the plans and specifications must also be submitted for review and approval to other governmental entities with appropriate jurisdiction including the City of Grand Rapids relative to all utility matters.

The parties further agree that the Owner-Contracted Infrastructure Improvements must incorporate the following provisions:

(1) No lift stations shall be utilized in the design of the sanitary sewer system.

(2) The top course of any roadways shall be left off; it being the parties' intent that the City shall be solely responsible for the installation and all subsequent costs associated with installing the top course.

(3) Manholes shall be raised to the top of the leveling course.

(4) Inlets shall be customized with the advance stormwater inlet at the low point.

(5) Pre-treatment ponds and detention ponds must be constructed as required by the City.

(6) Storm sewer outlets and inlets shall be constructed as part of the project as required by the City.

(7) Easements shall be provided as reasonably requested by the City or other governmental entity with jurisdiction.

(8) Sidewalks shall be installed concurrent with the installation of any streets.

(9) The project shall be designed in full compliance with the City's adopted soil erosion laws, rules and regulations.

(10) Sanitary stubs shall be extended to the next manhole subject to review and approval by the City of Grand Rapids.

(11) The Owner shall coordinate its efforts in the design and construction of the Owner-Contracted Infrastructure Improvements with the adjoining property owner, Holland Home, and the City. To this end, representatives of both property owners shall attend mandatory biweekly progress meetings at City Hall until such time as the Owner-Contracted Infrastructure Improvements have been conveyed consistent with Section 1(h) herein.

(b) Construction Easements and Permits. Prior to beginning construction, the Owner shall, at its sole expense, obtain any construction and permanent easements, rights-of-way and permits needed to construct the Owner-Contracted Infrastructure Improvements. The City shall cooperate with the Owner's efforts to do so as reasonably necessary. All easements and rights-of-way shall be fully assignable to the City or other appropriate governmental entity upon the completion of the Owner-Contracted Infrastructure Improvements and copies of the easements, rights-of-way and permits shall be presented to the City for review and approval prior to beginning construction.

(c) Inspection. The City and its agents shall have the right, but not the obligation, to inspect and test all construction of the Owner-Contracted Infrastructure Improvements and be contacted before the water mains, sanitary or storm sewer mains, or any other portions of the Owner-Contracted Infrastructure Improvements are covered after being laid. The City will not, simply by making such inspection(s) or testing(s), or by failing to raise any objections, relieve the Owner or its contractors from any obligations they may have, or waive any warranties or guarantees covering the construction. All costs incurred by the City to have the inspections or tests performed shall be included in the special assessments referenced in Section 2, herein. The City shall be notified of all scheduled progress meetings conducted by the Owner's engineer or principal contractor during the construction period and shall be afforded a reasonable opportunity to attend and participate in all such meetings.

(d) Construction. The Owner shall assure that the Owner-Contracted Infrastructure Improvements are constructed by a contractor acceptable to and approved in writing by the City's Purchasing Agent. The Owner shall further require that the Owner-Contracted Infrastructure Improvements are constructed in accordance with the approved Owner-

Contracted Infrastructure Improvements Plans. The Owner shall obtain bids via sealed bids or by an alternate bid process approved by the City's Purchasing Agent for such work based on the Owner-Contracted Infrastructure Improvement Plans and shall open and/or tabulate those bids in the presence of the City's Purchasing Agent. The Owner shall provide the bid tabulation and, if requested by the City, the bids to the City Purchasing Agent for review and comment prior to any bid award. Owner shall indemnify and hold harmless the City for any claims, damages or liabilities arising out of the bidding process or award for the Owner-Contracted Infrastructure Improvements; provided, however, that the Owner's obligations shall not be construed or interpreted as applying to claims, damages or liabilities caused by the City, its officers or employees. The City shall have the right to inspect and copy any documents related to the construction, pricing or administration of the Owner-Contracted Infrastructure Improvements in the possession of Owner or its agent(s). Construction of Pfeiffer Woods Drive on the 44th LLC Property will be in accordance with the approved preliminary PUD site plan for the Ravines. The parties agree that the Owner-Contracted Infrastructure Improvements shall be completed by the Owner within 14 months after the Owner-Contracted Infrastructure Improvements Plans are approved in writing by the City.

(e) Indemnification and Insurance. The Owner shall hold the City (including its officers and employees) harmless from, indemnify it for, and defend it (with legal counsel reasonably acceptable to the City) against any and all demands, claims, liabilities, obligations, damages, awards, judgments, administrative or criminal penalties or other losses or expenses the City may receive or incur arising out of the Owner's design, award, or construction of the Owner-Contracted Infrastructure Improvements provided, however, that the Owner's obligations shall be limited to claims made, or which could have been made, prior to the Owner's conveyance of the Owner-Contracted Infrastructure Improvements as provided for in Section 1(h) herein. During construction and until construction is completed, the land is restored and the City has accepted the Owner-Contracted Infrastructure Improvements, the Owner shall obtain and maintain a general liability insurance policy naming the City, its officers and employees as insureds and certificate holders with coverages of at least $5,000,000 per occurrence. Such general liability insurance policy shall provide that it may not be canceled, modified or terminated without at least 30 days prior written notice to the City. During construction and until construction is completed, the land is restored and the City has accepted the Owner-Contracted Infrastructure Improvements, the Owner shall obtain and maintain an owner and contractor protective liability insurance policy, which policy names the City, its officers and employees as insureds with coverages of at least $1,000,000 per occurrence and $2,000,000 general aggregate. Such owner and contractor protective liability insurance policy shall provide that it may not be canceled, modified or terminated without at least 10 days prior written notice to the City. A copy of the certificate(s) and policy(ies) of insurance shall be provided to the City Public Works Director prior to the commencement of construction. In addition, the Owner shall assure that all necessary or required workers' disability compensation, unemployment compensation and other insurance has been obtained by its subcontractors.

(f) Liens and Encumbrances. The Owner shall use reasonable commercial efforts to keep the Owner-Contracted Infrastructure Improvements and all City property free of any and all liens and encumbrances including, without limitation, contractors', mechanics' or material supplier's liens. The Owner may dispute and bond off any liens so filed.

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(g) Construction Bonds. Prior to the commencement of construction, the Owner shall post with the City: (1) a performance bond in an amount not less than 25% of the total value of the Owner-Contracted Infrastructure Improvements and (2) a payment bond in the amount of 100% of the total value of the Owner-Contracted Infrastructure Improvements. The bonds shall be in a form approved in advance by the City.

(h) Conveyance and Warranty. Upon completion of the Owner-Contracted Infrastructure Improvements and the written opinion of the City Engineer that they have been completed in accordance with Owner-Contracted Infrastructure Improvements Plans and all applicable laws, ordinances, regulations and rules, the Owner shall convey and dedicate for public use the Owner-Contracted Infrastructure Improvements to the City or other appropriate governmental entity, together with all easements, rights-of-way, contractual guarantees and warranties, operations or other manuals and other information, all with such documentation in a form reasonably acceptable to the City. Owner and its agent(s) shall execute all documents reasonably requested by the City to effectuate the conveyance of the Owner-Contracted Infrastructure Improvements to the City or other appropriate governmental entity. The City shall then, within a reasonable time period, by resolution of the City Commission, accept such conveyance and dedication. The Owner shall, for a period of one (1) year after the City Commission's adoption of a resolution of conveyance and dedication, warrant and guarantee the construction and use of materials in the Owner-Contracted Infrastructure Improvements; provided, however, that the foregoing Owner's warranties and guarantees shall not apply to the leveling course or top course of any roadway. Within this one (1) year period, Owner will repair or replace, as reasonably determined in advance by the City in writing, any materials incorporated in the Owner-Contracted Infrastructure Improvements which may be defective. Owner further warrants and guarantees that the construction of the Owner-Contracted Infrastructure Improvements will be performed in a good and workmanlike manner, and that the Owner will repair any defects resulting from faulty workmanship. While the warranties referenced herein are in effect, the Owner shall post with the City a performance bond for the same, in a form satisfactory to the City, in the amount of two percent (2%) of the total cost of the Owner-Contracted Infrastructure Improvements.

(i) "As Builts". The Owner shall also provide the City with "as built" drawings, certified by a licensed engineer, showing the exact location of the Owner-Contracted Infrastructure Improvements and any deviations from the Owner-Contracted Infrastructure Improvements Plans. Such drawings shall be provided to the City prior to the conveyance and dedication required by the preceding subsection (h) and before the City accepts that conveyance and dedication.

(j) Payment. The City shall pay to the Owner the cost of constructing the Owner-Contracted Infrastructure Improvements as provided in this subsection.

(1) Payments will be made solely by the City in anticipation of special assessments levied against the 44th LLC Property. The City shall have no obligation for any payment of funds until after the conclusion of the special assessment proceedings referenced in Section 2 herein and the expiration of the period for appealing any special assessments. Any payments made by the City shall not effect the Owner's waiver and release of claims challenging the validity or enforceability of the special assessments provided for herein.

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(2) Progress payments will be made during construction to reimburse the Owner for payments it has already made to its contractors and subcontractors. Such payments shall be made not more frequently than monthly and shall require City approval. Accordingly, it may take 30 or more days to process a reimbursement payment request, however, the City shall timely and diligently process such requests for payment.

(3) All requests for payment shall include statements from the Owner and its engineers that the work for which payment is sought has been completed in accordance with the Owner-Contracted Infrastructure Improvements Plans and waivers of liens from all contractors, subcontractors and suppliers are supplied. They shall be reviewed by the City Engineer before processing for payment and, if the City's inspectors have viewed the work, such payment requests shall also be subject to the approval of the City's inspectors.

(4) For up to one year after substantial completion of the Owner-Contracted Infrastructure Improvements, the City shall have the right to inspect, audit and copy all invoices, financial records, books, expense sheets, billing statements, contracts or similar documents in the possession of the Owner or its agent(s) related to the construction of and payment for the Owner-Contracted Infrastructure Improvements.

(5) Reimbursement payments to the Owner shall be made within 10 days after approval by the City.

2. Special Assessments. The City shall specially assess the costs of the Owner-Contracted Infrastructure Improvements against the 44th LLC Property.

(a) Defined. The costs of the Owner-Contracted Infrastructure Improvements shall include design, construction, installation, construction engineering, inspection, financing, insurance, administrative and all other costs incurred in connection with the construction, including all costs and fees incurred by the City relating to the establishment of a special assessment district and those costs associated with the inspection, review, approval, construction or acceptance of the Owner-Contracted Infrastructure Improvements incurred by the City.

(b) Agreed Value Enhancement and Waiver. The Owner represents, covenants and agrees that the 44th LLC Property will benefit and be enhanced in value by at least the amount to be specially assessed against the 44th LLC Property. The Owner hereby releases, waives and relinquishes, on behalf of itself, its successors and assigns, any claims it may have against the City, its officers or employees based on or arising out of: the nature of the special assessment proceedings provided for herein; any defects in notice or other procedure associated with the special assessments; or, whether the Owner-Contracted Infrastructure Improvements proportionately increase (relative to the amount of the special assessment) the value of the 44th LLC Property.

(c) Consent. The Owner consents to the levy of the special assessments and agrees to execute and deliver to the City such other consents, releases and waivers regarding the notice, hearing and levies associated with the special assessment as the City may reasonably request as it proceeds to levy the special assessments as provided for in this section.

(d) Notice of Conveyance. If the Owner conveys any interest in any of its real property to any other party prior to the conclusion of the special assessment

proceedings, the Owner shall provide the City a written copy of the conveying documents within 3 days of their execution.

(e) Terms for Special Assessment. Consistent with City Ordinance No. 4-67, as amended, the final amount of any special assessment, the term of years for the special assessment and similar matters associated with the establishment of a special assessment district for the Owner-Contracted Infrastructure Improvements will be determined by resolution of the City Commission in its discretion. Without limiting the foregoing, it is the parties' intent that the special assessments will be consistent with the following guidelines:

(1) The public improvements will only be those identified in Exhibit C.

(2) The term of the special assessment will not exceed ten (10) years.

(3) The interest rate charged will be a rate equal to one percentage (1%) point over the U.S. prime rate as published in the *Wall Street Journal*, which prime rate is in effect on the date the roll is confirmed as provided for in Ordinance No. 4-67, as amended.

(4) The following components of the Owner-Contracted Infrastructure Improvements will be paid for by the City at large as part of the special assessment:

(a) Difference in the cross section and unit costs between the standard 30-foot street residential cross section and the cross section as constructed to meet City requirements for the Ravines;

(b) Oversizing the watermain from eight (8) inches to twelve (12) inches; and

(c) Ten percent (10%) of the subcontractors' total costs for items 2(e)(4)(a) and 2(e)(4)(b), above; which figure represents the City's proportional share of administrative, engineering and similar fees associated with the project.

(5) 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.

(6) The special assessment roll shall be modified so as not to exceed the actual costs reimbursed to the property owner pursuant to this Agreement and the costs and expenses of the City to which the City is lawfully entitled to be reimbursed including, but not limited to, all legal fees incurred by the City in establishing and preparing the special assessment district and special assessment roll.

(f) Valuation. The City's obligation to establish a special assessment district for the Owner-Contracted Infrastructure Improvements shall be contingent on the City's receipt of information, in a form and of a type reasonably satisfactory to the City, from the Owner confirming that the fair market value of the 44th LLC Property will support the anticipated special assessment liens in the event of a subsequent default. The Owner shall submit such information with thirty (30) days from the date hereof. The City will promptly review such submissions.

(g) Allocation. Allocation of the special assessment shall be structured as follows:

(1) Except as otherwise provided herein, annual installment payments shall be interest only until the end of the term of the special assessment. Provision shall be made such that if any installment is not paid when due, then penalties shall be applied as are collected on delinquent ad valorem taxes.

(2) The principal shall be allocated among the various approved phases for Neighborhoods B-1 through B-4 of the Ravines as defined in a certain Planned Unit Development Agreement, dated March 18, 2004, recorded as Instrument No. 20040402-0043209 with the Kent County Register of Deeds. The fixed allocation of the special assessment district ("SAD") costs by neighborhood shall be as follows:

Neighborhood	Fixed SAD Cost Allocation
B-1	24%
B-2	22%
B-3	33%
B-4	21%

The fixed SAD costs by neighborhood may not be changed except by written amendment to this Agreement. The City has agreed to allow the SAD costs to be further apportioned to a maximum number of construction phases within each neighborhood as follows:

Neighborhood	Max. # of Phases
B-1	2
B-2	2
B-3	4
B-4	2

The number of phases within each neighborhood may not be changed except by written amendment to this Agreement. The process by which the SAD costs will be apportioned to each phase is as follows:

(a) Unless otherwise agreed to by the City, the Owner shall have one opportunity per neighborhood to apportion the SAD costs among the construction phases as described herein; provided, however, that any apportionment must equal the total fixed SAD costs for the relevant neighborhood.

(b) At the time Owner files the first application for final zoning approval for any land within a neighborhood, the Owner will also file an amended phasing plan for the entire neighborhood. The phasing plan will include the total housing

units expected to be constructed within the neighborhood and within each phase up to the maximum number of units and phases allowed for that neighborhood.

(c) The Owner will prepare, for the City's review and approval, a proposed apportionment of the SAD costs among the individual construction phases. The following example shows how the costs will be apportioned assuming a $1.6 Million total SAD cost:

[1] Allocate the costs to each neighborhood by multiplying the total SAD costs by the fixed allocation percentages:

Total SAD	Neighborhood	Fixed SAD % Allocation	SAD $ Allocation
$1,600,000	B-1	24%	$384,000
	B-2	22%	$352,000
	B-3	33%	$528,000
	B-4	21%	$336,000

[2] Determine the final number of housing units in each neighborhood and within each construction phase:

Neighborhood	Final # of Units	# of Units in Each Phase			
		1	2	3	4
B-1	248	124	124	N/A	N/A
B-2	190	95	95	N/A	N/A
B-3	210	57	59	47	47
B-4	178	100	78	N/A	N/A

[3] Calculate the percentage of housing units in each phase of a neighborhood relative to the total number of housing units in that neighborhood as determined in Section 2.(g)(2)(c)[2] above:

Neighborhood	% of Units in Each Phase			
	1	2	3	4
B-1	50%	50%	N/A	N/A
B-2	50%	50%	N/A	N/A
B-3	27%	28%	22%	22%
B-4	56%	44%	N/A	N/A

[4] Calculate the SAD costs to be apportioned among each construction phase by multiplying the percentages calculated in the table in 2.(g)(2)(c)[3] above by the total SAD costs allocated to the neighborhood as calculated in 2.(g)(2)(c)[1] above.

Neighborhood	$ to be Allocated to Each Phase			
	1	2	3	4
B-1	$192,000	$192,000	N/A	N/A
B-2	$176,000	$176,000	N/A	N/A
B-3	$143,314	$148,343	$118,171	$118,171
B-4	$188,764	$147,236	N/A	N/A

(d) Principal payments, with interest thereon accrued on a pro rata basis, shall be due within 180 days of final zoning approval for a phase or upon the City's issuance of a soil erosion permit for the phase, whichever is earlier.

(3) It is an express condition of this Agreement that the Owner waives any right it may have under state or local law, rule or regulation to any further allocation or apportionment of special assessments for the Owner-Contracted Infrastructure Improvements (among lots, units, or other divisions of property) beyond that provided for herein or as otherwise provided for in the City Commission resolution confirming the roll for the Owner-Contracted Infrastructure Improvements.

3. The Ravines. The Owner represents and covenants that the Owner-Contracted Infrastructure Improvement costs incurred in the Ravines when completed will be at least $1,200,000.00, not including the value of the land. The Owner estimates the construction of the Owner-Contracted Infrastructure Improvements will be completed by December 31, 2005.

4. Other Rates, Fees and Charges. This Agreement shall not affect any rates, fees or charges for any City services. Accordingly, the Owner, the Builders or their successors in interest to portions of the 44th LLC Property who shall seek or require such connections or services, shall pay on a timely basis all rates, fees and charges due under City ordinances, rules, regulations, policies and permit requirements, including without limitation those for:

(a) Utilities. Connection to or use of the City's water or sanitary sewer systems.

(b) Construction Permits. Building, electrical, plumbing, mechanical, foundation, site preparation, occupancy and other construction permits and approvals.

(c) Inspections. Inspection, approval and acceptance of the Owner-Contracted Infrastructure Improvements.

(d) On-going Maintenance. Except as noted herein, the City or other appropriate governmental entity will be responsible for on-going maintenance after dedication of the Owner-Contracted Infrastructure Improvements and the Owner will be responsible for

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on-going maintenance for the portion of the Owner-Contracted Infrastructure Improvements located on its property prior to dedication. The parties acknowledge and agree that prior to the dedication of the Owner-Contracted Infrastructure Improvements, the parties shall enter into a separate agreement which incorporates the following provisions:

(1) On-going maintenance responsibility for landscaping improvements in the parkway included in the Owner-Contracted Infrastructure Improvements shall be assumed by the Owner at the Owner's sole cost and expense. Nothing herein shall be construed or interpreted as granting the Owner any property interest in the landscaping, it being the parties' understanding that the City may remove or modify any landscaping within the public rights of way as the City deems necessary for the public health, safety and welfare and that payment for these improvements by special assessment shall not impact the City's rights. The City shall not require the removal or replacement of the initial landscaping if doing so will materially increase the Owner's burden to maintain.

(2) On-going maintenance responsibility for the irrigation system improvements included in the Owner-Contracted Infrastructure Improvements shall be assumed by the Owner at the Owner's sole cost and expense. Nothing herein shall be construed or interpreted as granting the Owner any immediate property interest in the irrigation system; provided, however, that the agreement shall further require that the irrigation system will be conveyed by the City to the Owner or its successor(s) and shall be accepted by the Owner or its successor(s) on the termination of the special assessment district for the Owner-Contracted Infrastructure Improvements.

(3) The City's ownership of the irrigation system shall extend only to the public side of the water meter, which water meter shall be installed within the public rights of way in such manner as approved in advance by the City.

(4) The Owner and its successor(s) shall indemnify and hold harmless the City and its officers and employees from any and all claims arising out of or related to the Owner's construction, operation or maintenance of the landscaping and irrigation systems that are included in the Owner-Contracted Infrastructure Improvements so long as the Owner's obligations remain.

5. Costs. Within 28 days of the City's invoice to the Owner therefore, 44th LLC shall reimburse the City for all costs incurred by the City related to the preparation of this Agreement.

6. Term and Termination. This Agreement shall be effective as of the date first written above and shall remain in effect until all the obligations of the Owner under this Agreement have been met.

7. Miscellaneous.

(a) Interpretation. This is the entire agreement between the parties with respect to its subject matter. It supersedes and replaces all other agreements, whether express or implied, written or verbal. There are no other agreements. Each party had the advice of legal counsel and was able to participate in its creation, so it shall be construed as mutually drafted. The captions are for convenience only. However, the recitals are deemed an integral part of this Agreement. More than one copy may be signed, but it shall constitute only one agreement. It was drafted in Kent County, Michigan and is to

be interpreted in accordance with Michigan law. The interpretation of this Agreement shall not be affected by any course of dealing between the parties.

(b) Notices. All notices shall be complete when provided to the other party at the first address given above or such other address as a party shall request by notice. It may be made by personal delivery, express courier such as FedEx, by United States certified mail, return receipt requested or by pre-paid United State first class mail. If made by first class mail, it shall be deemed completed 5 business days after mailing. Otherwise, it shall be deemed completed when actually delivered.

(c) Breach and Remedies.

(1) The parties agree that damages and other legal remedies are inadequate relief. Only specific performance, injunctive or other equitable relief may be sufficient. The parties agree that any breach of this Agreement will result in irreparable harm to the other party.

(2) All remedies are cumulative of all remedies available at law or in equity. The pursuit of one remedy does not foreclose the pursuit of other remedies. Available remedies may be exercised simultaneously or individually.

(3) In any dispute pursuant to this Agreement, the parties agree that, to the extent not otherwise prohibited by law, the jurisdiction and venue for any such dispute shall be solely within the state courts located in Kent County, Michigan. The parties further agree that in any such dispute the prevailing party shall, in addition to any other relief to which it may be entitled, be awarded its actual cost, including, without limitation, filing fees, discovery costs, actual reasonable attorneys' fees, expert witness fees, and other costs incurred to bring, maintain or defend any such action from its first accrual or notice thereof through all appellate and collection proceedings.

(d) Assignment. Except as provided in Recital C, neither party may assign any of its interests in or rights, duties or obligations under this agreement without the prior written consent of the other party.

(e) Recording. The obligations under this Agreement are covenants that run with the land, and shall bind all successors in title. This Agreement shall be recorded with the Kent County Register of Deeds. The City shall be responsible for all costs associated with recording the Agreement.

(f) Additional Documents. The parties agree to execute such other documents and any one of them may reasonably request to fully implement this Agreement.

(g) No Other Beneficiaries. No other party is intended as a beneficiary of this Agreement.

(h) Meaning of 44th LLC. The term "44th LLC" as used in this Agreement so far as the covenants, agreements, stipulations or obligations on the part of 44th LLC are concerned is limited to mean and include only the owner of the 44th LLC Property or portion thereof effected at the time in question. In the event of any sale, transfer or conveyance of the title to such fee, 44th LLC will automatically be freed and relieved from and after the date of such sale, transfer or conveyance of all personal liability for the performance of any covenants of obligations on the part of 44th LLC contained in this Agreement thereafter to be performed as to the portion of the 44th LLC Property thereof sold, transferred or conveyed and 44th LLC's successor shall assume all commitments

with respect to said covenants, agreements, stipulations or obligations as to the portion of the 44th LLC Property acquired from 44th LLC.

THE PARTIES have caused this Agreement to be executed as of the date first written above.

CITY OF KENTWOOD

By: _____
Richard L. Root, Mayor

By: _____
Dan Kasunic, Clerk

STATE OF MICHIGAN
COUNTY OF KENT
Acknowledged before me in Kent County, Michigan on September 7, 2004, by Richard L. Root and Dan Kasunic, respectively the Mayor and Clerk of the City of Kentwood, a Michigan home rule city, on behalf of that entity.

_____
Notary Public, Kent County, MI
Acting in Kent County
My commission expires: 10/20/2004

44TH/SHAFFER AVENUE, LLC

By: _____
Member

STATE OF MICHIGAN
COUNTY OF KENT

Acknowledged before me in Kent County, Michigan on September 7, 2004, by Michael J. Damone, member of 44th/Shaffer Avenue, LLC, a Michigan limited liability company, for the company.

_____
Notary Public, Kent County, MI
Acting in Kent County
My commission expires: 10/20/2004

Drafted by:

Jeff Sluggett
LAW, WEATHERS & RICHARDSON, P.C.
Bridgewater Place, Suite 800
333 Bridge St. NW
Grand Rapids, MI 49504

When recorded return to:

Dan Kasunic, Clerk
City of Kentwood
4900 Breton Avenue, SE
PO Box 8848
Kentwood, MI 49518-8848

NO TRANSFER TAX IS OWED BECAUSE THIS AGREEMENT DOES NOT CONVEY ANY REAL PROPERTY.

EXHIBIT A

LEGAL DESCRIPTION OF 44TH/SHAFFER AVENUE LLC PROPERTY

Part of the NE ¼ and part of the SE ¼, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: BEGINNING at the NE corner of Section 22; thence S 03°35'29" E 395.00 feet along the East line of said NE ¼; thence S 89°42'31" W 258.00 feet; thence S 03°35'29" E 120.00 feet; thence N 89°42'31" E 258.00 feet; thence S 03°35'29" E 705.38 feet along the East line of said NE ¼; thence N 54°47'03" W 395.85 feet; thence S 89°45'47" W 308.00 feet; thence S 03°35'29" E 330.00 feet; thence N 89°45'47" E 424.00 feet along the South line of the N ½ of the NE ¼ of Section 22; thence S 03°35'29" E 153.00 feet; thence N 89°45'47" E 193.00 feet; thence S 03°35'29" E 273.18 feet along the East line of said NE ¼; thence S 86°24'31" W 40.00 feet; thence S 03°35'29" E 891.81 feet along the West line of Shaffer Avenue to the South line of said NE ¼; thence S 03°10'02" E 1324.40 feet along the West line of Shaffer Avenue; thence S 89°54'32" W 629.94 feet along the North line of the S ½ of the SE ¼ of Section 22; thence S 03°10'02" E 60.95 feet; thence S 90°00'00" W 708.24 feet; thence N 45°00'00" W 67.88 feet; thence S 90°00'00" W 530.00 feet; thence N 50°00'00" W 235.00 feet; thence S 42°36'50" W 260.00 feet; thence S 77°56'20" W 333.73 feet; thence N 03°02'05" W 1440.00 feet along the West line of the SE ¼ of Section 22 to the center of said Section; thence N 03°29'48" W 2635.49 feet along the West line of the NE ¼ of Section 22 to the N ¼ corner of said Section; thence N 89°42'31" E 2633.71 feet along the North line of said NE ¼ to the place of beginning. Subject to highway R.O.W. for Shaffer Avenue. This parcel contains 233.49 acres, including highway R.O.W.

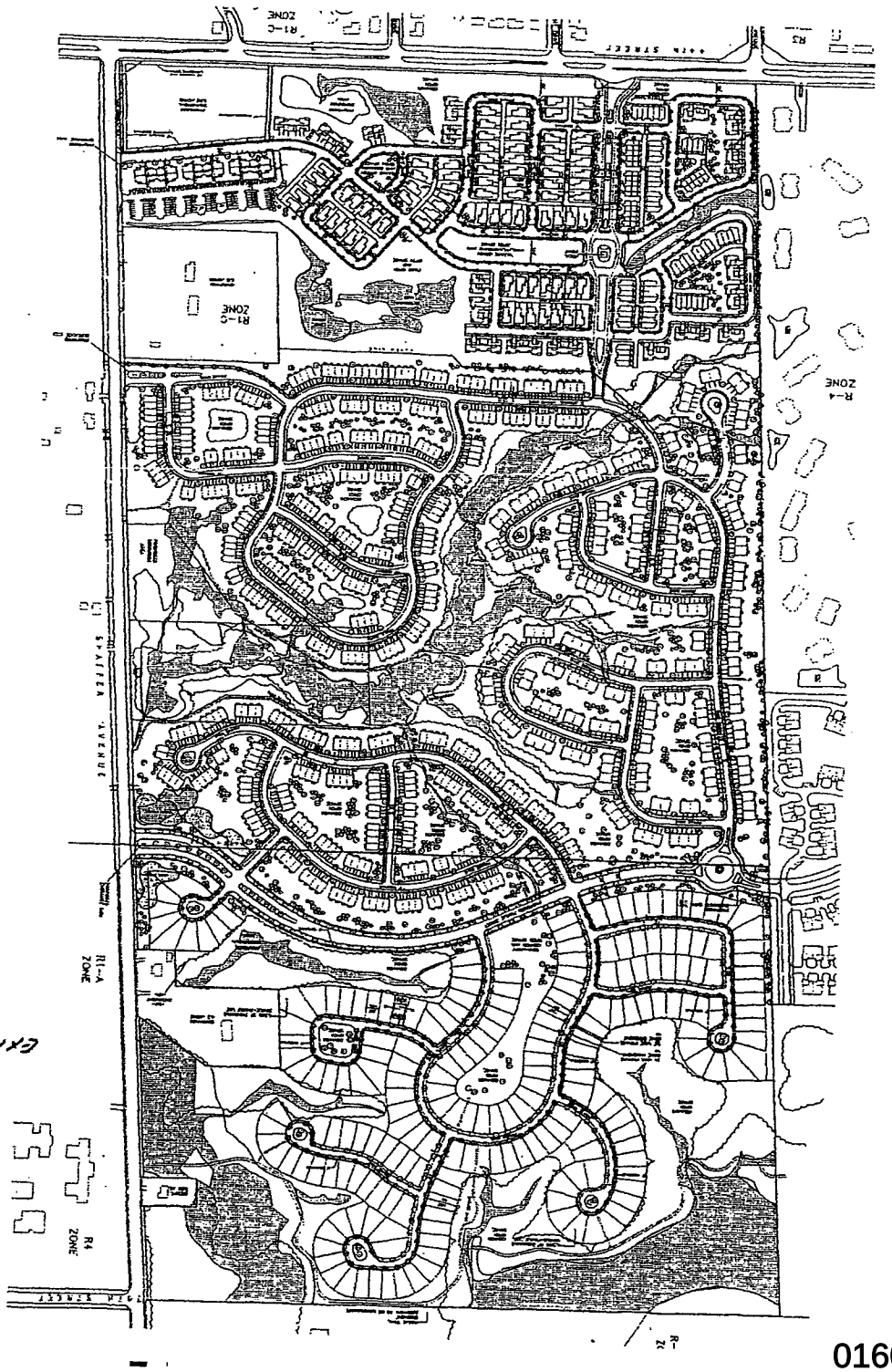

EXHIBIT B

Design and Inspection Fees	115,000.00	115,000.00	0.00
Permits and Fees	20,000.00	20,000.00	0.00
Bonding Costs	15,000.00	15,000.00	0.00
City Legal and Other	25,000.00	25,000.00	0.00
Total Project Costs	1,493,900.00	1,301,400.00	192,500.00
Total Project Contingency/Inflation (30%)	448,170.00	448,170.00	0.00
SAD Total Costs	**1,942,070.00**	**1,749,570.00**	**192,500.00**

Owner of Property: 44th/Shaffer Avenue, LLC, a Michigan limited liability company

Term: 10 years from confirmation of roll; i.e., September 7, 2014. Any unpaid principal and interest is due in full upon termination date.

Deferred Installments:

A. Interest is charged at a rate equal to one percentage (1%) point over the U.S. prime rate as published in the *Wall Street Journal*, which prime rate is in effect on the date the roll is confirmed as provided for in Ordinance No. 4-67, as amended. As of September 7, 2004, this aggregate interest rate is 5.5%.

B. A payment shall be due annually on the anniversary date of the confirmation of the roll (e.g., without limitation, September 7, 2005, September 7, 2006, September 7, 2007, etc.) in an amount equivalent to the simple interest on any unpaid principal amount.

C. Principal payments, along with any unpaid simple interest on that portion of the principal, shall be due upon certain governmental approvals being issued consistent with the terms of a Voluntary Special Assessment/ Development Agreement dated September 7, 2004, between the City of Kentwood and 44th/Shaffer Avenue, LLC (the "Agreement").

D. In no event shall the amount of the special assessment exceed the actual costs reimbursed to the property owner pursuant to the Agreement and the costs and expenses of the City to which the City is lawfully entitled to be reimbursed including, but not limited to, all legal fees incurred by the City in establishing and preparing the special assessment district and special assessment roll.

E. Deferred installments shall be collected without penalty until 60 days after the due date; thereafter, such penalties as are provided for in the City Charter for general *ad valorem* taxes shall be due and collected.

F. Anticipated allocations: See attachments hereto which are incorporated by reference. Note that several of the specific dates included in the attachments are incorporated for purposes of example only and the payment amounts actually due will be determined based on the occurrence of certain governmental approvals being issued consistent with the terms of the Agreement.

CITY OF KENTWOOD
44/Schaffer - Pfeiffer Woods Drive
Special Assessment Roll

Allocation per Neighborhood

	Fixed Cost Allocation	Fixed Cost Amount	Principal Portion of SAD for each Phase 1	2	3	4
B-1	24.00%	419,896.80	209,948.40	209,948.40	0.00	0.00
B-2	22.00%	384,905.40	192,452.70	192,452.70	0.00	0.00
B-3	33.00%	577,358.10	156,711.48	162,210.13	129,218.24	129,218.24
B-4	21.00%	367,409.70	206,409.94	160,999.76	0.00	0.00
		1,749,570.00	765,523.53	725,612.99	129,221.24	129,222.24

Neighborhood B-1, Phase 1

Amount of SA Principal allocated to this Phase	C	209,948.40
Effective Date of Special Assessment		9/7/2004
1% over the WSJ Prime Rate on Effective Date		5.50%
Assumed days per year		360
Interest Only Payment due 9/7 each year (in effect until Trigger occurs and sets due date for Phase Payment)		11,547.16

Due Date Triggers

Final Zoning Approval for Phase		8/1/2007
180 days from Final Zoning Approval for Phase		1/28/2008
-OR-		
Erosion Permit for a Phase issued		9/7/2014
Computed Final Date for Phase payment		1/28/2008
Date Last Interest Payment Made		9/7/2007
Interest from Last Interest Payment Date To Due Date of Phase	A	4,586.79
OR		
Date Phase Payment Actually Made (If prior to Due Date)		11/15/2007
Date of last interest payment prior to this date		9/7/2007
Interest from Last Interest Payment Date To Date of Actual Payment	B	2,213.21

Total Due is the sum of either A or B plus C

For Example

A+C: If paid on the Final Date for Phase Payment	214,535.19
B+C: If payment made on earlier date shown above	212,161.61

*NOTE: All dates are for demonstration only.
When actual dates are inserted, the interest is automatically recalculated.

CITY OF KENTWOOD
44/Schaffer - Pfeiffer Woods Drive
City's and LLC's share of costs for Owner-Contracted Infrastructure Improvements

Subcontractor Costs	Total Costs	LLC Portion	City's Share
Pfeiffer Woods Roadway (22A)	475,000.00	360,000.00	115,000.00
Add for 21AA (Allowance)	17,000.00	0.00	17,000.00
Storm Sewer	200,000.00	200,000.00	0.00
Water Main	203,000.00	160,000.00	43,000.00
Lighting Allowance	66,000.00	66,000.00	0.00
Landscape Allowance	125,000.00	125,000.00	0.00
Irrigation Allowance	50,000.00	50,000.00	0.00
Testing & Construction Staking	55,000.00	55,000.00	0.00
Total Subcontractor Costs	1,191,000.00	1,016,000.00	175,000.00
Project Management (10%)	119,100.00	101,600.00	17,500.00
Liability Insurance	8,800.00	8,800.00	0.00
Design and Inspection Fees	115,000.00	115,000.00	0.00
Permits and Fees	20,000.00	20,000.00	0.00
Bonding Costs	15,000.00	15,000.00	0.00
City Legal and Other	25,000.00	25,000.00	0.00
Total Project Costs	1,493,900.00	1,301,400.00	192,500.00
Project Contingency/Inflation (30%)	448,170.00	448,170.00	0.00
SAD Total Costs	1,942,070.00	1,749,570.00	192,500.00

CITY OF KENTWOOD
44/Schaffer - Pfeiffer Woods Drive
Allocation of Special Assessments against 44th LLC Property

Allocation of Units

Neighborhood	Max. no. Phases	Total No. of Units	No. of Units in Each Phase				Percent of Units in each Phase			
			1	2	3	4	1	2	3	4
B-1	2	248	124	124	N/A	N/A	50.00%	50.00%		
B-2	2	190	95	95	N/A	N/A	50.00%	50.00%		
B-3	4	210	57	59	47	47	27.14%	28.10%	22.38%	22.38%
B-4	2	178	100	78	N/A	N/A	56.18%	43.82%		

Amounts per Phase

Neighborhood

	Fixed Cost Allocation	Fixed Cost Amount	Principal Portion of SAD for each Phase			
			1	2	3	4
B-1	24%	419,896.80	209,948.40	209,948.40	0.00	0.00
B-2	22%	384,905.40	192,452.70	192,452.70	0.00	0.00
B-3	33%	577,358.10	156,711.48	162,210.13	129,218.24	129,218.24
B-4	21%	367,409.70	206,409.94	160,999.76	0.00	0.00
		1,749,570.00	765,523.53	725,612.99	129,221.24	129,222.24

CITY OF KENTWOOD
44/Schaffer - Pfeiffer Woods Drive
WSJ Prime Rate for date Special Assessment Roll is confirmed

Date	Prime Rate	Prime Rate plus 1%
9/7/2004	4.50%	5.50%

EXHIBIT 8

CITY OF KENTWOOD

PFEIFFER WOODS DRIVE LANDSCAPING MAINTENANCE SPECIAL ASSESSMENT DISTRICT

(Ravines)

RESOLUTION NO. 8-06
(Resolution No. 5)

A RESOLUTION TO CONFIRM THE SPECIAL ASSESSMENT ROLL

Minutes of the regular meeting of the City Commission of the City of Kentwood, Kent County, Michigan, held in the City on January 17, 2006 at 7:30 P.M.

PRESENT: COMMISSIONERS: Brinks, Brown, Clanton, Raha and Mayor Root.

ABSENT: COMMISSIONERS: Coughlin and Cummings.

The following preamble and resolution were offered by Commissioner Brinks, and supported by Commissioner Clanton:

WHEREAS, consistent with City of Kentwood Ordinance No. 4-67 a special assessment roll has been prepared for the purpose of specially assessing that portion of the cost of the public improvements more particularly hereafter described to the properties specially benefited by the public improvements; and

WHEREAS, a copy of the special assessment roll is attached to this resolution as "Roll A" and is incorporated by reference; and

WHEREAS, the special assessment roll has been presented to the City Commission by the City Clerk; and

WHEREAS, the City Commission has held a public hearing to consider objections to the confirmation of the special assessment roll, which hearing was noticed in accordance with state and local law; and

WHEREAS, no objections having been made to the City either before or during the hearing, and the City Commission having otherwise fully reviewed proposed special assessment roll and finding it proper; and

WHEREAS, the City Commission also finds that due to the nature of the present and planned use and development of the premises within the district that it will be fair and equitable if the special assessment roll is confirmed as hereinafter provided which will contain the properties within the district as identified on "Roll A."

THEREFORE BE IT RESOLVED THAT:

1. The Special Assessment Roll marked as "Roll A," shall be designated as follows: Pfeiffer

Woods Drive Landscaping Maintenance Special Assessment District, Special Assessment District No. 808.051.145.

2. The special assessment roll in the amount of $160,899.15, as prepared and reported to the City Commission be and the same is hereby confirmed, containing the assessments shown on "Roll A" and associated attachments, which is attached to and made part of this Resolution, and is found to contain assessments proportional to the benefits received.

3. The special assessment roll shall be applied consistent with the terms of the Voluntary Special Assessment/Development Agreement dated December 6, 2005, between the City of Kentwood, 44th/Shaffer Avenue, LLC, Holland Home and Ravines North, LLC (the "Agreement").

4. Interest shall be paid on any unpaid balance of the special assessment roll at the rate of 8.25%.

5. The special assessment roll shall be filed in the office of the City Clerk and shall have the date of confirmation endorsed thereon. The date of the confirmation shall be January 17, 2006.

6. The assessments made in the special assessment roll as confirmed shall be deemed a lien on the property described and are hereby ordered and directed to be collected consistent with the terms thereof and the Agreement, and the City Clerk shall deliver a certified copy of the special assessment roll to the City Treasurer with his warrant attached commanding the Assessor to spread and the Treasurer to collect the assessments therein in accordance with the directions of the City Commission with the respect thereto, and the Treasurer is directed to collect the amounts assessed as the same above become due.

7. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same hereby are rescinded.

YEAS: Commissioners: Brinks, Brown, Clanton, Raha and Mayor Root.

NAYS: None.

ABSENT: Commissioners Coughlin and Cummings.

RESOLUTION NO. 8-06 DECLARED ADOPTED.

Dan Kasunic
Kentwood City Clerk

CERTIFICATION

The foregoing resolution was adopted at a regular meeting of the Kentwood City Commission held on January 17, 2006.

Dan Kasunic
Kentwood City Clerk

ROLL A

CITY OF KENTWOOD

PFEIFFER WOODS DRIVE LANDSCAPING MAINTENANCE SPECIAL ASSESSMENT DISTRICT
(Ravines)

CONFIRMED SPECIAL ASSESSMENT ROLL

Date of Confirmation: January 17, 2006

Subject Property:

Part of the NE 1/4 and part of the SE 1/4, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: BEGINNING at the NE corner of Section 22; thence S 03°35'29" E 395.00 feet along the East line of said NE 1/4; thence S 89°42'31" W 258.00 feet; thence S 03°35'29" E 120.00 feet; thence N 89°42'31" E 258.00 feet; thence S 03°35'29" E 705.38 feet along the East line of said NE 1/4; thence N 54°47'03" W 395.85 feet; thence S 89°45'47" W 308.00 feet; thence S 03°35'29" E 330.00 feet; thence N 89°45'47" E 424.00 feet along the South line of the N 1/2 of the NE 1/4 of Section 22; thence S 03°35'29" E 153.00 feet; thence N 89°45'47" E 193.00 feet; thence S 03°35'29" E 273.18 feet along the East line of said NE 1/4; thence S 86°24'31" W 40.00 feet; thence S 03°35'29" E 891.81 feet along the West line of Shaffer Avenue to the South line of said NE 1/4; thence S 03°10'02" E 1324.40 feet along the West line of Shaffer Avenue; thence S 89°54'32" W 629.94 feet along the North line of the S 1/2 of the SE 1/4 of Section 22; thence S 03°10'02" E 60.95 feet; thence S 90°00'00" W 708.24 feet; thence N 45°00'00" W 67.88 feet; thence S 90°00'00" W 530.00 feet; thence N 50°00'00" W 235.00 feet; thence S 42°36'50" W 260.00 feet; thence S 77°56'20" W 333.73 feet; thence N 03°02'05" W 1440.00 feet along the West line of the SE 1/4 of Section 22 to the center of said Section; thence N 03°29'48" W 2635.49 feet along the West line of the NE 1/4 of Section 22 to the N 1/4 corner of said Section; thence N 89°42'31" E 2633.71 feet along the North line of said NE 1/4 to the place of beginning. Subject to highway R.O.W. for Shaffer Avenue. This parcel contains 233.49 acres, including highway R.O.W.

Estimated Public Improvement Costs	Total Costs	Property Owners' Portion	City's Share
Pfeiffer Woods Drive Landscaping	150,130.15	150,130.15	0.00
Escrow Fee	250.00	250.00	0.00
Total Project Costs	150,380.15	150,380.15	0.00
Total Project Contingency/Inflation (5%)	7,519.00	7,519.00	0.00
City Legal and Administrative	3,000	3,000	0.00
SAD Total Costs	**160,899.15**	**160,899.15**	**0.00**

Owners of Property: 44th/Shaffer Avenue, LLC, a Michigan limited liability company, Holland Home, a Michigan non-profit corporation and Ravines North, LLC, a Michigan limited liability company.

Term: 8 years from confirmation of roll.

Installments:

A. Interest is charged at a rate equal to one percentage (1%) point over the U.S. prime rate as

published in the *Wall Street Journal*, which prime rate is in effect on the date the roll is confirmed as provided for in Ordinance No. 4-67, as amended. As of January 17, 2006, this aggregate interest rate is 8.25%.

B. A payment shall be due annually on the anniversary date of the confirmation of the roll (e.g., without limitation, January 17, 2007, January 17, 2008, January 17, 2009, etc.) in an amount equivalent to the simple interest on any unpaid principal amount.

C. Installments shall be collected without penalty until 60 days after the due date; thereafter, such penalties as are provided for in the City Charter for general *ad valorem* taxes shall be due and collected.

D. Anticipated allocations: See Voluntary Special Assessment/Development Agreement dated December 6, 2005, the terms of which are incorporated by reference.

294509

EXHIBIT 9

7
3
5

20150623-0053765
Mary Hollinrake P:1/7 2:03PM
Kent Cnty MI Rgstr 06/23/2015 SEAL

RECD KENT COUNTY, MI ROD
2015 JUN 23 PM 2:02

AMENDMENT TO VOLUNTARY SPECIAL ASSESSMENT/DEVELOPMENT AGREEMENT (RAVINES NEIGHBORHOOD B1)

This Amendment to Voluntary Special Assessment/Development Agreement is dated June 16, 2015 ("Amendment") between the City of Kentwood, a Michigan municipal corporation, the address of which is 4900 Breton Avenue, SE, Kentwood, Michigan 49508 ("City") and the Kent County Treasurer, a Michigan county official, whose address is Kent County Administration Building, 300 Monroe Avenue NW, Grand Rapids MI 49503 ("KCT" or "Owner").

RECITALS

A. On September 7, 2004, 44th/Shaffer Avenue, LLC ("44th/Shaffer") and the City entered into a Voluntary Special Assessment/Development Agreement ("Agreement") to facilitate 44th/Shaffer's development of property as a residential planned unit development. The Agreement was recorded with the Kent County Register of Deeds at Instrument No. 20040917-0125700 on September 17, 2004.

B. The Agreement was subsequently amended in 2005, which amendment was recorded with the Kent County Register of Deeds at Instrument No. 20050405-0039643 on April 5, 2005, in recognition of the conveyance of certain real property.

C. Subsequently, the owner of a tract of real property (i.e., neighborhood) subject to the Agreement became delinquent in paying property taxes and special assessments due and owing on its property. As a result, and in accordance with Michigan's General Property Tax Act, Act No. 206 of the Public Acts of 1893, as amended, the property was forfeited and a judgment of foreclosure was entered with respect to the property on March 31, 2015. As a result of the foreclosure, the property is now titled to the KCT.

D. The real property owned by the KCT remains subject to the terms of the Agreement, as amended, is legally described on attached **Exhibit A**, which is incorporated by reference ("Property").

E. The obligations set forth in the Agreement were covenants running with the land which bind all successors in title. The KCT is the successor in title to 44th/Shaffer of the Property. The Agreement provides, in part, that certain improvements benefitting the Property were to be financed through the establishment by the City of a special assessment district.

20150623-0053765
Mary Hollinrake P:2/7 2:03PM
Kent Cnty MI Rgstr 06/23/2015 SEAL

F. In accordance with its adopted ordinances and state law, the City Commission, on September 7, 2004, adopted Resolution No. 96-04 which established the special assessment district referenced above and confirmed a special assessment roll for the district (the special assessment roll as subsequently amended referred to herein as the "Roll").

G. A balloon payment in the principal amount of $403,620 plus accrued interest is due on September 7, 2015 under the terms set forth as part of the Roll and the Agreement.

H. As permitted under Section 2(e) of the Agreement, and without re-confirming the district's special assessment roll, the City Commission has determined that extending the term of years for payment of the district's special assessment with respect to the Property will serve a valuable public purpose including, without limitation, making the Property more marketable, enhancing economic development opportunities within the City, and facilitating the maintenance of the Property on the tax rolls.

TERMS AND CONDITIONS

NOW, THEREFORE, for good and valuable consideration in and referred to by this agreement, the sufficiency of which the parties acknowledge, the parties agree as follows:

1. The parties affirm that the Recitals set forth above are correct, form an integral part of this Amendment, and are incorporated herein by reference.

2. Section 2(g) of the Agreement is amended to read in its entirety as follows:

(g) Allocation. Notwithstanding any provision in this Agreement to the contrary, allocation of the special assessment shall be structured as follows:

(1) Installment payments for the Property subject to this Amendment shall be payable in accordance with the schedule attached as **Exhibit B** to this Amendment, which terms are incorporated by reference. Provision shall be made such that if any installment is not paid when due, then penalties shall be applied as are collected on delinquent ad valorem taxes.

(2) It is an express condition of this Agreement that the Owner waives any right it may have under state or local law, rule or regulation to any further allocation or apportionment of special assessments of the Owner-Contracted Infrastructure Improvements (among lots, units, or other divisions of property) beyond that provided for herein or as otherwise provided for in the City Commission resolution confirming the Roll for the Owner-Contracted Infrastructure Improvements, as amended.

(3) Owner agrees that the special assessment lien imposed against the Property for the Owner-Contracted Infrastructure Improvements shall not be satisfied or released as to the Property or any part thereof until such time as the entire aforesaid special assessment is paid in full.

(4) Notwithstanding anything herein to the contrary, the unpaid balance may be prepaid in whole without penalty or premium.

20150623-0053765
Mary Hollinrake P:3/7 2:03PM
Kent Cnty MI Rgstr 06/23/2015 SEAL

3. The parties acknowledge and agree that the City, consistent with the terms of the Agreement and City Ordinance No. 4-67, as amended, has reserved to itself the right to extend the term of years for payment of the above-described special assessment without changing the date of the confirmation of the Roll or exposing the City to a challenge of the special assessment or Roll, as amended, and that it is the parties' intent that all challenges, claims or causes of action to any special assessment associated with the Property or the Roll are released and waived by the KCT, its successors and assigns as against the City. Without limiting the foregoing, the KCT, on behalf of his office and his successors and assigns, waives and releases any claim he may have against the City predicated upon the existence of other resolutions, amendments, agreements, special assessments, etc. which impact the special assessment or Roll as amended herein.

4. Except as modified herein, the Agreement shall be and remain binding and in effect as between the parties, their successors and assigns.

5. The obligations and pledges contained in this Amendment are covenants that run with the land, and shall bind all successors in title. This Amendment shall be recorded with the Kent County Register of Deeds. The City shall be responsible for all costs associated with recording the Amendment.

6. The parties agree to execute such other documents as either of them may reasonably request to fully implement this Amendment.

7. No other party is intended as a beneficiary of this Amendment.

The parties have caused this Amendment to be executed as of the date first written above.

CITY OF KENTWOOD

By: _____
Stephen Kepley, Mayor

By: _____
Dan Kasunic, City Clerk

STATE OF MICHIGAN
COUNTY OF KENT
Acknowledged before me in Kent County, Michigan on June 18, 2015, by Stephen Kepley and Dan Kasunic, respectively the Mayor and Clerk of the City of Kentwood, a Michigan home rule city, on behalf of the city.

Mary L. Bremer
* MARY L. BREMER
Notary Public, Kent County, Michigan
Acting in Kent County, Michigan
My commission expires: 08-09-2016

MARY L. BREMER
Notary Public, State of Michigan
Qualified in Kent County
Commission Expires August 9, 2016

KENT COUNTY TREASURER

STATE OF MICHIGAN

KENT COUNTY TREASURER

By: Kenneth D. Parrish
Kenneth Parrish

STATE OF MICHIGAN
COUNTY OF KENT
Acknowledged before me in Kent County, Michigan on June 23, 2015, by Kenneth Parrish, the Treasurer of Kent County, Michigan, for that office.

Rose Heys
*
Rose Heys
Notary Public, Kent County, Michigan
Acting in Kent County, Michigan
My commission expires: 5/26/2020

*Name must be typed or printed in black in beneath signature.

Drafted by:
Jeff Sluggett
Bloom Sluggett Morgan, PC
15 Ionia Ave, SW, Suite 640
Grand Rapids, MI 49503
(616) 965-9341

When recorded return to:
Dan Kasunic, Clerk
City of Kentwood
4900 Breton Avenue, SE
PO Box 8848
Kentwood, MI 49518-884

NO TRANSFER TAX IS OWED BECAUSE THIS AMENDMENT DOES NOT CONVEY ANY REAL PROPERTY.

EXHIBIT A

REAL PROPERTY LEGAL DESCRIPTION

Parcel B-1: 41-18-22-426-001

PART OF E ½ COM AT E ¼ COR TH S 3D 35M 29S E ALONG E SEC LINE 60.07 FT TH S 88D 09M 27S W 40.01 FT TO W LINE OF SHAFFER AVE & BEG OF THIS DESC – TH S 3D 10M 02S E ALONG SD W LINE 1263.17 FT TH S 89D 54M 32S W 629.94 FT TH S 3D 10M 02S E 60.95 FT TH S 90D 00M 00S W 708.24 FT TH N 45D 00M 00S W 67.88 FT TH S 90D 00M 00S W 530.0 FT TH N 50D 00M 00S W 235.0 FT TH N 44D 18M 31S E 199.74 FT TH N 77D 07M 45S E 307.02 FT TH N 41D 46M 39S E 334.95 FT TH N 8D 47M 09S E 226.61 FT TH N 11D 02M 04S W 245.78 FT TH N 25D 03M 50S E 281.40 FT TO A PT ON E&W ¼ LINE SD PT BEING 1290.96 FT S 89D 49M 02S W FROM E ¼ COR TH N 70D 13M 01S E 266.80 FT TH S 75D 46M 26S E 333.65 FT TH S 69D 14M 04S E 227.04 FT TH N 88D 09M 27S E 467.76 FT TO BEG * SEC 22 T6N R11W 47.77 A

EXHIBIT B

PAYMENT SCHEDULE

Attached

20150623-0053765
Mary Hollinrake P:7/7 2:03PM
Kent Cnty MI Rgstr 06/23/2015 SEAL

Pfeiffer Woods Drive
Special Assessment District
Proposed Principal & Interest Payments

Ravines PUD Neighborhood B1

Initial principal balance	$ 403,620.00
Interest rate	5.50%
# of days in year	365
Calculate initial interest from	9/7/2014
Target annual payment amount	$ 54,000.00

Payment Date	Interest Payment	Principal Payment	Total Payment	Outstanding Principal
9/7/2014				$ 403,620.00
9/7/2015	$ 22,199.10	$ 31,800.90	$ 54,000.00	$ 371,819.10
9/7/2016	$ 20,506.08	$ 33,493.92	$ 54,000.00	$ 338,325.18
9/7/2017	$ 18,607.88	$ 35,392.12	$ 54,000.00	$ 302,933.06
9/7/2018	$ 16,661.32	$ 37,338.68	$ 54,000.00	$ 265,594.38
9/7/2019	$ 14,607.69	$ 39,392.31	$ 54,000.00	$ 226,202.07
9/7/2020	$ 12,475.20	$ 41,524.80	$ 54,000.00	$ 184,677.27
9/7/2021	$ 10,157.25	$ 43,842.75	$ 54,000.00	$ 140,834.52
9/7/2022	$ 7,745.90	$ 46,254.10	$ 54,000.00	$ 94,580.42
9/7/2023	$ 5,201.92	$ 48,798.08	$ 54,000.00	$ 45,782.34
9/7/2024	$ 2,524.93	$ 45,782.34	$ 48,307.27	$ -
	$ 130,687.27	$ 403,620.00	$ 534,307.27	

2064.xlsx 6/2/2015

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

PETERSEN FINANCIAL LLC,

Plaintiff,

-vs-

Case No. 16-11820 - CH
HON. GEORGE JAY QUIST

CITY OF KENTWOOD and
KENT COUNTY TREASURER,

Defendant.
_____/

NOTICE OF HEARING

TO: ALL ATTORNEYS OF RECORDS

PLEASE TAKE NOTICE that Defendant City of Kentwood's Motion for Summary Disposition will be brought on to be heard on Friday, July 19, 2019 at 9:00 a.m. before the Honorable George Jay Quist in the Kent County Circuit Courtrooms located at 180 OTTAWA Ave, NW Ste 2400, Grand Rapids, MI 49503 or as soon thereafter as counsel may be heard.

Respectfully submitted,

Dated: 6-17-19

By: _____

David K. Otis (P31627)
PLUNKETT COONEY
Attorney for Defendants
325 E. Grand River, Ste 250
East Lansing, MI 48823
(517) 324-5612
dotis@plunkettcooney.com

Open.00560.70941.22318790-1

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

PETERSEN FINANCIAL LLC,

Plaintiff,

-vs-

Case No. 16-11820 - CH
HON. GEORGE JAY QUIST

CITY OF KENTWOOD and
KENT COUNTY TREASURER,

Defendant.
_____/

PROOF OF SERVICE

Laura L. Cushman states that on the 17th day of June, 2019, she did cause to be served a copy of Defendant City of Kentwood Motion for Summary Disposition, Brief in Support and Notice of Hearing to all attorneys of record at their respective addresses, by placing said documents in an envelope properly addressed to said parties and depositing same in the U.S. Mail with postage fully prepaid. I declare under penalty of perjury that the above statement is true to the best of my knowledge, information and belief.

Laura L. Cushman

Open.00560.70941.22318840-1

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

PETERSEN FINANCIAL LLC,

Plaintiff,

-vs-

Case No. 16-11820 - CH
HON. GEORGE JAY QUIST

CITY OF KENTWOOD and
KENT COUNTY TREASURER,

Defendant.

_____/

Donald R. Visser (P27961)
Jeremy J. Voorhees (P80872)
Attorneys for Plaintiff
VISSER AND ASSOCIATES, PLLC
2480 – 44th Street, S.E., Suite 150
Kentwood, Michigan 49512
(616) 531-9860

David K. Otis (P31627)
PLUNKETT COONEY
Attorneys for Defendant
325 E. Grand River Ave, Ste 250
East Lansing, MI 48823
(517) 324-5612

Linda S. Howell (P44006)
Kent County Corporate Counsel
Attorney for Kent County Treasurer
300 Monroe NW, Ste 303
Grand Rapids MI 49503
(616) 632-7594

_____/

DEFENDANT CITY OF KENTWOOD'S MOTION FOR SUMMARY DISPOSITION

Defendant, City of Kentwood, by and through its attorneys, PLUNKETT COONEY, by David K. Otis, brings its Motion for Summary Disposition under MCR 2.116 (C)(7) and (C)(8) because Plaintiff's claims are barred by waiver and/or the statute of limitations, and Plaintiff has otherwise failed to state a claim upon which relief can be granted. This motion is based on the facts, legal authorities, and arguments contained in the Brief in Support of Motion for Summary Disposition filed with this motion.

WHEREFORE, the City of Kentwood respectfully requests summary disposition of Counts II, IV and V pursuant to MCR 2.116(C)(7) and (C)(8).

Respectfully submitted,

Dated: June 18, 2019

By: _____

David K. Otis (P31627)
PLUNKETT COONEY
Attorney for Defendants
325 E. Grand River, Ste 250
East Lansing, MI 48823
(517) 324-5612
dotis@plunkettcooney.com

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

PETERSEN FINANCIAL LLC,

Plaintiff,

-vs-

Case No. 16-11820 - CH
HON. GEORGE JAY QUIST

CITY OF KENTWOOD and
KENT COUNTY TREASURER,

Defendant.

/

Donald R. Visser (P27961)
Jeremy J. Voorhees (P80872)
Attorneys for Plaintiff
VISSER AND ASSOCIATES, PLLC
2480 – 44th Street, S.E., Suite 150
Kentwood, Michigan 49512
(616) 531-9860

David K. Otis (P31627)
PLUNKETT COONEY
Attorneys for Defendant
325 E. Grand River Ave, Ste 250
East Lansing, MI 48823
(517) 324-5612

Linda S. Howell (P44006)
Kent County Corporate Counsel
Attorney for Kent County Treasurer
300 Monroe NW, Ste 303
Grand Rapids MI 49503
(616) 632-7594

/

DEFENDANT CITY OF KENTWOOD'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION

TABLE OF CONTENTS

STATEMENT OF ISSUES PRESENTED

1. Whether Petersen has any interest or rights in the subject property beyond those rights conveyed by the owner to the Kent County Treasurer and conveyed by the Kent County Treasurer to Petersen by quit claim deed.

2. Whether Petersen's claims are barred by the applicable statute of limitations:

   a. What is the accrual date for Petersen's challenge to the validity of the VSADA or the Amendment?
   b. What is the nature of the action for purposes of applying a statute of limitations?

3. Whether the special assessment district created by the adopted resolutions, VSADA and/or the Amendment is valid.

   a. Is the VSADA valid as authorized by MCL 117.4d and Chapter 10 and Chapter 50 of the City Charter and City Code;
   b. Is the Amendment valid as authorized by the VSADA and did the City reserve the right to modify the term of payment by Sec. 2(e) of the VSADA.

I. STATEMENT OF FACTS

A. Introduction

This case is now on remand from the Court of Appeals, and Plaintiff, Petersen Financial, seeks a declaration from this Court that the special assessment district created by Defendant, City of Kentwood, within which Petersen's property is located, is invalid and that any special assessments owed were extinguished when the property was foreclosed upon. Petersen's Amended Complaint must be dismissed because (1) Petersen lacks standing to challenge the agreement that created the special assessment district and the later amendment to that agreement; (2) Petersen's claims are otherwise barred by express waiver language in those agreements and the applicable statutes of limitations; and (3) in any event, Petersen has failed to state a claim upon which relief can be granted because the special assessment and subsequent amendment to the agreement are valid and the future installments of the special assessment were not extinguished by the foreclosure.

B. Material Facts

On March 18, 2004, the City entered into a Planned Unit Development Agreement with Ravines Capital Management LLC and 44th Shaffer Avenue, LLC (collectively "Shaffer"). (At the time, Shaffer owned nearly 300 acres of real estate, including that area of the Ravines known as Neighborhood B-1, which is at issue in this litigation ("the Subject Property"). (Amended Complaint, ¶¶ 12-14; **Ex. 4** to Amended Complaint, Planned Unit Development Agreement; **Ex 1** to Amended Complaint, Property Description.) The Subject Property was included in and subject to three separate special assessments; at issue here is the Pfeiffer Woods Drive Construction Special Assessment District implemented by adoption of a series of resolutions by the City Commission and incorporating a Voluntary Special Assessment/Development Agreement

(VSADA). (Amended Complaint, ¶¶ 12-20; **Ex. 6** to Amended Complaint, VSADA).[1] On September 7, 2004, Shaffer entered into the VSADA with the City, which agreement addressed, among other matters, prospective payment terms for infrastructure associated with the new development. (Amended Complaint, ¶ 16; **Ex. 6** to Amended Complaint, VSADA). One of the sections of the VSADA addressed the mechanism by which certain public improvements such as sewers, streets, and sidewalks, would be paid for, and it authorized the City to create and establish a special assessment district to pay for some of these public improvements. (VSADA, pp 5-6).

Over the course of several weeks, multiple resolutions were adopted by the City Commission (as called for under the City's special assessment ordinance), culminating in Resolution No. 96-04–A Resolution to Confirm the Special Assessment Roll, also passed on September 7, 2004. Resolution 96-04 confirmed the special assessment roll, which incorporated terms of the VSADA (referred to in the resolution as Ravines Special Assessment District) and a special assessment in the amount of $1,942,070.00. (Amended Complaint, ¶¶ 18-19; **Ex. 7** to Complaint, Resolution 96-04). The special assessment roll initially set a term of ten years for the special assessment, with annual interest payments and a balloon payment due on September 7, 2014. **(Ex. 7** to Amended Complaint, Resolution 96-04). However, under paragraph 2.(e)of the Terms and Conditions section of the VSADA, which addressed terms for the special assessment, the agreement expressly reserved to the City the authority, through resolution, to establish final terms for the special assessment district "in its discretion"' (**Ex. 6** to Amended Complaint, VSADA, p 7).[2] On July 15, 2014, *before the final installment was due on the special assessment*, the City Commission adopted Resolution No. 50-14, extending the term of the special assessment for the Subject Property by an

[1] The City has maintained that it seeks to collect only the amounts owing under the VSADA. Moreover, the Court of Appeals has ordered that this Court enter judgment for Petersen on Count I and III concerning the Deferred Assessment Agreement and Landscape Irrigation Agreement respectively.

[2] It is the City's position that it had this authority (i.e., to modify a prior resolution) by law and independent of any language in the VSADA. In any event, other terms of the special assessment, such as the allocation of costs among the different neighborhoods and the number of phases within each neighborhood, could be changed by written amendment to the agreement. (**Ex. 6** to Amended Complaint, VSADA, p 8).

additional one year (i.e., until September 7, 2015). (**Ex. A**, Resolution 50-14).

Because Shaffer became delinquent in paying base taxes and the special assessments owing on the Subject Property, it was forfeited, and a Judgment of Foreclosure was entered on March 6, 2015, resulting in absolute title to the Subject Property vesting in the County Treasurer. (Amended Complaint ¶ 22; **Ex 2** to Amended Complaint, Notice of Judgment Foreclosure). Then, in June 2015, the County and City entered into an agreement entitled Amendment to Voluntary Special Assessment/Development Agreement ("the Amendment"), which specified and affirmed that the Subject Property, now owned by the Kent County Treasurer, remained subject to the VSADA. (**Ex. 9** to Amended Complaint, Amendment). In the Amendment, in order to make the subject property more attractive to a potential buyer, the City, citing Section 2.(e) of the VSADA, agreed to extend into ten installments a balloon payment otherwise due on September 7, 2015. (*Id.*) The Amendment specified that it was not a reconfirmation of the District's special assessment roll, but simply the extension of the term of the pre-existing roll. *Id.* Petersen purchased the Subject Property from the County at a tax foreclosure sale on November 10, 2015. (Amended Complaint ¶ 9; **Ex. 3** to Amended Complaint, Quit Claim Deed).

C. Course of proceedings

In December 2016, Petersen filed an action against the City and Defendant Kent County Treasurer seeking declaratory relief and damages for slander of title with respect to the Subject Property. Petersen challenged the creation of the special assessment district, asserting that all the requirements for a valid special assessment district "were not fulfilled." (Complaint, ¶ 21). Petersen also asserted that Defendants lacked authority to enter into the Amendment. (*Id.*, ¶ 65). Further, Petersen alleged that Section 78k of the General Property Tax Act ("GPTA"), MCL 211.78k(5)(c), operates to extinguish certain special assessment installment payments that are the subject of this case. (*Id.*, ¶¶ 11, 24, 31, 46, 53, and 59).

In lieu of filing an answer, Defendants moved for summary disposition under MCR 2.116(C)(4), (C)(7), and MCR 2.116(C)(8). Defendants' primary argument was that Petersen's action clearly challenged

special assessments levied against the Subject Property, and therefore, the circuit court lacked jurisdiction and the case was properly considered in the Tax Tribunal. Petersen responded to Defendants' motion and also sought summary disposition under MCR 2.116(C)(9) and MCR 2.116(C)(10), asking that this Court declare the subject special assessments invalid and grant summary disposition to Petersen. Petersen also argued that all of the challenged "assessments/agreements" were extinguished in March 2015, regardless of whether it was a special assessment or a contract. *Id.*, p 10.

In its subsequently issued written opinion, the Court granted Defendants' motion to dismiss Counts I-IV, for lack of jurisdiction, and granted the motion as to Count V based on governmental immunity. Petersen's motion was denied. (**Exhibit B**, 7/7/17 Opinion, p 1). This Court agreed that Petersen was challenging the "formation and imposition" of the special assessments, and therefore, the Tax Tribunal had exclusive jurisdiction. (*Id.*, p 1). The Court also observed that under the GPTA, a foreclosure extinguishes all liens, including liens for unpaid taxes or special assessments, except future installments of special assessments. The Court thus reasoned that the VSADA "was amended after the foreclosure. Moreover, it addresses future installments that will be collected until 2024. Therefore, the foreclosure sale does not operate to extinguish the installments." (*Id.*, p 5).

Petersen appealed and the Court of Appeals reversed, holding that "the particular allegations in Counts I through III of plaintiff's complaint squarely presented a legal question regarding the effect of a tax foreclosure judgment on overdue special assessment installment payments; it is a pure issue of statutory construction." *Petersen Fin LLC v City of Kentwood*, 326 Mich App 433 (2018) (**Exhibit C**), slip op p 6. "Resolution of Counts I through III requires construction of the GPTA and the law of tax foreclosure, having nothing to do with the factual underpinnings of the special assessments." (*Id.*, slip op, p 7). Likewise, the Court of Appeals determined that this Court has subject matter jurisdiction over Count IV, pertaining to the Amendment. As the Court of Appeals explained, Petersen "asserted that the amended VSADA was not supported by any consideration and that it was against public policy. Regardless of the substantive

soundness of plaintiff's argument, Count IV effectively alleged the creation or existence of a legally invalid contract that gave rise to a special assessment or the extension of a special assessment, resulting in an encumbrance on plaintiff's property." (*Id.*, slip op., p 9). In essence, the Court held that the legal validity of the special assessment had to be established before it could be determined whether the future installments of the special assessment were extinguished by the tax foreclosure. (*Id.*, slip op, pp 9-10).

Now on remand, Petersen has filed an amended complaint again challenging the creation of the special assessment, asserting that all of the requirements for a valid special assessment district "were not fulfilled." (Amended Complaint, ¶ 21). Petersen also alleges that MCL 211.78k operates to extinguish certain installment payments under the VSADA. (*Id.*, ¶¶ 10, 24 and 34). Petersen further alleges that the Amendment was adopted without authority and without consideration, and was against public policy. (*Id.*, ¶¶ 65, 66 and 67). Accordingly, in Count II, Petersen seeks a declaration that the special assessment is void and unenforceable against the subject property; Count IV seeks similar relief with respect to the Amendment. In Count V, Petersen asserts "erroneous payment" to recover $23,189.24 collected in taxes and an administrative fee of $231.89.

II. LEGAL STANDARD

Summary disposition may be granted pursuant to MCR 2.116(C)(7) when a claim is barred "because of release [or] ... [a] statute of limitations[.]" The court "consider(s) all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict them." *Waltz v Wyse*, 469 Mich 642, 647-648; 677 NW2d 813 (2004) (citation omitted). A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the pleadings alone. *Johnson-McIntosh v City of Detroit*, 266 Mich App 318, 322; 701 NW2d 179 (2005). In evaluating a motion under MCR 2.116(C)(8), a court considers only the pleadings and "[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). Summary disposition is

appropriate "only where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id.* at 119.

III. LAW AND ARGUMENT

A. Petersen lacks standing to bring a claim challenging the formation of the VSADA and the Amendment, and, as the successor in interest to the original owner and the County, Petersen's claims are barred by the waiver provisions in the VSADA and Amendment as well as the applicable statutes of limitations.

Petersen lacks standing to challenge the formation of the VSADA and the Amendment because it was not a party to those agreements. Moreover, as successor in title to both the original owner and later the Kent County Treasurer, Petersen has no greater rights in those agreements than its predecessors. Therefore, Petersen is subject to the waiver agreements in the VSADA and the Amendment as well as the applicable statutes of limitations.

1. Petersen lacks standing to challenge the formation of the VSADA and the Amendment.

As the Court of Appeals has explained,

> Standing is the legal term used to denote the existence of a party's interest in the outcome of the litigation and that will assure sincere and vigorous advocacy. To have standing, a plaintiff must demonstrate a legally protected interest that is in jeopardy of being adversely affected and must allege a sufficient personal stake in the outcome of the dispute to ensure that the controversy to be adjudicated will be presented in an adversarial setting that is capable of judicial resolution. Generally, a plaintiff shows a personal stake in a lawsuit by demonstrating injury to the plaintiff or the plaintiff's property.

Taylor v Blue Cross/Blue Shield of Michigan, 205 Mich App 644, 655-56; 517 NW2d 864 (1994) (citations omitted). See also *MOSES Inc v SEMCOG*, 270 Mich App 401, 414; 716 NW2d 278 (2006) (A party has standing if it has "a legal or equitable right, title, or interest in the subject matter of the controversy.")

As is relevant here, however, "one who is not a party to an agreement cannot pursue a claim for breach of the agreement." *First Security Savings Bank v Aitken*, 226 Mich App 291, 305; 573 NW2d 307 (1997), overruled in part on other grounds by *Smith v Globe Life Ins Co*, 460 Mich 446; 597 NW2d 28 (1999). Petersen was not a party to the VSADA when it was formed, rather, that agreement was a contract

between Schaffer and the City. Likewise, Petersen was not a party to the Amendment, which was an agreement between the County Treasurer and the City. Thus, Petersen has no standing to challenge any issues related to the VSADA's formation and thus Counts II, IV, and V must be dismissed.[3]

2. Petersen has no greater rights in the property than its predecessors in interest.

Moreover, and regardless, as a predecessor in interest, Petersen stands in the shoes of Shaffer and the Kent County Treasurer, and thus has no greater right to challenge the VSADA or the Amendment than would those previous property owners. See e.g., *First of Am Bank v Thompson*, 217 Mich App 581, 587; 552 NW2d 516 (1996) (Bank, as assignee of installment sales contract between auto dealer and buyer and cobuyer, stood in auto dealer's shoes and was subject to same defenses in its deficiency action against cobuyer, including statute of limitations, as auto dealer would have been, particularly when agreement provided that holder of contract was subject to all claims and defenses that debtor could assert against seller); *Am Cedar & Lumber Co v Gustin*, 236 Mich 351, 361; 210 NW 300 (1926) (Purchaser of land with notice that grantor is under contract to convey it to another obtains such right as vendor had, including right to subsequent payments.); *Fed Nat Mortg Ass'n v Li-Ming Hsiung*, No. 325178, 2015 WL 7356591, at *8 (Mich Ct App, November 19, 2015) (unpublished) (**Exhibit D**) (After mortgagee was conveyed property under a quitclaim deed it was standing in the shoes of the prior owner); *State v United Pac Ins Co*, 52 Mich App 157, 159–60; 216 NW2d 469 (1974) ("the surety, by the assignment or by its performance, steps into the shoes of the principal and can claim nothing under the contract which the principal could not have claimed."); *Shay v Aldrich*, 487 Mich 648, 666; 790 NW2d 629 (2010) (a third-party beneficiary "stands in the shoes of the original promisee and only gains the same right that the original promisee would have had."); *In re $55,33617 Surplus Funds*, 319 Mich App 501, 514; 902 NW2d 422 (2017) ("The personal representative of the mortgagor's estate stands in the mortgagor's shoes and has no

[3] As this court observed in its order granting Defendants' motion for summary disposition, "Plaintiff is not a party to the assessment/contract and likely lacks standing to challenge it." (**Exhibit C**, 7/7/17 Opinion, pp 5-6).

greater interest than the mortgagor.") Thus, as successor in interest to Schaffer and the Kent County Treasurer, Petersen is subject to the waiver provisions in the VSADA and the Amendment, as well as the applicable statutes of limitations.

a. *Petersen's claims are barred by waiver.*

Petersen has waived all challenges to the nature of the special assessment district and the process by which it was implemented. Both the VSADA and the Amendment (as distinguished from the special assessment) are contracts (between the City and Shaffer and the City and the Treasurer, respectively) and, therefore, the normal rules of contract interpretation apply. When interpreting a contract, the overarching goal is to ascertain the party's intent. *Shay*, 487 Mich at 660. "[I]f the language of a contract is unambiguous, it is to be construed according to its plain meaning." *Id.* A contract is only ambiguous if its words may be reasonably understood in different ways or if provisions of the contract irreconcilably conflict. *Cole v Auto-Owners Ins Co*, 272 Mich App 50, 53; 723 NW2d 922 (2006).

The VSADA and Amendment contain waiver provisions. A waiver "is the intentional relinquishment of a known right." *Sweebe v Sweebe*, 474 Mich 151, 156–57; 712 NW2d 708 (2006). "[A]waiver may be shown by express declarations or by declarations that manifest the parties' intent and purpose." *Id.* at 157. The waivers in the VSADA and Amendment are express, unambiguous declarations. Section 2 of the VSADA's Terms and Conditions includes a waiver provision in paragraph (b), which states

> [t]he Owner hereby releases, waives, and relinquishes, on behalf of itself, its successors, and assigns any claims it may have against the City, its officers or employees based on or *arising out of the nature of the special assessment proceedings provided for herein, any defects in notice or other procedure associated with the special assessments*, or whether the owner contracted infrastructure improvements proportionately increase (relative to the amount of the special assessment) the value of the 44th LLC Property.

(**Ex. 6** to Amended Complaint, VSADA, (emphasis added)). Paragraph 2(e)(5) further provides: "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." (*Id.*). Finally, the VSADA made clear that "[t]he obligations under this Agreement are covenants that run with the land, and shall bind all successors in title." (*Id.*)

Petersen was on notice of the VSADA's waiver provision because, as Petersen acknowledges in the Amended Complaint (¶53), this document was properly filed with the Kent County Register of Deeds (recorded as document 20040917-0125700). Michigan courts have held that "[n]otice can be real or constructive." *Richards v Tibaldi*, 272 Mich App 522, 539, 726 NW2d 770 (2007). Further,

> When a person has knowledge of such facts as would lead any honest man, using ordinary caution, to make further inquiries concerning the possible rights of another in real estate and fails to make them, he is chargeable with notice of what such inquiries and the exercise of ordinary caution would have disclosed.

Kastle v Clemons, 330 Mich 28, 31; 46 NW2d 450 (1951). Thus, as Petersen Financial essentially acknowledges, the waiver was a matter of record and discoverable upon due diligence by Petersen in advance of its acquisition of the property and before it filed this action.

Like the VSADA, the Amendment thereto executed by the County Treasurer also contained a waiver provision in paragraph 3 of the Terms and Conditions section, stating that the Treasurer, "on behalf of his office and his successors and assigns," waived any claim he might have against the City regarding the special assessment. In addition, the Treasurer acknowledged that the obligations in the Amendment were "covenants running with the land, and which bind all successors in title," and that the Amendment would be recorded. (**Ex 9** to Amended Complaint, Amendment to VSADA). As with the original agreement, this document was also properly filed with the Kent County Register of Deeds (recorded as document 20140715-0055364). Thus, this document also was available to Petersen in advance of its purchase and before it filed this action.

The foreclosure of the parcel did not extinguish this waiver or any of the other provisions, as both the VSADA and Amendment specified that the obligations were covenants running with the land. Michigan courts have held that restrictive covenants are not extinguished by tax foreclosure. See *Lakes of the N*

Ass'n v TWIGA Ltd Pship, 241 Mich App 91; 614 NW2d 682 (2000) (association assessments, which were created by virtue of restrictive covenants affecting all lots in development, were not an "encumbrance," and thus were not cancelled by tax sale); *Ferry Beaubien LLC v Centurion Place on Ferry St Condo Ass'n*, No. 335571, 2017 WL 6390068, at *4 (Mich Ct App, December 14, 2017) (unpublished) (**Exhibit E**) ("the mere fact that plaintiff acquired [two condominium units] through a tax sale does not extinguish the use restrictions imposed by the Master Deed.")[4]

Accordingly, where Petersen had notice of the waiver provisions and stands in the shoes of both Shaffer and the Kent County Treasurer, Petersen waived the right to challenge the nature of the special assessment proceedings or bring any claim regarding the special assessment. The City is entitled to summary disposition on Counts II, IV, and V.

b. *Petersen's claims are barred by the applicable statutes of limitations.*

In deciding which period of limitations controls an action, a court "must first determine the true nature of the claim." *Adams v Adams*, 276 Mich App 704, 710; 742 NW2d 399 (2007). "The type of interest allegedly harmed is the focal point in determining which limitation period controls. It is well settled that the gravamen of an action is determined by reading the complaint as a whole, and by looking beyond mere procedural labels to determine the exact nature of the claim." *Id.* at 710-11(citations and quotation marks omitted).

Here Petersen is challenging both the VSADA, which is a development agreement, i.e., a contract by which the City and Schaffer agreed to be bound by the special assessment process with respect to the subject property, and a later amendment to that agreement. The Court of Appeals considered the nature of these claims when determining whether this Court or the Tax Tribunal had jurisdiction. When addressing Counts I through III of Petersen's complaint, which included its challenge to the VSADA, the Court

[4] Although Petersen's complaint focuses on future installments of special assessments, the City preserves the right to enforce any other obligation set forth in the VSADA or Amendment because such properly recorded private deed restrictions are not extinguished by foreclosure. MCL 211.78k(e).

observed that those counts "squarely presented a legal question regarding the effect of a tax foreclosure judgment on overdue special-assessment installment payments; it is a pure issue of statutory construction." *Petersen*, slip op, p 6. Thus, resolution of those counts "requires construction of the GPTA and the law of tax foreclosure . . . ." *Id.*, p 7. With respect to Count IV, which challenges the VSADA, the Court characterized the issue as a contract dispute. *Id.*, p 9 ("As alleged by plaintiff, Count IV presented a question of contract law, as shaped by the construction of provisions in the GPTA.") Therefore, the applicable statutes of limitations involve those concerning the GPTA and contract law.

The next consideration is when Petersen's claim accrued. Again, Petersen's claims involve the formation of the VSADA (and later Amendment) and thus Petersen stands in the shoes of its predecessor in interest. Under MCL 600.5841,

> If the claim first accrues to an ancestor, predecessor, or grantor of the person who brings the action or makes the entry, or to any other person from or under whom he claims, the periods of limitations shall be computed from the time when the claim first accrued to the ancestor, predecessor, grantor, or other person, except as otherwise provided by law.

See *Poly-Flex Const, Inc v Neyer, Tiseo & Hindo, Ltd*, 582 F Supp 2d 892, 917 (WD Mich, 2008) ("If the assignment [of a claim from Landfill to PFC] had been valid, PFC would stand in the shoes of Landfill, and the question would be when Landfill's negligence claim against NTH accrued. See Mich. Comp. Laws § 600.5841[.]").

Additionally, "[e]xcept as otherwise expressly provided, the period of limitations runs from the time the claim accrues. . . . [T]he claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results." MCL 600.5827. For example, in *Holzwarth v Coldwell Banker Schmidt Realtors*, No. 295627, 2011 WL 2462712 (Mich Ct App, June 21, 2011) (unpublished) (**Exhibit F**), the plaintiff purchasers sued the defendant property owners and their realtor after plaintiffs discovered that the property they bought was less than a 40-acre parcel. The Court held that the plaintiffs' claims accrued in 1998 when they bought the property, not in 2007 when they discovered the discrepancy.

In this case, Petersen's claim accrued on September 7, 2004, upon the execution of the VSADA, which provides the City with discretion to modify the payment terms as set forth in Sec. 2(e), which discretion was later exercised in executing the Amendment. Petersen's claim, filed December 22, 2016, is thus untimely under any applicable statutes of limitations.

First, under the GPTA, with respect to residential real property, MCL 205.735a(6) provides that disputes must be invoked by "filing a written petition on or before July 31 of the tax year involved." Petersen's original complaint did not specify the tax year involved, but it is clear that the applicable tax year could only be 2005, because the special assessment would not arise until after the creation of the special assessment district by the City in September 2004. Consequently, Petersen's claims expired on July 31, 2005.

Petersen fares no better applying the longer statute of limitations for contract actions under MCL 600.5807(9), which provides "[t]he period of limitations is 6 years for an action to recover damages or money due for breach of contract . . . ." Here, Petersen actually seeks to declare the VSADA void, but a six-year limitations period is also applicable to actions for rescission. See *Adams v Adams*, 276 Mich App 704, 710; 742 NW2d 399 (2007), citing MCL 600.5813; *Wall v Zynda*, 283 Mich 260, 265-266, 278 NW 66 (1938). The limitations period thus expired in September 2010. Even if this action is considered one "founded on a covenant in a deed or mortgage of real estate," which covenants Petersen seeks to void, its action was not filed within the ten-year limitations period set by MCL 600.5807 (5) ("The period of limitations is 10 years for an action founded on a covenant in a deed or mortgage of real estate."), which expired in September 2014. See *Holzwarth*, 2011 WL 2462712 (finding that the 10-year statute of limitations applied, not the 15-years provided for in MCL 600.5801, because "plaintiffs are not seeking to recover real property from these defendants, only money damages" for having misrepresented the acreage of the subject property).

B. Petersen fails to state a claim upon which relief can be granted because the City had ample authority to enter into the VSADA and the Amendment thereto.

The Amended Complaint contains the cursory allegation "upon information and belief, all the requirements for a valid special assessment were not fulfilled." (¶ 21). Petersen thus asks this Court to declare the special assessment (including the VSADA) void and unenforceable. Petersen also asserts that "[a]ll payments under the [special assessment] were due on or before September 7, 2014, more than six months prior to the tax foreclosure, and therefore any unpaid amounts were clearly not future installments and ALL were extinguished by the 2015 Judgment of Foreclosure." (*Id.*, ¶ 53). Additionally, Petersen contends that Defendants lacked authority to enter into the Amendment to the VSADA, the Amendment lacked consideration, and the Amendment was against public policy. (*Id.*, ¶¶ 65-66).

Petersen has failed to state a claim upon which relief can be granted. As the Court of Appeals has already held in *Damghani v City of Kentwood*, No. 341213, 2019 WL 1645208 (Mich Ct App Apr 16, 2019) (unpublished) (**Exhibit G**), the City had ample authority to create and implement the special assessment district and enter into the VSADA and the Amendment thereto. Thus, the future installments of the valid special assessment were not extinguished by the foreclosure and remained valid.

Specifically, the special assessment district is valid because it is authorized by the Home Rule Cities Act and the City Charter and Code of Ordinances. Under the Home Rule Cities Act, each city may, in its charter provide "[f]or assessing and reassessing the costs, or a portion of the costs, of a public improvement to a special district." MCL 117.4d(1)(a). In light of this express authority, the City Charter, Section 10.1., provides that the City Commission "shall have the power to provide, with or without petition, for assessing and reassessing the costs, or any portion of the costs, of public improvements to a special assessment district and to determine that the whole or any part of the expense of any public improvement be defrayed by special assessment upon property especially benefitted." (**Ex. H**, Relevant Portions of City Charter and Ordinances). Section 10.2 states that a detailed procedure for completing the special

assessments is to be set by ordinance. (*Id.*) That ordinance is Chapter 50 of the City Code, which requires the City to provide notice and a public hearing, followed by a resolution "approving the necessary profiles, plans, specifications, assessment district, and detailed estimates of cost," and further "directing the treasurer to prepare a special assessment roll in accordance with the city commission's determination and report the special assessment roll to the city commission for confirmation . . . ." *Id.* Sec 50-12(a) further provides that the city commission may provide for the payment of special assessments in annual installments.

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." *Kane v Williamstown Twp*, 301 Mich App 582, 586; 836 NW2d 868 (2013) (citation omitted). In this case, on September 7, 2004, the City entered into the VSADA with Schaffer, which agreement is a development agreement that provides, among other matters, for use of the special assessment process. The VSADA addressed prospective payment terms for infrastructure associated with the new development. (**Ex. 6** to Amended Complaint, VSADA). One of the sections of the VSADA addressed the mechanism by which certain public improvements, such as water, sewers, streets, and sidewalks, would be paid for, and it authorized the City to create and establish a special assessment district to pay for some of these public improvements. (*Id.*, pp 5-7).

Multiple resolutions were adopted by the City Commission, culminating in Resolution No. 96-04 – A Resolution to Confirm the Special Assessment Roll, also passed on September 7, 2004. That resolution confirmed the special assessment roll in the amount of $1,942,070.00 and incorporated the terms of the VSADA. (**Ex 7** to Complaint). The agenda and minutes associated with the City Commission's September 7, 2004 meeting make clear that the City did, in fact, hold a public hearing (as also indicated in the resolution itself) before Resolution 96-04 was adopted. (**Ex.** I, Agenda; **Ex. J**, Minutes). Thus, the City complied with the requirements of the ordinance, as recognized by the Court of Appeals in *Damghani*.

Likewise, the City had authority to enter into the Amendment to the VSADA and to extend the term

of the special assessment roll. Paragraph 2.(e) of the Terms and Conditions section of the VSADA, which concerns the term for the special assessment, expressly reserved to the City the authority, through resolution, to establish final terms for the special assessment "in its discretion." (**Ex 6** to Amended Complaint, VSADA, p 7).[5] Accordingly, on July 15 2014, the City Commission adopted Resolution No. 50-14, extending the term of the special assessment for the Subject Property by an additional one year (or until September 7, 2015). (**Ex. A,** Resolution 50-14). Then, after the County had acquired the Subject Property through foreclosure in March 2015, the County and City entered into the Amendment, which specified that the property remained subject to the VSADA. (**Ex. 9** to Amended Complaint). The Amendment also relied on Section 2.(e) of the VSADA and agreed to extend into ten installments a balloon payment otherwise due on September 7, 2015.

Indeed, in light of this clear statutory authority, the Court of Appeals has already confirmed the validity of the VSADA and the Amendment thereto in the related case of *Damghani*, and therefore, Petersen has failed to state a claim regarding the validity of the special assessment district. The *Damghani* Court rejected the plaintiff's cursory arguments that the City failed to follow the proper rules for creating a special assessment and that the City's contractual relationship with Shaffer somehow negated the existence of a special assessment. (*Id.*, slip op, p 9). The Court expressly held that the VSADA was part of a validly established special assessment, not a contractual obligation. Rejecting the plaintiff's arguments to the contrary – that the VSADA is a contract because it was recorded – the Court explained:

> the City Commission passed Resolution No. 96-04 to confirm the special assessment roll for the Ravines special assessment district. Resolution No. 96-04 sought to recover costs for public improvements that conferred a peculiar benefit on the properties in the Ravines special assessment district, and these costs were allocated among each of the "approved phases for Neighborhoods B-1 through B-4 of the Ravines . . . ." *In other words, a special assessment district was created, not by the VSADA, but by Resolution No. 96-04*. And while plaintiff suggests that the recording status of a document is definitive, it does not appear that Resolution No. 96-04 was recorded.

[5] See earlier comment at fn 2.

Damghani, slip op, p 9 (emphasis added).

Given that the special assessment district is valid, Petersen cannot challenge the assessments. Under MCL 211.78k(5)(c), when a judgment of foreclosure is entered, it must specify that "all liens against the property, including any lien for taxes or special assessments, except future installments of special assessments . . . are extinguished . . . ." A brief review of the timeline set forth above makes clear that future installments of the special assessment remained due and owing at the time of the foreclosure:

- In September 2004, the initial special assessment district was established.
- In July 2014, the City adopted Resolution 50-14, extending the final installment of the special assessment from September 2014 to September 2015.
- In March 2015, prior to the date of the final installment of the special assessment, the foreclosure occurred, at which time the County took ownership.
- In June 2015, after the foreclosure, Defendants entered into the Amendment and the City Commission passed the accompanying resolution, which extended the payment terms for the special assessment district from September 2015 to 2024.

In sum, since the foreclosure on the Subject Property occurred in March 2015 before the due date of the special assessment installment in September 2015, the amount due was a future installment and was not extinguished by the foreclosure.

IV. CONCLUSION

WHEREFORE, this Court should dismiss Counts II, IV and V of Plaintiff's Amended Complaint and grant the City all other relief to which it is entitled.

Respectfully submitted,

Dated: 6-17-19

By: _____
David K. Otis (P31627)
PLUNKETT COONEY
Attorney for Defendants
325 E. Grand River, Ste 250
East Lansing, MI 48823
(517) 324-5612

Open.00560.70941.22311148-1

EXHIBIT A

CITY OF KENTWOOD
KENT COUNTY, MICHIGAN

Motion by Brinks, seconded by Coughlin, to adopt the following resolution:

RESOLUTION NO. 50-14

A RESOLUTION TO EXTEND PAYMENT TERMS FOR A CONFIRMED SPECIAL ASSESSMENT DISTRICT (RAVINES NEIGHBORHOOD B1)

RECITALS

A. Pursuant to City of Kentwood Resolution No. 96-04 entitled "Pfeiffer Woods Drive Construction (Ravines Special Assessment District) Street, Storm Sewer, Non-Motorized Trail, Sanitary Sewer and Watermain Special Assessment District," as amended ("Resolution"), the Pfeiffer Woods Drive Construction, Ravines Special Assessment District was established ("District").

B. The Resolution was adopted to finance certain public improvements benefitting the property located within the District.

C. The Resolution included a special assessment roll for the District, which special assessment roll was confirmed on September 7, 2004. The amount of the special assessment as reflected in the roll, by law, became a lien on the property comprising the District.

D. The Resolution was subsequently amended by the City with respect to the amount of the total special assessment (Resolution No. 108-04), and to reduce the area subject to the special assessment terms (Resolution No. 28-05).

E. Subsequently, the owner of a large tract of real property (i.e., a neighborhood) within the District became delinquent in paying property taxes and special assessments due and owing on its property. As a result, the property is at risk of having a judgment of foreclosure entered. (The subject real property referred to as the "Property".)

F. The Property is and remains liable for a portion of the special assessment set forth in the Resolution, as amended. The Property is legally described on the attached **Exhibit A**, which is incorporated by reference.

G. The District was established, in part, pursuant to a Voluntary Special Assessment/Development Agreement between the City and the owner of the Property dated September 7, 2004 and recorded with the Kent County Register of Deeds at Instrument No. 20040917-0125700 on September 17, 2004 ("Agreement").

H. A balloon payment on the outstanding principal of $403,620.00 and interest of $22,199.10 (totaling $425,819.10) attributable to the Property is due on September 7, 2014 under the terms set forth as part of the Agreement and accompanying special assessment roll.

I. The Agreement, at Section 2(e), provides, in part, that the "term of years" for the District's special assessment and similar matters are to be determined by resolution of the City Commission "in its discretion."

J. Without re-confirming the District's special assessment roll, the City Commission has determined that extending the term of the special assessment for one additional year is in the public interest in order to allow the owner of the Property an opportunity to cause the balloon payment to be made and to bring the taxes and special assessment on the Property current, to make the Property more marketable, and to enhance economic development opportunities within the City.

NOW, THEREFORE, IT IS RESOLVED THAT:

1. The City affirms that the Recitals above are correct, form an integral part of this resolution, and are incorporated herein by reference.

2. The special assessment roll attached to the Resolution as amended, and identified as "Roll A", is attached as **Exhibit B** and incorporated herein by reference ("Roll A").

3. A revised schedule of payment terms for the portion of the District's special assessment roll attributable to the Property, identified as "Roll A Supplemental", is attached as **Exhibit C** and incorporated herein by reference ("Roll A Supplemental").

4. Without modifying the confirmation date of the special assessment roll as amended, Roll A Supplemental shall hereby amend, supersede and replace any term or provision in Roll A to the contrary; to the extent of a conflict between Roll A and Roll A Supplemental, the provisions of Roll A Supplemental shall control. All remaining terms and provisions in Roll A not in conflict with Roll A Supplemental shall be and remain in effect.

5. Except as provided for herein, the Resolution and its terms are and shall remain binding and in effect. This resolution shall not be interpreted or construed to extend the period in which to challenge the underlying special assessment, which period has expired.

6. The Mayor, City Clerk and administrative officers of the City are hereby ordered and directed to take all actions reasonably necessary and authorized by law to effectuate this resolution and to provide notice of its passage to the Property's owner.

7. The City Clerk shall deliver a certified copy of this resolution and accompanying exhibits to the City Treasurer with his warrant attached commanding the Assessor to spread and the Treasurer to collect the assessment therein in accordance with the directions of the City Commission and the Treasurer is directed to collect the amounts assessed as the same become due.

8. All prior resolutions and parts of resolutions in conflict herewith are, to the extent of such conflict, hereby repealed.

YEAS: Commissioners: Artz, Brinks, Brown, Coughlin, DeMaagd, Haas and Mayor Kepley

NAY: None

ABSENT: None

RESOLUTION NO. 50-14 ADOPTED.

Dan Kasunic
City Clerk

The foregoing resolution was adopted at a regular meeting of the City Commission of the City of Kentwood on July 15, 2014.

Dan Kasunic
City Clerk

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

Parcel B-1: 41-18-22-426-001
PART OF E ½ COM AT E ¼ COR TH S 3D 35M 29S E ALONG E SEC LINE 60.07 FT TH S 88D 09M 27S W 40.01 FT TO W LINE OF SHAFFER AVE & BEG OF THIS DESC – TH S 3D 10M 02S E ALONG SD W LINE 1263.17 FT TH S 89D 54M 32S W 629.94 FT TH S 3D 10M 02S E 60.95 FT TH S 90D 00M 00S W 708.24 FT TH N 45D 00M 00S W 67.88 FT TH S 90D 00M 00S W 530.0 FT TH N 50D 00M 00S W 235.0 FT TH N 44D 18M 31S E 199.74 FT TH N 77D 07M 45S E 307.02 FT TH N 41D 46M 39S E 334.95 FT TH N 8D 47M 09S E 226.61 FT TH N 11D 02M 04S W 245.78 FT TH N 25D 03M 50S E 281.40 FT TO A PT ON E&W ¼ LINE SD PT BEING 1290.96 FT S 89D 49M 02S W FROM E ¼ COR TH N 70D 13M 01S E 266.80 FT TH S 75D 46M 26S E 333.65 FT TH S 69D 14M 04S E 227.04 FT TH N 88D 09M 27S E 467.76 FT TO BEG * SEC 22 T6N R11W 47.77 A

EXHIBIT B

ROLL A

Attached

ROLL A

CITY OF KENTWOOD

PFEIFFER WOODS DRIVE CONSTRUCTION
(Ravines Special Assessment District)
STREET, STORM SEWER, NON-MOTORIZED TRAIL, SANITARY SEWER, AND WATERMAIN
SPECIAL ASSESSMENT DISTRICT

CONFIRMED SPECIAL ASSESSMENT ROLL

Date of Confirmation: September 7, 2004; amended October 19, 2004 and March 15, 2005

Subject Property:

Part of the Northeast one-quarter and part of the Southeast one-quarter, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: COMMENCING at the Northeast corner of Section 22 and the POINT OF BEGINNING of this description; thence S03°35'29"E 395.00 feet along the East line of said Northeast one-quarter, thence South 89°42'31" West 258.00 feet; thence South 03°35'29" East 120.00 feet; thence North 89°42'31" East 258.00 feet; thence South 03°35'29" East 705.38 feet along the East line of said Northeast one-quarter; thence North 54°47'03" West 395.85 feet; thence South 89°45'47" West 308.00 feet; thence South 03°35'29" East 330.00 feet; thence North 89°45'47" East 424.00 feet along the South line of the North one-half of the Northeast one-quarter of Section 22; thence South 03°35'29" East 153.00 feet; thence North 89°45'47" East 193.00 feet; thence South 03°35'29" East 273.18 feet along the East line of said Northeast one-quarter; thence South 86°24'31" West 40.00 feet; thence South 03°35'29" East 891.81 feet along the West line of Shaffer Avenue; thence North 89°49'02" East 0.02 feet along the East-West one-quarter line of said Section; thence South 03°10'02" East 1324.40 feet along the West line of Shaffer Avenue; thence South 89°54'32" West 629.94 feet along the North line of the South one-half of the Southeast one-quarter of Section 22; thence South 03°10'02" East 60.95 feet; thence South 90°00'00" West 708.24 feet; thence North 45°00'00" West 67.88 feet; thence South 90°00'00" West 530.00 feet; thence North 50°00'00" West 235.00 feet; thence South 42°36'50" West 260.00 feet; thence South 77°56'20" West 333.73 feet; thence North 03°02'05" West 1258.70 feet along the West line of the Southeast one-quarter of Section 22; thence North 63°04'26" East 366.74 feet; thence Northwesterly 17.84 feet along a 375.00 foot radius curve to the right, the chord of which bears North 26°04'58" West 17.84 feet; thence Northerly 182.95 feet along a 375.00 foot radius curve to the right, the chord of which bears North 10°44'36" West 181.15 feet; thence North 03°14'00" East 22.33 feet; thence Northwesterly 214.05 feet along a 325.00 foot radius curve to the left, the chord of which bears North 15'38'05" West 210.20 feet; thence North 34°30'10" West 49.19 feet; thence Northwesterly 159.95 feet along a 275.00 foot radius curve to the right, the chord of which bears North 17°50'24" West 157.71 feet; thence South 88°51'22" West 78.13 feet; thence North 07°38'58" West 121.92 feet; thence Northwesterly 16.28 feet along a 47.50 foot radius curve to the left, the chord of which bears North 17°28'15" West 16.20 feet; thence North 27°17'32" West 13.47 feet; thence

Northwesterly 59.87 feet along a 67.50 foot radius curve to the left, the chord of which bears North 52°42'11" West 57.93 feet; thence Westerly 60.54 feet along a 460.00 foot radius curve to the left, the chord of which bears North 81°53'03" West 60.49 feet to the West line of the Southeast one-quarter of said Section 22; thence North 03°29'48" West 1849.27 feet along the West line of the Northeast one-quarter of Section 22 to the North one-quarter corner of said Section; thence North 89°42'31" East 2633.71 feet along the North line of said Northeast one-quarter to the point of beginning. Subject to highway R.O.W. for Shaffer Avenue. This parcel contains 228.49 acres, including highway R.O.W.

Estimated Public Improvement Costs	Total Costs	LLC Portion	City's Share
Pfeiffer Woods Roadway (22A)	500,000.00	360,000.00	140,000.00
Add for 21AA (Allowance)	17,000.00	0.00	17,000.00
Storm Sewer	200,000.00	200,000.00	0.00
Water Main	203,000.00	160,000.00	43,000.00
Lighting Allowance	66,000.00	66,000.00	0.00
Landscape Allowance	125,000.00	125,000.00	0.00
Irrigation Allowance	50,000.00	50,000.00	0.00
Testing & Construction Staking	55,000.00	55,000.00	0.00
Total Subcontractor Costs	1,216,000.00	1,016,000.00	200,000.00
Project Management (10%)	121,600.00	101,600.00	20,000.00
Liability Insurance	8,800.00	8,800.00	0.00
Design and Inspection Fees	115,000.00	115,000.00	0.00
Permits and Fees	20,000.00	20,000.00	0.00
Bonding Costs	15,000.00	15,000.00	0.00
City Legal and Other	25,000.00	25,000.00	0.00
Total Project Costs	1,521,400.00	1,301,400.00	220,000.00
Total Project Contingency/Inflation (25%)	380,350.00	380,350.00	0.00
SAD Total Costs	**1,901,750.00**	**1,681,750.00**	**220,000.00**

Owner of Property: 44th/Shaffer Avenue, LLC, a Michigan limited liability company

Term: 10 years from confirmation of roll; i.e., September 7, 2014. Any unpaid principal and interest is due in full upon termination date.

Deferred Installments:

A. Interest is charged at a rate equal to one percentage (1%) point over the U.S. prime rate as published in the *Wall Street Journal*, which prime rate is in effect on the date the roll is confirmed as provided for in Ordinance No. 4-67, as amended. As of September 7, 2004, this aggregate interest rate is 5.5%.

B. A payment shall be due annually on the anniversary date of the confirmation of the roll (e.g., without limitation, September 7, 2005, September 7, 2006, September 7, 2007, etc.) in an

amount equivalent to the simple interest on any unpaid principal amount.

C. Principal payments, along with any unpaid simple interest on that portion of the principal, shall be due upon certain governmental approvals being issued consistent with the terms of a Voluntary Special Assessment/ Development Agreement dated September 7, 2004, between the City of Kentwood and 44th/Shaffer Avenue, LLC (the "Agreement").

D. In no event shall the amount of the special assessment exceed the actual costs reimbursed to the property owner pursuant to the Agreement and the costs and expenses of the City to which the City is lawfully entitled to be reimbursed including, but not limited to, all legal fees incurred by the City in establishing and preparing the special assessment district and special assessment roll.

E. Deferred installments shall be collected without penalty until 60 days after the due date; thereafter, such penalties as are provided for in the City Charter for general *ad valorem* taxes shall be due and collected.

F. Anticipated allocations: See attachments hereto which are incorporated by reference. Note that several of the specific dates included In the attachments are incorporated for purposes of example only and the payment amounts actually due will be determined based on the occurrence of certain governmental approvals being issued consistent with the terms of the Agreement.

EXHIBIT C

ROLL A SUPPLEMENTAL

Extended Term: Until September 7, 2015.

Principal due September 7, 2015	$403,620.00
Interest due for one-year period ending September 7, 2015	$ 22, 199.10
Total due September 7, 2015	$425,819.10

Note: Interest still due for one-year period ending September 7, 2014 $ 22, 199.1 0

EXHIBIT B

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

PETERSEN FINANCIAL LLC,

Plaintiff,

vs

CITY OF KENTWOOD and KENT COUNTY TREASURER,

Defendants.

Case No. 16-11820-CH

OPINION/ORDER RE: DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

At a session of said Court, held in the Kent County Courthouse in the City of Grand Rapids, on July 7, 2017,

Present: HON. GEORGE JAY QUIST
Circuit Judge

OPINION AND ORDER

I. Issue Presented and Disposition

Defendants filed the instant motion for summary disposition pursuant to MCR 2.116(C)(4) and MCR 2.116(C)(7). Plaintiff filed a cross-motion for summary disposition pursuant to MCR 2.116(C)(9) and MCR 2.116(C)(10). In the alternative, Plaintiff seeks summary disposition pursuant to MCR 2.116(I)(2).

After reviewing the material facts and applicable law, Defendants' motion to dismiss Counts I-IV for lack of jurisdiction is **GRANTED**. Defendants' motion to dismiss Count V based on governmental immunity is also **GRANTED**. Plaintiff's motion for summary disposition is respectfully **DENIED.**

II. Material Facts

This case arises out of a dispute regarding special assessments. In 2004, 44th LLC purchased a large portion of land in the City of Kentwood (the "City") with the intent of

creating a residential housing development. The development required the construction of infrastructure that would benefit the community as a whole. 44th LLC and the City agreed that the infrastructure would be financed through special tax assessments. The special assessments were adopted in 2004 and 2005. (Defendants' Exhibits 2-4).

44th LLC became delinquent on base taxes and the special assessments. On March 6, 2015, Kent County foreclosed on the property pursuant to the General Property Tax Act ("GPTA"). The foreclosure became final on April 1, 2015. (Defendants' Exhibit 1).

On June 18, 2015, the City entered into an agreement with Kent County wherein the County, as owner of the foreclosed property, agreed to allow one of the delinquent special assessments – the Voluntary Special Assessment/Development Agreement initially imposed in 2004- to be repaid in ten installments due annually until 2024. (Defendants' Exhibit 8).

On November 4, 2015, Plaintiff purchased 40 acres of the subject property at a tax foreclosure sale (Plaintiff's Complaint, Exhibit 3). The City then attempted to collect special assessment installment payments from Plaintiff pursuant to the June 18, 2015 City/County agreement.

On December 23, 2016, Plaintiff filed the instant suit requesting the court grant declaratory relief and find the following void and unenforceable against the subject property: the Deferred Assessment Agreement (Count I); the Voluntary Special Assessment/Development Agreement (Count II); the Landscape/Irrigation Agreement (Count III); and the Amendment to Voluntary Special Assessment/Development Agreement (Count IV). Plaintiff also asserted slander of title (Count V).

Defendants filed a motion for summary disposition pursuant to MCL 2.116(C)(4) and (7). Defendants argue that Plaintiff's special assessment claims (Counts I-IV) must be dismissed because the circuit court lacks subject matter jurisdiction over the matter. Defendants also argue that Plaintiff's slander of title claim (Count V) is barred by governmental immunity.

Plaintiff filed a cross-motion for summary disposition pursuant to MCL 2.116(C)(9) and (10), or, in the alternative, MCR 2.116(I)(2).

III. Law and Analysis

a. Subject matter jurisdiction (Counts I-IV)

Defendants assert that Plaintiff is challenging the nature and/or imposition of the special assessments, therefore exclusive jurisdiction to decide the matter lies with the Michigan Tax Tribunal ("MTT"). The Court agrees.

Summary disposition is warranted under MCR 2.116(C)(4) where the court lacks jurisdiction over the subject matter of the case. The jurisdiction of the circuit court is governed by Const. 1963, art. 6, § 13. It provides, in part, that "[t]he circuit court shall have original jurisdiction in all matters not prohibited by law..." MCL 600.605 further provides that the "[c]ircuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state."

One exception to the circuit court's general grant of jurisdiction is MCL 205.731. It provides, in pertinent part, that the MTT has exclusive and original jurisdiction over all of the following:

> (a) A proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under the property tax laws of this state.
>
> (b) A proceeding for a refund or redetermination of a tax levied under the property tax laws of this state.
>
> * * *
>
> (e) Any other proceeding provided by law.

Accordingly, the MTT has exclusive jurisdiction where four elements are met: (1) a proceeding for direct review of a final decision, finding, ruling, determination, or order; (2) of an agency; (3) relating to an assessment, valuation, rate, special assessment, allocation, or equalization; (4) under the property tax laws.

The burden of establishing jurisdiction is on the plaintiff. *Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43, 50 (2000). Here, Plaintiff claims that the circuit court has jurisdiction over this case because it merely involves a

foreclosure dispute under the General Property Tax Act ("GPTA"). MCL 211.1, *et seq.* The court disagrees.

A court is not bound by the label a party assigns to its claims. *Stephens v Worden Ins Agency LLC*, 307 Mich App 220, 229 (2014). "It is well settled that the gravamen of an action is determined by reading the complaint as a whole, and by looking beyond mere procedural labels to determine the exact nature of the claim." *Adams v Adams*, 276 Mich App 704, 710–711 (2007). Additionally, the MTT's "jurisdiction is based either on the subject matter of the proceeding ... or the type of relief requested...." *Wikman v Novi*, 413 Mich 617, 631 (1982).

A review of Plaintiff's complaint, as well as the arguments he presented in subsequent motions and oral argument, clearly reflect that Plaintiff is challenging the formation and imposition of the special assessments. Plaintiff has asserted that the requirements of a valid special assessment were not fulfilled. Furthermore, Plaintiff has consistently argued that procedural errors and/or irregularities in the formation of assessments indicate that the special assessments are, in fact, contracts between the original developer and the City. The Michigan Court of Appeals addressed a similar argument in the case of *Elm Inv Co v City of Detroit*, not reported, 2007 WL 2257708, wherein the plaintiff alleged that a so-called "special assessment" was actually a disguised tax. The Court of Appeals found that the MTT had exclusive jurisdiction to decide the issue. While unpublished law is not binding, the court finds it persuasive.

Based on the above analysis, as well as the plain language of MCL 205.731, the MTT has exclusive jurisdiction over the allegations contained in Counts I-IV of Plaintiff's Complaint.

b. Direct review

Plaintiff also argues that regardless of the label placed on the assessments, his suit is not seeking a "direct review" of the City's final decision because the assessments in dispute were drafted, approved, and implemented years before his purchase of the subject property. Again, the Court disagrees.

The term "direct review" is not defined by the MTT's authorizing statute. However, the well-established rules of statutory interpretation call on the courts to give

unambiguous statutory terms their plain meaning. *McElhaney ex rel McElhaney v Harper-Hutzel Hosp*, 269 Mich App 488 (2006).

As stated by Defendants, "direct review" is not a term of art. MCL 205.731 makes it clear that the MTT has exclusive jurisdiction to hear challenges to its final decision, finding, ruling, or determination regarding special assessments. The fact that Plaintiff had no interest in the property when the special assessments were imposed has no bearing on the MTT's jurisdiction.

c. No constitutional claims

The circuit court maintains jurisdiction over the imposition of taxes and assessments where the constitutionality of an authorizing statute is challenged. However, the MTT's jurisdiction extends to taxpayers' constitutional arguments that a tax assessment is arbitrary and without foundation. *Wikman v City of Novi*, 413 Mich 617, 646–647.

In the instant case, Plaintiff makes no constitutional arguments. Because Plaintiff's claims are not constitutional in nature, the circuit court cannot assert jurisdiction.

d. Plaintiff's GPTA and contract arguments

Even if the court were persuaded that Plaintiff's claims fall within the GPTA, Plaintiff's position is fatally flawed.

A foreclosure under the GPTA specifically states that it extinguishes all liens against the property, including any lien for unpaid taxes or special assessments, except future installments of special assessments. MCL 211.78k(5)(c). The Defendants have stated, both on the record and in brief form, that they are only pursuing collection of the Voluntary Special Assessment/Development Agreement installments referenced in Plaintiff's Count II. This assessment was amended after the foreclosure. Moreover, it addresses future installments that will be collected until 2024. Therefore, the foreclosure sale does not operate to extinguish the installments.

The court is also not persuaded by Plaintiff's claims that the assessment is actually a contract. As more full discussed in subsection "a" of this opinion, the issue of whether the assessment is actually a contract is for the MTT to determine. However, the court notes that Plaintiff is not a party to the assessment/contract and likely lacks standing to

challenge it. Additionally, the forming document states "the parties agree that, to the extent not otherwise prohibited by law, the jurisdiction and venue for any such dispute shall be solely with the state courts located in Kent County, Michigan." (Plaintiff's Reply Brief, Exhibit A, pg. 12, emphasis added). As discussed above, the MTT has exclusive jurisdiction over this matter. A contract cannot establish or alter jurisdiction.

e. Governmental immunity (Count V)

Summary disposition is appropriate pursuant to MCR 2.116(C)(7) where a claim is barred by governmental immunity. A governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function. MCL 691.1407(1). A "governmental function" is defined as "an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law," and is broadly construed. MCL 691.1401(f); *Brown v Genesee Co Bd of Comm'rs*, 464 Mich 430, 434 (2001); *Kerbersky v Northern Michigan Univ*, 458 Mich 525 (1998).

There are six statutory exceptions to governmental immunity: the highway exception (MCL 691.1402); the motor vehicle exception (MCL 691.1405); the public building exception (MCL 691.1406); the governmental hospital exception (MCL 691.1407(4)); the proprietary function exception (MCL 691.1413); and the sewage system event exception (MCL 691.1417). *Lash v City of Traverse City*, 479 Mich App 180, fn 33 (2007). These exceptions are narrowly construed. *Kerbersky* at 529. The party filing suit against a governmental agency bears the burden of pleading his or her claims in avoidance of governmental immunity. *Odom v Wayne Co*, 482 Mich 459, 478-79 (2008).

In the instant case, Plaintiff has pled the tort of slander of title. MCL 565.25; MCL 600.2907a(2). There can be no dispute that a municipal unit's attempt to collect taxes is the performance of a governmental function. Therefore, to circumvent the bar of governmental immunity, Plaintiff must establish that his claim falls within a recognized exception. He has failed to do so. Plaintiff merely argues that Defendants attempt to collect assessments is improper under the GPTA. This argument does not fall within a recognized exception to governmental immunity.

Based on the above analysis, Defendants' motion for summary disposition of Count V of Plaintiff's complaint is **GRANTED** pursuant to MCR 2.116(C)(7).

Conclusion and Judgment

Based on a review of the above analysis, the court finds as follows:

a. The circuit court lacks subject matter jurisdiction over Plaintiff's claims. Therefore, summary disposition of Count I-IV of Plaintiff's complaint is **GRANTED** pursuant to MCR 2.116(C)(4);

b. Plaintiff's claim of slander of title is barred by governmental immunity. Therefore summary disposition of Count V of Plaintiff's complaint is **GRANTED** pursuant to MCR 2.116(C)(7);

c. Plaintiff's motion for summary disposition is **DENIED.**

Based on the above analysis, Plaintiff's case is dismissed with prejudice. This order resolves the last pending claim and closes the case.

IT IS SO ORDERED.

JUL -7 2017
Date

GEORGE JAY QUIST

GEORGE JAY QUIST, Circuit Judge (P43884)

Attest: A true copy
Stacy Dilworth, Deputy Clerk

PROOF OF SERVICE

Service of a copy of this document was made by ordinary mail this date upon the parties who have appeared, or their attorneys of record.

7-7-17
Date

Stacy Dilworth, Judicial Clerk

EXHIBIT C

STATE OF MICHIGAN

COURT OF APPEALS

PETERSEN FINANCIAL LLC,

Plaintiff-Appellant,

v

CITY OF KENTWOOD and KENT COUNTY TREASURER,

Defendants-Appellees.

FOR PUBLICATION
November 20, 2018
9:10 a.m.

No. 339399
Kent Circuit Court
LC No. 16-011820-CH

Before: MURPHY, P.J., and O'CONNELL and BECKERING, JJ.

MURPHY, P.J.

Plaintiff appeals as of right the circuit court's order granting summary disposition in favor of defendants City of Kentwood (the city) and Kent County Treasurer (the county treasurer) in this action involving claims related to the impact of tax foreclosure proceedings on special assessment agreements entered into by the city, which assessments were payable in installments and had encumbered real property purchased by plaintiff at a tax foreclosure sale. Plaintiff maintained that the judgment of foreclosure extinguished all special assessments connected to the property. The circuit court determined that it lacked subject-matter jurisdiction with respect to four of the five counts in plaintiff's complaint, which sought declaratory relief regarding three of the underlying special assessment agreements, plus an amended version of one of those agreements. The court found that the Michigan Tax Tribunal (MTT) had exclusive jurisdiction over those four counts. The circuit court also summarily dismissed the fifth count of plaintiff's complaint that alleged slander of title predicated on special assessment liens and demands for payment that effectively clouded title. The court concluded that the city and the county treasurer were shielded by governmental immunity on the slander of title claim. We hold that the four counts dismissed for lack of subject-matter jurisdiction were within the jurisdiction of the circuit court, not the MTT, because they did not implicate the MTT's fact-finding purpose and expertise but solely presented questions of law. And, for reasons elaborated on below, we remand for entry of an order providing plaintiff with declaratory relief on two of the counts and

for further proceedings on the remaining two counts.[1] We further hold that plaintiff's argument that the circuit court erred in dismissing the slander of title count on the basis of governmental immunity is unavailing. Accordingly, we affirm in part and reverse and remand in part.

This case concerns real property located within the city. Starting in 2004, the city and the property owner, along with others, entered into various special assessment agreements relative to several infrastructure improvements that were to benefit the property for purposes of a planned unit development.[2] These agreements, which were recorded and involved the property owner making installment payments to the city, indicated that the contractual obligations contained therein constituted covenants that ran with the land and bound all successors in title. The city commission adopted multiple resolutions associated with the agreements and prepared and confirmed special assessment rolls for the improvements. Eventually, the property owner failed to pay the special assessments, a tax foreclosure action was commenced, a judgment of foreclosure was entered, the property owner failed to redeem the property or appeal the judgment, and title vested absolutely in the county treasurer, as the foreclosing governmental unit. Subsequently, at a tax foreclosure sale, the county treasurer conveyed the property to plaintiff pursuant to a quitclaim deed.

Over one year later, plaintiff filed its complaint against defendants, alleging that under the General Property Tax Act (GPTA), MCL 211.1 *et seq.*, its "purchase was free and clear from all liens except any future installments of special assessments." Plaintiff asserted that despite the fact that title by fee simple absolute was conveyed to plaintiff in the tax foreclosure sale, the city continued to cloud the property's title "by improperly attempting to revive past installments for special assessments as well as contractual obligations that were extinguished upon the final Judgment of Foreclosure." Plaintiff complained that defendants "wrongfully attempted to recoup past due special assessment installments and continue[d] to charge Plaintiff for the same." Plaintiff insisted that under the GPTA, all previously owed special assessment installments were extinguished by the judgment of foreclosure and that the county treasurer lacked the authority to deviate from the GPTA mandates.

As indicated earlier, the first four counts of plaintiff's complaint each sought declaratory relief with respect to a particular special assessment agreement. Count I pertained to a deferred assessment agreement, which, according to plaintiff, was scheduled to be paid off in full eight years prior to the tax foreclosure; therefore, any debt owed for unpaid installments was extinguished by the judgment of foreclosure. Count II concerned a voluntary special assessment/development agreement (VSADA), which plaintiff alleged was to be paid off within 10 years under the language of the special assessment roll, and which date had elapsed prior to the entry of the judgment of foreclosure. Therefore, any accrued debt for nonpayment was

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[1] The latter two counts ultimately concern the single question regarding the enforceability of the special assessment arising out of the amended version of one of the special assessment agreements.

[2] The property consisted of 300 acres, only a portion of which was ultimately purchased by plaintiff at the tax foreclosure sale.

extinguished by the foreclosure judgment. Count III regarded a landscape/irrigation agreement, and plaintiff alleged that the termination date was eight years from the confirmation of the special assessment roll and that the last scheduled date for an installment payment date had passed before the tax foreclosure proceedings. Thus, according to plaintiff, the debt owed on the unpaid balance was extinguished by the judgment of foreclosure. Count IV pertained to an amended VSADA,[3] presenting a somewhat different issue than that posed in the first three counts. The amended VSADA was not executed by the prior property owner, but was an agreement between the city and the county treasurer that was signed after title had vested with the county treasurer but before plaintiff acquired its interest. In Count IV, plaintiff alleged that "[t]here was no authority for the Defendants to enter into the [amended] . . . VSADA in an attempt to restore an assessment that had been voided by the GPTA." Plaintiff claimed that this agreement was not supported by any consideration and that it was against public policy. Finally, in regard to Count V, plaintiff alleged a cause of action for slander of title, seeking money damages. Plaintiff contended that defendants had maliciously and falsely continued to "assert that substantial special assessments exist on the Subject Property." Plaintiff maintained that defendants' "assertions have been published, as the installments claimed owing on the special assessments appear in title work, the public tax records, and in instruments recorded with the Kent County Register of Deeds." Plaintiff alleged that defendants' misrepresentations had rendered the property "unmarketable for its true value."

On competing motions for summary disposition, the circuit court, with respect to Counts I through IV, agreed with defendants' position that plaintiff was challenging the nature and imposition of the special assessments and, therefore, the MTT had exclusive jurisdiction over those counts. We note that the city, as confirmed in defendants' appellate brief, "was not seeking to collect the Deferred Assessment or the Landscape Irrigation Agreement[[4]] with respect to the Subject Property." The circuit court rejected all of plaintiff's arguments regarding subject-matter jurisdiction. The circuit court also proceeded to rule:

> Even if the court were persuaded that Plaintiff's claims fall within the GPTA, Plaintiff's position is fatally flawed. A foreclosure under the GPTA specifically states that it extinguishes all liens against the property, including any lien for unpaid taxes or special assessments, except future installments of special assessments. MCL 211.78k(5)(c).[[5]] The Defendants have stated, both on the

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[3] This was an amendment and extension of the agreement covered by Count II of plaintiff's complaint.

[4] These are the agreements referenced, respectively, in Counts I and III of plaintiff's complaint.

[5] We note that MCL 211.78k(5)(c) provides that a circuit court's final judgment of foreclosure shall specify, in part, as follows:

> That all liens against the property, including any lien for unpaid taxes or special assessments, except future installments of special assessments and liens recorded by this state or the foreclosing governmental unit pursuant to the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, are extinguished, if all forfeited delinquent taxes, interest, penalties,

> record and in brief form, that they are only pursuing collection of the Voluntary Special Assessment/Development Agreement installments referenced in Plaintiff's Count II. This assessment was amended after the foreclosure [see Count IV of plaintiff's complaint]. Moreover, it addresses future installments that will be collected until 2024. Therefore, the foreclosure sale does not operate to extinguish the installments.
>
> The court is also not persuaded by Plaintiff's claims that the assessment is actually a contract. As more full[y] discussed in subsection "a" of this opinion, the issue of whether the assessment is actually a contract is for the MTT to determine. However, the court notes that Plaintiff is not a party to the assessment/contract and likely lacks standing to challenge it. Additionally, the forming document states "the parties agree that, **to the extent not otherwise prohibited by law**, the jurisdiction and venue for any such dispute shall be solely with the state courts located in Kent County, Michigan." . . . As discussed above, the MTT has exclusive jurisdiction over this matter. A contract cannot establish or alter jurisdiction.

In regard to Count V, slander of title, the circuit court ruled that the claim constitutes a tort that is covered by governmental immunity and that none of the statutory exceptions to immunity applied. Accordingly, the circuit court denied plaintiff's motion for summary disposition and granted defendants' summary disposition motion under MCR 2.116(C)(4) and (7).

We review de novo a circuit court's ruling on a motion for summary disposition. *Winkler v Marist Fathers of Detroit, Inc*, 500 Mich 327, 333; 901 NW2d 566 (2017). "We likewise review de novo questions of subject matter jurisdiction[.]" *Id.* "Further, the determination regarding the applicability of governmental immunity and a statutory exception to governmental immunity is a question of law that is also subject to review de novo." *Snead v John Carlo, Inc*, 294 Mich App 343, 354; 813 NW2d 294 (2011). Under MCR 2.116(C)(4), summary disposition is warranted when "[t]he court lacks jurisdiction of the subject matter." See also *Winkler*, 500 Mich at 333. Under MCR 2.116(C)(7), summary disposition is appropriate when a claim is barred based on "immunity granted by law." See also *Snead*, 294 Mich App at 354.

Subject-matter jurisdiction concerns the right of an adjudicative body to exercise judicial power over a class of cases; not the particular case before it, but rather the abstract power to try a case of the kind or character of the one pending. *Winkler*, 500 Mich at 333. The question of jurisdiction is not dependent on the truth or falsity of the allegations, but upon their nature. *Wayne Co v AFSCME Local 3317*, __ Mich App __, __; __ NW2d __ (2018); slip op at 11. The

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> and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section.

inquiry into subject-matter jurisdiction is determinable at the commencement of a case, not its conclusion. *Id.* There is a vast difference between want of jurisdiction, in which case a court has no power whatsoever to adjudicate the matter, and an error in the exercise of undoubted jurisdiction, in which case the court's action is not void, even though it may be subject to direct attack on appeal. *Id.*

"Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state." MCL 600.605; see also Const 1963, art 6, § 13 ("The circuit court shall have original jurisdiction in all matters not prohibited by law[.]").[6] With respect to the MTT, it has "exclusive and original jurisdiction" over "[a] proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, *special assessments*, allocation, or equalization, under the property tax laws of this state." MCL 205.731(a) (emphasis added). In *Hillsdale Co Senior Servs, Inc v Hillsdale Co*, 494 Mich 46, 53; 832 NW2d 728 (2013), our Supreme Court extrapolated four elements from MCL 205.731(a), observing:

> Thus, for the tribunal to have jurisdiction pursuant to MCL 205.731(a), four elements must be present: (1) a proceeding for direct review of a final decision, finding, ruling, determination, or order; (2) of an agency; (3) relating to an assessment, valuation, rate, special assessment, allocation, or equalization; (4) under the property tax laws. Where all such elements are present, the tribunal's jurisdiction is both original and exclusive.

"The divestiture of jurisdiction from the circuit court is an extreme undertaking[;]" however, "the Tax Tribunal Act[, MCL 205.701 *et seq.*,] clearly evidences a legislative intention

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[6] MCL 600.601(1) provides:

> The circuit court has the power and jurisdiction that is any of the following:
>
> (a) Possessed by courts of record at the common law, as altered by the state constitution of 1963, the laws of this state, and the rules of the supreme court.
>
> (b) Possessed by courts and judges in chancery in England on March 1, 1847, as altered by the state constitution of 1963, the laws of this state, and the rules of the supreme court.
>
> (c) Prescribed by the rules of the supreme court.

that the circuit court not have jurisdiction over matters within the tribunal's exclusive jurisdiction." *Wikman v City of Novi*, 413 Mich 617, 645; 322 NW2d 103 (1982).

MCL 205.731(a) expressly references "special assessments," and 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, 500; 502 NW2d 299 (1993). "In contrast to a tax, a special assessment is imposed to defray the costs of specific local improvements, rather than to raise revenue for general governmental purposes." *Id.* The Tax Tribunal Act grants the MTT "exclusive jurisdiction over . . . [a] proceeding seeking direct review of the governmental unit's decision concerning a special assessment for a public improvement." *Wikman*, 413 Mich at 626.

We conclude that the particular allegations in Counts I through III of plaintiff's complaint squarely presented a legal question regarding the effect of a tax foreclosure judgment on overdue special-assessment installment payments; it is a pure issue of statutory construction. In *Romulus City Treasurer v Wayne Co Drain Comm'r*, 413 Mich 728, 737-738; 322 NW2d 152 (1982), the Supreme Court described the composition of the MTT and the relevance of that composition, explaining:

> The tribunal that was created to exercise such jurisdiction was labeled a "quasi-judicial agency," whose membership is to be comprised of persons with various specified qualifications. Of the seven members, two must be attorneys with experience either in property tax matters or in judicial or quasi-judicial office. One member must be a certified assessor; one, an experienced professional real estate appraiser; and one, a certified public accountant with experience in state-local tax matters. . . . [P]ersons who are not members of any of the enumerated disciplines are required to have experience in state or local tax matters.
>
> The expertise of the tribunal members can be seen to relate primarily to questions concerning *the factual underpinnings of taxes*. In cases not involving special assessments, the tribunal's membership is well-qualified to resolve the disputes concerning those matters that the Legislature has placed within its jurisdiction: assessments, valuations, rates, allocation and equalization. In special assessment cases, the tribunal is competent to ascertain whether the assessments are levied according to the benefits received. Although the tribunal, in making its determinations, will make conclusions of law, the matters within its jurisdiction under MCL 205.731 most clearly relate to the basis for a tax . . . . [Citations omitted; emphasis added.]

In *Joy Mgt Co v Detroit*, 176 Mich App 722, 728; 440 NW2d 654 (1989), overruled in part on other grounds by *Detroit v Walker*, 445 Mich 682, 697 n 20 (1994), this Court noted that the MTT's "primary functions are to find facts," where its expertise chiefly relates "to questions concerning the factual underpinnings of taxes." The *Joy Mgt Co* panel ruled:

> In the instant case, plaintiff has not challenged a final decision regarding valuation, rates, allocation or assessment, nor is plaintiff asking for a refund or a redetermination of a tax. Rather, plaintiff has challenged the legality of

> the *method* used by defendant to enforce collection of the property taxes. Resolution of this issue depends not on findings of fact, but on conclusions of law based upon the construction of [MCL 211.47]. This is clearly within the scope of the circuit court's jurisdiction. Thus, the trial court did not err by denying defendant's motion for summary disposition pursuant to MCR 2.116(C)(4), lack of subject-matter jurisdiction. [*Joy Mgt Co*, 176 Mich App at 728-729.]

In *In re Petition of the Wayne Co Treasurer for Foreclosure*, 286 Mich App 108, 112-113; 777 NW2d 507 (2009), this Court indicated that when a "challenge does not require any findings of fact, but rather only construction of law—where no factual issues requiring the tribunal's expertise are present—the circuit court has jurisdiction to consider the issue." The Court observed that this "reasoning applies to any challenge to a tax assessment based not on the validity of the assessment per se, but on peripheral issues relevant to enforcing a tax assessment." *Id.* at 113.

Here, our review of Counts I through III of plaintiff's complaint reveals that plaintiff is not challenging the factual basis or the amount of the underlying assessments arising from the special assessment agreements; rather, plaintiff takes issue with the continuing enforceability of the assessments, at least in regard to outstanding past due installments, in light of the tax foreclosure, arguing that past debt was extinguished by the judgment of foreclosure. It is important to keep in mind that, even though plaintiff's arguments at the summary disposition stage may have deviated somewhat from the allegations in its complaint, it is the nature of those allegations alone that govern our resolution of whether the circuit court has subject-matter jurisdiction. *Grubb Creek Action Comm v Shiawassee Co Drain Comm'r*, 218 Mich App 665, 668; 554 NW2d 612 (1996) ("A court's subject-matter jurisdiction is determined only by reference to the allegations listed in the complaint."); see also *Reynolds v Robert Hasbany, MD PLLC*, 323 Mich App 426, 431; 917 NW2d 715 (2018); *Trost v Buckstop Lure Co, Inc*, 249 Mich App 580, 586; 644 NW2d 54 (2002); *Luscombe v Shedd's Food Prod Corp*, 212 Mich App 537, 541; 539 NW2d 210 (1995). Resolution of Counts I through III requires construction of the GPTA and the law of tax foreclosure, having nothing to do with the factual underpinnings of the special assessments. The proceedings, as framed by plaintiff's complaint, did not entail plaintiff seeking direct review of a final decision, finding, ruling, or determination by the city relating to special assessments under the property tax laws of this state. MCL 205.731(a). Instead, plaintiff sought review of various GPTA foreclosure provisions and application of those provisions *to the existing factual circumstances*, which is not within the wheelhouse of MTT's expertise. In Counts I through III, there is no allegation challenging the amount or the basis of a contractually-created special assessment, nor is there an allegation that an improvement did not benefit the property in correlation to the cost of the improvement. Counts I through III of plaintiff's complaint did not trigger the MTT's original and exclusive jurisdiction.

With respect to the deferred assessment agreement addressed in Count I and the landscape/irrigation agreement challenged in Count III, defendants, as recognized by the circuit court, maintained that the city does not seek to recover or hold plaintiff responsible for any amounts owing under those agreements/assessments. In light of this position, and given our ruling on subject-matter jurisdiction, we deem the appropriate course of action to be a remand to the circuit court for entry of declaratory relief in favor of plaintiff on those two counts, making

clear that plaintiff owes nothing in regard to those agreements/assessments, nor is plaintiff's property to be subject to any lien or encumbrance connected to the two agreements/assessments.

With respect to Count II and the VSADA and the amendment of the VSADA post-foreclosure judgment but pre-foreclosure sale, which amended agreement is addressed in Count IV of plaintiff's complaint, it is necessary to examine the record in more detail. The VSADA was entered into in 2004, and it provided that "[t]he term of the special assessment will not exceed ten (10) years." The VSADA further stated that it "shall be effective as of the date first written above and shall remain in effect until all the obligations of the Owner under this Agreement have been met." Additionally, the VSADA provided that "the final amount of any special assessment, the term of years for the special assessment and similar matters associated with the establishment of a special assessment district for the Owner-Contracted Infrastructure Improvements will be determined by resolution of the City Commission *in its discretion*." (Emphasis added.)

A resolution adopted by the city on July 15, 2014, indicated that a balloon payment totaling $403,620 was due on September 7, 2014, under the VSADA. The resolution, referring back to the city's right to exercise its discretion as stated in the VSADA, further provided:

> Without re-confirming the District's special assessment roll, the City Commission has determined that extending the term of the special assessment for one additional year [September 7, 2015] is in the public interest in order to allow the owner of the Property an opportunity to cause the balloon payment to be made and to bring the taxes and special assessment on the Property current, to make the Property more marketable, and to enhance economic development opportunities within the City.

On March 6, 2015, before the expiration of the one-year extension adopted by the city, the judgment of foreclosure was entered, vesting title in the county treasurer. The judgment became final and unappealable on April 1, 2015. In June 2015, the city and the county treasurer entered into the amended VSADA. The amended VSADA recited the history of the original VSADA, noted the foreclosure proceedings, referenced the language, quoted above, found in the city's resolution adopted in July 2014, acknowledged the balance of $403,620, and set forth a payment structure requiring nine annual payments of $54,000 starting on September 7, 2015, with a final payment of $48,307 due on September 7, 2024. The amended VSADA also provided:

> The parties acknowledge and agree that the City, consistent with the terms of the [VSADA] and City Ordinance No. 4-67, as amended, has reserved to itself the right to extend the term of years for payment of the above-described special assessment without changing the date of the confirmation of the Roll or exposing the City to a challenge of the special assessment or Roll, as amended, and that it is the parties' intent that all challenges, claims or causes of action to any special assessment associated with the Property or the Roll are released and waived by the [county treasurer], its successors and assigns as against the City.

The amended VSADA was recorded with the register of deeds on June 23, 2015. In November 2015, plaintiff purchased the property at the tax foreclosure sale for $36,500.

We have already determined that the circuit court has subject-matter jurisdiction over Count II of the complaint concerning the VSADA, standing on its own. And we now hold that the circuit court also has subject-matter jurisdiction over Count IV of the complaint pertaining to the amended VSADA. With respect to Count IV, as stated earlier, plaintiff alleged that "[t]here was no authority for the [d]efendants to enter into the [amended] . . . VSADA in an attempt to restore an assessment that had been voided by the GPTA." Plaintiff asserted that the amended VSADA was not supported by any consideration and that it was against public policy. Regardless of the substantive soundness of plaintiff's argument, Count IV effectively alleged the creation or existence of a legally invalid contract that gave rise to a special assessment or the extension of a special assessment, resulting in an encumbrance on plaintiff's property.

The MTT does not have subject-matter jurisdiction over contract disputes simply because the substance of the contract regards special assessments. In *Highland-Howell Dev Co, LLC v Marion Twp*, 469 Mich 673, 677-678; 677 NW2d 810 (2004), our Supreme Court, after citing and quoting the language from *Romulus City Treasurer* that we alluded to earlier, ruled:

> While the Tax Tribunal's membership is particularly competent to resolve disputes related to the basis for and amounts of taxes, its membership is not qualified to resolve common-law tort or contract claims. Clearly, this supports our conclusion that the Legislature did not intend the Tax Tribunal's exclusive jurisdiction to encompass matters outside the realm of those tax matters specified in the statute.

As alleged by plaintiff, Count IV presented a question of contract law, as shaped by the construction of provisions in the GPTA. Count IV does not require any findings of fact nor entail the factual underpinnings of taxes; rather, it concerns the construction of law—contract law and the GPTA. Therefore, the circuit court and not the MTT has jurisdiction over Count IV.

That concluded, we must nonetheless continue our analysis, because the circuit court supplemented its jurisdictional ruling with a determination that plaintiff's action was fatally flawed even if the court had subject-matter jurisdiction. The circuit court first found that the judgment of foreclosure was entered *before* the amended VSADA was executed. And therefore, pursuant to MCL 211.78k(5)(c), future installments of a special assessment are at issue, which necessarily could not have been extinguished by the foreclosure judgment. The court's ruling assumes the soundness and validity of the amended VSADA from which the special assessment arose. However, the allegations in Count IV of the complaint challenge the legal validity of the amended VSADA. If the amended VSADA and resulting assessment are void or voidable, the language in MCL 211.78k(5)(c) excepting future assessment installments from extinguishment becomes irrelevant, because there is no assessment to enforce.

The circuit court next observed that plaintiff was not a party to the amended VSADA and thus "likely lacks standing to challenge it." We do not find this language to reflect a conclusive ruling on standing, and any standing issue can certainly be entertained more fully and conclusively on remand. We do note that the special assessment based on the amended VSADA encumbers plaintiff's property to the tune of over half a million dollars. The circuit court did not address the allegations in Count IV of plaintiff's complaint that the amended VSADA was

invalid because there was a lack of consideration and because it violated public policy. The legal validity of the amended VSADA must be addressed and resolved on remand.

Finally, with respect to Count V, the circuit court summarily dismissed the claim based on governmental immunity. In *Moraccini v City of Sterling Hts*, 296 Mich App 387, 391-392; 822 NW2d 799 (2012), this Court set forth the basic analytical framework concerning governmental immunity:

> Except as otherwise provided, the governmental tort liability act (GTLA), MCL 691.1401 *et seq.*, broadly shields and grants to governmental agencies immunity from tort liability when an agency is engaged in the exercise or discharge of a governmental function. MCL 691.1407(1); *Duffy v Dep't of Natural Resources*, 490 Mich 198, 204; 805 NW2d 399 (2011); *Grimes v Dep't of Transp*, 475 Mich 72, 76-77; 715 NW2d 275 (2006). "The existence and scope of governmental immunity was solely a creation of the courts until the Legislature enacted the GTLA in 1964, which codified several exceptions to governmental immunity that permit a plaintiff to pursue a claim against a governmental agency." *Duffy*, 490 Mich at 204. A governmental agency can be held liable under the GTLA only if a case falls into one of the enumerated statutory exceptions. *Grimes*, 475 Mich at 77; *Stanton v Battle Creek*, 466 Mich 611, 614-615; 647 NW2d 508 (2002). . . . This Court gives the term "governmental function" a broad interpretation, but the statutory exceptions must be narrowly construed. [Citation omitted.]

"[T]he burden . . . fall[s] on the governmental employee to raise and prove his entitlement to immunity as an affirmative defense." *Odom v Wayne Co*, 482 Mich 459, 479; 760 NW2d 217 (2008). But "[a] plaintiff filing suit against a governmental agency must initially plead his claims in avoidance of governmental immunity." *Id.* at 478-479.

The sole argument posed by plaintiff on appeal is that defendants were not engaged in the exercise or discharge of a governmental function when attempting to collect an extinguished obligation. This argument lacks merit, failing to appreciate the difference between having the authority to generally engage in a particular governmental function and the negligent, improper, or wrongful performance of the authorized function. A "governmental function" is defined as "an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law." MCL 691.1401(b).

A "city may in its charter provide . . . [f]or assessing and reassessing the costs, or a portion of the costs, of a public improvement to a special district." MCL 117.4d(1)(a). The Kentwood Code of Ordinances (KCO) grants the city authorization to impose special assessments. See KCO, § 10.1; KCO, § 50-2 ("The whole cost, or any part thereof, of any local public improvement may be defrayed by special assessment upon the lands especially benefitted by the improvement in the manner provided in this chapter."). Furthermore, KCO, § 50-13 authorizes the creation of liens relative to special assessments, providing that "[s]pecial assessments . . . shall become a personal obligation to the city . . . and, until paid, shall be and remain a lien upon the property assessed . . . ." Indeed, MCL 211.78k(5)(c) (see footnote 5 of this opinion), which plaintiff cites in its complaint as supporting extinguishment of existing

special assessments, recognizes the authority of governmental entities to record liens against property for special assessments.

In light of the authorities, the city was plainly engaged in the exercise and discharge of a governmental function for purposes of MCL 691.1407(1) and governmental immunity with respect to the special assessments at issue, their collection, and the resulting recorded liens. Plaintiff's argument simply challenges the specific manner in which the city carried out the governmental functions, alleging that the city clouded plaintiff's title by improperly attempting to collect payment on special assessments, making payment demands, and allowing recorded instruments to remain in place, where the special assessments had been extinguished. In determining whether a governmental agency was engaged in the exercise of a governmental function, the focus must be on the general activity, not the particular conduct involved at the time the alleged tort was committed. *Tate v Grand Rapids*, 256 Mich App 656, 661; 671 NW2d 84 (2003). The improper performance of an activity authorized by law is, regardless of the impropriety, still authorized for purposes of the governmental function test. *Richardson v Jackson Co*, 432 Mich 377, 385; 443 NW2d 105 (1989). A governmental agency is not engaged in the exercise or discharge of a governmental function when it lacks the legal authority to perform the activity "in any manner." *Id.* at 387. Such is not the situation in the instant case. Plaintiff has not established that the circuit court erred in summarily dismissing plaintiff's claim for slander of title.

Affirmed in part, and reversed and remanded in part for further proceedings. We do not retain jurisdiction. No party having fully prevailed on appeal, we decline to award taxable costs under MCR 7.219.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Jane M. Beckering

EXHIBIT D

2015 WL 7356591
Only the Westlaw citation
is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

FEDERAL NATIONAL MORTGAGE ASSOCIATION, Plaintiff–Appellee,
v.
LI–MING HSIUNG, Defendant/Crossplaintiff–Appellant,
and
Trademark Properties of Michigan, LLC, Defendant/Crossdefendant.

Docket No. 325178.
|
Nov. 19, 2015.

Oakland Circuit Court; LC No.2013–136895–CH.

Before: JANSEN, P.J., and MURPHYand RIORDAN, JJ.

Opinion

PER CURIAM.

*1 In this action to quiet title relative to a condominium unit, defendant Li–Ming Hsiung appeals as of right the trial court's order granting summary disposition in favor of plaintiff Federal National Mortgage Association (Fannie Mae) pursuant to MCR 2.116(C)(10) and denying Hsiung's competing motion for summary disposition. We reverse and remand for entry of an order granting summary disposition and quieting title in favor of Hsiung.

In 2008, George Stahl purchased the condominium unit at issue ("the property") and executed a mortgage that was held by Mortgage Electronic Registration Systems, Inc. (MERS). In 2009, Stahl stopped paying condominium association dues to North Hill Condominium Association ("the Association"), giving rise to a lien being recorded on the property, foreclosure of the lien, and eventually a sheriff's sale that was conducted in March 2010, where the Association purchased the property for $6,120. The sheriff's deed was dated March 16, 2010, and it was recorded two days later on March 18th. The sheriff's deed provided that the redemption period would expire six months from the date of sale (September 16, 2010), unless the property was determined to be abandoned, in which case the redemption period would expire in 30 days from the date of sale. There was no indication of abandonment. In April 2010, MERS assigned the mortgage to Chase Home Finance, LLC (Chase). As reflected in email communications and affidavits by counsel, Chase engaged in discussions with the Association, arguing over priority as between the mortgage and the foreclosed-upon condominium lien. Chase indicated its desire to now foreclose on the mortgage, as apparently Stahl had also stopped paying his mortgage. Nothing came of the discussions, and Chase did not pursue foreclosure of the mortgage. Thereafter, in August 2010, the mortgage held by Chase was assigned to Fannie Mae, with Fannie Mae recording

the assignment of mortgage on September 9, 2010, which was a week before the redemption period expired relative to the Association's foreclosure.

Fannie Mae and the Association then became entangled in a dispute over the priority of their respective interests in the property.[1] According to an averment in an affidavit executed by an attorney representing Fannie Mae, she communicated to the Association's counsel that Fannie Mae wished to redeem the property relative to the Association's purchase of the property at the March 2010 sheriff's sale. Counsel further asserted that the Association "agreed to accept funds by my client [Fannie Mae] and allow a late redemption of the March 16, 2010 condo lien foreclosure." Counsel additionally averred that she was contacted by the Association's attorney on October 1, 2010, and advised that the Association had "received redemption funds" from Fannie Mae and was "preparing a quit claim deed to Fannie Mae in exchange." A quitclaim deed dated October 1, 2010, was executed by the Association, conveying the property to Fannie Mae, and it was eventually recorded on November 10, 2010. The quitclaim deed provided that it was "intended to convey only the interest of the grantor[, i.e., the Association] obtained by virtue of [the] Sheriff's Deed in its favor." The quitclaim deed also indicated that it was "subject to any and all Condominium Documents[.]" The quitclaim deed was silent with respect to whether Fannie Mae's mortgage was extinguished or whether it survived the conveyance. In the affidavit by Fannie Mae's attorney, she claimed that "there was no intention between the parties that the March 16, 2010 condo foreclosure redemption would constitute a discharge or elimination of Fannie Mae's Mortgage."

***2** We note that, given the expiration of the redemption period in mid-September 2010, absent redemption by Stahl or anyone, title to the property had fully vested in the Association under the sheriff's deed, subject to Fannie Mae's senior mortgage. See MCL 559.208(2) (generally applying the law regarding foreclosure by advertisement or judicial foreclosure to lien foreclosures involving condominiums); MCL 600.3236 (effect of failure to redeem in foreclosure by advertisement);[2] *Coventry Parkhomes Condo. Ass'n v. Fed. Nat'l Mtg. Ass'n*, 298 Mich.App. 252, 827 N.W.2d 379 (2012) (the Condominium Act, MCL 559.101 *et seq.*, gives priority to a first mortgage of record over a condo lien if recorded before the condo lien, and the subsequent assignment of the first mortgage, even after the condo lien is recorded, does not affect its priority). The point of contention in this litigation concerns whether Fannie Mae, while indisputably obtaining a fee simple interest in the property by way of the quitclaim deed, also retained its preexisting mortgage interest, or whether that interest was extinguished under the doctrine of merger. See *Anderson v. Thompson*, 225 Mich. 155, 159, 195 N.W. 689 (1923) (generally speaking, when the holder of a real estate mortgage becomes the owner of the fee, the mortgage interest or estate is merged into the fee estate).

Condominium dues were not paid by Fannie Mae, despite its ownership of the property, resulting in an accumulated debt of $1,339, a new lien on the property being recorded, and, once again, foreclosure proceedings by the Association. A sheriff's sale was scheduled for May 17, 2011. A few days before the scheduled sale, Fannie Mae notified the Association that it intended to foreclose on its purported surviving mortgage on the property, scheduling its own sheriff's sale for June 14, 2011. Of course, if there had been a merger of Fannie Mae's mortgage interest into the fee estate when the quitclaim deed conveyed the property to Fannie Mae from the Association, Fannie Mae would have had no mortgage to foreclose upon. Thus, Fannie Mae was necessarily proceeding on the basis that there had been no merger. The Association, unfazed, followed through with its sheriff's sale, and the property was purchased by defendant Trademark Properties of Michigan, LLC (Trademark) for $5,773. Trademark recorded the sheriff's deed on May 24, 2011. Subsequently, Fannie Mae, also unfazed, proceeded with its sheriff's sale on the property, resulting in Fannie Mae purchasing the property for $153,483.[3] Fannie Mae's sheriff's deed was recorded on June 14, 2011.

Later, Trademark contemplated selling the property to Hsiung, but it was aware of Fannie Mae's sheriff's sale and the associated sheriff's deed purportedly conveying the property to Fannie Mae. This problem resulted in a series of email communications between counsel for Trademark and counsel for Fannie Mae. In the final email sent by Fannie Mae's attorney,[4] she stated that Fannie Mae "has agreed that [it is] no longer in title to the property," that Fannie Mae "agree[s] that the condo lien foreclosure wiped out [its] interest in the property," that Fannie Mae "ha[s] no interest to deed at this point," that Fannie Mae "will not be issuing a quit claim deed," and that "Trademark is in title to the property at this point." In reliance on this email, which Fannie Mae's counsel subsequently averred was taken out of context and not intended by her to clear title, but which left Trademark, Hsiung, and the title company willing to proceed, Trademark sold the property to Hsiung for $95,000 in May 2012 pursuant to a covenant deed that was recorded on June 19, 2012. Accordingly, at this stage, there were recorded deeds that reflected conflicting ownership interests as between Hsiung and Fannie Mae.

*3 In October 2013, Fannie Mae brought the instant lawsuit against Trademark and Hsiung, seeking to quiet title in its favor. Fannie Mae alleged that its mortgage interest had been senior to all subsequent liens and deeds. Fannie Mae further contended that when it foreclosed on the property in June 2011 and the period of redemption expired, any and all junior interests and liens were extinguished. As such, Trademark had no interest in the property in 2012 to convey to Hsiung, and Hsiung therefore had no interest in the property. Hsiung filed a crossclaim against Trademark for breach of the covenant deed that had conveyed the property from Trademark to Hsiung. But Hsiung eventually stipulated to the dismissal of

her crossclaim without prejudice, expressly preserving any available claims against Trademark dependent upon the outcome of Fannie Mae's action. Shortly thereafter, a stipulated order was entered dismissing Fannie Mae's suit against Trademark without prejudice, leaving only Fannie Mae and Hsiung to continue the litigation.

Fannie Mae and Hsiung next filed opposing motions for summary disposition. Fannie Mae maintained that it held the senior interest in the property and that all other interests had been extinguished. Hsiung argued that Fannie Mae's mortgage had been extinguished under the merger doctrine when Fannie Mae acquired title from the Association pursuant to the quitclaim deed following the Association's initial foreclosure effort. Fannie Mae insisted that the merger doctrine did not apply, given that it fully intended for the mortgage to survive, concurrent with Fannie Mae holding title to the property under the quitclaim deed. Hsiung responded that Fannie Mae had never exhibited such an intent, and even if it had, because third parties would be negatively affected should the merger doctrine be disregarded, merger was required and Fannie Mae's purported mortgage was extinguished. Hsiung also asserted the equitable defenses of estoppel, unclean hands, and waiver, relying on Fannie Mae's counsel's email disclaiming an interest in the property.

The trial court found that Fannie Mae's interest and intent in sustaining the mortgage exempted Fannie Mae from the merger doctrine. The trial court further ruled that because Hsiung had record notice of Fannie Mae's interests in the property (ownership and mortgage), Hsiung's equitable defenses were unavailing. Accordingly, the trial court granted summary disposition and quieted title in favor of Fannie Mae and denied Hsiung's motion. Hsiung filed a motion for reconsideration on the basis of this Court's newly-released opinion in *Reserve at Heritage Village Ass'n v. Warren Fin. Acquisition, LLC,* 305 Mich.App. 92, 850 N.W.2d 649 (2014). Fannie Mae argued that the case was factually distinguishable and therefore not controlling. The trial court agreed with Fannie Mae and denied the motion for reconsideration.

This Court reviews de novo a trial court's ruling on a motion for summary disposition, *Elba Twp. v. Gratiot Co. Drain Comm'r,*493 Mich. 265, 277, 831 N.W.2d 204 (2013), as well as equitable rulings, including quiet-title determinations, *Richards v. Tibaldi,* 272 Mich.App. 522, 528–529, 726 N.W.2d 770 (2006). With respect to the principles governing a motion for summary disposition brought pursuant to MCR 2.116(C)(10), this Court in *Pioneer State Mut. Ins. Co. v. Dells,* 301 Mich.App. 368, 377, 836 N.W.2d 257 (2013), stated:

> ***4** In general, MCR 2.116(C)(10) provides for summary disposition when there is no genuine issue regarding any material fact and the moving party is entitled to judgment

> or partial judgment as a matter of law. A motion brought under MCR 2.116(C)(10)tests the factual support for a party's claim. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmovant, show that there is no genuine issue with respect to any material fact. A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ. The trial court is not permitted to assess credibility, weigh the evidence, or resolve factual disputes, and if material evidence conflicts, it is not appropriate to grant a motion for summary disposition under MCR 2.116(C)(10). A court may only consider substantively admissible evidence actually proffered relative to a motion for summary disposition under MCR 2.116(C)(10). [Citations and quotation marks omitted.]

Hsiung first argues that Fannie Mae's claimed mortgage interest in the property was extinguished under the merger doctrine. We agree. In *Anderson,* 225 Mich. at 159, 195 N.W. 689, our Supreme Court observed:

> There is no doubt about the general rule that when the holder of a real estate mortgage becomes the owner of the fee, the former estate is merged in the latter. This rule is, however, subject to the exception that when it is to the interest of the mortgagee and is his intention to keep the mortgage alive, there is no merger, unless the rights of the mortgagor or third persons are affected thereby. [Citation omitted.]

This Court has quoted and relied on the above-passage from *Anderson*in *Byerlein v. Shipp,* 182 Mich.App. 39, 48, 451 N.W.2d 565 (1990), and *Heritage Village,*305 Mich.App. at 105, 850 N.W.2d 649. With respect to intent, the Michigan Supreme Court in *First Nat'l Bank of Utica v. Ramm,* 256 Mich. 573, 575, 240 N.W. 32 (1932), explained:

> The intention is controlling. It is either expressed or is implied from the circumstances of the transaction. If it is to the interest of the mortgagee to keep the mortgage alive, the intention to do so will be implied; for it is presumed that a man intends to do that which is to his advantage. But if the intention to merge the estates is expressed, the fact that it is to his benefit to keep the mortgage alive is immaterial. [See also *Heritage Village*, 305 Mich.App. at 105, 850 N.W.2d 649.]

When considering whether a party intended to keep a mortgage alive, this Court is concerned with the intent at the time of the transaction. *Heritage Village*, 305 Mich.App. at 105, 850 N.W.2d 649.

Fannie Mae did not expressly indicate an intent to keep the mortgage alive; therefore, it must be determined whether such an intent can be implied from the circumstances of the transaction, including whether it was in Fannie Mae's interest to keep the mortgage alive. We conclude that there is no basis to find that it was in Fannie Mae's interest to have the mortgage survive once Fannie Mae obtained its fee interest. Stahl's ownership interest in the property had been entirely extinguished when the redemption period expired, resulting in title vesting in the Association. MCL 559.208(2); MCL 600.3236. And, upon the issuance of the quitclaim deed by the Association, Fannie Mae acquired title to the property, unencumbered by any other interests or liens at that point, rendering Fannie Mae's mortgage irrelevant. There was simply no valid interest that was in need of protection via retention of the mortgage at the time of the transaction, which is when intent is gauged.

***5** Because Fannie Mae's mortgage relative to Stahl had not been in foreclosure when the Association deeded the property to Fannie Mae, Fannie Mae argues that "the potential existed for George Stahl to resume his regular course of monthly payments." This argument borders on the absurd, as it suggests that Stahl would have made payments on the property with respect to which he no longer held title or had a right to possess. Moreover, assuming that Stahl were to have made payments, it would in no way have negatively affected Fannie Mae's interests, nor would such payments have to have been categorized as "mortgage" payments, as opposed to simply constituting payments on the promissory note. Fannie Mae further argues that "[k]eeping the mortgage alive also kept alive the potential for debt repayment, thus merger cannot be implied." Fannie Mae, apparently, is of the view that retaining the mortgage would have given it some leverage in regard to making Stahl pay on the underlying

promissory note; we fail to see any logic in this argument. Again, Stahl's ownership and possessory interests were extinguished, and Fannie Mae threatening him with foreclosure of a mortgage on property that it now owned seems nonsensical. A foreclosure in that context would have resulted in Fannie Mae purchasing property it already owned at a sheriff's sale for the total amount of the mortgage debt, which eventually did occur, or a third party purchasing the property, which could have been accomplished by Fannie Mae simply selling the property on its own absent any foreclosure or sheriff's sale. Additionally, Fannie Mae, upon obtaining ownership of the property from the Association on October 1, 2010, presumably could have still sued Stahl on the promissory note itself and/or for damages related to the payment made to the Association for the quitclaim deed, regardless of the mortgage being extinguished.

Next, Fannie Mae argues that "implying merger runs afoul of George Stahl's equities," and that "[o]nly a mortgagor [here Stahl] can surrender his equity of redemption to the mortgagee." The fatal flaw in this argument is that, considering the Association's foreclosure proceedings against Stahl, the sheriff's sale, and the expiration of the redemption period in September 2010, Stahl had effectively surrendered his equity of redemption; title vested in the Association. There was no surviving "equity of redemption" rights held by Stahl relative to Fannie Mae's subsequent sheriff's sale in June 2011.

Further, the circumstances surrounding the transaction between the Association and Fannie Mae did not give rise to an implication of an intent to have the mortgage survive. The fact that Fannie Mae did not execute and record a discharge of lien is, in our view, irrelevant, given that Fannie Mae had bought the property under deed, effectively resulting in the discharge of the lien under the merger doctrine, and making it unnecessary and redundant to prepare and record a discharge. Moreover, under the circumstances, it would have been ludicrous for *the Association* to have intended for the mortgage to survive, considering that, with Fannie Mae obtaining title to a condominium unit and thus becoming obligated to pay condominium fees or assessments, the Association's ability to effectively utilize a lien for nonpayment would have been compromised. The quitclaim deed had indicated that it was "subject to any and all Condominium Documents[,]" which certainly included documents pertaining to the obligation to pay fees and assessments under threat of foreclosure. This matter is explored in greater detail below.

***6** In sum, there was no expressed intent to keep the mortgage alive and it cannot be implied under the circumstances of the transaction between the Association and Fannie Mae. Moreover, even if we ruled otherwise with respect to intent and interest, this Court's recent decision in *Heritage Village,* which is binding authority, demands reversal in this case, because the rights of a third party would have been affected if merger did not take place. Again, the merger

doctrine is "subject to the exception that when it is to the interest of the mortgagee and is his intention to keep the mortgage alive, there is no merger, *unless* the rights of the mortgagor or third persons are affected thereby." *Anderson,* 225 Mich. at 159, 195 N.W. 689 (emphasis added).

Heritage Village involved a 205–unit condominium complex, of which Winnick Heritage Village, LLC (Winnick) owned 150 units. *Id* . at 96, 850 N.W.2d 649. Of those 150 units owned by Winnick, Fifth Third Bank held a recorded mortgage on 76 units. *Id.* at 96–97, 850 N.W.2d 649. Later, Fifth Third Bank assigned its mortgage interests in the 76 units to Warren Financial Acquisitions, LLC (Warren). *Id.* at 97, 850 N.W.2d 649. Shortly thereafter, Winnick "conveyed the 76 units to Warren by covenant deed, which provided that the transfer was 'without merger of the Mortgage[,]' " resulting in, from all appearances, Warren holding both the fee and the mortgage on each of the 76 units. *Id.* Subsequently, the plaintiff condominium association recorded a lien against Warren for unpaid association assessments. *Id.* The condominium association instituted the action to collect $205,884 in assessments and for judicial foreclosure of the lien. *Id.* After the litigation had commenced, Warren assigned the mortgages to Reserve Mortgage Holding, LLC (Reserve). *Id.* While the case was underway, Reserve moved to intervene, arguing that it had "commenced foreclosure proceedings against Warren" and that, in lieu of a foreclosure sale, "Warren executed a waiver of statutory and equitable rights of redemption to Reserve." *Id.* at 98, 850 N.W.2d 649. Upon that waiver, Reserve contended that its foreclosure proceeding had effectively "extinguished all encumbrances" held by the condominium association. *Id.*The condominium association, however, argued that when Warren took title to the 76 condominium units, prior to which it had been assigned the mortgages on those very same units, the merger doctrine worked to extinguish the mortgages on the property, regardless of the nonmerger language in the covenant deed conveying the units. *Id.* at 100–101, 850 N.W.2d 649. "The trial court concluded that the parties intended to keep the mortgage alive and, at the time of the conveyance from Winnick to Warren there were no assessments due. Accordingly, it found that at the time of the conveyance containing the nonmerger clause, the nonmerger had no effect on the rights of third parties." *Id.* at 101, 850 N.W.2d 649.

This Court reversed the trial court's decision, reasoning that "the purpose of the exception to the general merger rule ... does not apply in this case because Warren is not seeking to protect itself from the claims of junior lienholders for debts incurred by Winnick[,]" but rather was attempting to avoid paying the required association fees to the condominium association relative to the 76 units. *Id.* at 108–109, 850 N.W.2d 649. Further, the *Heritage Village* panel held that "the time for considering the effect on a third party is not limited to the time of the transaction." *Id.* at 109, 850 N.W.2d 649. In sum, this Court ruled:

> *7 In conclusion, despite the express intent to keep the mortgage alive, there was a merger of the mortgage and the fee title because a finding of nonmerger would affect the rights of plaintiff. Because the fee and the mortgage merged, Warren could not foreclose on the mortgage. The trial court abused its discretion by ordering that Warren could foreclose. We remand for the trial court to vacate and set aside Warren's foreclosure and the subsequent sale. [*Id.* at 109–110, 850 N.W.2d 649 (citation omitted).]

The same decision is mandated in this case. Regardless of Fannie Mae's intent, the Association's rights, as a third party, were affected when Fannie Mae took title to the property, assuming Fannie Mae's retention of the mortgage on the property. Indeed, those rights were identical to those affected in *Heritage Village,* in that, absent application of the merger doctrine, the Association would have been left with no effective recourse by way of foreclosure and a sheriff's sale to collect unpaid association fees indisputably owed by Fannie Mae. Indeed, Fannie Mae sought to undermine the Association's May 2011 foreclosure efforts by foreclosing on its own alleged surviving mortgage, which, if recognized, was superior to the condominium lien.

Fannie Mae argues, however, that actual satisfaction of the Association's lien via the sheriff's sale to Trademark, factually distinguishes this case from *Heritage Village.* In other words, because the Association was eventually paid by Trademark at the sheriff's sale, the Association's rights were not ultimately affected, contrary to the condominium association's rights in *Heritage Village,* where the association there was not paid for outstanding dues or fees. The difference between the two cases, which is ultimately irrelevant, concerns the mode of foreclosure and timing. In *Heritage Village,* the condominium association pursued judicial foreclosure, MCL 600.3101 *et seq.;* therefore, the litigation took place at a point in time when there had yet to be a foreclosure or sheriff's sale, which could have produced a purchaser to satisfy the condominium-fee debt. Here, the Association utilized foreclosure by advertisement, MCL 600.3201 *et seq.,* and the litigation was commenced after a sheriff's sale was conducted and the lien was satisfied. First, we find no basis to find that had the *Heritage Village* panel been confronted with comparable circumstances, its analysis and ruling would have differed. Most importantly, Fannie Mae wholly fails to appreciate that, if merger indeed does not apply as so adamantly argued by Fannie Mae, the Association would in fact have been absolutely stymied in regard to the condo-lien foreclosure that produced the payment from Trademark at the sheriff's

sale, considering that Fannie Mae's superior interest and its sheriff's sale would have governed and blocked recovery by the Association.

Fannie Mae also attempts to distinguish the instant case by essentially arguing that the principles espoused in *Heritage Village*are only applicable when the third party whose rights were affected is directly involved in the litigation and seeking to protect those rights. Because nothing in the opinion in *Heritage Village,* nor the rule announced years ago by our Supreme Court in *Anderson,* requires such a limited reading of the affected-third-party exception, we disagree. The proper analysis is merely concerned with whether a third-party's rights were affected, not with whether the affected third party was involved in the litigation and raised the matter.

***8** Lastly, Fannie Mae argues that because it did not receive the deed from the mortgagor in lieu of foreclosure, the merger doctrine was inapplicable. A plain reading of the merger doctrine or rule clearly reflects no such requirement, as it simply provides that "when the holder of a real estate mortgage becomes the owner of the fee, the former estate is merged in the latter." *Anderson,* 225 Mich. at 159, 195 N.W. 689; see also *Heritage Village,* 305 Mich.App. at 105, 850 N.W.2d 649.

In sum, pursuant to *Heritage Village,* we hold that when Fannie Mae was conveyed the property under the quitclaim deed executed by the Association, while simultaneously holding the mortgage on the property, the merger doctrine was implicated, with the fee and mortgage merging, resulting in the mortgage on the property being extinguished. "When once extinguished it [was] gone forever." *First Nat'l Bank,* 256 Mich. at 577, 240 N.W. 32. At that stage, Fannie Mae was standing in the same shoes as any other owner of a condominium unit, absent any lien or mortgage interest. Therefore, when the Association's second lien foreclosure or sheriff's sale was finalized and the period of redemption expired absent redemption, Trademark became vested with sole, unencumbered title to the property. See MCL 559.208(2); MCL 600.3236. Fannie Mae had no mortgage interest to foreclose upon when it conducted its own sheriff's sale in June of 2011. Accordingly, Trademark's conveyance of the property to Hsiung by covenant deed was legally sound, giving Hsiung unclouded fee simple title to the property. And there is no genuine issue of material fact on the matter. Therefore, we reverse the trial court's decision granting summary disposition in favor of Fannie Mae and remand the case to the trial court for entry of an order granting summary disposition and quieting title in favor of Hsiung. Because we have decided this case on the issue of merger, we need not examine Hsiung's alternative equitable defenses.

Reversed and remanded for entry of an order granting summary disposition to Hsiung. We do not retain jurisdiction. Hsiung, having fully prevailed on appeal, is awarded taxable costs pursuant to MCR 7.219.

All Citations

Not Reported in N.W.2d, 2015 WL 7356591

Footnotes

1 It appears that counsel for Chase was also counsel for Fannie Mae.

2 MCL 600.3236 provides:
Unless the premises described in such deed shall be redeemed within the time limited for such redemption as hereinafter provided, such deed shall thereupon become operative, and shall vest in the grantee therein named, his heirs or assigns, all the right, title, and interest which the mortgagor had at the time of the execution of the mortgage, or at any time thereafter, except as to any parcel ... which may have been redeemed and canceled, as hereinafter provided, and the record thereof shall thereafter, for all purposes be deemed a valid record of said deed without being re-recorded, but no person having any valid subsisting lien upon the mortgaged premises, or any part thereof, created before the lien of such mortgage took effect, shall be prejudiced by any such sale, nor shall his rights or interests be in any way affected thereby.

3 According to the affidavit of posting relative to the foreclosure, Stahl was in default of the mortgage and owed, upon acceleration of the debt, $144,601.

4 This is not the same Fannie Mae attorney referenced earlier in this opinion.

End of Document

EXHIBIT E

2017 WL 6390068
Only the Westlaw citation
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UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

FERRY BEAUBIEN LLC,
Plaintiff–Appellant,
v.
CENTURION PLACE ON FERRY
STREET CONDOMINIUM
ASSOCIATION, Defendant–Appellee.

No. 335571
|
December 14, 2017

Wayne Circuit Court, LC No. 16–008668–CH

Before: Gleicher, P.J., and Gadolaand O'Brien, JJ.

Opinion

Per Curiam.

*1 This action involves two units of real property that were established as part of the Centurion Place on Ferry Street Condominium. Plaintiff, Ferry Beaubien LLC, appeals as of right an order granting summary disposition in favor of defendant, Centurion Place on Ferry Street Condominium Association (the Association), under MCR 2.116(I)(2)(non-moving party is entitled to judgment as a matter of law). For the reasons set forth in this opinion, we affirm.

I. BACKGROUND OF THE CASE

In September 2005, the Association was established as a nonprofit corporation under Michigan's Nonprofit Corporation Act, MCL 450.2101 *et seq.*, for the purpose of operating a condominium in Detroit, Michigan, pursuant to the Michigan Condominium Act (MCA), MCL 559.101 *et seq.* On July 25, 2006, Wayne County approved a Master Deed establishing the Centurion Place on Ferry Street Condominium. Centurion Place on Ferry Street, LLC (Centurion) was identified as the developer of the condominium project within the Master Deed. The Master Deed was recorded with the Wayne County Register of Deeds on July 26, 2006.

According to the Master Deed, the condominium was intended to consist of 10 units. However, only eight units were ever constructed, with Units 9 and 10 remaining undeveloped, vacant land. The Master Deed provided the following in the event the developer did not construct all 10 units:

> **7.1 Limit of Unit Contraction.** The project established by this master deed consists of Ten (10) units and may, at the election of the developer, be contracted to a minimum of six (6) units....
>
> **7.2 Withdrawal of Units.** The number of units in the project may, at the option of the developer within a period ending

not later than six years after the recording of the master deed, be decreased by the withdrawal of a portion of the lands described ... provided, that no unit that has been sold or that is the subject of a binding purchase agreement may be withdrawn without the consent of the co-owner, purchaser, and/or mortgagee of such unit....

* * *

7.4 Amendment(s) to Master Deed. A withdrawal of lands from this project by the developer will be given effect by an appropriate amendment(s) to the master deed, which amendment(s) will not require the consent or approval of any co-owner, mortgagee, or other interested person....

* * *

7.6 Withdrawal of Property. If the development and construction of all improvements to the project has not been completed within a period ending 10 years after the date on which contraction, or convertibility were last exercised, whichever first occurs, the developer shall have the right to withdraw all remaining undeveloped portions of the project without the consent of any co-owner, mortgagee, or other party in interest. Any undeveloped portions not so withdrawn before the expiration of the time periods, shall remain as general common elements of the project, and all rights to construct units on such lands shall cease.

The condominium subdivision plan, which was approved on July 25, 2006, indicates that Units 1 through 8 of the project "MUST BE BUILT" while Units 9 and 10 "NEED NOT BE BUILT." On July 13, 2011, Centurion filed an amendment of the Master Deed, which indicated that Units 9 and 10 "may be built, but have not been built as of the date of this amendment." Thereafter, Centurion stopped paying property taxes on Units 9 and 10 and the vacant property was subject to foreclosure and tax sale.

*2 In September 2015, Association President Valarie Preyer filed an affidavit with the Wayne County Register of Deeds, stating that the Association was aware Units 9 and 10 were "to be placed on auction to be sold by the Wayne County Treasurer subsequent to his appropriate foreclosure actions for non-payment of real estate taxes." Preyer noted that Units 9 and 10 were vacant and undeveloped land. She announced in her affidavit that the Association had taken the position that any purchaser of the units at auction could not be considered a "successor developer" for purposes of MCL 559.235, [1] and that, under MCL 559.167, any purchaser would be required to complete construction of Units 9 and 10 before July 26, 2016—or ten years after the recording of the Master Deed—or the units would "cease to legally exist and such area of the project will then become part of the project's general common element for ever more."

Kostakos Woodward LLC (Kostakos) purchased Units 9 and 10 at the tax sale.

The Wayne County Treasurer transferred the units by quit claim deed to Kostakos on October 30, 2015. Kostakos then transferred the two units to Ferry Beaubien LLC, whose sole member is Alexandra Lipera. In May 2016, Lipera secured a building permit from the city of Detroit to construct an urban garden on Units 9 and 10. Once construction began, Preyer contacted the city of Detroit, asserting that the Association owned the land in question and that the building permit should be revoked. On June 8, 2016, the city of Detroit revoked Lipera's building permit, stating that it had determined Lipera "does not have an ownership interest in the subject property."

On July 8, 2016, plaintiff filed a complaint asserting that it held absolute title to the disputed property in fee simple, derived from the deeds executed by the Wayne County Treasurer following the tax sale. Plaintiff sought a declaratory ruling from the trial court to establish its rights to the vacant land comprising Units 9 and 10. On July 14, 2016, plaintiff also filed an emergency motion for declaratory judgment. Plaintiff explained that the Association had taken the position that the units in question needed to be constructed by July 26, 2016, "or the property reverts back to the association and becomes common property resulting in the Plaintiff losing its interest in the property." Plaintiff asserted that, under MCL 211.78k(5)(e) of the General Property Tax Act (GPTA), MCL 211.1a *et seq.*, any restrictions imposed on the property by the Master Deed were extinguished by the tax sale.

The Association argued in response that the restrictions imposed by the Master Deed were "private deed restrictions" for purposes of MCL 211.78k(5)(e) that survived the tax sale and that, under MCL 559.167(3), all of the statutory requirements were met to cause Units 9 and 10 to revert to general common elements of the condominium. In reply, plaintiff argued in the alternative that it amended the Master Deed on July 25, 2016, to remove Units 9 and 10 from the condominium before the units reverted to general common elements. Following a hearing, the trial court entered an order denying plaintiff's emergency motion for declaratory judgment and granting summary disposition in favor of defendant under MCR 2.116(I)(2).

II. STANDARD OF REVIEW

We review de novo a trial court's decision to grant or deny summary disposition. *Rossow v. Brentwood Farms Dev, Inc.*, 251 Mich. App. 652, 657; 651 N.W.2d 458 (2002). "The trial court appropriately grants summary disposition to the opposing party under MCR 2.116(I)(2) when it appears to the court that the opposing party, rather than the moving party, is entitled to judgment as a matter of law." *Id.* at 658. This case also implicates questions of statutory interpretation, which we review de novo. *Petersen v. Magna Corp.*, 484 Mich. 300, 306; 773 N.W.2d 564 (2009).

III. DISCUSSION

*3 MCL 211.78k(5)(e) of the GPTA governs the interests in real property that remain following a tax sale and provides the following:

> (e) That all existing recorded and unrecorded interests in that property are extinguished, except a visible or recorded easement or right-of-way, *private deed restrictions*, interests of a lessee or an assignee of an interest of a lessee under a recorded oil or gas lease, interests in oil or gas in that property that are owned by a person other than the owner of the surface that have been preserved as provided in section 1(3) of 1963 PA 42, MCL 554.291, interests in property assessable as personal property under section 8(g), or restrictions or other governmental interests imposed pursuant to the natural resources and environmental protection act, 1994 PA 451, MCL 324.101to 324.90106, if all forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section. [Emphasis added; footnote omitted.]

The parties agree that the only exception that would allow the restrictions of the Master Deed to survive the tax sale of Units 9 and 10 is the phrase "private deed restrictions" in MCL 211.78k(5)(e). Plaintiff argues that the Master Deed does not constitute a "private deed restriction," citing the definition of "master deed" set forth in the MCA. MCL 559.108 of the MCA defines "master deed" as follows:

> "Master deed" means the condominium document recording the condominium project to which are attached as exhibits and incorporated by reference the bylaws for the project and the condominium subdivision plan for the project. The master deed shall include all of the following:
>
> (a) An accurate legal description of the land involved in the project.
>
> (b) A statement designating the condominium units served by the limited common elements and clearly defining the rights in the limited common elements.
>
> (c) A statement showing the total percentage of value for the condominium project and the separate percentages of values assigned to each individual condominium unit identifying the

condominium units by the numbers assigned in the condominium subdivision plan.

(d) Identification of the local unit of government with which the detailed architectural plans and specifications for the project have been filed.

(e) Any other matter which is appropriate for the project.

Plaintiff argues that "[a]bsent from this definition is any hint that a Condominium Master Deed could fall under the statutory definition of a 'private deed restriction.' " We disagree that the restrictions imposed by the Master Deed are not "private deed restrictions" falling within the exception set forth in MCL 211.78k(5)(e).

In *Lakes of the North Ass'n v. TWIGA Ltd Partnership*, 241 Mich. App. 91, 99; 614 N.W.2d 682 (2000), this Court addressed whether restrictive covenants, including a covenant to pay association assessments, were "private deed restrictions" for purposes of MCL 211.78k(5)(e) or whether such restrictions were encumbrances otherwise extinguished by a tax sale. The *TWIGA* Court explained that "[p]lanned unit developments are a modern trend in residential living. Deed restrictions and covenants are vital to the existence and viability of such communities, and 'if clearly established by proper instruments, are favored by definite public policy.' " *Id.*, quoting *Oosterhouse v. Brummel*, 343 Mich. 283, 287; 72 N.W.2d 6 (1995). The *TWIGA* Court explained that, "[b]ecause public policy favors restrictions and covenants regarding residential use, we believe that the Legislature did not intend to cancel such restrictions and covenants in the event of a tax sale." *Id.* The Court thus held that "[r]estrictive covenants and covenants to pay association assessment[s] are private deed restrictions" that the Legislature did not intend to cancel by a tax sale. *Id.* at 100.

*4 Like the covenant to pay an association assessment in *TWIGA*, the Master Deed in this case represents a restrictive covenant that constitutes a "private deed restriction" under MCL 211.78k(5)(e). *Black's Law Dictionary* (10th ed) defines "restrictive covenant," as the term pertains to real property, as "[a] private agreement, usu. in a deed or lease, that restricts the use or occupancy of real property, esp. by specifying lot sizes, building lines, architectural styles, and the uses to which the property may be put." Among other restrictions, the Master Deed specifies the "units that may be developed in the project, including the number, boundaries, dimensions, and area of each unit," as shown by the condominium subdivision plan, which was incorporated by reference into the Master Deed. As in *TWIGA*, the mere fact that plaintiff acquired Units 9 and 10 through a tax sale does not extinguish the use restrictions imposed by the Master Deed. We therefore conclude that the restrictions imposed on Units 9 and 10 by the Master Deed survived the tax sale of the units.

Plaintiff argues in the alternative that Units 9 and 10 are not subject to the Master Deed because it amended the Master Deed and withdrew the units from the condominium

project on July 25, 2016, less than 10 years after the Master Deed was recorded. At the time of the events giving rise to this action, MCL 559.167, as amended by 2002 PA 283, stated the following:

> (1) A change in a condominium project shall be reflected in an amendment to the appropriate condominium document. An amendment to the condominium document is subject to sections 90, 90a, and 91.
>
> (2) If a change involves a change in the boundaries of a condominium unit or the addition or elimination of condominium units, a replat of the condominium subdivision plan shall be prepared and recorded assigning a condominium unit number to each condominium unit in the amended project. The replat of the condominium subdivision plan shall be designated replat number _____ of _____ county condominium subdivision plan number _____, using the same plan number assigned to the original condominium subdivision plan.
>
> (3) Notwithstanding section 33, *if the developer has not completed development and construction of units or improvements in the condominium project that are identified as "need not be built" during a period ending 10 years after the date of commencement of construction by the developer of the project, the developer, its successors, or assigns have the right to withdraw from the project all undeveloped portions of the project not identified as "must be built" without the prior consent of any co-owners, mortgagees of units in the project, or any other party having an interest in the project.* If the master deed contains provisions permitting the expansion, contraction, or rights of convertibility of units or common elements in the condominium project, then the time period is 6 years after the date the developer exercised its rights with respect to either expansion, contraction, or rights of convertibility, whichever right was exercised last. The undeveloped portions of the project withdrawn shall also automatically be granted easements for utility and access purposes through the condominium project for the benefit of the undeveloped portions of the project. *If the developer does not withdraw the undeveloped portions of the project from the project before expiration of the time periods, those undeveloped lands shall remain part of the project as general common elements and all rights to construct units upon that land shall cease.* In such an event, if it becomes necessary to adjust percentages of value as a result of fewer units existing, a co-owner or the association of co-owners may bring an action to require revisions to the percentages of value under section 95. [Emphasis added; footnotes omitted.]

In the trial court, defendant presented evidence showing that construction on the condominium project began by, at the latest, April 18, 2006. It is also clear from the condominium subdivision plan filed with the Master Deed that Units 9 and 10 were designated as "NEED NOT BE BUILT." Under former MCL 559.167(3),

as of April 18, 2016, or "10 years after the date of commencement of construction by the developer of the project," because the developer did not withdraw Units 9 and 10 from the project before that time, Units 9 and 10 became "part of the project as general common elements" and all rights to construct units on the land ceased.[2] Therefore, under the version of MCL 559.167(3) in effect at the time in question, Units 9 and 10 reverted to general common elements of the condominium on April 18, 2016.[3]

*5 Plaintiff argues that it is a developer of the condominium project and that it amended the Master Deed on July 25, 2016, or less than 10 years after the Master Deed was recorded, to withdraw Units 9 and 10 from the condominium. However, the relevant date for purposes of former MCL 559.167(3) is "10 years after the date of commencement of construction by the developer of the project," not 10 years after the recording of the Master Deed.[4] Likewise, Section 7.6 of the Master Deed states the following:

> If the development and construction of all improvements to the project has not been completed *within a period ending 10 years after the date on which construction was commenced*, or six years after the date on which rights of expansion, contraction, or convertibility were last exercised, whichever first occurs, the developer shall have the right to withdraw all remaining undeveloped portions of the project without the consent of any co-owner, mortgagee, or other party in interests. Any undeveloped portions not so withdrawn before the expiration of the time periods, shall remain as general common elements of the project, and all rights to construct units on such lands shall cease. [Emphasis added.]

Therefore, plaintiff's attempt to withdraw Units 9 and 10 by amendment fell outside the time period specified by former MCL 559.167 and Section 7.6 of the Master Deed.

Additionally, defendant argues that plaintiff was not authorized to amend the Master Deed and withdraw Units 9 and 10 because it was not a developer or successor developer of the condominium project. We agree. The Master Deed states the following with respect to withdrawal of units from the condominium project:

> **7.2 Withdrawal of Units.** The number of units in the project may, at the option *of the developer* within a period ending not later than six years after the recording of the master deed, be decreased by the withdrawal of a portion of the lands described ....

* * *

7.4 Amendment(s) to Master Deed. A withdrawal of lands from this project *by the developer* will be given effect by an appropriate amendment(s) to the master deed, which amendment(s) will not require the consent or approval of any co-owner, mortgagee, or other interested person.... [Emphasis added.]

Plaintiff was not identified as a developer in the Master Deed, and the MCA defines "successor developer" as "a person who acquires title to the lesser of 10 units or 75% of the units in a condominium project ... by foreclosure ...." MCL 559.235(1). At the hearing on plaintiff's emergency motion for declaratory judgment, plaintiff's counsel argued that plaintiff was a successor developer because plaintiff acquired "less than 10" units at the tax sale. However, it is clear by a plain reading of MCL 559.235that the statute defines a "successor developer" as someone who acquires title to 10 units or 75% of the units in a condominium project, whichever is less, not that the term applies to anyone who acquires less than 10 units. Plaintiff is therefore not a "successor developer" for purposes of the MCA and had no authority to amend the Master Deed.

***6** Defendant also argues that plaintiff did not properly record the amendment purporting to withdraw Units 9 and 10 from the condominium project. The MCA provides that "[a]n amendment to the master deed ... shall not be effective until the amendment is recorded." MCL 559.191(1). The amendment that plaintiff attached to its reply brief in support of its emergency motion for declaratory judgment does not contain a record stamp from the Wayne County Register of Deeds. Defense counsel explained at the hearing on plaintiff's emergency motion that he checked with the Wayne County Register of Deeds and that no such amendment had been recorded. We therefore agree with defendant that plaintiff failed to present evidence showing that it properly recorded an amendment of the Master Deed. For all of these reasons, the trial court did not err by concluding that the restrictions of the Master Deed survived the tax sale of Units 9 and 10 and by granting summary disposition in favor of defendant.

IV. DEFENDANT's REQUEST FOR DAMAGES

Defendant contends that this Court should award damages under MCR 7.216(C) because plaintiff's appeal is vexatious and because plaintiff misrepresented in its brief on appeal that it "recorded" a second amendment of the Master Deed. MCR 7.216(C) states the following:

(C) Vexatious Proceedings.

(1) The Court of Appeals may, on its own initiative or on the motion of any party filed under MCR 7.211(C)(8), assess actual and punitive damages or take other disciplinary action when it determines that an appeal or any of the proceedings in an appeal was vexatious because

(a) the appeal was taken for purposes of hindrance or delay or without any

reasonable basis for belief that there was a meritorious issue to be determined on appeal; or

(b) a pleading, motion, argument, brief, document, or record filed in the case or any testimony presented in the case was grossly lacking in the requirements of propriety, violated court rules, or grossly disregarded the requirements of a fair presentation of the issues to the court.

We need not address defendant's request at this time because the request was not included in a timely filed motion under MCR 7.211(C)(8), which states that a party's request for damages for a vexatious proceeding "must be contained in a motion filed under this rule" and may be filed "at any time within 21 days after the date of the order or opinion that disposes of the matter that is asserted to have been vexatious." The time for filing a motion under MCR 7.211(C)(8) has not yet occurred and defendant did not include its request for damages in a separate motion. We decline to assess damages in this matter on our own initiative.

Defendant also argues that it is entitled to costs and reasonable attorney fees under MCL 559.206(b), which states that, "[i]n a proceeding arising because of an alleged default by a co-owner, the association of co-owners or the co-owner, if successful, shall recover the costs of the proceeding and reasonable attorney fees, as determined by the court, to the extent the condominium documents expressly so provide." Plaintiff pursued this action in an attempt to obtain a declaratory judgment from the trial court announcing that the Master Deed did not apply to the units plaintiff purchased at a tax sale. The proceeding therefore arose as a result of plaintiff's attempt to ascertain its property rights in Units 9 and 10, not "because of an alleged default by a co-owner[.]" Also, in *Cohan v. Riverside Park Place Condo Ass'n, Inc.*, 123 Mich. App. 743, 750; 333 N.W.2d 574 (1983),[5] this Court agreed that, in reference to MCL 559.206(b), "attorney fees may not be awarded to a condominium association where the action is brought by a unit owner rather than the association." Finally, MCL 559.206(b) only authorizes an award of costs and attorney fees "to the extent the condominium documents expressly so provide." The manner in which the Association and unit owners agree to allocate the costs of resolving conflicts presumably would be part of the condominium bylaws, which were not presented as part of the lower court record. We are therefore not compelled to award costs and attorney fees to defendant under MCL 559.206(b).

*7 Affirmed.

All Citations

Not Reported in N.W.2d, 2017 WL 6390068

Footnotes

1 MCL 559.235 defines "successor developer" as a person "who acquires title to the lesser of 10 units or 75% of the units in a condominium project ... by foreclosure ...."

2 Plaintiff does not argue that, in the first amendment of the Master Deed, recorded July 13, 2011, Centurion exercised rights "with respect to either expansion, contraction, or rights of convertibility," such that the relevant time period would be "6 years after the date the developer exercised its rights ...." MCL 559.167(3), as amended by 2002 PA 283. The Association explained that the "Amendment does **not** alter nor attempt to alter the language of Exhibit B, ("Units 9 & 10 NEED NOT BE BUILT"), but states that prospective future action "**may**" (emphasis added) at the election of the developer be contracted. Nothing in the Amendment purports to effectuate any contraction ...."

3 We note that, effective September 21, 2016, the Legislature amended MCL 559.167 by way of 2016 PA 223. Plaintiff does not raise any issues regarding the effect of the 2016 amendment of MCL 559.167 on the reversion of Units 9 and 10 to general common elements of the condominium, so we do not address the matter in this opinion.

4 The amended version of MCL 559.167(3) provides that the relevant time period is "10 years after the recording of the master deed," but nothing in the language of amended Subsection (3) suggests that it applies retroactively. We presume that statutory amendments operate prospectively unless a contrary intent is clearly manifested in the language of the statute. *Frank W Lynch & Co. v. Flex Technologies, Inc.*, 463 Mich. 578, 583; 624 N.W.2d 180 (2001).

5 Opinions of the Court of Appeals issued before November 1, 1990, are not binding, but may be considered persuasive authority. MCR 7.215(J)(1); *In re Stillwell Trust*, 299 Mich. App. 289, 299 n 1; 829 N.W.2d 353 (2012).

End of Document

EXHIBIT F

2011 WL 2462712
Only the Westlaw citation
is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

THOMAS HOLZWARTH and
ELIZABETH HOLZWARTH,
Plaintiff–Appellants,
v.
COLDWELL BANKER SCHMIDT
REALTORS d/b/a Schmidt Real Estate,
Inc., Charlotte O'Neal, and Virginia
Hospodar, Defendant–Appellees,
and
Thomas D. Kann d/b/a Real Estate
One of Mio, Michigan Department
of Natural Resources, Defendants.

Docket No. 295627.
|
June 21, 2011.

Oscoda Circuit Court; LC No. 08–004431 CH.

Before: SHAPIRO, P.J., and O'CONNELL and OWENS, JJ.

Opinion

PER CURIAM.

*1 In this property case, plaintiffs Thomas and Elizabeth Holzwarth appeal as of right from the trial court's grant of defendants' motion for summary disposition under MCR 2.116(C)(7). We affirm.

In 1998, plaintiffs purchased a parcel of land from defendants O'Neal and Hospodar. Defendant Coldwell Banker acted as defendants' real estate agent and defendant Thomas Kann, working for Real Estate One of Mio [1], acted as plaintiffs' real estate agent. Coldwell listed the property as a "quarter-quarter" section, which both parties presumed to encompass 40 acres of land. The legal description of the property is:

> *The Southwest¼ of the Southwest¼ of Section 31, Town 27 North, Range 2 East, Elmer Township, Oscoda County, Michigan*.
> Notably, nowhere in this description, or in the purchase agreement, does it state that this quarter-quarter encompasses 40 acres. Plaintiffs purchased the property from defendants, without having a survey conducted, in November, 1998.

The Michigan Department of Natural Resources (MDNR) owns the property adjacent to plaintiffs'. Before 2007, a wire fence existed along what plaintiffs believed to be the border of their 40 acres and the MDNR's property. This fence had been in existence for at least 40 years, and was on the property when plaintiffs purchased the land in 1998.

In the fall of 2007, a wind storm damaged several trees on both the MDNR and plaintiffs' property. The storm also destroyed the fence. At this time, the MDNR informed plaintiffs that 7.5 acres

that plaintiffs believed that they owned, in fact, was owned by the MDNR. This was land that had been on "plaintiffs' side" of the wire fence. Plaintiffs paid taxes on 40 acres starting when they purchased the property in 1998 until Elmer Township changed the description from a 40 acre parcel to a 32.5 acre parcel in December 2007.

On September 26, 2008, plaintiffs filed a complaint against the MDNR. Plaintiffs state that they "then had no option other than to purchase the 7.5 acres back from the MDNR." On April 10, 2009, plaintiffs filed a first amended complaint dismissing the MDNR as a party and joining the defendant O'Neal, as well as the real estate agent defendants. Defendant Hospodar was not added until July 10, 2009. Defendants brought a motion for summary disposition under MCR 2.116(C)(7) alleging that the period of limitations had expired. The trial court granted defendants' motion for summary disposition "based on applicable statutes of limitations." Plaintiffs now appeals as of right.

Plaintiffs argue that the trial court erred by granting defendants' motion for summary disposition based on the determination that plaintiffs' claims accrued in 1998 and not in 2007. At the heart of this case is the issue of when plaintiffs' claims against defendants began to accrue. If the claims accrued when the property was sold in 1998, then when plaintiffs added defendants to the suit in April 2009, and July 2009, the suit was barred by the ten year limitations period in MCL 600.5807. However, if, as plaintiffs assert, the claims did not accrue until 2007, when they were informed that the property they believed to be theirs actually belonged to the MDNR, then the suit was timely. We conclude that it was not timely.

***2** This Court reviews de novo a trial court's ruling on a motion for summary disposition. *Doe v. Roman Catholic Archbishop of the Archdiocese of Detroit,* 264 Mich.App 632, 638; 692 NW2d 398 (2004). When reviewing a motion under MCR 2.116(C)(7), a reviewing court must consider all affidavits, pleadings, and other documentary evidence submitted by the parties and construe the pleadings and evidence in favor of the nonmoving party. *Id.* "Absent a disputed question of fact, the determination whether a cause of action is barred by a statute of limitation is a question of law that this Court reviews de novo." *Id.*

MCL 600.5807 provides, "[t]he period of limitations is 10 years for actions founded upon covenants to deeds and mortgages of real estate." MCL 600.5827 specifies when a claim "accrues" as follows:

> Except as otherwise expressly provided, the period of limitations runs from the time the claim accrues. The claim accrues at the time provided in sections 5829 to 5838, and in cases not covered by these sections the claim accrues at the time the wrong upon which the claim is based was done

> regardless of the time when damage results.

According to *Boyle v. Gen Motors Corp,* 468 Mich. 226, 231 n. 5; 661 NW2d 557 (2003), under MCL 600.5827 "[t]he wrong is done when the plaintiff is harmed rather than when the defendant acted." When all of the elements of a cause of action for personal injury have occurred, including damages, the claim accrues and the statute of limitations begins to run. *Stephens v. Dixon,* 449 Mich. 531, 538; 536 NW2d 755 (1995) (citation omitted). Even if later damages result, "they give rise to no new cause of action, nor does the statute of limitations begin to run anew as each item of damage is incurred." *Stephens,* 449 Mich. at 538 (quotation omitted).

Plaintiffs urge us to apply MCL 600.5801, which provides for a 15 year statute of limitations in an action for the recovery or possession of land, and MCL 600.5829, which provides that a claim for entry or recovery of possession of land accrues; "whenever any person is disseised, his right of entry on and claim to recover land accrue at the time of his disseisin." Here, plaintiffs are not seeking to recover real property from these defendants, only money damages, and as a result, neither of these statutes apply. We find that none of the provisions of MCL 600.5829through MCL 600.5838 apply to this case, and therefore, under MCL 600.5827, the claim accrued at the time the wrong upon which the claim is based was done regardless of the time when damage resulted. Here, plaintiffs' claims are for money damages and are based upon the "wrong" of having paid for 40 acres, but having actually only received 32.5, and for having paid taxes starting in 1998 for 40 full acres.

Plaintiffs' contention that their claims accrued in 2007, when they discovered that the MDNR owned the property, is contrary to Michigan case law. In *Trentadue v. Buckler Lawn Sprinkler,* 479 Mich. 378; 738 NW2d 664 (2007), our Supreme Court held that an extrastatutory discovery rule could not apply to toll or delay the time of accrual of a plaintiff's claim. Rather, the Legislature had to expressly carve out an exception in the language of the statute. *Trentadue,*479 Mich. at 390–391. There is no statutory language that creates an exception for the facts of this case.

***3** Plaintiffs also argue that the retroactive application of *Trentadue* deprives them of due process, citing *Peter v. Stryker Orthopaedics, Inc,* 581 F.Supp 2d 813 (ED Mich.2008). However, our Supreme Court explicitly held that its decision in *Trentadue* was to have retroactive effect. *Trentadue,* 479 Mich. at 401. Further, this Court retroactively applied *Trentadue*in *Terlecki v. Stewart,* 278 Mich.App 644, 652, 754 NW2d 899 (2008). Thus, the discovery rule does not toll the limitations period for plaintiffs' claims.

In addition, we do not believe that plaintiffs' claim would have fallen within the common law discovery rule as it existed prior to Trentadue since plaintiff's lack of discovery of the harm was due, at least in part, to

plaintiff's decision not to have the property surveyed before purchase

Plaintiffs' suit is therefore barred by the 10 year statute of limitations in MCL 600.5807 and the trial court did not err in granting defendants' motion for summary disposition under MCR 2.116(C)(7).

Affirmed.

All Citations

Not Reported in N.W.2d, 2011 WL 2462712

Footnotes

1 Defendant Thomas Kann has settled with plaintiffs and is not a party to this appeal.

EXHIBIT G

STATE OF MICHIGAN

COURT OF APPEALS

MAJID DAMGHANI,

Plaintiff-Appellant,

v

CITY OF KENTWOOD and KENT COUNTY TREASURER,

Defendants-Appellees.

UNPUBLISHED
April 16, 2019

No. 341213
Kent Circuit Court
LC No. 15-011405-CH

Before: RIORDAN, P.J., and MARKEY and LETICA, JJ.

PER CURIAM.

Plaintiff filed the present case seeking a refund of a payment made on a special assessment as well as a declaratory judgment that a foreclosure extinguished the special assessment on his property. Following a bench trial, the trial court entered judgment in favor of defendants. Plaintiff now appeals as of right. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

I. BACKGROUND

In August 2014, plaintiff purchased 34.57 acres of property, known as Neighborhood B-4, from the Kent County Treasurer at a public land auction. The Kent County Treasurer acquired the property through foreclosure proceedings in March 2014. Before the foreclosure, while the property was owned by 44th/Shaffer Avenue LLC (Shaffer), the City of Kentwood (the City) levied a special assessment against a larger group of parcels in connection with public improvements for a multiphase development project known as the Ravines. Neighborhood B-4 was one of several planned "neighborhoods" that would make up the Ravines.

Under the General Property Tax Act (GPTA), MCL 211.1 *et seq.*, "all liens against the property, including any lien for unpaid taxes or special assessments, *except future installments of special assessments* and liens recorded by this state or the foreclosing governmental unit pursuant to the natural resources and environmental protection act . . . are extinguished" by a

foreclosure. MCL 211.78k(5)(c) (emphasis added). In other words, "future installments of special assessments" are not extinguished by a foreclosure. Accordingly, the general dispute between the parties involves whether the City actually levied a special assessment and whether the amounts owed were future installments that survived foreclosure. Following a bench trial, the trial court decided the matter in the City's favor, concluding that there was a special assessment and that a balloon payment on that special assessment was a future installment that was not extinguished by the foreclosure.

A. CREATION OF THE SPECIAL ASSESSMENT

In 2004, Shaffer and the City entered into a "Voluntary Special Assessment/Development Agreement" (VSADA) by which the parties agreed that Shaffer would undertake public improvements required for the development of the Ravines at the City's expense. However, the City's payment was based on "anticipation of special assessments" to be levied against the property, and the City had "no obligation for any payment of funds until after the conclusion of the special assessment proceedings . . . ." On September 7, 2004, the City Commission passed Resolution No. 96-04 to confirm a special assessment roll for the Ravines special assessment district. The confirmed special assessment roll attached to the resolution stated, in pertinent part:

> Term: 10 years from confirmation of roll, i.e., September 7, 2014. Any unpaid balance and interest is due in full upon termination date.
>
> Deferred Installments:
>
> * * *
>
> B. A payment shall be due annually on the anniversary date of the confirmation of the roll (e.g., without limitation, September 7, 2005, September 7, 2006, September 7, 2006, September 7, 2007, etc.) in an amount equivalent to the simple interest on any unpaid principal amount.
>
> C. Principal payments, along with any unpaid simple interest on that portion of the principal, shall be due upon certain governmental approvals being issued consistent with the terms of [the VSADA].

Relevant to section (C) above, the VSADA provided that "[p]rincipal payments, with interest thereon accrued on a pro rata basis, shall be due within 180 days of final zoning approval for a phase or upon the City's issuance of a soil erosion permit for the phase, whichever is earlier."

B. TRIAL COURT PROCEEDINGS

During the course of this litigation, plaintiff filed a motion to compel cooperation with discovery, asserting that the City had failed to provide full and complete answers to interrogatories and to comply with requests for production of documents. The trial court heard the motion on November 4, 2016. Plaintiff's counsel explained that there were several triggering events that would cause the principal of the special assessment to become due. Thus, he was seeking, among other things, documents regarding development of the Ravines that might reflect the occurrence of a triggering event. The City's attorney explained that the City had already

produced numerous documents and, given the recent narrowing of the issues as a result of a partial grant of summary disposition, it would be more prudent to depose City officials with knowledge concerning the payments and balance of the assessment before and after the foreclosure sale. After a lengthy discussion of the categories of information plaintiff sought, the following exchange occurred:

> [City's Attorney]: Well, your Honor, we've already produced a document that answers every question that [plaintiff's attorney] just raised, and they've had these documents since July. And I'll approach the Court. This is a payment history that is a printout from the City documents (handing), and it includes the entire payment history. *It includes all the trigger dates that* [plaintiff's counsel] *is referring to. The trigger dates for zoning approvals and permits is listed down the left side of the page in the downward column.* The payment history is listed across the top. I produced numerous payment history sheets . . . . [I]f there's questions about these documents, it's not going to be answered by other documents. It's going to be answered by the treasurer or the finance director answering questions about these documents. But all of the things he says that he wants to know are right on these payment histories (indicating).
>
> The Court: Hmm.
>
> Do you have this, [plaintiff's attorney]? Other than for the fact that the print is kind of fine. . . . But it does appear to be a fairly comprehensive situation. And even with the fine print, I think I would rather work with that than a banker's box full of stuff.
>
> [Plaintiff's Attorney]: (Pause) I guess, my colleague has indicated that we have seen at least a document like this. I guess critical to this would be are they just saying this is a document, or are they saying—are they stipulating that these are the trigger dates?
>
> The Court: Well, I think they're saying both. I think they're saying that is a document which shows the trigger dates, among other things, and the payments. The nice thing about it is it looks like it's all on one page. As long as you've got a magnifying glass, you can probably read it.
>
> [Plaintiff's Attorney]: . . . [I]f they'll stipulate that those indeed are the trigger dates under the—under the special assessment for—for when things are due, that's fine.
>
> The Court: I think that's what they're saying. Am I—am I right?
>
> [City's Attorney]: Well, I am saying that, your Honor. [Emphasis added.]

At a subsequent hearing regarding entry of an order reflecting the outcome of the November 4, 2016 proceeding, plaintiff's attorney indicated that he wanted the parties' stipulation included in the order because he believed that "the City no longer want[ed] to recognize the stipulation . . . ." Defense counsel expressed confusion about the nature of the

stipulation and indicated that there were a series of documents relevant to the issues which had been explained in detail by Thomas Chase, the City's finance director, during a deposition that took place after the November 4, 2016 hearing. According to defense counsel, Chase "testified and explained the trigger dates, and you can't simply discern the trigger dates from looking at the document itself." In light of the Chase's testimony about the documents, counsel questioned why the stipulation remained necessary. However, he agreed that he would "stipulate to the authenticity of those documents and that the information on them is accurate, as they were explained by Mr. Chase in his deposition." Responding to the City's position, plaintiff's attorney argued that he proceeded in reliance upon the parties' stipulation and expected that the City should be bound by it. After reviewing a transcript of the November 4, 2016 hearing, the trial court entered plaintiff's proposed order, which provided, in pertinent part, the following:

> This matter having come to be heard upon Plaintiff's Motion to Compel Cooperation with Request for Production of Documents, arguments having been heard, and Defendant City of Kentwood having stipulated to the "Due Date Triggers" as set forth in Exhibit 1, the Court being otherwise advised in the premises;
>
> IT IS HEREBY ORDERED that the document attached as Exhibit 1 reflects the payments and trigger dates for the special assessment district on the Subject Property[.]

In relevant part, Exhibit 1 to the order related to "Neighborhood B-4, Phase 1" and stated:

Due Date Triggers	
Final Zoning Approval for Phase	5/1/2006
180 days from Final Zoning Approval for Phase	10/28/2006
-OR-	
Erosion Permit for a Phase issued	9/7/2014
Computed Final Date for Phase payment	10/28/2006

At the bottom of the page, the following disclaimer was printed: "NOTE: All dates are for demonstration only. When actual dates are inserted, the interest is automatically recalculated."

The case proceeded to a bench trial. Following opening statements, the trial began with a discussion of the stipulation and whether additional evidence regarding the trigger dates would be allowed. Plaintiff maintained that the stipulation was binding with regard to the trigger dates and that he had tailored discovery to the stipulation. Accordingly, plaintiff asserted that the City could not renege on or impeach the stipulation. Defense counsel asserted that he had been

"unartful in terms of the breadth of the stipulation," but denied that plaintiff would be surprised by other evidence of trigger dates because the information had been elicited during Chase's deposition testimony.[1]

The trial court ruled that additional evidence regarding trigger dates would be allowed. In reaching this conclusion, the trial court stated that it misunderstood the facts when entering the stipulation, having failed to realize that the project was a multiphase development with more than one triggering event and that "some of the phases, in fact . . . most of them, have never been developed." The court apologized for the confusion and offered to adjourn the trial if the parties were caught by surprise at any point and needed further time to prepare. The trial court agreed that the stipulated document would "clearly constitute[] evidence of triggering dates," but it declined to limit the evidence of trigger dates to that document, concluding that it would be more appropriate to "follow the evidence."

At the conclusion of the trial, the trial court provided a lengthy ruling on the record, beginning with a detailed description of the various agreements and resolutions, the foreclosure, plaintiff's purchase of the property, and the pretrial procedure of the case. The trial court defined the question remaining at trial as "whether the VSADA is due and owing on the balloon payment date of September 7, 2014, which would be after the foreclosure, or whether one of the triggering events had extinguished that assessment . . . ." The trial court concluded that neither of the triggering events had occurred before the foreclosure. Accordingly, the balloon payment on the principal came due September 7, 2014—after the March 2014 foreclosure—and constituted a future installment of a special assessment that was not extinguished by the foreclosure.

With respect to the parties' stipulation, the trial court noted that the disclaimer at the bottom of the stipulated document rendered the dates in the document "essentially meaningless." Concluding that it was clear beyond any doubt that the stipulation was factually incorrect, the trial court refused to hold the parties to the stipulation. The trial court subsequently entered an order stating that the special assessment balloon payment was not extinguished and remained a valid lien on plaintiff's property. This appeal followed.

II. THE STIPULATION

On appeal, plaintiff first argues that the trial court erred when it refused to apply the parties' factual stipulation regarding the occurrence of events that triggered the date on which payment of the special assessment principal became due. We agree, in part.

Stipulations are generally construed under the same rules applicable to interpretation of a contract, *Phillips v Jordan*, 241 Mich App 17, 21; 614 NW2d 183 (2000), and questions involving contract interpretation and the legal effect of a contractual provision are reviewed de novo, *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 366-367; 817 NW2d 504 (2012).

---

[1] Chase testified that the stipulated document had been prepared by a law firm and that he did not believe the final zoning approval date (from which the final payment date had been computed) was accurate because the property had never actually been developed.

The meaning of a court order is also a question of law reviewed de novo. *Silberstein v Pro-Golf of America, Inc*, 278 Mich App 446, 460; 750 NW2d 615 (2008). Whether the trial court "disregarded a clear and unambiguous factual stipulation by the parties is a legal question, which this Court reviews de novo." *Toll Northville Ltd Partnership v Northville Twp (On Remand)*, 298 Mich App 41, 47; 825 NW2d 646 (2012) (citation omitted).

"A stipulation is an agreement, admission, or concession made by the parties in a legal action with regard to a matter related to the case." *In re Estate of Koch*, 322 Mich App 383, 402; 912 NW2d 205 (2017) (quotation marks and citation omitted). "While a stipulation need not follow any particular form, its terms must be definite and certain in order to afford a proper basis for judicial decision . . . ." *Whitley v Chrysler Corp*, 373 Mich 469, 474; 130 NW2d 26 (1964) (quotation marks and citation omitted). When "[t]he stipulation on its own terms is not clear," the stipulation may be interpreted "in light of the facts and issues as agreed to by the parties and as found by the trial court." *Novi v Detroit*, 433 Mich 414, 436-437; 446 NW2d 118 (1989). Parties may stipulate to the facts of a case, and when a stipulation of facts has been approved by the trial court, those facts are to be taken as conclusive. *Signature Villas, LLC v Ann Arbor*, 269 Mich App 694, 706; 714 NW2d 392 (2006); *Nuriel v Young Women's Christian Ass'n of Metropolitan Detroit*, 186 Mich App 141, 147; 463 NW2d 206 (1990). More fully, the Michigan Supreme Court long ago provided the following warning and guidance concerning the effect of factual stipulations:

> To the bench, the bar, and administrative agencies, be it known herefrom that the practice of submission of questions to any adjudicating forum, judicial or quasi-judicial on stipulation of fact, is praiseworthy in proper cases. It eliminates costly and time consuming hearings. It narrows and delineates issues. *But once stipulations have been received and approved they are sacrosanct. Neither a hearing officer nor a judge may thereafter alter them.* This holding requires no supporting citation. The necessity of the rule is apparent. A party must be able to rest secure on the premise that the stipulated facts and stipulated ultimate conclusionary facts as accepted will be those upon which adjudication is based. Any deviation therefrom results in a denial of due process for the obvious reason that both parties by accepting the stipulation have been foreclosed from making any testimonial or other evidentiary record.
>
> This is not to say, of course, that the hearing officer or judge may not reject any offered stipulation as incomplete or legally erroneous. The concerned adjudicator has not only that right—he has that duty. But as previously indicated, the time so to do is before final acceptance of the stipulation, not after. [*Dana Corp v Appeal Bd of Mich Employment Security Comm*, 371 Mich 107, 110-111; 123 NW2d 277 (1963) (emphasis added).]

Undoubtedly, there are circumstances in which a trial court is not bound by the parties' stipulation. For instance, the trial court may disregard a stipulation that has been abandoned or disaffirmed by all of the parties, *Kimball v Bangs*, 321 Mich 394, 414; 32 NW2d 831 (1948), or a stipulation of fact that involves considerations beyond the rights of the parties involved, *Bowman v Coleman*, 356 Mich 390, 392-393; 97 NW2d 118 (1959). In *Nuriel*, 186 Mich App at 147, we

also stated that a stipulation "may be set aside where it has been entered into as a result of inadvertence, improvidence or excusable neglect."

In light of the disclaimer on the stipulated document, which clearly stated that the dates contained therein were for "demonstration only," and counsel's concession at trial that he had been "unartful in terms of the breadth of the stipulation," it is arguable that the City agreed to the stipulation as a result of inadvertence, improvidence, or excusable neglect. However, we find this case comparable to *Nuriel* and conclude that this exception does not support the trial court's decision to disregard the stipulation. In *Nuriel*, the plaintiff claimed religious discrimination after she received an anonymous letter containing anti-Semitic statements which she believed was written by one of six individuals involved in the decision to terminate her employment. *Id.* at 144. The plaintiff stipulated that the letter would be analyzed by an expert and compared with handwriting samples from each of the suspected authors. *Id.* She further agreed that "if the expert does not give a conclusive or definitive opinion that a person actually wrote the letter, then that person shall be considered as having not written the letter." *Id.* at 145. The expert was unable to conclusively determine whether any of the individuals wrote the letter, but discovered fingerprints on the letter that could, presumably, be used to identify the author. *Id.* This Court affirmed the trial court's refusal to compel fingerprint samples from the suspected authors, reasoning that the parties' stipulation regarding the effect of the expert's opinion precluded further discovery attempting to establish the individuals already tested as the author. *Id.* at 146-147. This Court further explained that the stipulation could not be set aside on the basis of inadvertence, improvidence, or excusable neglect because the plaintiff had the letter in her possession for three years before it was submitted to the handwriting expert and could have discovered the existence of the fingerprints had she exercised reasonable diligence during that time. *Id.* at 148.

Here, the parties entered into a clear and unambiguous stipulation providing that the document attached to the court's order reflected the trigger dates for the special assessment. The document at issue was contained within the City's records and had, in fact, been disclosed to plaintiff through discovery months before the stipulation was reached. Thus, like the plaintiff in *Nuriel*, the City and its attorney had ample time during which they could have reviewed the document and discovered that it did not contain actual trigger dates. Nonetheless, the City's attorney represented to plaintiff and the trial court that the document contained "all the trigger dates" that plaintiff sought. Plaintiff's counsel even asked for clarification as to whether the City was stipulating that "those indeed are the trigger dates," and defense counsel answered, "I am saying that[.]" The City, having agreed through its attorney to an unambiguous stipulation of fact that was received and approved by the trial court, was bound by the stipulation. *Dana Corp*, 371 Mich at 110-111. The trial court was, likewise, obligated to treat the stipulated fact as sacrosanct, as plaintiff was entitled to "rest secure on the premise that the stipulated facts . . . as accepted will be those upon which adjudication is based." *Id.* at 110. While we recognize that the stipulation was ultimately proven untrue by other evidence, "[c]ourts have long held parties to agreements they make, regardless of the harshness of the results." *Nexteer Auto Corp v Mando America Corp*, 314 Mich App 391, 396; 886 NW2d 906 (2016).

The trial court erred by finding that the triggering events never occurred for the B-4 Neighborhood because it was bound to apply the parties' stipulation concerning the triggering event dates. The stipulated document stated that final zoning approval for Phase 1 of the B-4

Neighborhood was granted on May 1, 2006, resulting in a final payment due date of October 28, 2006, for Phase 1. As such, the portion of the assessment attributable to Phase 1 became due before the March 2014 foreclosure. Because MCL 211.78k(5)(c) only excludes *future* installments of special assessments from the liens that are extinguished by a foreclosure, the portion of the assessment attributable to Phase 1 was extinguished by operation of law.

That being said, when the parties enter into a stipulation, it does not follow that the record is limited to that stipulation. *Signature Villas, LLC*, 269 Mich App at 706. "Where the parties' stipulation is not contradicted, it is within the discretion of the [court] to permit or consider additional proofs supplementing the same." *Id.* As the trial court belatedly realized, the Ravines development was planned as a multiphase project. Under the VSADA, the principal of the special assessment was to be "allocated among the various approved phases for Neighborhoods B-1 through B-4 of the Ravines[.]" While unpaid principal and interest became automatically due 10 years after the special assessment roll was confirmed on September 7, 2004, principal payments could also be triggered earlier based upon "final zoning approval *for a phase* or upon the City's issuance of a soil erosion permit *for the phase* . . . ." (Emphasis added.) According to the planned unit development agreement and the VSADA, Neighborhood B-4 was planned in two phases. The heading on the stipulated document refers to Phase 1 only.[2] Consequently, we find no error in the trial court's decision to take further evidence concerning the occurrence of triggering events and apply that evidence to any amount of the special assessment attributable to Phase 2. Because the amounts attributable to each phase are not readily apparent from the record, we remand for further proceedings.

III. NATURE OF THE OBLIGATION

Next, plaintiff argues that the trial court erred by concluding that the obligation at issue arose from a special assessment. According to plaintiff, the obligation arose from the VSADA—a contractual agreement between the City and Shaffer—and should have been treated as a contract that was extinguished by the foreclosure. We disagree.

Questions involving statutory interpretation, contract interpretation, or the interpretation of a resolution are reviewed de novo. *46th Circuit Trial Court v Crawford Co*, 476 Mich 131, 140; 719 NW2d 553 (2006). The term "special assessment" refers to "pecuniary exactions made by the government for a special purpose or local improvement, apportioned according to the benefits received." *Wikman v Novi*, 413 Mich 617, 632-633; 322 NW2d 103 (1982). Special assessments for public improvements are a "form of taxation," and a special assessment may be

[2] A similar document containing demonstrative figures for Phase 2 was admitted at trial as Exhibit 9. On appeal, plaintiff treats Exhibit 9 as though it was part of the pretrial stipulation concerning trigger dates—a position that is unsupported by our review of the record. Although the City's attorney stipulated to the admissibility of Exhibit 9 at trial, he explicitly stated that he did not agree that Exhibit 9 contained accurate trigger dates, and the document was not attached to the order memorializing the parties' stipulation as to the Phase 1 document.

levied as allowed by municipal charter and applicable ordinances.[3] See *id.* at 636-637. 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 (citations omitted). "Special assessments are presumed valid." *Kane v Williamstown Twp*, 301 Mich App 582, 586; 836 NW2d 868 (2013).

Plaintiff argues that the underlying financial obligation relating to Neighborhood B-4 is contractual in nature as opposed to a special assessment. However, the only authority offered by plaintiff to distinguish between a contract and a special assessment is a citation to an opinion of the Michigan Office of the Attorney General, which in relevant part states:

> "Liens" and notices of liens are recorded in the office of the register of deeds for the county in which the lands are located. "Special assessments" are not recorded. Liens may only be accepted for recording where there is a statute permitting such recordation. *Nelson v Scofield*, 219 Mich 595, 597; 189 NW 185 (1922). Research discloses no statute authorizing the recording of liens for special assessments levied by local governmental units. Therefore, the legislative intent evinced by the statutory language is that two categories of liens are not extinguished by foreclosure: 1) future installments of special assessments, and 2) liens recorded by the state or foreclosing governmental unit pursuant to the natural resources and environmental protection act. [OAG, 2001-2002, No. 7110, p 95, at 97 (June 17, 2002).]

Relying on this discussion of liens and special assessments, plaintiff asserts that the VSADA is not a special assessment because the VSADA was recorded. However, plaintiff's conclusory argument wholly ignores the fact that the City Commission passed Resolution No. 96-04 to confirm the special assessment roll for the Ravines special assessment district. Resolution No. 96-04 sought to recover costs for public improvements that conferred a peculiar benefit on the properties in the Ravines special assessment district, and these costs were allocated among each of the "approved phases for Neighborhoods B-1 through B-4 of the Ravines . . . ." In other words, a special assessment district was created, not by the VSADA, but by Resolution No. 96-04.[4] And while plaintiff suggests that the recording status of a document is definitive, it does not appear that Resolution No. 96-04 was recorded. Therefore, to the extent that the opinion of the attorney general has any persuasive value, see *Mich Ed Ass'n Political Action Comm v Secretary of State*, 241 Mich App 432, 441-442; 616 NW2d 234 (2000), it does not support plaintiff's argument that a special assessment was not levied in this case.

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[3] The City's charter and ordinances provide for the levying of special assessments. See Kentwood Charter, ch X; Kentwood Code, ch 50.

[4] Indeed, the VSADA did not purport to establish a special assessment, rather it stated that the special assessment would be determined by the City Commission in its discretion.

Apart from reliance on the opinion of the attorney general, plaintiff fails to cite any other legal authority in support of his claim that a contractual obligation, as opposed to a special assessment, is at issue in this case. Plaintiff claims that the rules for creating a special assessment were not followed and that a special assessment does not exist, but he does not cite the applicable rules for levying a special assessment or explain how the procedures in this case deviated from those rules. Likewise, plaintiff argues that a special assessment cannot exist because the City also entered into a contractual relationship with Shaffer under the VSADA, but, again, plaintiff offers no authority for the proposition that the City could not establish a special assessment and also enter into a contract. By failing to adequately brief the merits of the issue and by failing to identify relevant legal authority, plaintiff has abandoned this argument on appeal. See *Goldstone v Bloomfield Twp Pub Library*, 268 Mich App 642, 658; 708 NW2d 740 (2005), aff'd 479 Mich 554 (2007) ("[T]his Court will not search for authority to support a party's position, and the failure to cite authority in support of an issue results in its being deemed abandoned on appeal.") (quotation marks and citation omitted; alteration in original).

IV. TRIGGER DATES

Next, plaintiff argues that the trial court clearly erred by concluding that the principal on the special assessment came due in September 2014, after the foreclosure. Given our analysis and conclusion of plaintiff's claim of error regarding the effect of the parties' stipulation, we limit our analysis of this issue to Phase 2 only. According to plaintiff, even setting aside the parties' stipulation, the evidence showed that triggering events occurred before the foreclosure, resulting in extinguishment of the special assessment in its entirety under MCL 211.78k(5)(c). We disagree.

A trial court's factual findings in a bench trial are reviewed for clear error. *Chelsea Investment Group LLC v City of Chelsea*, 288 Mich App 239, 250; 792 NW2d 781 (2010). "A finding is clearly erroneous if there is no evidentiary support for it or if this Court is left with a definite and firm conviction that a mistake has been made." *Id.* at 251. "The trial court's findings are given great deference because it is in a better position to examine the facts." *Id.* In contrast, questions involving statutory interpretation, contract interpretation, or the interpretation of a resolution are all reviewed de novo. *46th Circuit Trial Court*, 476 Mich at 140.

"A resolution is the form in which a legislative body expresses a determination or directs a particular action." *Duggan v Clare Co Bd of Comm'rs*, 203 Mich App 573, 576; 513 NW2d 192 (1994). A resolution is treated like a statute, see *Gale v Bd of Supervisors of Oakland Co*, 260 Mich 399, 404; 245 NW 363 (1932), and as such it is interpreted like a statute, see *Bonner v City of Brighton*, 495 Mich 209, 221; 848 NW2d 380 (2014). Accordingly, when interpreting a resolution, "it is a basic requirement that the intent shall be ascertained and given effect." *Dearborn Fire Fighters Ass'n v City of Dearborn*, 323 Mich 414, 421; 35 NW2d 366 (1949). To ascertain intent, "words must be given their plain and ordinary meanings." *Bonner*, 495 Mich at 222. "If the language of the resolution is certain and unambiguous, courts must apply the resolution as written." *Hardaway v Wayne Co*, 494 Mich 423, 427; 835 NW2d 336 (2013).

Similarly, when interpreting a contract, "it is a court's obligation to determine the intent of the parties by examining the language of the contract according to its plain and ordinary meaning." *In re Smith Trust*, 480 Mich 19, 24; 745 NW2d 754 (2008). Contracts must be read

"as a whole, giving harmonious effect, if possible, to each word and phrase." *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 50 n 11; 664 NW2d 776 (2003). An interpretation that would "render any part of the contract surplusage or nugatory" must be avoided. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003) (quotation marks and citation omitted). Unambiguous contract language must be enforced as written. *In re Smith Trust*, 480 Mich at 24. "However, if the contractual language is ambiguous, extrinsic evidence can be presented to determine the intent of the parties." *Id.*

The special assessment was established by Resolution 96-04, which incorporated terms contained in the VSADA. Under Resolution 96-04, the special assessment roll was confirmed on September 7, 2004. The resolution called for annual interest-only payments, and it deferred the payment of the principal consistent with the terms of the VSADA. The special assessment roll, as confirmed by the resolution, established a term of 10 years, specifying that any "unpaid principal and interest is due in full upon [the] termination date." Thus, as a general proposition, the principal on the special assessment would come due in September 2014. However, as explained earlier, the special assessment roll also makes clear that certain triggering events could result in the principal coming before the termination of the 10-year period. On appeal, plaintiff debates what constitutes a triggering event, and he asserts that triggering events occurred in this case that necessitated payment of the principal before the foreclosure. These arguments are without merit.

First, plaintiff asserts that Resolution 96-04 triggered payment of the entire special assessment, including principal, in the event that the prior owner failed to make annual interest payments. Relevant to plaintiff's argument, Resolution 96-04 states, "The special assessment roll shall be deferred consistent with the terms of the [VSADA] . . . *provided that* annual payments equivalent to the simple interest on any unpaid balance shall be due and payable on the anniversary date of the confirmation of this special assessment roll." Plaintiff interprets this provision to mean that the special assessment shall only be deferred "provided that" the annual interest payments were actually made each year. Because he presented evidence suggesting that the previous owners were delinquent in making their annual interest payments, plaintiff asserts that the deferment provided for in Resolution 96-04 ceased and that the entire special assessment was due before the foreclosure.

Contrary to this argument, the pertinent phrase in Resolution 96-04 is "due and payable," not "paid." In other words, the resolution does not state that payment of the principal is deferred provided that annual payments are actually paid each year. As commonly understood, when something is "due," it is "owed or owing." *Merriam-Webster's Collegiate Dictionary* (11th ed). Likewise, when something is "payable," it is something "that may, can, or must be paid." *Merriam-Webster's Collegiate Dictionary* (11th ed). Undoubtedly, the interest-only payments are "due and payable" annually, and elsewhere in the resolution the City makes plain that penalties for nonpayment of taxes could be assessed if the interest was not paid. But, this "due and payable" language simply distinguishes between the interest-only payments due and payable annually and the principal payment, which was to be deferred consistent with the terms of the VSADA. This establishment of an annual due date for the interest installments does not condition the deferment of the principal on the actual payment of these annual installments. Accordingly, there is no merit to plaintiff's assertion that nonpayment of interest by the previous

owners was a triggering event, and any evidence establishing that the previous owners were delinquent in their payment of interest does not entitle plaintiff to relief on appeal.

Second, plaintiff asserts that a triggering event under the VSADA, specifically "final zoning approval," occurred before foreclosure. In contrast to this conclusion, the trial court concluded that "final zoning approval" referred to "completion of the review" by the planning commission and city staff as required to bring the planned unit development (PUD) zoning into fruition. In our view, considering the phrase "final zoning approval" in context and in light of the VSADA as a whole, the trial court's interpretation is correct.

Resolution 96-04 expressly incorporates certain provisions of the VSADA. For instance, as noted, Resolution 96-04 states that "[t]he special assessment roll shall be deferred consistent with the terms of the [VSADA] . . . ." Additionally, the confirmed special assessment roll attached to Resolution 96-04 provides that "[p]rincipal payments, along with any unpaid simple interest on that portion of the principal, shall be due upon certain governmental approvals being issued consistent with the terms of [the VSADA] . . . ." Because Resolution 96-04 refers to the VSADA for additional terms, it is appropriate to look to the VSADA to determine the rules for deferment of the special assessment and, in particular, the governmental approvals in question. See generally *Forge v Smith*, 458 Mich 198, 207; 580 NW2d 876 (1998) (stating that when a writing incorporates additional terms by reference to another writing, the two should be read together). Under § 2(g)(2)(d) of the VSADA, "[p]rincipal payments, with interest thereon accrued on a pro rata basis, shall be due within 180 days of *final zoning approval for a phase* or upon the City's issuance of a soil erosion permit *for the phase*, whichever is earlier." (Emphasis added).

It is undisputed that the full Ravines project was successfully rezoned from single-family residential to a high-density residential PUD district and that the City approved, with conditions, a preliminary PUD site plan. This rezoning occurred in February 2004, approximately seven months before the passage of Resolution 96-04 and the signing of the VSADA in September 2004. Nevertheless, according to plaintiff, this rezoning was the "final zoning approval," and the rezoning constituted a triggering event for payment of the special assessment. In other words, plaintiff asserts that rezoning and "final zoning approval" are synonymous.

Plaintiff's argument is unpersuasive when the phrase "final zoning approval" is considered in context and in light of the VSADA and Resolution 96-04 as a whole. Plaintiff's proposed interpretation renders all provisions dealing with deferment of the special assessment nugatory because the rezoning occurred *before* the signing of the VSADA and its incorporation in the special assessment by Resolution 96-04. It is evident that the parties were aware of and contemplated that fact because the rezoning is recognized in the recitals to the VSADA. Given that understanding, if rezoning was a triggering event, everything in the VSADA and Resolution 96-04 relating to the deferment of the special assessment—the 10-year term, the interest-only annual payments, the inclusion of a soil erosion permit as an event triggering payment, etc.—would be meaningless because a triggering event occurred before the VSADA and Resolution 96-04 came into being. Rather than referring to a past event that would render all provisions regarding deferment of the special assessment useless, § 2(g)(2)(d) of the VSADA is written in the future tense: the principal payments "shall be due within 180 days of" one of the two triggering events, "whichever is earlier." In other words, the VSADA does not contemplate that

a triggering event had already occurred; rather the parties to the VSADA were concerned with possible future events that would trigger payment of the principal.[5] Read as a whole, it cannot plausibly be concluded that the parties to the VSADA intended the PUD rezoning in February 2004 to be the "final zoning approval" that triggered payment of the special assessment principal.

This conclusion is further supported by the fact that, while plaintiff focuses on the phrase "final zoning approval," the triggering event is actually "final zoning approval *for a phase*." (Emphasis added.) As noted, the parties acknowledged in the VSADA that the entire property had been successfully rezoned, and it is undisputed that the development was a multiphase project. In this context, reference to final zoning approval "for a phase" is significant because it clearly denotes something other than rezoning of the entire project as a whole; it is specific to each phase of the development. The City's zoning ordinance, as it pertains to PUD projects, includes requirements for "Final PUD Plan Review," which must be approved for "each phase" if the PUD is to be built in phases. Kentwood Zoning Ordinance, § 13.06(D)(2). At trial, Terry Schweitzer, the community development director and zoning administrator for the City, described the various stages of review, including rezoning and final site review of PUD projects, that must be taken before actual construction can begin on a project. While plaintiff contends that these various steps are unrelated to "zoning" approval, the requirements relating to final PUD approval, including final approval for "each phase," are part of the City's zoning ordinance and thus reasonably understood as part of zoning approval. See Kentwood Zoning Ordinance, ch 12 and 13. On the whole, the VSADA and Resolution 96-04 are not ambiguous, and the trial court did not err by rejecting plaintiff's assertion that "final zoning approval for each phase" meant rezoning of the entire project, which occurred several months before the creation of the deferred special assessment.

Finally, plaintiff asserts that an invoice from 2012 demonstrates that Shaffer had already been billed for the principal on the special assessment. The document in question reports interest as well as principal being "due." However, even if the document could be read to indicate both the principal and the interest were being billed, this would not necessarily entitle plaintiff to

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[5] As another example of the incongruity of plaintiff's assertion that the triggering event predated the VSADA, the confirmed special assessment roll attached to Resolution 96-04, includes an attachment the assessment roll incorporates by reference. The document is similar to the one involved in the parties' stipulation and lists various trigger dates with a caveat that the dates "are for demonstration only" and when "actual dates are inserted, the interest is automatically recalculated." Notably, the example date for final zoning approval is August 1, 2007. If rezoning in February 2004 was a triggering event, there would be no need for a sample set of dates because the actual date of the final zoning approval would already be known. Indeed, in a paragraph entitled "*Anticipated* Allocations," Roll A specifies that the "payment amounts actually due will be determined based on the occurrence of certain governmental approvals being issued . . . ." (Emphasis added.) Taken together, the VSADA and Resolution 96-04 clearly support the conclusion that the triggering events were possible future events, not a past occurrence.

relief. The invoice is, at best, evidence that the City billed Shaffer, but it does not conclusively establish that the special assessment was legally due and owing under the terms of the VSADA or Resolution 96-04. In other words, the question of when the special assessment came due is really a matter of interpreting the resolution as well as the VSADA and then discerning whether a triggering event occurred. The invoice does not conclusively resolve this issue, and the trial court did not clearly err by giving the document little or no weight.

In sum, the trial court did not clearly err by rejecting plaintiff's assertion that a triggering event occurred before March 2014. Absent a triggering event, the principal on the special assessment came due in September 2014. And, as a future installment of the special assessment, this obligation survived foreclosure. See MCL 211.78k(5)(c). Consequently, plaintiff is not entitled to relief on appeal.

V. PLAINTIFF'S PRIOR PAYMENT

Next, plaintiff argues that the trial court erred by failing to order the return of a $30,000 payment he made to the City after receiving a bill for taxes owed pursuant to the special assessment. MCL 211.53a provides:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.

Although plaintiff raised this issue below, the trial court did not expressly address the question of a refund, presumably because it determined that the full principal of the special assessment had not been extinguished by the foreclosure. Because we cannot agree with the trial court's ruling as it relates to Phase 1 for the reasons explained in Part II of this opinion, on remand, the trial court should address plaintiff's entitlement to a refund in the first instance.

VI. SLANDER OF TITLE

Finally, plaintiff argued in his appellate brief that the trial court erred by granting summary disposition regarding his slander of title claim on the basis of governmental immunity. At oral argument, plaintiff's counsel withdrew this claim of error, acknowledging that it lacked merit in light of this Court's recent decision in *Petersen Financial LLC v Kentwood*, ___ Mich App ___, ___; ___ NW2d ___ (2018) (Docket No. 339399); slip op at 10-11. Accordingly, we will not address this issue.

VII. CONCLUSION

In sum, the trial court was bound by the parties' factual stipulation regarding the conclusive nature of the trigger dates identified in the stipulated document, although we emphasize that those dates were controlling only as to Phase 1 of the B-4 Neighborhood. According to the stipulated document, any amount of the special assessment balance that was attributable to Phase 1 became due before the foreclosure. That amount was therefore extinguished by the foreclosure under MCL 211.78k(5)(c). Because that amount is not readily

ascertainable from the record, we remand for further proceedings consistent with this opinion. On remand, the trial court should also address in the first instance plaintiff's claim that he was entitled to a refund of the $30,000 he previously made to the City. We affirm in all other respects. We do not retain jurisdiction.

/s/ Michael J. Riordan
/s/ Jane E. Markey
/s/ Anica Letica

EXHIBIT H

Section 10.1. - General powers relative to special assessments.

The commission shall have the power to provide, with or without petition, for assessing and reassessing the costs, or any portion of the costs, of public improvements to a special assessment district and to determine that the whole or any part of the expense of any public improvement be defrayed by special assessment upon property especially benefitted.

The commission shall, in the exercise of its powers of financing the whole or a part of the costs of public improvements by special assessment, have authority to provide for the following, but this list shall not be exclusive:

(a) Street improvements and facilities, including constructing, grading, widening and the paving of streets, curbs and gutters, storm sewers, sanitary sewers, water mains, and constructing and maintaining sidewalks.

(b) The construction and extension of public parking facilities as a public improvement.

(c) The assessment of single lots when an expenditure is made on a single lot, parcel or premises, which the city is authorized to charge and collect as a special assessment.

(d) The assessment of the cost of construction, removal or abatement of any condition which the commission determines to be a public hazard or nuisance which is dangerous to the health, safety or welfare of the inhabitants of the city.

(e) Installing a lighting system on any street or other public place. In each case, the special assessment district for a street lighting system shall be limited to the frontage of the street or part of street upon which the system is placed.

All real property shall be liable for the cost of public improvements benefiting such property, unless specifically exempted from special assessments by law.

Section 10.2. - Detailed procedure to be fixed by ordinance.

(a) The commission shall establish by ordinance the complete special assessment procedure governing the initiation of projects, preparation of plans and cost estimates, creation of districts, making and confirming special assessment rolls, correction of errors in special assessment rolls, collection of special assessments, refunds of excess funds, additional pro rata assessments and any other matters concerning the making and financing of improvements by special assessment.

(b) Such ordinance shall be subject to the following limitations:

(1) No final resolution determining to proceed with establishing a special assessment district shall be adopted until cost estimates have been prepared and a public hearing held on the advisability of proceeding.

(2) No special assessment roll shall be confirmed until after a meeting of the commission has been held to review the roll.

(3) Notice of hearings shall be given in the manner required by law.

Chapter 50 - SPECIAL ASSESSMENTS[1]

Sec. 50-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Cost includes, when referring to the cost of any local public improvement, the cost of services, plans, condemnation, spreading of rolls, notices, advertising, financing, construction and legal fees and all other costs incidental to the making of such improvement, the special assessments and the financing.

Local public improvement means any public improvement which is of such a nature as to especially benefit any real property or properties within a district in the vicinity of such improvement.

(Code 2004, § 50-1; Comp. Ords. 1987, § 12.101)

Sec. 50-2. - Authority to assess.

The whole cost, or any part thereof, of any local public improvement may be defrayed by special assessment upon the lands especially benefitted by the improvement in the manner provided in this chapter.

(Code 2004, § 50-2; Comp. Ords. 1987, § 12.102)

Sec. 50-3. - Project initiation.

Proceedings for the making of local public improvements within the city may be commenced by resolution of the city commission. Such action may be requested by the filing with the city clerk of a petition signed by at least 50 percent of the owners of the property to be assessed for the improvement, requesting that the improvement be made and the cost be defrayed by special assessment upon the property benefitted, but such petition shall be advisory to the city commission only.

(Code 2004, § 50-3; Comp. Ords. 1987, § 12.103)

Sec. 50-4. - Report of city clerk.

Before the city commission shall consider the making of any local public improvement, it shall be referred by resolution to the city clerk, directing the city clerk or his designee to prepare a report which shall include necessary plans, profiles, specifications and detailed estimates of costs, an estimate of the life of the improvement, a description of the assessment districts and such other pertinent information as will permit the city commission to decide the costs, extent and necessity of the improvement proposed and what part, or proportion thereof, should be paid by special assessments upon the property especially benefitted and what part, if any, should be paid by the city at large. The city commission shall not finally determine to proceed with the making of any local public improvement until such report of the city clerk or his designee has been filed, nor until after a public hearing has been held by the city commission for the purpose of hearing objections to the making of such improvement.

(Code 2004, § 50-4; Comp. Ords. 1987, § 12.104)

Sec. 50-5. - Determination; notice of hearing.

After the city clerk or his designee has presented the report required in section 50-4 for making any local public improvement as requested in the resolution of the city commission, and the city commission has reviewed the report, a resolution may be tentatively passed, determining the necessity of the improvement, setting forth the nature thereof, prescribing what part or proportion of the cost of such improvement shall be paid by special assessment upon the property especially benefitted, a determination of benefits received by affected properties and what part, if any, shall be paid by the city at large, designating the limits of the special assessment district to be affected, designating whether it is to be assessed according to frontage or other benefits, placing the complete information on file in the office of the city clerk, where it may be found for examination, and directing the city clerk to give notice of a public hearing on the proposed improvement, at which time and place an opportunity will be given to interested persons to be heard. Such notice shall be given by one publication in a newspaper published or circulated within the city and by first class mail addressed to each owner of, or person interested in, the property to be assessed as shown by the last general tax assessment roll of the city. Such publication and mailing is to be made at least ten full days prior to the date of the hearing. The hearing required by this section may be held at any regular, adjourned or special meeting of the city commission.

(Code 2004, § 50-5; Comp. Ords. 1987, § 12.105)

State Law reference— Notice of hearings, MCL 211.741.

Sec. 50-6. - Hearing.

At the public hearing on the proposed improvement, all persons interested shall be given an opportunity to be heard, after which, the city commission may modify the scope of the local public improvement in such a manner as they shall deem to be in the best interest of the city as a whole, provided that, if the amount of work is increased or additions are made to the district, then another hearing shall be held pursuant to the notice prescribed in section 54-5. If the determination of the city commission is to proceed with the improvement, a resolution shall be passed approving the necessary profiles, plans, specifications, assessment district and detailed estimates of cost, determining the probable useful life of the improvement, and directing the treasurer to prepare a special assessment roll in accordance with the city commission's determination and report the special assessment roll to the city commission for confirmation; provided that, if, prior to the adoption of the resolution to proceed with the making of the public improvement, written objections thereto have been filed by the owners of property in the district, which, according to the city clerk's report, will be required to bear more than 50 percent of the cost thereof, or by a majority of the owners of property to be assessed, no resolution determining to proceed with the improvement shall be adopted while such objections remain, except by the affirmative vote of five members of the city commission.

(Code 2004, § 50-6; Comp. Ords. 1987, § 12.106)

Sec. 50-7. - Making special assessment roll.

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.

(Code 2004, § 50-7; Comp. Ords. 1987, § 12.107)

Sec. 50-8. - Filing assessment roll.

When the treasurer shall have completed the assessment roll, he shall file it with the city clerk for presentation to the city commission for review and certification by the city commission.

(Code 2004, § 50-8; Comp. Ords. 1987, § 12.108)

Sec. 50-9. - Meeting to review special assessment roll.

Upon receipt of the special assessment roll, the city commission by resolution shall accept such assessment roll and order it to be filed in the office of the city clerk for public examination, shall fix the time and place the city commission will meet to review such special assessment roll, and direct the city clerk to give notice of a public hearing for the purpose of affording an opportunity for interested persons to be heard. Such notice shall be given by one publication in a newspaper published or circulated within the city and by first class mail addressed to each owner of, or person interested in, property to be assessed as shown by the last general tax assessment roll of the city. Such publication and mailing is to be made at least ten full days prior to the date of such hearing. The hearing required by this section may be held at any regular, adjourned or special meeting of the city commission. At such meeting, all interested persons or parties shall present, in writing, their objections, if any, to the assessments against them. The treasurer or their designee shall be present at every meeting of the city commission at which a special assessment is to be reviewed.

(Code 2004, § 50-9; Comp. Ords. 1987, § 12.109)

Sec. 50-10. - Changes and corrections in special assessment roll.

The city commission shall meet at the time and place designated for the review of such special assessment roll, and at such meeting, or a proper adjournment thereof, shall consider all objections thereto submitted in writing. The city commission may correct such roll as to any special assessment or description of any lot or parcel of land or other errors appearing therein, or it may by resolution annul such assessment roll and direct that new proceedings be instituted. The same proceedings shall be followed in the making of the new roll as in the making of the original roll. If, after hearing all objections and making a record of such changes as the city commission deems justified, the city commission determines that it is satisfied with the special assessment roll and that assessments are in proportion to benefits received, it shall thereupon pass a resolution reciting such determinations, confirming such roll, placing it on file in the office of the clerk and directing the clerk to attach his warrant to a certified copy thereof within ten

days, therein commanding the assessor to spread, and the treasurer to collect, the various sums and amounts appearing thereon as directed by the city commission. Such 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.

(Code 2004, § 50-10; Comp. Ords. 1987, § 12.110)

Sec. 50-11. - Due date.

All 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.

(Code 2004, § 50-11; Comp. Ords. 1987, § 12.111)

Sec. 50-12. - Payments.

(a) The city commission may provide for the payment of special assessments in annual installments. Such 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.

(b) Interest shall be charged on all deferred installments at a rate equal to the project bond interest rate, plus one percentage point; or in the case that a bond is not sold for the project, then, a rate equal to one percentage point over the prime rate in effect as stated in the Wall Street Journal on the date the roll is confirmed, commencing on the due date of the first installment and payable on the due date of the first installment and payable on the due date of each subsequent installment; the full amount of all or any deferred installments, with interest accrued thereon to the date of payment thereof.

(c) If the full assessment or the first installment thereof shall be due upon confirmation, each property owner shall have 60 days from the date of confirmation to pay the full amount of such assessment or the full amount of any installments, without interest or penalty. Following the 60-day period, the assessment or first installment shall, if unpaid, be considered as delinquent and the same penalties shall be collected on such unpaid assessments or first

installments as are provided in the city Charter to be collected on delinquent general city taxes.

(d) Deferred installments shall be collected without penalty until 60 days after the due date thereof, after which time, such installments shall be considered as delinquent and such penalties on such installments shall be collected as are provided in the city Charter to be collected on delinquent general city taxes.

(e) After the city commission has confirmed the roll, the city treasurer shall notify by mail each property owner on such roll that such roll has been filed, stating the amount assessed and the terms of payment. Failure on the part of the city treasurer to give such notice or of such owner to receive such notice shall not invalidate any special assessment roll of the city or any assessment, nor excuse the payment of interest or penalties.

(Code 2004, § 50-12; Comp. Ords. 1987, § 12.112)

Sec. 50-13. - Creation of lien.

Special assessments and all interest, penalties and charges thereon from the date of confirmation of the roll shall become a personal obligation to the city from the persons to whom they are assessed, and, until paid, shall be and remain a lien upon the property assessed, of the same character and effect as the lien created by general law for county and school taxes and by the city Charter for city taxes, and the lands upon which such amounts are a lien shall be subject to sale the same as are lands upon which delinquent city taxes constitute a lien. In addition to the procedures established in section 54-12 for the collection of special assessments levied against property, the city may recover such amounts in a suit in any court of competent jurisdiction. In any such suit, the confirmed special assessment roll upon which the special assessment concerned appears shall be prima facie evidence of the existence of the special assessment, of the regularity of the proceedings in making the special assessment and of the right of the city to recover judgment therefor.

(Code 2004, § 50-13; Comp. Ords. 1987, § 12.113)

Sec. 50-14. - Additional assessments; refunds.

The city clerk or his designee shall, within 60 days after the completion of each local public improvement, compile the actual cost thereof and certify such cost to the city commission. When any special assessment roll shall prove insufficient to meet the cost of the improvement for which

it was made, the city commission may make an additional pro rata assessment; provided, however, that no property shall be assessed in excess of benefits received. The excess by which any special assessment proves larger than the actual cost of the improvement and expenses incidental thereto may be placed in the general fund of the city if such excess is less than five percent of the total amount of the assessment roll, but should the assessment prove larger than such amount by five percent or more, the entire excess shall be refunded on a pro rata basis to the owners of the property assessed. Such refund shall be made by credit against future unpaid installments to the extent such installments then exist and the balance of such refund shall be in cash. No refunds may be made which contravene the provisions of outstanding evidence of indebtedness secured, in whole or in part, by such special assessment.

(Code 2004, § 50-14; Comp. Ords. 1987, § 12.114)

Sec. 50-15. - Additional procedures.

In any case where the provisions of this chapter may prove to be insufficient to fully carry out the making of any special assessment, the city commission shall provide by ordinance any additional steps or procedures required.

(Code 2004, § 50-15; Comp. Ords. 1987, § 12.115)

Sec. 50-16. - Reassessment for benefits.

Whenever the city commission shall deem any special assessment invalid or defective for any reason whatsoever, or if any court of competent jurisdiction shall have adjudged such assessment to be illegal for any reason whatsoever, in whole or in part, the city commission shall have the power to cause a new assessment to be made for the same purpose for which the former assessment was made, whether the improvement, or any part thereof, has been completed and whether or not any part of the assessment has been collected. All proceedings on such reassessment and for the collection thereof shall be made in the manner as provided for the original assessment. If any portion of the original assessment shall have been collected and not refunded, it shall be applied upon the reassessment and the reassessment shall, to that extent, be deemed satisfied. If more than the amount reassessed shall have been collected, the balance shall be refunded to the person making such payment.

(Code 2004, § 50-16; Comp. Ords. 1987, § 12.118)

Sec. 50-17. - Combination of projects.

The city commission may combine several districts into one project for the purpose of effecting a savings in the costs; provided, however, that for each district, there shall be established separate funds and accounts to cover the cost thereof.

(Code 2004, § 50-17; Comp. Ords. 1987, § 12.119)

Sec. 50-18. - Reserved.

Editor's note— This section pertaining to postponement of payment due to impoverishment was deleted. It was derived from Comp. Ords. 1987, § 12.120 and Code 2004, § 50-18.

Sec. 50-19. - Single lot special assessments.

(a) Report to commission. When the city incurs an expense for or in respect to any single lot or parcel, which expense is chargeable against the lot or parcel pursuant to law and is not otherwise to be prorated among several lots or parcels in a special assessment district, the amount of labor and material, or any other applicable expense, with a description of the lot or parcel for which the expense was incurred, and the name of the owner, if known, shall be reported to the city commission.

(b) Determination of city commission. After reviewing the report, the city commission may determine by resolution what amount or part of such expense will be charged and the premises upon which the charge will be levied as a special assessment. By resolution, the city commission will determine the number of installments in which the assessment may be paid, determine the rate of interest to be charged, designate the premises upon which the special assessment may be levied and direct the preparation of a special assessment roll in accordance with the city commission's determination. As the city commission deems expedient, it may require that notice of the assessments be given to each owner of or party in interest in the property to be assessed whose name appears upon the last local tax assessment records, by mailing by first-class mail addressed to such owner or party at the address shown on the tax records which notice shall also advise the owner or party in interest of any hearing scheduled pursuant to subsection (d) of this section.

(c)

Certificate of roll. When the assessment roll has been completed, it shall be filed with the city clerk who will present it to the city commission.

(d) Resolution; notice of hearing. After the special assessment roll is filed in the office of the city clerk, the city commission shall, by resolution, fix the time and place when it will review the roll, which meeting shall not be less than ten days after notice of the time and place has been mailed to the owner of or party in interest in the property to be assessed, whose name appears on the last city tax assessment records in accordance with state law.

(e) Objections to roll. Any person deeming himself aggrieved by the special assessment roll may file his objections and protest in writing with the city clerk at or prior to the time of hearing, which objections shall specify how he is aggrieved. If the objections are timely and properly filed, the objecting person's appearance in person is not required at the hearing.

(f) Review of roll. The city commission shall meet and review the special assessment roll at the time and place appointed or an adjourned date and shall consider any objections. The city commission may correct the roll as to any assessment or description of any lot or parcel of land or other errors. Any changes made in the roll shall be noted in the minutes.

(g) Confirmation of roll. After the hearing, the city commission may confirm such special assessment roll, with any corrections that were made, and the city clerk shall endorse the date of confirmation and, upon confirmation, the roll shall be final and conclusive.

(Code 2004, § 50-19; Ord. No. 5-08, § 1, 3-28-2008)

EXHIBIT I

OFFICE OF THE CITY CLERK

AGENDA: SEPTEMBER 7, 2004 CITY OF KENTWOOD COMMISSION MEETING

1. Call meeting to order at 7:30 P.M.

2. Invocation by Rev. Joe Knight of Grand Rapids International Fellowship.

3. Pledge of Allegiance to the Flag (Coughlin).

4. Roll Call: Brinks, Brown, Clanton, Coughlin, Cummings, McGookey, and Mayor Root.

   Excuse Commissioner Brown with notification.

5. Approve agenda.

6. Acknowledge visitors and those wishing to speak to non-agenda items.

7. Consent agenda (roll call vote).
   a. Approve Findings of Fact for rezoning of 5 acres from R1-C Single Family Residential to C-4 Office on the east side of Walma, south of 44th Street for 44th and Walma Office Park.
   b. Approve Findings of Fact for approval of a site plan for a Site Condominium Office Development on the east side of Walma, south of 44th Street for 44th and Walma Office Park.
   c. Approve Findings of Fact for rezoning of 25 acres from R1-C Single Family Residential to RPUD-1 High Density Residential Planned Unit Development on the east side of Walma, south of 44th Street for Walma Avenue Condominiums.
   d. Approve Findings of Fact for approval of the Preliminary Site Plan for a Planned Unit Development on the east side of Walma, south of 44th Street for the Walma Avenue Condominiums.
   e. Receive and file Career Summary from Gordon Start.
   f. Approve purchase of a replacement Special Response and Command Vehicle for the Police Department at a not to exceed cost of $87,000.00 with funds from the Property and Building Fund and Drug Forfeiture Fund. (Finance Comm.)
   g. Approve purchase of a fire engine under a 2002 contract with Toyne, Inc. and to equip the engine at a total cost of $310,050.00 with funds from the Fire Department budget. (Finance Comm.)

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Agenda for September 7, 2004 City of Kentwood Commission Meeting

7. Consent agenda – Con't.
   - h. Authorize Mayor to contract with Ron Anger Excavating to repair a culvert and install a guardrail on Morningside Drive at a total cost of $16,000.00 with funds from the Drain Fund. (Finance Comm.)
   - i. Approve the expansion of Phase 2 of the 44th Street median improvement project by authorizing the construction of additional median landscaping from Applewood to Breton with funds from the existing MDOT Grant and authorizing the Mayor to contract for the expenditure of an additional $10,600.00 for landscaping and professional fees with funds from the Major Streets Fund. (Finance Comm.)
   - j. Receive and file minutes of the Finance Committee Meeting held on August 19, 2004.
   - k. Res. -04 to set an October 5, 2004 public hearing date to establish an Industrial Development District in the City of Kentwood for Lack's Enterprises, Inc. generally located northwest of 52nd Street and Broadmoor Avenue, SE; under Act 198.
   - l. Approve request for carnival permit and waive license fee and cash deposit for the Celebrate Kentwood event on September 11, 2004 at the Bowen Station site off of Bowen Blvd. just south of 44th Street.
   - m. City Payables.

8. Approve minutes of the regular City Commission Meeting held on August 17, 2004 as distributed.

9. Presentations and Proclamations.

10. Communications and Petitions.
    - a. Approve Voluntary Special Assessment Development Agreements with Holland Home and 44th/Shaffer LLC for the Pfeiffer Woods Drive project. (voice vote)

11. Public Hearings.
    - a. Res. -04 to approve an application for an Industrial Facilities Exemption Certificate in the City of Kentwood for Monroe, Inc. located at 4549 – 40th Street, SE; under Act 198. (roll call vote)
    - b. Res. -04 to approve an application for an Industrial Facilities Exemption Certificate in the City of Kentwood for Monroe, Inc. located at 4675 – 40th Street, SE; under Act 198. (roll call vote)
    - c. Res. -04 to approve an application for an Industrial Facilities Exemption Certificate in the City of Kentwood for Monroe, Inc. located at 4707 – 40th Street, SE; under Act 198. (roll call vote)

Agenda for September 7, 2004 City of Kentwood Commission Meeting

11. Public Hearings – Con't.
    d. Res. -04 to approve an application for an Industrial Facilities Exemption Certificate in the City of Kentwood for MacDonald's Industrial Products, Inc. located at 4242 – 44th Street, SE; under Act 198. (roll call vote)

    e. Res. -04 to approve an application for an Industrial Facilities Exemption Certificate in the City of Kentwood for Dynaflex Corporation located at 4480 – 44th Street, SE; under Act 198. (roll call vote)

    f. Res. -04 to approve an application for an Industrial Facilities Exemption Certificate in the City of Kentwood for Advance Packaging Corporation located at 4450 – 36th Street, SE; under Act 198. (roll call vote)

    g. (Resolution #5) To approve the Special Assessment Rolls for Pfeiffer Woods Drive (Breton North Special Assessment District). (roll call vote)

    h. (Resolution #5) To approve the Special Assessment Rolls for Pfeiffer Woods Drive (Ravines Special Assessment District). (roll call vote)

    i. Approve Preliminary Plat and Final Site Plan for a Planned Unit Development Phase for the Wildflower Creek PUD-Phase I project located west of East Paris Avenue, north of 52nd Street. (roll call vote)

    j. Approve Preliminary Site Condominium Development Plan for the Cobblestone Planned Unit Development located on the east side of Shaffer, south of 32nd Street. (roll call vote)

12. Report of Standing Committees.

13. Other Committees.

14. Bids.
    a. Bids for truck bodies and accessories for Public Works Department. (voice vote)
    b. Bids for liquid Sodium Chloride for Public Works Department. (voice vote)
    c. Bids for sewer lining for Public Works Department. (voice vote)
    d. Bids for relocation of equipment in water tower buildings for Public Works Department. (voice vote)

Agenda for September 7, 2004 City of Kentwood Commission Meeting

15. Resolutions.
    a. Res, -04 to authorize a change to the Consumers Energy Standard Streetlighting Contract to convert all existing incandescent streetlights in the City of Kentwood to 100 Watt High Pressure Sodium lights. (roll call vote)

16. Ordinances.

17. Appointments and Resignations.

18. Bills.

19. Comments of Commissioners and Mayor.

20. Adjournment.

Mary Bremer
Deputy City Clerk

EXHIBIT J

OFFICE OF THE CITY CLERK

APPROVED MINUTES OF THE REGULAR MEETING OF THE KENTWOOD CITY COMMISSION HELD SEPTEMBER 7, 2004

Mayor Richard Root called the meeting to order at 7:40 P.M.

Reverend Joe Knight of Grand Rapids International Fellowship gave the invocation.

Commissioner Coughlin led the Pledge of Allegiance to the Flag.

Roll Call: Present: Commissioners: Sharon R. Brinks, Richard Clanton, Robert Coughlin, Frank Cummings, Jane McGookey and Mayor Richard Root.

Motion by Coughlin, supported by McGookey, to excuse Commissioner Brown with prior notification.

Motion Carried.

Staff Present: Fire Chief Jim Carr, Finance Director Tom Chase, Economic Development Planner Lisa Golder, City Clerk Dan Kasunic, Assistant Planner Debargha Sengupta, Fire Department Administrative Assistant Nancy Shane, City Attorney Jeffrey Sluggett, Assistant to the Mayor Keith Van Beek, Police Captain Randy Williamson and Public Works Director Ron Woods.

Twenty-five (25) citizens and members of the news media attended the meeting.

Motion by Cummings, supported by McGookey, to **approve the agenda.**

Motion Carried.

CONSENT AGENDA:

Motion by Clanton, supported by Coughlin, to approve the Consent Agenda as follows:

A. Approve Findings of Fact for rezoning of 5 acres from R1-C Single Family Residential to C-4 Office on the east side of Walma, south of 44th Street for 44th and Walma Office Park.
B. Approve Findings of Fact for approval of a site plan for the Site Condominium Office Development on the east side of Walma, south of 44th Street for 44th and Walma Office Park.
C. Approve Findings of Fact for rezoning of 25 acres from R1-C Single Family Residential to RPUD-1 High Density Residential Planned Unit Development on the east side of Walma, south of 44th Street for Walma Avenue Condominiums.
D. Approve Findings of Fact for approval of the Preliminary Site Plan for a Planned Unit Development on the east side of Walma, south of 44th Street for the Walma Avenue Condominiums.
E. Receive and file Career Summary from Gordon Start.

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City Commission Meeting
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F. Approve purchase of a replacement Special Response and Command Vehicle for the Police Department at a not to exceed cost of $87,000.00 with funds from the Property and Building Fund and Drug Forfeiture Fund.
G. Approve purchase of a Fire Engine under a 2002 contract with Toyne, Inc. and to equip the engine at a total cost of $310,050.00 with funds from the Fire Department budget.
H. Authorize the Mayor to contract with Ron Anger Excavating to repair a culvert and install a guardrail on Morningside Drive at a cost of $16,000.00 with funds from the Drain Fund.
I. Approve the expansion of Phase 2 of the 44th Street median landscaping from Applewood to Breton with funds from existing MDOT Grant and authorizing the Mayor to contract for the expenditure of an additional $10,600.00 for landscaping and professional fees with funds from the Major Streets Fund.
J. Receive and file minutes of the Finance Committee Meeting held on August 19, 2004.
K. Resolution 88–04 to set an October 5, 2004 public hearing date to establish an Industrial Development District in the City of Kentwood for Lack's Enterprises, Inc. generally located northwest of 52nd Street and Broadmoor Avenue, SE; under Act 198.
L. Approve request for carnival permit and waive license fee and cash deposit for the Celebrate Kentwood event on September 11, 2004 at the Bowen Station site off of Bowen Blvd. just south of 44th Street.
M. Payables for the City $1,132,812.57, Roads $185,537.20, Water/Sewer of $9,844.40, Taxes $10,000,416.12 totaling $11,328,610.29.

Roll Call Vote: Yeas: All. Nays: None. Absent: Brown.

Motion Carried.
Resolution Adopted.

Motion by Clanton, supported by Coughlin, to **approve the minutes** of the August 17, 2004 City Commission Meeting.

Motion Carried.

COMMUNICATIONS AND PETITIONS:

APPROVE VOLUNTARY SPECIAL ASSESSMENT DEVELOPMENT AGREEMENTS WITH HOLLAND HOMES AND 44TH/SHAFFER LLC FOR PFEIFFER WOODS DRIVE PROJECT.

Motion by Brinks, supported by Coughlin, to authorize the Mayor and City Clerk to execute on behalf of the City of Kentwood the Voluntary Special Assessment Development Agreements with Holland Home and 44th/Shaffer LLC, and to waive purchasing requirements to authorize purchasing of construction through a limited bidding process conducted by 44th/Shaffer LLC's and Holland Home's engineers and overseen by the City's Purchasing Agent on the basis that special circumstances apply; namely: a) that this unique opportunity provides a means of constructing ahead of schedule an important roadway called for in the City's Master Plan; b) that this roadway

can be constructed by a limited and manageable number of private developers to City specifications and will eventually become dedicated to the City; c) that the bidding process that was employed provided for competitive bids which assure that the best value was obtained and that public funds are well used; d) that certain economies of scale are uniquely presented given the small number of developers involved and the close collaboration of their efforts; and e) that the City Commission finds that proceeding in this manner will best serve the public good.

Motion Carried.

HEARINGS:

Monroe, Inc.

Mayor Root opened the public hearing to approve the applications for Industrial Facilities Exemption Certificates in the City of Kentwood for Monroe, Inc. located at 4549, 4675 and 4707-40th Street, SE; under Act 198.

Following a brief presentation by Economic Development Planner Golder:

Motion by Coughlin, supported by Brinks, to close the public hearing.

Motion Carried.

ADOPT RESOLUTION 89–04 TO APPROVE AN APPLICATION FOR AN INDUSTRIAL FACILITIES EXEMPTION CERTIFICATE IN THE CITY OF KENTWOOD FOR MONROE, INC.

Motion by McGookey, supported by Coughlin, to adopt Resolution 89–04 to approve an application for an Industrial Facilities Exemption Certificate in the City of Kentwood for Monroe, Inc. located at 4549-40th Street, SE; under Act 198.

Roll Call Vote: Yeas: All. Nays: None. Absent: Brown.

Resolution Adopted.

ADOPT RESOLUTION 90–04 TO APPROVE AN APPLICATION FOR AN INDUSTRIAL FACILITIES EXEMPTION CERTIFICATE IN THE CITY OF KENTWOOD FOR MONROE, INC.

Motion by McGookey, supported by Coughlin, to adopt Resolution 90–04 to approve an application for an Industrial Facilities Exemption Certificate in the City of Kentwood for Monroe, Inc. located at 4675-40th Street, SE; under Act 198.

Roll Call Vote: Yeas: All. Nays: None. Absent: Brown.

Resolution Adopted.

ADOPT RESOLUTION 91–04 TO APPROVE AN APPLICATION FOR AN INDUSTRIAL FACILITIES EXEMPTION CERTIFICATE IN THE CITY OF KENTWOOD FOR MONROE, INC.

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Motion by McGookey, supported by Coughlin, to adopt Resolution 91–04 to approve an application for an Industrial Facilities Exemption Certificate in the City of Kentwood for Monroe, Inc. located at 4707-40th Street, SE; under Act 198.

Roll Call Vote: Yeas: All. Nays: None. Absent: Brown.

Resolution Adopted.

MacDonald's Industrial Products.
Mayor Root opened the public hearing to approve an application for an Industrial Facilities Exemption Certificate in the City of Kentwood for MacDonald's Industrial Products, Inc. located at 4242-44th Street, SE; under Act 198.

Following a brief presentation by Economic Development Planner Golder and President of MacDonald Rod Adams:

Motion by Brinks, supported by Coughlin, to close the public hearing.

Motion Carried.

ADOPT RESOLUTION 92–04 TO APPROVE AN APPLICATION FOR AN INDUSTRIAL FACILITIES EXEMPTION CERTIFICATE IN THE CITY OF KENTWOOD FOR MACDONALD'S INDUSTRIAL PRODUCTS, INC.
Motion by Clanton, supported by Coughlin, to adopt Resolution 92–04 to approve an application for an Industrial Facilities Exemption Certificate in the City of Kentwood for MacDonald's Industrial Products, Inc. located at 4242-44th Street, SE; under Act 198.

Roll Call Vote: Yeas: All. Nays: None. Absent: Brown.

Resolution Adopted.

Dynaflex Corporation.
Mayor Root opened the public hearing to approve an application for an Industrial Facilities Exemption Certificate in the City of Kentwood for Dynaflex Corporation located at 4480-44th Street, SE; under Act 198.

Following a brief presentation by Economic Development Planner Golder:

Motion by Coughlin, supported by McGookey, to close the public hearing.

Motion Carried.

ADOPT RESOLUTION 93–04 TO APPROVE AN APPLICATION FOR AN INDUSTRIAL FACILITIES EXEMPTION CERTIFICATE IN THE CITY OF KENTWOOD FOR DYNAFLEX COROPORATION.
Motion by Brinks, supported by Clanton, to adopt Resolution 93–04 to approve an application for an Industrial Facilities Exemption Certificate in the City of Kentwood for

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Dynaflex Corporation located at 4480-44th Street, SE; under Act 198 subject to modifying the condition that the State of Michigan is the venue for agreement.

Roll Call Vote: Yeas: All. Nays: None. Absent: Brown.

Resolution Adopted.

Advance Packaging Corporation.
Mayor Root opened the public hearing to approve an application for an Industrial Facilities Exemption Certificate in the City of Kentwood for Advance Packaging Corporation located at 4450-36th Street, SE; under Act 198.

Following a brief presentation by Economic Development Planner Golder and President of Advance Packaging Don Crossley:

Motion by Brinks, supported by Coughlin, to close the public hearing.

Motion Carried.

ADOPT RESOLUTION 94–04 TO APPROVE AN APPLICATION FOR AN INDUSTRIAL FACILITIES EXEMPTION CERTIFICATE IN THE CITY OF KENTWOOD FOR ADVANCE PACKAGING CORPORATION.
Motion by McGookey, supported by Clanton, to adopt Resolution 94–04 to approve an application for an Industrial Facilities Exemption Certificate in the City of Kentwood for Advance Packaging Corporation located at 4450-36th Street, SE; under Act 198.

Roll Call Vote: Yeas: All. Nays: None. Absent: Brown.

Resolution Adopted.

Pfeiffer Woods Drive.
Mayor Root opened the public hearing to approve the Special Assessment Rolls for Pfeiffer Woods Drive for Breton North Special Assessment District and Ravines Special Assessment Districts.

Motion by Coughlin, supported by Cummings, to close the public hearing.

Motion Carried.

ADOPT RESOLUTION 95–04 TO APPROVE THE SPECIAL ASSESSMENT ROLLS FOR PFEIFFER WOODS DRIVE (BRETON NORTH SPECIAL ASSESSMENT DISTRICT) (RESOLUTION #5).
Motion by McGookey, supported by Coughlin, to adopt Resolution 95–04 to approve the Special Assessment Rolls for Pfeiffer Woods Drive (Breton North Special Assessment District Resolution #5)

Roll Call Vote: Yeas: All. Nays: None. Absent: Brown.

Resolution Adopted.

City Commission Meeting
September 7, 2004

ADOPT RESOLUTION 96-04 TO APPROVE THE SPECIAL ASSESSMENT ROLLS FOR PFEIFFER WOODS DRIVE (RAVINE SPECIAL ASSESSMENT DISTRICT) (RESOLUTION #5).

Motion by McGookey, supported by Coughlin, to adopt Resolution 96-04 to approve the Special Assessment Rolls for Pfeiffer Woods Drive (Ravine Special Assessment District Resolution #5)

Roll Call Vote: Yeas: All. Nays: None. Absent: Brown.

Resolution Adopted.

Wildflower Creek PUD-Phase 1.

Mayor Root opened the public hearing to approve the Preliminary Plat and Final Site Plan for the Planned Unit Development Phase for the Wildflower Creek PUD-Phase 1 project located west of East Paris Avenue, north of 52nd Street.

Following a brief presentation by Economic Development Planner Golder and Rick Polaski Representatives of Windy Ridge and Bailey's Grove Homeowners Associations spoke of their concerns with traffic safety, trees for lot 51 and the right to retain property for neighborhood sign by deed. The Commission acknowledged the developer and homeowner may be able to settle some concerns and recessed for them to work out some issues.

The Commission took a ten minute recess.

Motion by Brinks, supported by McGookey, to close the public hearing.

Motion Carried.

TABLE DECISION ON THE PRELIMINARY PLAT AND FINAL SITE PLAN FOR A PLANNED UNIT DEVELOPMENT PHASE FOR THE WILDFLOWER CREEK PUD-PHASE 1 PROJECT UNTIL CITY COMMISSION MEETING SEPTEMBER 21, 2004.

Motion by Brinks, supported by Coughlin, to table decision on the Preliminary Plat and Final Site Plan for a Planned Unit Development Phase for Wildflower Creek PUD-Phase 1 project located west of East Paris Avenue, north of 52nd Street until the September 21, 2004 City Commission Meeting.

Motion Carried.
McGookey dissenting.

Cobblestone PUD (Ravines).

Mayor Root opened the public hearing to approve a Preliminary Site Condominium Development Plan for the Cobblestone Planned Unit Development located on the east side of Shaffer, south of 32nd Street.

Following a brief presentation by Economic Development Planner Golder:
Motion by Brinks, supported by McGookey, to close the public hearing.

City Commission Meeting
September 7, 2004

Motion Carried.

APPROVE A PRELIMINARY SITE CONDOMINIUM DEVELOPMENT PLAN FOR COBBLESTONE PLANNED UNIT DEVELOPMENT.

Motion by McGookey, supported by Cummings, to approve a Preliminary Site Condominium Development Plan for Cobblestone Planned Unit Development located on the west side of Shaffer, south of 32nd Street based on the Planning Commission's Findings of Fact dated August 24, 2004 with conditions 1 through 3 and basis point 1.

Motion Carried.

BIDS:

BIDS FOR TRUCK BODIES AND ACCESSORIES FOR PUBLIC WORKS DEPARTMENT.

Motion by McGookey, supported by Clanton, to purchase dump bodies, salters, blades and accessories for plow trucks from Allied Truck Equipment, at a total cost of $87,363.00 and a 2-yard dump body from Allied Truck Equipment at a total cost of $10,326.00 totaling $97,689.00 with funds from the Public Works Department budget.

Motion Carried.

BIDS FOR LIQUID SODIUM CHLORIDE FOR PUBLIC WORKS DEPARTMENT.

Public Works Director Woods advised the Commission that numbers in their addition were transposed; the correct amount will be $14,560.00

Motion by Cummings, supported by McGookey, to piggy back onto the Kent County Road Commission bid and to purchase up to 40,000 gallons of 26% Liquid Sodium Chloride for road maintenance from Great Lakes Chloride, Inc. at a cost of $14,560.00 with funds from Streets Fund.

Motion Carried.

BIDS FOR SEWER LINING FOR PUBLIC WORKS DEPARTMENT.

Public Works Director Woods explained the contingency is in anticipation of any difficultly in accessing the project.

Motion by Cummings, supported by Coughlin, to authorize staff to contract with American Water Services for the lining of approximately 889 feet of sewer line at a total cost not to exceed $38,000.00, including contingencies, by piggy backing onto Kent County's Department of Public Works contract with funds from the Sewer Fund.

Motion Carried.

BIDS FOR RELOCATION OF EQUIPMENT LOCATED IN THE WATER TOWER BUILDING FOR PUBLIC WORKS DEPARTMENT.

City Commission Meeting
September 7, 2004

Motion by Clanton, supported by Brinks, to authorize a contract with Allstate Electric at a total cost of $24,785.00 for the relocation of equipment in the buildings beneath the City's one million gallon water tank and associated site work with funds from the Water Fund.

Motion Carried.

RESOLUTIONS:

ADOPT RESOLUTION 97–04 TO AUTHORIZE A CHANGE TO THE CONSUMERS ENERGY STANDARD STREETLIGHTING CONTRACT TO CONVERT ALL EXISTING INCANDESCENT STREETLIGHTS TO 100 WATT HIGH PRESSURE SODIUM LIGHTS.

Public Works Director Woods informed the Commission there are approximately 100 incandescent bulbs out of over 2,400 streetlights that will be replaced. These new bulbs will increase the output of light by 40% and decrease operational cost by 8%.

Motion by McGookey, supported by Cummings, to adopt Resolution 97-04 to authorize a change to the Consumers Energy Standard Streetlighting Contract to convert all existing incandescent streetlights in the City of Kentwood to 100 Watt High Pressure Sodium lights.

Roll Call Vote: Yeas: All. Nays: None. Absent: Brown.

Resolution Adopted.

COMMENTS OF COMMISSIONERS AND MAYOR:

Mayor Root-Spoke on City Engineer Gordon Start's retirement and of his excellence in his work and his legacy from which future generation will benefit. He reminded the Commission of the "Celebrate Kentwood" festivities that will held on September 11th. The Mayor mentioned the Code books have arrived and he informed the Commission he will not be able to attend the Safety Committee meeting September 14th or the Finance Committee meeting the 16th.

Commissioner Brinks-Will not be at the City Commission meeting on September 21st.

Commissioner McGookey-Stated she will be having surgery on October 13th and will not be available for any meetings for three weeks. She noted the new material for road resurfacing was not (in her opinion) was not any better than the old way.

Commissioner Clanton-Stated he will not be available for the Finance Committee meeting on the 16th. He mention May 6th will be the Regional Michigan Municipal League meeting in Grandville and hoped for good attendance and the business survey has been completed and will be presented at the September 21st City Commission meeting. He stated he may be able to attend the Finance Committee meeting.

City Commission Meeting
September 7, 2004

Commissioner Coughlin-Noted he will be unable to attend the Ordinance Committee meeting on September 28th.

Assistant to the Mayor Van Beek-Noted Planning Commissioner Schroder's father passed away over the weekend. Also on October 2nd Gaines Township & MDOT will be having a bike ride on the new M-6 unopened section.

The meeting was adjourned at 9:37 P.M.

Dan Kasunic
City Clerk

Richard L. Root
Mayor

THIS DOCUMENT HAS VOID PANTOGRAPH IN PRINT. VISIBLE FLUORESCENT FIBERS. VIEW UNDER BLACK LIGHT.

PLUNKETT COONEY

ATTORNEYS & COUNSELORS AT LAW

325 E. Grand River, Suite 250
East Lansing, MI 48823

CITY'S MOTION FOR SUMMARY DISPOSITION

PNC Bank, N.A. 670
Ohio
6-12/410

LN 500003309

DATE

6/17/2019

AMOUNT

**********$20.00

PAY Twenty and 00/100 Dollars

Req: 536698 Vendor: PLUNKETT COONEY, CLIENT EXPENSE ACCOUNT
(2) SIGNATURES REQUIRED OVER $5000.00

TO THE ORDER OF Kent County Circuit Court

MP

MP

AUTHORIZED SIGNATURE

DOCUMENT CONTAINS CUSTOMER'S LOGO ON BACK. HOLD AT AN ANGLE TO VIEW.

⑈500003309⑈ ⑆041203895⑆ 4245724486⑈

PLUNKETT COONEY 325 E. Grand River, Suite 250 • East Lansing, MI 48823 LN 500003309

PLUNKETT COONEY 6/17/2019 REQ: 536698 Check Number: 500003309

1046

061719 6/17/2019 00528 $20.00

VENDOR: Kent County Circuit Court - INVOICE#: 061719 - DATE: 6/17/2019 - Motion fee - File No: 00560.70941 - ATTY: 0109

Check Total: $20.00

PLUNKETT COONEY 325 E. Grand River, Suite 250 • East Lansing, MI 48823 LN 500003309

Judge GEORGE JAY QUIST

No. 16-11820-CH

[XX] CIVIL
[ ] CRIMINAL
[ ] DIVORCE

KENT COUNTY CIRCUIT COURT

PETERSEN FINANCIAL LLC

Plaintiff

VS.

CITY OF KENTWOOD and
KENT COUNTY TREASURER

Defendant

NOTICE OF MOTION

To the Clerk,
Please place this on Motion Calendar for
Friday, July 19, 2019
at 9 a.m. Motion day

Yours,

David K. Otis

Attorney for ~~City of Kentwood~~

NATURE OF MOTION Summary Disposition

Donald Visser
Attorney for Plaintiff
David K. Otis for Kentwood
Linda Howell for Kent County
Attorney for Defendant

KENT COUNTY CLERK
~~333 Monroe Ave., N.W.~~ 180 Ottawa Avenue
Grand Rapids, MI 49503
~~(616) 336-3679~~ 456-3402
232-5480

CITY'S MOTION FOR SUMMARY DISPOSITION

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

* * * * *

PETERSEN FINANCIAL LLC,

Plaintiff,

-vs-

CITY OF KENTWOOD and
KENT COUNTY TREASURER,

Defendants.

Case No. 16-11820-CH

HON. GEORGE JAY QUIST
Circuit Court Judge

Donald R. Visser (P27961)
VISSER AND ASSOCIATES, PLLC
Attorneys for Plaintiff
2480 - 44th Street, SE - Ste. 150
Kentwood, MI 49512
(616) 531-9860

David K. Otis (P31627)
PLUNKETT COONEY
Attorneys for Defendant City of Kentwood
325 E. Grand River Ave., Ste. 250
East Lansing, MI 48823
(517) 324-5612

Craig A. Paull (P76605)
Linda S. Howell (P44006)
Kent County Corporate Counsel
Attorney for Kent County Treasurer
300 Monroe, NW - Ste. 303
Grand Rapids, MI 49503
(616) 632-7594

PLAINTIFF'S RENEWED MOTION FOR SUMMARY DISPOSITION

COMES NOW the Plaintiff, by and through counsel, and requests this Court to issue summary disposition pursuant to MCR 2.116(C)9 and (C)(10). In support of this motion, Plaintiff states as follows:

1. Plaintiff filed this action on or about December 22, 2016, to resolve title issues relating to property (the "Subject Property") purchased by Plaintiff at a tax foreclosure sale in November, 2015, pursuant to the General Property Tax Act (GPTA), MCL 211.1 *et seq.*

2. As discussed in Plaintiff's brief in support of this motion, there are three separate asserted "assessments" on the Subject Property that are in issue:

A. The DAA.

A Deferred Assessment Agreement was entered into on March 18, 2004, in the total amount of $327,004.68, affecting Plaintiff's property and others.

The DAA had a termination date of December 31, 2006.

B. Landscape/Irrigation Agreement (LIA).

On October 26, 2005, the City entered into a Landscape Irrigation Agreement affecting Plaintiff's property and others which purported to place an assessment and recorded it initially on January 26, 2006.

On January 17, 2006, the City adopted Resolution no. 8-06, which purported to place an assessment in the amount of $160,899.15. The purported Resolution had an 8-year maximum term -- or January 17, 2014.

C. The Voluntary Special Assessment/Development Agreement (VSADA).

After extensive negotiation with the developer, the City and the developer signed the VSADA on September 7, 2004. Later in the day, the City passed Resolution no. 8-06, purporting to make the agreed-upon obligation a special assessment. Both the Agreement and the Resolution had a maximum 10-year payback, resulting in the last possible due date of September 7, 2014. The VSADA was recorded on September 17, 2004.

3. The property taxes and asserted special assessments became delinquent, and the property was forfeited to the County Treasurer on March 1, 2015.

4. Pursuant to Section 78k of the General Property Tax Act, the purported assessments, whether by agreement or by assessment action, were extinguished.

5. Plaintiff previously filed a Motion for Summary Disposition which was not decided because the Court issued an Opinion and Order on July 7, 2017, indicating that it did not have jurisdiction of the issues presented in Plaintiff's Complaint, but rather that the Tax Tribunal had

such jurisdiction.

6. On November 20, 2018, in a published decision (see attached **Exhibit 1**), the Michigan Court of Appeals clarified the jurisdictional issues and remanded this matter to the trial court with the following findings:

(a) In regards to Count I and Count III (a deferred assessment agreement and the landscape irrigation agreement) some of the case was remanded to the circuit court "for entry of declaratory relief in favor of Plaintiff on those two counts…".

(b) "If the amended VSADA and resulting assessment are void or voidable, the language in MCL 211.78k(5)(c) excepting future assessment installments from extinguishment becomes irrelevant, because there is no assessment to enforce."

(Opinion, at Page 9).

7. Plaintiff incorporates by reference the allegations, arguments, and documents contained in Plaintiff's brief in support of this motion.

WHEREFORE, Plaintiff prays that this Court declare the DAA, the LIA, and the VSADA and all related assessments invalid as to Plaintiff's property and grant summary disposition to Plaintiff so that an Order may enter clearing these encumbrances from Plaintiff's title.

VISSER AND ASSOCIATES, PLLC

Dated: June 28, 2019

Donald R. Visser (P27961)
Attorneys for Plaintiff

PROOF OF SERVICE

A copy of this document was served upon all parties of record by electronic delivery and/or U.S. Mail on June 28, 2019, pursuant to MCR 2.107(C).

Kelly A. Eefsting

STATE OF MICHIGAN

COURT OF APPEALS

PETERSEN FINANCIAL LLC,

Plaintiff-Appellant,

v

CITY OF KENTWOOD and KENT COUNTY TREASURER,

Defendants-Appellees.

FOR PUBLICATION
November 20, 2018
9:10 a.m.

No. 339399
Kent Circuit Court
LC No. 16-011820-CH

Before: MURPHY, P.J., and O'CONNELL and BECKERING, JJ.

MURPHY, P.J.

Plaintiff appeals as of right the circuit court's order granting summary disposition in favor of defendants City of Kentwood (the city) and Kent County Treasurer (the county treasurer) in this action involving claims related to the impact of tax foreclosure proceedings on special assessment agreements entered into by the city, which assessments were payable in installments and had encumbered real property purchased by plaintiff at a tax foreclosure sale. Plaintiff maintained that the judgment of foreclosure extinguished all special assessments connected to the property. The circuit court determined that it lacked subject-matter jurisdiction with respect to four of the five counts in plaintiff's complaint, which sought declaratory relief regarding three of the underlying special assessment agreements, plus an amended version of one of those agreements. The court found that the Michigan Tax Tribunal (MTT) had exclusive jurisdiction over those four counts. The circuit court also summarily dismissed the fifth count of plaintiff's complaint that alleged slander of title predicated on special assessment liens and demands for payment that effectively clouded title. The court concluded that the city and the county treasurer were shielded by governmental immunity on the slander of title claim. We hold that the four counts dismissed for lack of subject-matter jurisdiction were within the jurisdiction of the circuit court, not the MTT, because they did not implicate the MTT's fact-finding purpose and expertise but solely presented questions of law. And, for reasons elaborated on below, we remand for entry of an order providing plaintiff with declaratory relief on two of the counts and

for further proceedings on the remaining two counts.[1] We further hold that plaintiff's argument that the circuit court erred in dismissing the slander of title count on the basis of governmental immunity is unavailing. Accordingly, we affirm in part and reverse and remand in part.

This case concerns real property located within the city. Starting in 2004, the city and the property owner, along with others, entered into various special assessment agreements relative to several infrastructure improvements that were to benefit the property for purposes of a planned unit development.[2] These agreements, which were recorded and involved the property owner making installment payments to the city, indicated that the contractual obligations contained therein constituted covenants that ran with the land and bound all successors in title. The city commission adopted multiple resolutions associated with the agreements and prepared and confirmed special assessment rolls for the improvements. Eventually, the property owner failed to pay the special assessments, a tax foreclosure action was commenced, a judgment of foreclosure was entered, the property owner failed to redeem the property or appeal the judgment, and title vested absolutely in the county treasurer, as the foreclosing governmental unit. Subsequently, at a tax foreclosure sale, the county treasurer conveyed the property to plaintiff pursuant to a quitclaim deed.

Over one year later, plaintiff filed its complaint against defendants, alleging that under the General Property Tax Act (GPTA), MCL 211.1 *et seq.*, its "purchase was free and clear from all liens except any future installments of special assessments." Plaintiff asserted that despite the fact that title by fee simple absolute was conveyed to plaintiff in the tax foreclosure sale, the city continued to cloud the property's title "by improperly attempting to revive past installments for special assessments as well as contractual obligations that were extinguished upon the final Judgment of Foreclosure." Plaintiff complained that defendants "wrongfully attempted to recoup past due special assessment installments and continue[d] to charge Plaintiff for the same." Plaintiff insisted that under the GPTA, all previously owed special assessment installments were extinguished by the judgment of foreclosure and that the county treasurer lacked the authority to deviate from the GPTA mandates.

As indicated earlier, the first four counts of plaintiff's complaint each sought declaratory relief with respect to a particular special assessment agreement. Count I pertained to a deferred assessment agreement, which, according to plaintiff, was scheduled to be paid off in full eight years prior to the tax foreclosure; therefore, any debt owed for unpaid installments was extinguished by the judgment of foreclosure. Count II concerned a voluntary special assessment/development agreement (VSADA), which plaintiff alleged was to be paid off within 10 years under the language of the special assessment roll, and which date had elapsed prior to the entry of the judgment of foreclosure. Therefore, any accrued debt for nonpayment was

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[1] The latter two counts ultimately concern the single question regarding the enforceability of the special assessment arising out of the amended version of one of the special assessment agreements.

[2] The property consisted of 300 acres, only a portion of which was ultimately purchased by plaintiff at the tax foreclosure sale.

extinguished by the foreclosure judgment. Count III regarded a landscape/irrigation agreement, and plaintiff alleged that the termination date was eight years from the confirmation of the special assessment roll and that the last scheduled date for an installment payment date had passed before the tax foreclosure proceedings. Thus, according to plaintiff, the debt owed on the unpaid balance was extinguished by the judgment of foreclosure. Count IV pertained to an amended VSADA,[3] presenting a somewhat different issue than that posed in the first three counts. The amended VSADA was not executed by the prior property owner, but was an agreement between the city and the county treasurer that was signed after title had vested with the county treasurer but before plaintiff acquired its interest. In Count IV, plaintiff alleged that "[t]here was no authority for the Defendants to enter into the [amended] . . . VSADA in an attempt to restore an assessment that had been voided by the GPTA." Plaintiff claimed that this agreement was not supported by any consideration and that it was against public policy. Finally, in regard to Count V, plaintiff alleged a cause of action for slander of title, seeking money damages. Plaintiff contended that defendants had maliciously and falsely continued to "assert that substantial special assessments exist on the Subject Property." Plaintiff maintained that defendants' "assertions have been published, as the installments claimed owing on the special assessments appear in title work, the public tax records, and in instruments recorded with the Kent County Register of Deeds." Plaintiff alleged that defendants' misrepresentations had rendered the property "unmarketable for its true value."

On competing motions for summary disposition, the circuit court, with respect to Counts I through IV, agreed with defendants' position that plaintiff was challenging the nature and imposition of the special assessments and, therefore, the MTT had exclusive jurisdiction over those counts. We note that the city, as confirmed in defendants' appellate brief, "was not seeking to collect the Deferred Assessment or the Landscape Irrigation Agreement[4] with respect to the Subject Property." The circuit court rejected all of plaintiff's arguments regarding subject-matter jurisdiction. The circuit court also proceeded to rule:

> Even if the court were persuaded that Plaintiff's claims fall within the GPTA, Plaintiff's position is fatally flawed. A foreclosure under the GPTA specifically states that it extinguishes all liens against the property, including any lien for unpaid taxes or special assessments, except future installments of special assessments. MCL 211.78k(5)(c).[5] The Defendants have stated, both on the

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[3] This was an amendment and extension of the agreement covered by Count II of plaintiff's complaint.

[4] These are the agreements referenced, respectively, in Counts I and III of plaintiff's complaint.

[5] We note that MCL 211.78k(5)(c) provides that a circuit court's final judgment of foreclosure shall specify, in part, as follows:

> That all liens against the property, including any lien for unpaid taxes or special assessments, except future installments of special assessments and liens recorded by this state or the foreclosing governmental unit pursuant to the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, are extinguished, if all forfeited delinquent taxes, interest, penalties,

> record and in brief form, that they are only pursuing collection of the Voluntary Special Assessment/Development Agreement installments referenced in Plaintiff's Count II. This assessment was amended after the foreclosure [see Count IV of plaintiff's complaint]. Moreover, it addresses future installments that will be collected until 2024. Therefore, the foreclosure sale does not operate to extinguish the installments.
>
> The court is also not persuaded by Plaintiff's claims that the assessment is actually a contract. As more full[y] discussed in subsection "a" of this opinion, the issue of whether the assessment is actually a contract is for the MTT to determine. However, the court notes that Plaintiff is not a party to the assessment/contract and likely lacks standing to challenge it. Additionally, the forming document states "the parties agree that, **to the extent not otherwise prohibited by law**, the jurisdiction and venue for any such dispute shall be solely with the state courts located in Kent County, Michigan." . . . As discussed above, the MTT has exclusive jurisdiction over this matter. A contract cannot establish or alter jurisdiction.

In regard to Count V, slander of title, the circuit court ruled that the claim constitutes a tort that is covered by governmental immunity and that none of the statutory exceptions to immunity applied. Accordingly, the circuit court denied plaintiff's motion for summary disposition and granted defendants' summary disposition motion under MCR 2.116(C)(4) and (7).

We review de novo a circuit court's ruling on a motion for summary disposition. *Winkler v Marist Fathers of Detroit, Inc*, 500 Mich 327, 333; 901 NW2d 566 (2017). "We likewise review de novo questions of subject matter jurisdiction[.]" *Id.* "Further, the determination regarding the applicability of governmental immunity and a statutory exception to governmental immunity is a question of law that is also subject to review de novo." *Snead v John Carlo, Inc*, 294 Mich App 343, 354; 813 NW2d 294 (2011). Under MCR 2.116(C)(4), summary disposition is warranted when "[t]he court lacks jurisdiction of the subject matter." See also *Winkler*, 500 Mich at 333. Under MCR 2.116(C)(7), summary disposition is appropriate when a claim is barred based on "immunity granted by law." See also *Snead*, 294 Mich App at 354.

Subject-matter jurisdiction concerns the right of an adjudicative body to exercise judicial power over a class of cases; not the particular case before it, but rather the abstract power to try a case of the kind or character of the one pending. *Winkler*, 500 Mich at 333. The question of jurisdiction is not dependent on the truth or falsity of the allegations, but upon their nature. *Wayne Co v AFSCME Local 3317*, __ Mich App __, __; __ NW2d __ (2018); slip op at 11. The

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> and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section.

inquiry into subject-matter jurisdiction is determinable at the commencement of a case, not its conclusion. *Id.* There is a vast difference between want of jurisdiction, in which case a court has no power whatsoever to adjudicate the matter, and an error in the exercise of undoubted jurisdiction, in which case the court's action is not void, even though it may be subject to direct attack on appeal. *Id.*

"Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state." MCL 600.605; see also Const 1963, art 6, § 13 ("The circuit court shall have original jurisdiction in all matters not prohibited by law[.]").[6] With respect to the MTT, it has "exclusive and original jurisdiction" over "[a] proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, *special assessments*, allocation, or equalization, under the property tax laws of this state." MCL 205.731(a) (emphasis added). In *Hillsdale Co Senior Servs, Inc v Hillsdale Co*, 494 Mich 46, 53; 832 NW2d 728 (2013), our Supreme Court extrapolated four elements from MCL 205.731(a), observing:

> Thus, for the tribunal to have jurisdiction pursuant to MCL 205.731(a), four elements must be present: (1) a proceeding for direct review of a final decision, finding, ruling, determination, or order; (2) of an agency; (3) relating to an assessment, valuation, rate, special assessment, allocation, or equalization; (4) under the property tax laws. Where all such elements are present, the tribunal's jurisdiction is both original and exclusive.

"The divestiture of jurisdiction from the circuit court is an extreme undertaking[;]" however, "the Tax Tribunal Act[, MCL 205.701 *et seq.*,] clearly evidences a legislative intention

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[6] MCL 600.601(1) provides:

> The circuit court has the power and jurisdiction that is any of the following:
>
> (a) Possessed by courts of record at the common law, as altered by the state constitution of 1963, the laws of this state, and the rules of the supreme court.
>
> (b) Possessed by courts and judges in chancery in England on March 1, 1847, as altered by the state constitution of 1963, the laws of this state, and the rules of the supreme court.
>
> (c) Prescribed by the rules of the supreme court.

that the circuit court not have jurisdiction over matters within the tribunal's exclusive jurisdiction." *Wikman v City of Novi*, 413 Mich 617, 645; 322 NW2d 103 (1982).

MCL 205.731(a) expressly references "special assessments," and 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, 500; 502 NW2d 299 (1993). "In contrast to a tax, a special assessment is imposed to defray the costs of specific local improvements, rather than to raise revenue for general governmental purposes." *Id.* The Tax Tribunal Act grants the MTT "exclusive jurisdiction over . . . [a] proceeding seeking direct review of the governmental unit's decision concerning a special assessment for a public improvement." *Wikman*, 413 Mich at 626.

We conclude that the particular allegations in Counts I through III of plaintiff's complaint squarely presented a legal question regarding the effect of a tax foreclosure judgment on overdue special-assessment installment payments; it is a pure issue of statutory construction. In *Romulus City Treasurer v Wayne Co Drain Comm'r*, 413 Mich 728, 737-738; 322 NW2d 152 (1982), the Supreme Court described the composition of the MTT and the relevance of that composition, explaining:

> The tribunal that was created to exercise such jurisdiction was labeled a "quasi-judicial agency," whose membership is to be comprised of persons with various specified qualifications. Of the seven members, two must be attorneys with experience either in property tax matters or in judicial or quasi-judicial office. One member must be a certified assessor; one, an experienced professional real estate appraiser; and one, a certified public accountant with experience in state-local tax matters. . . . [P]ersons who are not members of any of the enumerated disciplines are required to have experience in state or local tax matters.
>
> The expertise of the tribunal members can be seen to relate primarily to questions concerning *the factual underpinnings of taxes*. In cases not involving special assessments, the tribunal's membership is well-qualified to resolve the disputes concerning those matters that the Legislature has placed within its jurisdiction: assessments, valuations, rates, allocation and equalization. In special assessment cases, the tribunal is competent to ascertain whether the assessments are levied according to the benefits received. Although the tribunal, in making its determinations, will make conclusions of law, the matters within its jurisdiction under MCL 205.731 most clearly relate to the basis for a tax . . . . [Citations omitted; emphasis added.]

In *Joy Mgt Co v Detroit*, 176 Mich App 722, 728; 440 NW2d 654 (1989), overruled in part on other grounds by *Detroit v Walker*, 445 Mich 682, 697 n 20 (1994), this Court noted that the MTT's "primary functions are to find facts," where its expertise chiefly relates "to questions concerning the factual underpinnings of taxes." The *Joy Mgt Co* panel ruled:

> In the instant case, plaintiff has not challenged a final decision regarding valuation, rates, allocation or assessment, nor is plaintiff asking for a refund or a redetermination of a tax. Rather, plaintiff has challenged the legality of

> the *method* used by defendant to enforce collection of the property taxes. Resolution of this issue depends not on findings of fact, but on conclusions of law based upon the construction of [MCL 211.47]. This is clearly within the scope of the circuit court's jurisdiction. Thus, the trial court did not err by denying defendant's motion for summary disposition pursuant to MCR 2.116(C)(4), lack of subject-matter jurisdiction. [*Joy Mgt Co*, 176 Mich App at 728-729.]

In *In re Petition of the Wayne Co Treasurer for Foreclosure*, 286 Mich App 108, 112-113; 777 NW2d 507 (2009), this Court indicated that when a "challenge does not require any findings of fact, but rather only construction of law—where no factual issues requiring the tribunal's expertise are present—the circuit court has jurisdiction to consider the issue." The Court observed that this "reasoning applies to any challenge to a tax assessment based not on the validity of the assessment per se, but on peripheral issues relevant to enforcing a tax assessment." *Id.* at 113.

Here, our review of Counts I through III of plaintiff's complaint reveals that plaintiff is not challenging the factual basis or the amount of the underlying assessments arising from the special assessment agreements; rather, plaintiff takes issue with the continuing enforceability of the assessments, at least in regard to outstanding past due installments, in light of the tax foreclosure, arguing that past debt was extinguished by the judgment of foreclosure. It is important to keep in mind that, even though plaintiff's arguments at the summary disposition stage may have deviated somewhat from the allegations in its complaint, it is the nature of those allegations alone that govern our resolution of whether the circuit court has subject-matter jurisdiction. *Grubb Creek Action Comm v Shiawassee Co Drain Comm'r*, 218 Mich App 665, 668; 554 NW2d 612 (1996) ("A court's subject-matter jurisdiction is determined only by reference to the allegations listed in the complaint."); see also *Reynolds v Robert Hasbany, MD PLLC*, 323 Mich App 426, 431; 917 NW2d 715 (2018); *Trost v Buckstop Lure Co, Inc*, 249 Mich App 580, 586; 644 NW2d 54 (2002); *Luscombe v Shedd's Food Prod Corp*, 212 Mich App 537, 541; 539 NW2d 210 (1995). Resolution of Counts I through III requires construction of the GPTA and the law of tax foreclosure, having nothing to do with the factual underpinnings of the special assessments. The proceedings, as framed by plaintiff's complaint, did not entail plaintiff seeking direct review of a final decision, finding, ruling, or determination by the city relating to special assessments under the property tax laws of this state. MCL 205.731(a). Instead, plaintiff sought review of various GPTA foreclosure provisions and application of those provisions *to the existing factual circumstances*, which is not within the wheelhouse of MTT's expertise. In Counts I through III, there is no allegation challenging the amount or the basis of a contractually-created special assessment, nor is there an allegation that an improvement did not benefit the property in correlation to the cost of the improvement. Counts I through III of plaintiff's complaint did not trigger the MTT's original and exclusive jurisdiction.

With respect to the deferred assessment agreement addressed in Count I and the landscape/irrigation agreement challenged in Count III, defendants, as recognized by the circuit court, maintained that the city does not seek to recover or hold plaintiff responsible for any amounts owing under those agreements/assessments. In light of this position, and given our ruling on subject-matter jurisdiction, we deem the appropriate course of action to be a remand to the circuit court for entry of declaratory relief in favor of plaintiff on those two counts, making

clear that plaintiff owes nothing in regard to those agreements/assessments, nor is plaintiff's property to be subject to any lien or encumbrance connected to the two agreements/assessments.

With respect to Count II and the VSADA and the amendment of the VSADA post-foreclosure judgment but pre-foreclosure sale, which amended agreement is addressed in Count IV of plaintiff's complaint, it is necessary to examine the record in more detail. The VSADA was entered into in 2004, and it provided that "[t]he term of the special assessment will not exceed ten (10) years." The VSADA further stated that it "shall be effective as of the date first written above and shall remain in effect until all the obligations of the Owner under this Agreement have been met." Additionally, the VSADA provided that "the final amount of any special assessment, the term of years for the special assessment and similar matters associated with the establishment of a special assessment district for the Owner-Contracted Infrastructure Improvements will be determined by resolution of the City Commission *in its discretion.*" (Emphasis added.)

A resolution adopted by the city on July 15, 2014, indicated that a balloon payment totaling $403,620 was due on September 7, 2014, under the VSADA. The resolution, referring back to the city's right to exercise its discretion as stated in the VSADA, further provided:

> Without re-confirming the District's special assessment roll, the City Commission has determined that extending the term of the special assessment for one additional year [September 7, 2015] is in the public interest in order to allow the owner of the Property an opportunity to cause the balloon payment to be made and to bring the taxes and special assessment on the Property current, to make the Property more marketable, and to enhance economic development opportunities within the City.

On March 6, 2015, before the expiration of the one-year extension adopted by the city, the judgment of foreclosure was entered, vesting title in the county treasurer. The judgment became final and unappealable on April 1, 2015. In June 2015, the city and the county treasurer entered into the amended VSADA. The amended VSADA recited the history of the original VSADA, noted the foreclosure proceedings, referenced the language, quoted above, found in the city's resolution adopted in July 2014, acknowledged the balance of $403,620, and set forth a payment structure requiring nine annual payments of $54,000 starting on September 7, 2015, with a final payment of $48,307 due on September 7, 2024. The amended VSADA also provided:

> The parties acknowledge and agree that the City, consistent with the terms of the [VSADA] and City Ordinance No. 4-67, as amended, has reserved to itself the right to extend the term of years for payment of the above-described special assessment without changing the date of the confirmation of the Roll or exposing the City to a challenge of the special assessment or Roll, as amended, and that it is the parties' intent that all challenges, claims or causes of action to any special assessment associated with the Property or the Roll are released and waived by the [county treasurer], its successors and assigns as against the City.

The amended VSADA was recorded with the register of deeds on June 23, 2015. In November 2015, plaintiff purchased the property at the tax foreclosure sale for $36,500.

We have already determined that the circuit court has subject-matter jurisdiction over Count II of the complaint concerning the VSADA, standing on its own. And we now hold that the circuit court also has subject-matter jurisdiction over Count IV of the complaint pertaining to the amended VSADA. With respect to Count IV, as stated earlier, plaintiff alleged that "[t]here was no authority for the [d]efendants to enter into the [amended] . . . VSADA in an attempt to restore an assessment that had been voided by the GPTA." Plaintiff asserted that the amended VSADA was not supported by any consideration and that it was against public policy. Regardless of the substantive soundness of plaintiff's argument, Count IV effectively alleged the creation or existence of a legally invalid contract that gave rise to a special assessment or the extension of a special assessment, resulting in an encumbrance on plaintiff's property.

The MTT does not have subject-matter jurisdiction over contract disputes simply because the substance of the contract regards special assessments. In *Highland-Howell Dev Co, LLC v Marion Twp*, 469 Mich 673, 677-678; 677 NW2d 810 (2004), our Supreme Court, after citing and quoting the language from *Romulus City Treasurer* that we alluded to earlier, ruled:

> While the Tax Tribunal's membership is particularly competent to resolve disputes related to the basis for and amounts of taxes, its membership is not qualified to resolve common-law tort or contract claims. Clearly, this supports our conclusion that the Legislature did not intend the Tax Tribunal's exclusive jurisdiction to encompass matters outside the realm of those tax matters specified in the statute.

As alleged by plaintiff, Count IV presented a question of contract law, as shaped by the construction of provisions in the GPTA. Count IV does not require any findings of fact nor entail the factual underpinnings of taxes; rather, it concerns the construction of law—contract law and the GPTA. Therefore, the circuit court and not the MTT has jurisdiction over Count IV.

That concluded, we must nonetheless continue our analysis, because the circuit court supplemented its jurisdictional ruling with a determination that plaintiff's action was fatally flawed even if the court had subject-matter jurisdiction. The circuit court first found that the judgment of foreclosure was entered *before* the amended VSADA was executed. And therefore, pursuant to MCL 211.78k(5)(c), future installments of a special assessment are at issue, which necessarily could not have been extinguished by the foreclosure judgment. The court's ruling assumes the soundness and validity of the amended VSADA from which the special assessment arose. However, the allegations in Count IV of the complaint challenge the legal validity of the amended VSADA. If the amended VSADA and resulting assessment are void or voidable, the language in MCL 211.78k(5)(c) excepting future assessment installments from extinguishment becomes irrelevant, because there is no assessment to enforce.

The circuit court next observed that plaintiff was not a party to the amended VSADA and thus "likely lacks standing to challenge it." We do not find this language to reflect a conclusive ruling on standing, and any standing issue can certainly be entertained more fully and conclusively on remand. We do note that the special assessment based on the amended VSADA encumbers plaintiff's property to the tune of over half a million dollars. The circuit court did not address the allegations in Count IV of plaintiff's complaint that the amended VSADA was

invalid because there was a lack of consideration and because it violated public policy. The legal validity of the amended VSADA must be addressed and resolved on remand.

Finally, with respect to Count V, the circuit court summarily dismissed the claim based on governmental immunity. In *Moraccini v City of Sterling Hts*, 296 Mich App 387, 391-392; 822 NW2d 799 (2012), this Court set forth the basic analytical framework concerning governmental immunity:

> Except as otherwise provided, the governmental tort liability act (GTLA), MCL 691.1401 *et seq.*, broadly shields and grants to governmental agencies immunity from tort liability when an agency is engaged in the exercise or discharge of a governmental function. MCL 691.1407(1); *Duffy v Dep't of Natural Resources*, 490 Mich 198, 204; 805 NW2d 399 (2011); *Grimes v Dep't of Transp*, 475 Mich 72, 76-77; 715 NW2d 275 (2006). "The existence and scope of governmental immunity was solely a creation of the courts until the Legislature enacted the GTLA in 1964, which codified several exceptions to governmental immunity that permit a plaintiff to pursue a claim against a governmental agency." *Duffy*, 490 Mich at 204. A governmental agency can be held liable under the GTLA only if a case falls into one of the enumerated statutory exceptions. *Grimes*, 475 Mich at 77; *Stanton v Battle Creek*, 466 Mich 611, 614-615; 647 NW2d 508 (2002). . . . This Court gives the term "governmental function" a broad interpretation, but the statutory exceptions must be narrowly construed. [Citation omitted.]

"[T]he burden . . . fall[s] on the governmental employee to raise and prove his entitlement to immunity as an affirmative defense." *Odom v Wayne Co*, 482 Mich 459, 479; 760 NW2d 217 (2008). But "[a] plaintiff filing suit against a governmental agency must initially plead his claims in avoidance of governmental immunity." *Id.* at 478-479.

The sole argument posed by plaintiff on appeal is that defendants were not engaged in the exercise or discharge of a governmental function when attempting to collect an extinguished obligation. This argument lacks merit, failing to appreciate the difference between having the authority to generally engage in a particular governmental function and the negligent, improper, or wrongful performance of the authorized function. A "governmental function" is defined as "an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law." MCL 691.1401(b).

A "city may in its charter provide . . . [f]or assessing and reassessing the costs, or a portion of the costs, of a public improvement to a special district." MCL 117.4d(1)(a). The Kentwood Code of Ordinances (KCO) grants the city authorization to impose special assessments. See KCO, § 10.1; KCO, § 50-2 ("The whole cost, or any part thereof, of any local public improvement may be defrayed by special assessment upon the lands especially benefitted by the improvement in the manner provided in this chapter."). Furthermore, KCO, § 50-13 authorizes the creation of liens relative to special assessments, providing that "[s]pecial assessments . . . shall become a personal obligation to the city . . . and, until paid, shall be and remain a lien upon the property assessed . . . ." Indeed, MCL 211.78k(5)(c) (see footnote 5 of this opinion), which plaintiff cites in its complaint as supporting extinguishment of existing

special assessments, recognizes the authority of governmental entities to record liens against property for special assessments.

In light of the authorities, the city was plainly engaged in the exercise and discharge of a governmental function for purposes of MCL 691.1407(1) and governmental immunity with respect to the special assessments at issue, their collection, and the resulting recorded liens. Plaintiff's argument simply challenges the specific manner in which the city carried out the governmental functions, alleging that the city clouded plaintiff's title by improperly attempting to collect payment on special assessments, making payment demands, and allowing recorded instruments to remain in place, where the special assessments had been extinguished. In determining whether a governmental agency was engaged in the exercise of a governmental function, the focus must be on the general activity, not the particular conduct involved at the time the alleged tort was committed. *Tate v Grand Rapids*, 256 Mich App 656, 661; 671 NW2d 84 (2003). The improper performance of an activity authorized by law is, regardless of the impropriety, still authorized for purposes of the governmental function test. *Richardson v Jackson Co*, 432 Mich 377, 385; 443 NW2d 105 (1989). A governmental agency is not engaged in the exercise or discharge of a governmental function when it lacks the legal authority to perform the activity "in any manner." *Id.* at 387. Such is not the situation in the instant case. Plaintiff has not established that the circuit court erred in summarily dismissing plaintiff's claim for slander of title.

Affirmed in part, and reversed and remanded in part for further proceedings. We do not retain jurisdiction. No party having fully prevailed on appeal, we decline to award taxable costs under MCR 7.219.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Jane M. Beckering

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

* * * * *

PETERSEN FINANCIAL LLC,

Plaintiff,

-vs-

CITY OF KENTWOOD and
KENT COUNTY TREASURER,

Defendants.

Case No. 16-11820-CH

HON. GEORGE JAY QUIST
Circuit Court Judge

Donald R. Visser (P27961)
VISSER AND ASSOCIATES, PLLC
Attorneys for Plaintiff
2480 - 44th Street, SE - Ste. 150
Kentwood, MI 49512
(616) 531-9860

David K. Otis (P31627)
PLUNKETT COONEY
Attorneys for Defendant City of Kentwood
325 E. Grand River Ave., Ste. 250
East Lansing, MI 48823
(517) 324-5612

Craig A. Paull (P76605)
Linda S. Howell (P44006)
Kent County Corporate Counsel
Attorney for Kent County Treasurer
300 Monroe, NW - Ste. 303
Grand Rapids, MI 49503
(616) 632-7594

**PLAINTIFF'S BRIEF IN SUPPORT OF
PLAINTIFF'S RENEWED MOTION FOR SUMMARY DISPOSITION**

NATURE OF PLAINTIFF'S CASE

Petersen Financial, LLC ("Petersen") initiated this case against the City of Kentwood and the Kent County Treasurer because its property was being improperly impacted by Defendants' assertions that several special assessments remained valid liens or encumbrances against Petersen's property. Defendants initially successfully challenged that this Court had jurisdiction of the matter and claimed that jurisdiction belonged properly in the Michigan Tax Tribunal ("MTT"). This Court initially granted summary disposition on July 7, 2017 to the Defendants based upon a lack of jurisdiction. Petersen subsequently

appealed that decision to the Michigan Court of Appeals. The Michigan Court of Appeals on November 20, 2018, issued a published decision indicating that the Circuit Court, and not the MTT, had jurisdiction of Petersen's Complaint (**Exhibit 1**). The Court of Appeals noted the contractual nature of the extension of the asserted special assessment. The Court of Appeals also remanded the matter to this Court with instructions to grant the declaratory relief which Petersen sought in Counts I and III (the deferred assessment agreement and landscape irrigation agreement, respectively, as set forth more fully below).

This case is solely about the ramifications and legal consequences of a tax foreclosure under the General Property Tax Act (GPTA), MCL 211.1 et seq. Under MCL 211.78(5)(c) and (e), all encumbrances against the Subject Property were extinguished on April 1, 2015, except "future installments of a deferred special assessment." Thus, two questions must be asked by the Court in resolving Plaintiff's Complaint:

1. Is the obligation that the City of Kentwood asserts a "special assessment" or a "contract?"

2. If a special assessment, how much was due prior to the foreclosure?

All contractual obligations are extinguished by the GPTA. MCL 211.78(5)(e). This extinguishment would include contractual obligations labeled by the parties as special assessments. MCL 211.78(5)(c) extinguishes special assessments – except future installments.

STATEMENT OF FACTS

Plaintiff bought approximately 40 acres of land within the city of Kentwood from the Kent County Treasurer at a tax sale on November 4, 2015. The property had been foreclosed by the Kent County Treasurer pursuant to the General Property Tax Act by Order dated March 6, 2015 (see **Exhibit 2**). The General Property Tax Act provides that all obligations on the property as of

the time of the foreclosure are extinguished, with a few exceptions -- the only one of which Kentwood appears to assert is that one of the asserted obligations is a future installment of a special assessment. There are three separate agreements/special assessments that Plaintiff asserts are improperly clouding title to his property:

1. Deferred Assessment Agreement ("DAA") dated March 18, 2004, and attached as **Exhibit 3** (Count I);
2. Landscape/Irrigation Agreement ("LIA") dated October 26, 2005 ("LIA") and attached as **Exhibit 4** (Count III); and
3. Voluntary Special Assessment/Development Agreement ("VSADA") dated September 7, 2004 and attached as **Exhibit 5** (Count II).

Each of the above-referenced contracts/assessments had their genesis in a contract, and each appears to have been the subject of a Special Assessment Resolution at the City of Kentwood. Each of the contracts/assessments had varying "deferment" terms that allowed deferment of payments until certain "triggering events", as discussed later. All of the contracts/assessments, however, had a mandatory end-date for payment in full -- often called a balloon payment. Those terms range from 6 - 10 years. Set forth in the table below is a graphical rendering of the dates that are likely to be relevant to this Court in reviewing summary disposition.

Contract/ Assessment ID	**Agreement date**	**Agreement recorded**	**Commission Resolution**	**Maximum term**	**Last possible balloon date**
DAA	3/18/2004	4/2/2004	unk	12/31/2006	12/31/2006
LIA	10/26/2005	1/26/2006		8 years	1/17/2014
VSADA	9/7/2004	9/17/2004	9/7/2004		9/7/2014

Each of the three contracts/assessments were implemented as a result of a joint effort between the developer and the City. The developer could have put in the infrastructure for the 300 or so acres involved out of his own funds, or borrowed the funds from a conventional lending source, with a resulting mortgage on the property. However, the City apparently desired the project enough that they were willing to be an accommodating party and act as the developer's financier. To bring it within the scope of what acts the municipality was permitted to do, that financing had to look like an assessment. Using a practice not unknown to other municipalities, the parties essentially contracted for a lien to be called an assessment. As the Court can well imagine, the practice, however, did not look like other assessments. There were no public hearings where concerned citizens expressed concern over the cost or apportionment. There were no expressed concerns over necessity, because everyone was on the same page.

What did not exist at that time, however, were the provisions of the General Property Tax Act. In 2008, the Michigan Legislature overhauled how the State dealt with delinquent taxes. To make the new foreclosure process effective, the Legislature determined that it was necessary to strip off all interest from the property and vest the fee interest in the Kent County Treasurer upon the effective date of the foreclosure.[1] The new foreclosure process excepted only a couple of items from being stripped off or voided -- future installments of special assessments and certain liens related to the DEQ which are not relevant to this case.[2] All past installments of special assessments were wiped out. Any lien having a contractual basis was also stripped from the property.[3]

The DAA (**Exhibit 3**) was signed on March 18, 2004 and recorded on April 2, 2004. The Agreement declares the maximum date for repayment to be December 31, 2006 (see **Exhibit 3**,

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[1] The foreclosure process vest absolute title in the county treasure: "... **the foreclosing governmental unit shall have absolute title to the property ...**". MCL 211.78k(6) (emphasis added).
[2] MCL 211.78k(5)(c).
[3] MCL 211.78k(5)(e).

Section 2(B)(5)). The 8-year term is dispositive that the DAA was stripped by the foreclosure process in 2014. The Court of Appeals agreed and directed that declaratory relief be granted to Petersen.

The LIA (**Exhibit 4**) was signed on October 26, 2005 and recorded on January 26, 2006. On January 17, 2006 the city commission passed Resolution 8-06 related to the landscaping declaring it to be an assessment in the form of **Exhibit 6**. The Resolution declared the maximum date for repayment to be "8 years from confirmation of roll" or January 17, 2014 (see **Exhibit 6**, Roll A). The 8-year term is itself dispositive that the LIA and Resolution 8-06 were stripped by the foreclosure process in 2014. The Court of Appeals agreed and directed that declaratory relief be granted to Petersen.

The VSADA (**Exhibit 5**) was signed on September 7, 2004 and recorded on September 17, 2004. On September 7, 2004 the city commission passed Resolution 96-04 related to the Agreement declaring it to be an assessment in the form of **Exhibit 7**. The Resolution incorporates provisions of the VSADA agreement into its provisions for deferment. The Agreement also has various "trigger dates" which would initiate the principal payment to be due some time prior to the end of the term. Those trigger dates occurred prior to the 10-year maximum term, but are not relevant in this motion because the 10-year term itself is dispositive that the VSADA was extinguished by the foreclosure process in 2015.

Post-expiration Efforts to Salvage the VSADA.

In the end, the VSADA is a good example of why municipalities should not act as private financiers; the project did not take off as anticipated and the developer defaulted. While a couple areas of the proposed development did move slowly along, others (including the portion that Plaintiff bought at tax sale – known as parcel B-1) had absolutely zero activity.

The VSADA had a maximum term of 10 years (see paragraph 2(e)(2) of **Exhibit 5** and "Roll A", paragraph "Term" of **Exhibit 7**). Both parties agree that the 10 years ran on September 7, 2014 -- that being the 10th anniversary of both the VSADA and the Resolution. As it pertains to at least one of the parcels affected by the VSADA (parcel B-2), the City signed an agreement to provide for later payments (**Exhibit 8**)[4] on June 16, 2015. Another part of the original project (parcels B-3 and B-4) was foreclosed in March of 2014, the City had a special resolution related to that Property (Resolution 49-14; **Exhibit 9**) (see also amendment by contract, **Exhibit 15**). As to Plaintiff's parcel, the City of Kentwood passed a Resolution in June of 2015 to extend the due date for the payments in the form of **Exhibit 10** – based upon the extinguished VSADA contract and signed a new contract (**Exhibit 11**) based upon the same extinguished VSADA contract in an effort to revive the amounts that had been extinguished by the tax foreclosure process . The City had previously attempted to get the property owner to sign an agreement. See **Exhibit 12**.

When the project failed and the property owners failed to make their tax payments, Defendants started to treat this obligation very much as a contract and not an assessment. Instead of a singular unified assessment district, they treated it as a contract and piecemeal. First of all, the City made an agreement with Holland Home to extend the payments (see **Exhibit 8**). Kentwood felt free to renegotiate the contractual VSADA with property owners as illustrated by the correspondence (**Exhibit 12**) from Mr. Sluggett indicating the Holland Home restructured its payments and the City offered to do the same for the Plaintiff's predecessor in interest Mr. Damone. Then, on other parts of the project, they attempted to extend the due date also by contract (see attached deposition of Thomas Chase, City of Kentwood Finance Director, **Exhibit 13**). In contrast to the special assessment process with addresses a unified special assessment district, Mr.

[4] Complaint **Exhibit 9**.

Tom Chase, Kentwood's Director of Finance, testified that Kentwood started handling parts of the original district differently:

> Q: Was there an amendment to the deferred assessment agreement?
>
> A: I believe there was, but I believe it only affected the parcel that Holland Home purchased.
>
> . . .
>
> Q: Is the Holland Home assessment part of the Pfieffer Woods Drive special assessment?
>
> A: Only the portion – well, there are two. There were two resolutions adopted. One was the – related solely to Holland Home and the other was related to the Ravines parcels. And with the Holland Home purchasing a portion of one of the Ravines parcels, that's when that came into play. So there's more than just Ravines.

Exhibit 13, page 83-85.

In regard to the Plaintiff's property, Defendants claimed in their brief, to have extended the payments on June 18, 2015.[5] This clearly illustrates the contractual nature of what Defendants label as an assessment.[6] Defendants even stated in their initial summary disposition brief that the Amended VSADA (or "AVSADA") was not a re-confirmation of the tax roll (Defendants' brief, pg. 7). It was simply a contractual attempt to resurrect a document that had been extinguished by the tax foreclosure.

Resolution 50-14 -- is notable for the fact that it addressed only one of five neighborhoods in the purported assessment district. The foundation for Resolution 50-14 is recited in the resolution itself -- that it was based in contract and not any special assessment statute: "The Agreement, as Section 2(e) provides …". (see **Exhibit 10**, paragraph "I"). That the "amendment"

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[5] While Defendants attempt to characterize this as an extension, Plaintiff's position is that it's an attempted resurrection since the assessment/contract had already been extinguished by law.

[6] Labeling a cow to be a horse does not make the animal a horse. Even if one should mount and ride the cow to town, it still does not become a horse. Similarly, Defendants' labels, while a detraction, are not conclusive as to the true nature of the obligation -- which is a contract.

of the VSADA was a contractual effort is exposed in some of the correspondence exchanged by Kentwood in preparation of the "extension" (**Exhibit 14**).

There is no evidence that the City attempted to comply with the publication requirements necessary for a new special assessment. In fact, the Resolution even specifically disavows that it is an assessment: "Without modifying the confirmation date of the special assessment rolls ..." (**Exhibit 10**, Section 4) and "Without re-confirming the District's special assessment roll ..." (**Exhibit 10**, Paragraph J). Indeed, in addition to triggering publication requirements, **if** the 2014 resolution was a special assessment, it would have triggered appropriate challenges -- including jurisdiction of the Tax Tribunal.[7] It would have also required that the entire "Assessment District" be involved rather than one isolated portion at a time.

Whatever the nature of the asserted obligation, it was past due.

Defendants' initial summary disposition brief,[8] defendant's pleadings filed with the Court of Appeals,[9] the contractual amendments to the VSADA, and Kentwood's Resolution No. 50-14[10] and the July 18, 2014 correspondence from attorney Jeff Sluggett (general counsel for the City of Kentwood) to Mr. Damone (the prior owner of the land at issue in this Appeal), all make it clear that the previous owner of the land became delinquent (i.e. **past** due) in paying the special assessments due and owing to City – and that per the adopted special assessment roll confirmed

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[7] As noted in the Argument portion of this brief, the Court of Appeals recognized the contractual nature of the obligation.

[8] "Plaintiffs predecessors in title, Ravines Capital Management, LLC ("Ravines") and 44th/Shaffer Avenue, LLC became delinquent on the special assessments owing on the Subject Property, which they forfeited and a Judgment of Foreclosure was entered on March 31, 2014." (Kentwood's Brief in Support of Motion for Summary Disposition, page 2).

[9] "Because Ravines Capital Management and Shaffer became delinquent on base taxes and the special assessments owing on the Subject Property, it was forfeited, and a Judgment of Foreclosure was entered on March 6, 2015, resulting in absolute title to the Subject Property vesting in the County Treasurer." (Kentwood's Brief on Appeal, page 3).

[10] "E. Subsequently, the owner of a large tract of real property (i.e., a neighborhood) within the District became delinquent in paying property taxes and special assessments due and owing on its property. As a result, the property is at risk of having a judgment of foreclosure entered." (**Exhibit 10**, paragraph E).

on September 7, 2004 with the final installment (aka balloon payment) under the VSADA becoming due on September 7, 2014.[11]

The Foreclosure Process.

Defendants withheld the subject property from the 2014 foreclosure process. In March of 2015, after putting the 50-14 Resolution in place, the property went to foreclosure. Plaintiff bought the property at the tax sale on October 22, 2015.

Admittedly, when the City of Kentwood set up the VSADA in 2004, the currently provisions of the GPTA were not in effect. In 2008, the Michigan Legislature made significant changes to the General Property Tax Act as it related to treatment of delinquent taxes. To make the new process effective, the Legislature determined that it was necessary to strip off all interests from the property and vest the fee interest in the County Treasurer upon the effective date of the foreclosure. The new process called for vesting the County Treasurer with absolute fee title. MCL 211.78k(6).[12] The title was to be stripped free of contracts, (MCL 211.78k(5)(e)) and even assessments, with the exception of future installments of special assessments (MCL 211.78k(5)(c)). One of the purposes of such provisions was to raise as much money as possible.[13]

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[11] See **Exhibit 10**, paragraph H: "A balloon payment on the outstanding principal of $403,620.00 and interest of $22,199.10 (totaling $425,819.10) attributable to the Property is due on September 7, 2014 under the terms set forth as part of the Agreement and accompanying special assessment roll."

[12] MCL 211.78k . . .(6) Except as otherwise provided in subsection (5)(c) and (e), fee simple title to property set forth in petition for foreclosure filed under section 78h on which forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section, shall vest absolutely in the foreclosing governmental unit, and **the foreclosing governmental unit shall have absolute title to the property**, including all interests in oil or gas in that property except the interests of a lessee or an assignee of an interest of a lessee under an oil or gas lease in effect as to that property or any part of that property if the lease was recorded in the office of the register of deeds in the county in which the property is located before the date of filing the petition for foreclosure under section 78h, and interests preserved as provided in section 1(3) of 1963 PA 42, MCL 554.291. The foreclosing governmental unit's title is not subject to any recorded or unrecorded lien and shall not be stayed or held invalid except as provided in subsection (7) or (9). (emphasis added).

[13] This objective was apparently not properly appreciated by the 6th Circuit Court of Appeals in Wayside Church v Van Buren Cnty, 847 F3d 812 (6th Cir) (2017) when the dissent made the following comment:

> "In this case the defendant Van Buren County took property worth $206,000 to satisfy a $16,750 debt, and then refused to refund any of the difference. In some legal precincts that sort of behavior

The Municipality is then given the opportunity to take the property into its inventory in lieu of receipt of the taxes. MCL 211.78m. In this case, the City of Kentwood did not make such an election. Thereafter, the County Treasurer is then supposed to sell the property for the greatest price again received at public auction. MCL 211.78m.[14] In this instance, that sale took place in October, 2015.[15]

LAW AND ARGUMENT

Plaintiff seeks summary disposition pursuant to MCR 2.116(C)(9) and (C)(10). Under MCR 2.116(C)(9), Defendants have failed to state a valid defense. The motion tests the sufficiency of a defendant's pleadings alone, and all well-pled allegations are accepted as true. *Allstate Ins Co v Morton*, 254 Mich App 418, 421; 657 NW2d 181 (2002).

This summary disposition motion is also filed pursuant to MCR 2.116(C)(10) -- no genuine issue of material fact. The standard governing a trial court's treatment of a Motion for Summary Disposition based on MCR 2.116(C)(10) is well settled. Summary disposition is properly granted when there is no genuine issue of material fact and thus, the moving party is entitled to judgment as a matter of law. *Quinto v Cross and Peters Company*, 451 Mich 358, 362; 574 NW2d 314 (1996). A motion brought under this section tests the factual basis for a plaintiff's claim. *Skinner v Square D Co.*, 445 Mich 153, 161; 516 NW2d 475 (1994). Summary Disposition under MCR 2.116(C)(10) is available when "[e]xcept as to the amount of damages, there is no genuine issue

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is called theft. But under the Michigan General Property Tax Act, apparently, that behavior is called tax collection. The question here is—or at least in my view should be—whether the County's action is a taking under the federal Constitution." *Id* at 824.

[14] ... at 1 or more convenient locations at which property foreclosed by the judgment entered under section 78k shall be sold by auction sale, which may include an auction sale conducted via an internet website. ... Each sale shall be completed before the first Tuesday in November immediately succeeding the entry of judgment under section 78k vesting absolute title to the tax delinquent property in the foreclosing governmental unit. Except as provided in this subsection and subsection (5), property shall be sold to the person bidding the minimum bid, or if a bid is greater than the minimum bid, the highest amount above the minimum bid. MCL 211.78m(2).

[15] The deed itself was not signed until November 4, 2015.

as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." *Haliw v City of Sterling Heights*, 464 Mich 297; 627 NW2d 581 (2001). In deciding a motion for summary disposition, the Court should consider all documentary evidence submitted by the parties. *Summers v City of Detroit*, 206 Mich App 46; 520 NW2d 356 (1994).

A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim. *Morganroth v Whitall*, 161 Mich App 787, 788, 411 NW2d 859 (1987). A party opposing a motion under this rule may not simply rest upon the allegations or denials of the pleadings, but must provide evidence that establishes the existence of a material factual dispute. The party opposing summary disposition predicated on MCR 2.116(C)(10) must come forward with substantively admissible evidence to establish the existence of a disputed material fact. *Maiden v Rozwood*, 461 Mich 109; 597 NW2d 817 (1999). In considering the evidence, the court must grant the non-moving party the benefit of any reasonable doubt. *Bertrand v Alan Ford, Inc.*, 449 Mich 606, 617-8, 537 NW2d 185 (1995). In reviewing the motion, the Court must consider the pleadings, affidavits, depositions, admissions, and any other admissible evidence in favor of the non-moving party. MCR 2.116(G)(5); *Maiden v Rozwood, supra.* Opinion evidence, conclusory denials, unsworn averments and inadmissible hearsay do not satisfy the non-movant's burden of production. *Id.* Additionally, a party may not rest upon mere allegations or denials in his pleadings by way of opposing a Motion for Summary Disposition. *Griffin v City of Detroit*, 178 Mich App 302; 443 NW2d 406 (1989). In deciding the motion, the court may not make any factual findings or weigh the credibility of witnesses. If the evidence is conflicting, summary disposition is improper. *Barnell v Taubman Co.*, 203 Mich App 110, 115, 512 NW2d 13 (1993).

I. Petersen is entitled to entry of the requested declaratory relief on Counts I and III.

The Court of Appeals directed the result that Plaintiff now requests:

> In light of this position, and given our ruling on subject-matter jurisdiction, we deem the appropriate course of action to be a remand to the circuit court for entry of declaratory relief in favor of plaintiff on those two counts, making clear that plaintiff owes nothing in regard to those agreements/assessments, nor is plaintiff's property to be subject to any lien or encumbrance connected to the two agreements/assessments.
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> *Petersen v Kentwood*, 326 Mich App 433, ____ NW2d _____ (2018), slip opinion pages 7-8, see **Exhibit 1**).

Kentwood did not seek review of the Michigan Supreme Court, so this ruling is law of case.

II. Petersen is entitled to Summary Disposition as to the VSADA (Count II).

As a starting point, Petersen believes it was entitled to Summary Disposition as the responding party to Defendants' initial Motion for Summary Disposition. "When the opposing party is entitled to Judgment, the Court may render Judgment in favor of the opposing party." MCR 2.116(I)(2). In this instance, the documents submitted by the Plaintiff, as well as the admissions by the Defendants, establish that the all the challenged obligations, be they assessments or agreements, were extinguished in March of 2015. Plaintiff now renews its motion for summary disposition.

A. Whether a special assessment or a contract, the lien was extinguished.

The GPTA governs the effect of tax foreclosures in the state of Michigan, and applies to the specific issues at hand. The applicable provision is as follows:

> "(c) That all liens against the property, including **any lien for unpaid taxes or special assessments**, except future installments of special assessments and liens recorded by this state or the foreclosing governmental unit pursuant to the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, **are extinguished**, if all forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section."
>
> . . .

> "(e) That all **existing recorded** and unrecorded interests in that property are **extinguished**..."
>
> Mich. Comp. Laws Ann. § 211.78k(5)(c); (emphasis added).

Thus, the GPTA provides that ALL liens for unpaid special assessments or contract obligations are extinguished by entry of a judgment foreclosing the property, EXCEPT future installments of special assessments.

As set forth above, Plaintiff believes that the first question that needs to be resolved, is whether the asserted obligation was an assessment or a contract. The VSADA, as well as the AVSADA, should be construed by the Court to be a contract, and as a contract the obligation is clearly extinguished by the provisions of MCL 211.78k(5)(e).[16] However, even if it is considered to be a valid assessment, the same result is mandated under a different sub-section of the statute (see subsection 211.78k(5)(c)). All previously due installments were extinguished. In this instance, Plaintiff believes that there are many factual arguments to show that the due date was triggered many years earlier, trigger dates that would be subject to presentation at a trial. But since it is recognized that the initial date of the assessment was September 7 of 2004, no matter how the City of Kentwood slices their documents, the 10-year period ran on September 7, 2014 -- some 6 months prior to the tax foreclosure. Plaintiff is therefore entitled to a Judgment declaring that the VSADA was extinguished in its entirety by the March foreclosure.

B. The obligation is a contract.

The Court of Appeals noted this case was essentially a contract issue to be resolved:

> Resolution of Counts I through III requires construction of the GPTA and the law of tax foreclosure, having nothing to do with the factual underpinnings of the special assessments. The proceedings, as framed by plaintiff's complaint, did not entail plaintiff seeking

[16] There really are two points that the Court can look at in the analysis: (1) the original obligation and, (2) the extension based on the contractual provisions. The extension was based upon rights reserved by contract, so it is contractual even if there was a special assessment in 2004.

> direct review of a final decision, finding, ruling, or determination by the city relating to special assessments under the property tax laws of this state. (Opinion, Page 7)
>
> The MTT does not have subject-matter jurisdiction over contract disputes simply because the substance of the contract regards special assessments. (Opinion, Page 9)
>
> As alleged by plaintiff, Count IV presented a question of contract law, as shaped by the construction of provisions in the GPTA. Count IV does not require any findings of fact nor entail the factual underpinnings of taxes; rather, it concerns the construction of law – contract law and the GPTA. (Opinion, page 9)

The Defendants did not appeal the Opinion of the Court of Appeals in this matter and the parties are bound by that Opinion and the admissions of the parties in getting to that Opinion. "The law of the case doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals with respect to that issue. *Driver v Hanley (After Remand)*, 226 Mich. App. 558, 565; 575 N.W.2d 31 (1997). Thus, a question of law decided by an appellate court will not be decided differently on remand or in a subsequent appeal in the same case." *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001).

The core of Defendants' position was their rather illogical position that extension of the time to pay a delinquent payment converts the delinquent payment into a future payment. Semantics does not change reality. Giving an additional year grace period to pay does not change the fact that all of the installments were due on or before September 7, 2014. In fact, the resolution by the City of Kentwood to approve the "extension" on July 15, 2014, actually affirms the initial special assessment roll.[17] Additionally, even if Defendants' semantic efforts were viable, changing

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[17] H. A balloon payment on the outstanding principal of $403,620.00 and interest of $22,199.10 (totaling $425,819.10) attributable to the Property is due on September 7, 2014 under the terms set forth as part of the Agreement and accompanying special assessment roll.

. . .

J. Without re-confirming the District's special assessment roll, . . . (Resolution 50-14, **Exhibit 10**, pages 1 and 2).

the VSADA "**pursuant**" to the terms of the contractual agreement means the changes were a contractual modification – not a special assessment. Thus, the Court of Appeals perspective of this case is binding on the parties and this Court. The COA saw through Defendants' semantic misdirection and understood this to be a contractual dispute.

But there were (are) many additional reasons to view the asserted obligation as a contract: Kentwood provided the Court of Appeals with a section of Kentwood Ordinances 50-10[18] (Kentwood's Appellee Brief Exhibit L). Unfortunately for Kentwood, Resolution 50-14 fails to deal with any of the following requirements applicable to a true special assessment under Kentwood's own ordinances:

1. "...Such 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." (Appellees' Exhibit L, Section 50-10.)

2. Section 50-15 requires ordinances for any additional steps or procedures if the current ordinances are insufficient.

3. Section 50-16 allows reassessment, but only if following the entire procedure over again: "...all proceedings on such reassessment and for the collection thereof shall be made in the manner as provided for the original assessment."

In both the resolution and the amended VSADA, Kentwood inserted the terms "without re-confirming the District's special assessment roll, City Commission has determined that extending the term of the special assessment for one year..."[19] What is the impact of not complying with the

[18] Even though it was supplied by Kentwood to the Court of Appeals, it appears that the version provided is a current iteration and not the Ordinance that existed in 2004.

[19] It is not insignificant to this issue that the purported "Roll A" of Resolution 50-14 continues to indicate that the term of the special assessment was 10 years: "Term: 10 years from confirmation of roll; i.e., September 7, 2014. Any unpaid principal and interest is due in full upon termination date." It is also notable that the provisions for deferred installments was not changed "Principal payments, along with any unpaid simple interest on that portion of the principal, shall be due upon certain governmental approvals being issued consistent with the terms of a Voluntary Special Assessment/Development Agreement dated September 7, 2004, between the City of Kentwood and 44th/Shaffer Avenue, LLC (the "Agreement")." In any event, whether the original assessment arose under the property tax laws of this state or not, clearly the amendment of the VSADA arose under contract.

requirements of its own Ordinance for an assessment? It mandates the acknowledgement that the "extension" in 2014, was by contract.

Additionally, Kentwood treated the obligation as a contract – modifying it piecemeal and by contract. Not only did Kentwood amend the VSADA as to Plaintiff's property in 2015, it amended the VSADA as to Holland Home's property in 2014 (**Exhibit 8**). The same agreement recited its authority to amend arising out of the original **agreement**. Similarly, Kentwood bifurcated the "District" when approving Resolution 49-14 pertaining to other property in the "District" – again reciting the original agreement as its authority to amend. (see **Exhibit 9**).

C. The obligation was extinguished even if it was a special assessment.

Even if the asserted obligation was special assessment, the installments were past due and not a future installment. On page 21 of their initial brief supporting summary disposition, Appellees assert that the obligation at issue was not extinguished because it was a "future installment" of a special assessment and therefore fell within the exception to MCL 211.78(5)(c). Assuming for argument purposes that the 2004 actions constituted an assessment and not a contact, it is clear that the term of the assessment ended no later than September 7, 2014 -- in other words all installments were past due on the date of the tax foreclosure.[20]

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[20] The obligation documents had triggering events prior to September 7, 2014, which triggered earlier payment. The "trigger" events are stated in the documents, but include when the subject properties were rezoned to PUD. That rezoning occurred in 2004.

Additionally, the documents establish that future payments were deferred only so long as the interest payments were made:

> 3. The special assessment roll **shall be deferred** consistent with the terms of the Voluntary Special Assessment/Development Agreement dated September 7, 2004, between the City of Kentwood and 44th/Shaffer Avenue, LLC (the ."Agreement"); **provided** that annual payments equivalent to the simple interest on any unpaid balance shall be due and payable on the anniversary date of the confirmation of this special assessment roll. (emphasis added). (See **Exhibit** 7.)

Default occurred in 2011, thereby triggering payment of the entire principal.

In addition to the issues identified in the footnote, any other position is precluded by Defendants' admissions contained on page 3 of their brief to the Court of Appeals:

> Because Ravines Capital Management and Shaffer **became delinquent** on base taxes **and the special assessments** owing on the Subject Property, **it was forfeited**, and a Judgment of Foreclosure was entered on March 6, 2015, resulting in absolute title to the Subject Property vesting in the County Treasurer…[21]

Admissions made by a party in its pleadings are binding on that party. *Monaghan v Pavsner*, 347 Mich 511, 524; 80 NW2d 218 (1956). Here, the admission was made in the Court of Appeals (see **Exhibit 16**, page 3) as well as in the Circuit Court (original Brief by Kentwood in Support of Summary Disposition, page 2.

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[21] On pages 3 and 4 of their Appellee's Brief, Kentwood made the following admissions:

> … However, under paragraph 2.(e)of the Terms and Conditions section of the Voluntary Special Assessment/Development Agreement, which addressed terms for the special assessment, t**he agreement** expressly reserved to the City the authority, through resolution, to establish final terms for the special assessment district "in its discretion'" Exhibit A-6, Voluntary Special Assessment/Development Agreement, p 7.3 On July 15 2014, before the final installment was due on the special assessment, the City Commission adopted Resolution No. 50-14, extending the term of the special assessment for the Subject Property by an additional one year (or until September 7, 2015). (Exhibit B, Resolution 50-14).
>
> . . .
>
> **"Because** Ravines Capital Management and Shaffer **became delinquent** on base taxes **and the special assessments** owing on the Subject Property, **it was forfeited**, and a Judgment of Foreclosure was entered on March 6, 2015, resulting in absolute title to the Subject Property vesting in the County Treasurer. Exhibit A, Complaint ¶ 22; Exhibit A-2, Notice of Judgment Foreclosure. Then, in June 2015, the County and City **entered into an agreement** entitled Amendment to Voluntary Special Assessment/Development Agreement, which specified that the Subject Property, now owned by the Kent County Treasurer, remained subject to the Voluntary Special Assessment/Development Agreement. Exhibit A-9, Amendment to Voluntary Special Assessment/Development Agreement. In the Amendment, in order to make the subject property more attractive to a potential buyer, the City, citing Section 2(e) of the Voluntary Special Assessment/Development Agreement, agreed to extend into ten installments a balloon payment otherwise due on September 7, 2015. *Id.* The Amendment specified that it was not a reconfirmation of the District's special assessment roll, but simply the extension of the term of the pre-existing roll. *Id.*" (Appellees' Brief, **Exhibit 16**, pages 3-4) (emphasis added).

It is not Plaintiff's wishful thinking; rather, it is Kentwood's own words –until those words do not suit their purposes in this lawsuit. Yes, the special assessments were delinquent (i.e., not future installments), the property was forfeited, and absolute title was vested in the County Treasurer.

III. Petersen is entitled to Summary Disposition as to the Amendment of the VSADA (Count IV).

The attempt to revive the VSADA through agreement or subsequent resolution based upon the VSADA was an exercise in futility. The Court of Appeals recognized that Kentwood's claim was built on quick-sand: "If the amended VSADA and resulting assessment are void or voidable, the language in MCL 211.78k(5)(c) excepting future assessment installments from extinguishment becomes irrelevant, because there is no assessment to enforce." (Opinion, at Page 9).

There are numerous problems with Defendants assertions that the VSADA was rescued through Resolution 50-14 becoming the AVSAD Agreement;

1. The Amendment was clearly a contract. As discussed above, the Amendment draws its authority from a contract, not an assessment statute.
2. The Amendment effort was against public policy.

   In June of 2015, the Appellees recognized that the GPTA extinguished the obligation -- and attempted to subject the property to the obligation pursuant to contract. The difficulty is that the GPTA (MCL 211.78m(2)) requires the County Treasurer to sell the interest that the County Treasurer received (absolute fee title) and does not permit contractual obligations to be asserted against the property -- no matter who the contractual obligation is in favor of. The public policy of the GPTA which was attempting to maximize the amount that would be received at tax foreclosure sales for

the benefit of the County's coffers.[22] Kentwood admits that the GPTA mandates the selling of exactly what was foreclosed – i.e. fee simple absolute.

> 28. Section 211.78m(2) of the GPTA mandates the foreclosing governmental unit to sell by auction the Subject Property as foreclosed by the Judgment of Foreclosure.
>
> **ANSWER**
>
> 28. As to Paragraph 28, Defendant City admits.

There is no provision in the GPTA for selling less than the whole. As noted in *East Side Trust & Sav Bank v McGinnis, 197 Mich 432, 163 NW 949 (1917)*, if a contract is void as against public policy, out courts have held, there is no consideration and the contract is void.

3. There was no consideration.

Kentwood had turned the delinquent property taxes to the County Treasurer and the County Treasurer paid Kentwood. The County Treasurer owned the property free and clear. Then without any compensation to the County, the County Treasurer simply gave a lien on the property. The County received nothing. When asked to identify any consideration received by the County, Kentwood could only reference the document itself – which recited no consideration:

> 3. All documents showing all consideration extended for the entry of the AVSADA.
>
> **RESPONSE:**
>
> 3. See City Commission Resolution to Extend Payment Terms of the July 15, 2014 and AVSADA.

Similarly, Kent County was unable to identify any consideration that was given to it for signing the AVSADA. Asserted contracts without consideration are void and are

[22] Notably, this public policy was severely challenged in a dissenting opinion in the Sixth Circuit Court noted at footnote 13, supra.

not enforceable. *East Side Trust & Sav Bank v McGinnis, 197 Mich 432, 163 NW 949 (1917).*

4. The effort was too late.

   If the assessment was amended after the foreclosure, it was clearly extinguished by the GPTA -- the foreclosure having occurred in March of 2015 and the actual asserted assessment having expired on September 7, 2014. The assessment was extinguished before it was attempted to be amended. Even if the payment period could be amended post-foreclosure, the amount was still zero. Notably, the Appellees did not appeal the determination by the Trial Court in its Opinion granting summary disposition that the amendment was made after the foreclosure sale.

5. There is no statutory authority allowing for modification.

   Once the Roll had been confirmed, the special assessment district and the collection and allocation of installments was set. There is statutory authority to make adjustments for special assessment districts for land splits, etc., but the special assessment district and collection of installments thereunder may not be modified. Instead Defendants, in their Brief in Support of Summary Disposition and in Resolution 50-14, relied entirely on the VSAD **Agreement** for their authority to modify the VSADA.

6. The contractual amendment was signed after the VSADA had been extinguished.

   The Amendment is replete with recitals about how it relies on the VSADA (it even labeling it an "Agreement" in "Recital A"). It recites that special assessments were delinquent resulting in the tax foreclosure (see "Recital C"). In "Recital D", the County Treasurer and Kentwood assert that the real property remains subject to the (extinguished) agreement. While Recital D is contrary to the GPTA, it makes clear that the foundation for the Amendment is contract. Since the VSADA had been

extinguished, there was no longer a valid contract on which to base the Amendment. Kentwood amended a nullity.

7. The City is wrong that it had discretion to amend in 2015.

There are a couple of noticeable flaws with Kentwood's position that it had the discretion to extend the assessment term. While Kentwood did have authority to set the time period for the assessment, the City did exercise that discretion and set the term of years 10 years earlier – in 2004. To date, the City has not expressed in any pleading (Trial Court or the Court of Appeals) or in the document, any statutory authority for doing what it did. The only authority that Kentwood cites to is the agreement: "The Agreement, at section 2(e), provides . . . " Resolution No. 50-14, ¶ I.[23] The fallacy in an argument that relies on contract is discussed earlier in this brief.

On the flip side, Plaintiff believes that statutory language relating to the adoption of special assessments ("shall, from that date, be final and conclusive"), really means that and not that it is "final and conclusive unless modified by contract or resolution later". These restrictions are contained in the very Ordinances that Kentwood asserts gives it authority to enact special assessments. The principals of interpretation is that clear and ordinary meanings of words shall given for terms set forth in a statute or ordinance. *Advo-Systems Inc v Department of Treasury*, 186 Mich App 419, 465 NW2d 349 (1990); *People v Hill*, 269 Mich App 505, 715 NW2d 301 (2006). Thus, Kentwood in 2004 set the term to be 10 years which expired in September 2014 – a date that was "final and conclusive".

[23] "The Agreement, at section 2(e), provides . . . " This emphasizes exactly the point Plaintiff has been attempting to make throughout: The City's claim is built upon an Agreement. If discretion existed, it is based upon contractual rights. Assuming that the City is reading the contract correctly, it exercised those rights. Contractual right to a lien was extinguished by the subsequent tax foreclosure sale.

SUMMARY

Plaintiff is entitled to summary disposition.

Plaintiff requests that this Court grant summary disposition declaring:

A. That the Deferred Assessment Agreement recorded in Instrument no. 20040402-0043212 and amended in Instrument no. 20050405-0039642 is invalid and void as against Plaintiff's property;

B. That the Voluntary Special Assessment/Development Agreement recorded in Instrument no. 20040917-0125700 and amended in Instrument no. 20050405-0039643 is invalid and void as against Plaintiff's property;

C. That the Landscape Irrigation Agreement recorded in Instrument no. 20060126-0010084 be declared invalid and void as against Plaintiff's property;

D. That the special assessments reflected on Plaintiff's tax bills as the "Ravines SA" are invalid and void as to this property;

E. That the special assessment described as the "HH/Pfeiffer SA" is invalid and void as to this property; and

Plaintiff also request this Court to enter an Order compelling the City of Kentwood to remove all such past billings from its records as to Plaintiff's property.

Dated: June 28, 2019

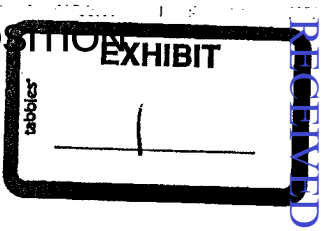
VISSER AND ASSOCIATES, PLLC

Donald R. Visser (P27961)
Attorneys for Plaintiff

PROOF OF SERVICE

A copy of this document was served upon all parties of record by electronic delivery and/or U.S. Mail on June 28, 2019, pursuant to MCR 2.107(C).

Kelly A. Eefsting



STATE OF MICHIGAN

COURT OF APPEALS

PETERSEN FINANCIAL LLC,

Plaintiff-Appellant,

v

CITY OF KENTWOOD and KENT COUNTY TREASURER,

Defendants-Appellees.

FOR PUBLICATION
November 20, 2018
9:10 a.m.

No. 339399
Kent Circuit Court
LC No. 16-011820-CH

Before: MURPHY, P.J., and O'CONNELL and BECKERING, JJ.

MURPHY, P.J.

Plaintiff appeals as of right the circuit court's order granting summary disposition in favor of defendants City of Kentwood (the city) and Kent County Treasurer (the county treasurer) in this action involving claims related to the impact of tax foreclosure proceedings on special assessment agreements entered into by the city, which assessments were payable in installments and had encumbered real property purchased by plaintiff at a tax foreclosure sale. Plaintiff maintained that the judgment of foreclosure extinguished all special assessments connected to the property. The circuit court determined that it lacked subject-matter jurisdiction with respect to four of the five counts in plaintiff's complaint, which sought declaratory relief regarding three of the underlying special assessment agreements, plus an amended version of one of those agreements. The court found that the Michigan Tax Tribunal (MTT) had exclusive jurisdiction over those four counts. The circuit court also summarily dismissed the fifth count of plaintiff's complaint that alleged slander of title predicated on special assessment liens and demands for payment that effectively clouded title. The court concluded that the city and the county treasurer were shielded by governmental immunity on the slander of title claim. We hold that the four counts dismissed for lack of subject-matter jurisdiction were within the jurisdiction of the circuit court, not the MTT, because they did not implicate the MTT's fact-finding purpose and expertise but solely presented questions of law. And, for reasons elaborated on below, we remand for entry of an order providing plaintiff with declaratory relief on two of the counts and

for further proceedings on the remaining two counts.[1] We further hold that plaintiff's argument that the circuit court erred in dismissing the slander of title count on the basis of governmental immunity is unavailing. Accordingly, we affirm in part and reverse and remand in part.

This case concerns real property located within the city. Starting in 2004, the city and the property owner, along with others, entered into various special assessment agreements relative to several infrastructure improvements that were to benefit the property for purposes of a planned unit development.[2] These agreements, which were recorded and involved the property owner making installment payments to the city, indicated that the contractual obligations contained therein constituted covenants that ran with the land and bound all successors in title. The city commission adopted multiple resolutions associated with the agreements and prepared and confirmed special assessment rolls for the improvements. Eventually, the property owner failed to pay the special assessments, a tax foreclosure action was commenced, a judgment of foreclosure was entered, the property owner failed to redeem the property or appeal the judgment, and title vested absolutely in the county treasurer, as the foreclosing governmental unit. Subsequently, at a tax foreclosure sale, the county treasurer conveyed the property to plaintiff pursuant to a quitclaim deed.

Over one year later, plaintiff filed its complaint against defendants, alleging that under the General Property Tax Act (GPTA), MCL 211.1 *et seq.*, its "purchase was free and clear from all liens except any future installments of special assessments." Plaintiff asserted that despite the fact that title by fee simple absolute was conveyed to plaintiff in the tax foreclosure sale, the city continued to cloud the property's title "by improperly attempting to revive past installments for special assessments as well as contractual obligations that were extinguished upon the final Judgment of Foreclosure." Plaintiff complained that defendants "wrongfully attempted to recoup past due special assessment installments and continue[d] to charge Plaintiff for the same." Plaintiff insisted that under the GPTA, all previously owed special assessment installments were extinguished by the judgment of foreclosure and that the county treasurer lacked the authority to deviate from the GPTA mandates.

As indicated earlier, the first four counts of plaintiff's complaint each sought declaratory relief with respect to a particular special assessment agreement. Count I pertained to a deferred assessment agreement, which, according to plaintiff, was scheduled to be paid off in full eight years prior to the tax foreclosure; therefore, any debt owed for unpaid installments was extinguished by the judgment of foreclosure. Count II concerned a voluntary special assessment/development agreement (VSADA), which plaintiff alleged was to be paid off within 10 years under the language of the special assessment roll, and which date had elapsed prior to the entry of the judgment of foreclosure. Therefore, any accrued debt for nonpayment was

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[1] The latter two counts ultimately concern the single question regarding the enforceability of the special assessment arising out of the amended version of one of the special assessment agreements.

[2] The property consisted of 300 acres, only a portion of which was ultimately purchased by plaintiff at the tax foreclosure sale.

extinguished by the foreclosure judgment. Count III regarded a landscape/irrigation agreement, and plaintiff alleged that the termination date was eight years from the confirmation of the special assessment roll and that the last scheduled date for an installment payment date had passed before the tax foreclosure proceedings. Thus, according to plaintiff, the debt owed on the unpaid balance was extinguished by the judgment of foreclosure. Count IV pertained to an amended VSADA,[3] presenting a somewhat different issue than that posed in the first three counts. The amended VSADA was not executed by the prior property owner, but was an agreement between the city and the county treasurer that was signed after title had vested with the county treasurer but before plaintiff acquired its interest. In Count IV, plaintiff alleged that "[t]here was no authority for the Defendants to enter into the [amended] . . . VSADA in an attempt to restore an assessment that had been voided by the GPTA." Plaintiff claimed that this agreement was not supported by any consideration and that it was against public policy. Finally, in regard to Count V, plaintiff alleged a cause of action for slander of title, seeking money damages. Plaintiff contended that defendants had maliciously and falsely continued to "assert that substantial special assessments exist on the Subject Property." Plaintiff maintained that defendants' "assertions have been published, as the installments claimed owing on the special assessments appear in title work, the public tax records, and in instruments recorded with the Kent County Register of Deeds." Plaintiff alleged that defendants' misrepresentations had rendered the property "unmarketable for its true value."

On competing motions for summary disposition, the circuit court, with respect to Counts I through IV, agreed with defendants' position that plaintiff was challenging the nature and imposition of the special assessments and, therefore, the MTT had exclusive jurisdiction over those counts. We note that the city, as confirmed in defendants' appellate brief, "was not seeking to collect the Deferred Assessment or the Landscape Irrigation Agreement[[4]] with respect to the Subject Property." The circuit court rejected all of plaintiff's arguments regarding subject-matter jurisdiction. The circuit court also proceeded to rule:

> Even if the court were persuaded that Plaintiff's claims fall within the GPTA, Plaintiff's position is fatally flawed. A foreclosure under the GPTA specifically states that it extinguishes all liens against the property, including any lien for unpaid taxes or special assessments, except future installments of special assessments. MCL 211.78k(5)(c).[[5]] The Defendants have stated, both on the

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[3] This was an amendment and extension of the agreement covered by Count II of plaintiff's complaint.

[4] These are the agreements referenced, respectively, in Counts I and III of plaintiff's complaint.

[5] We note that MCL 211.78k(5)(c) provides that a circuit court's final judgment of foreclosure shall specify, in part, as follows:

> That all liens against the property, including any lien for unpaid taxes or special assessments, except future installments of special assessments and liens recorded by this state or the foreclosing governmental unit pursuant to the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, are extinguished, if all forfeited delinquent taxes, interest, penalties,

> record and in brief form, that they are only pursuing collection of the Voluntary Special Assessment/Development Agreement installments referenced in Plaintiff's Count II. This assessment was amended after the foreclosure [see Count IV of plaintiff's complaint]. Moreover, it addresses future installments that will be collected until 2024. Therefore, the foreclosure sale does not operate to extinguish the installments.
>
> The court is also not persuaded by Plaintiff's claims that the assessment is actually a contract. As more full[y] discussed in subsection "a" of this opinion, the issue of whether the assessment is actually a contract is for the MTT to determine. However, the court notes that Plaintiff is not a party to the assessment/contract and likely lacks standing to challenge it. Additionally, the forming document states "the parties agree that, **to the extent not otherwise prohibited by law**, the jurisdiction and venue for any such dispute shall be solely with the state courts located in Kent County, Michigan." . . . As discussed above, the MTT has exclusive jurisdiction over this matter. A contract cannot establish or alter jurisdiction.

In regard to Count V, slander of title, the circuit court ruled that the claim constitutes a tort that is covered by governmental immunity and that none of the statutory exceptions to immunity applied. Accordingly, the circuit court denied plaintiff's motion for summary disposition and granted defendants' summary disposition motion under MCR 2.116(C)(4) and (7).

We review de novo a circuit court's ruling on a motion for summary disposition. *Winkler v Marist Fathers of Detroit, Inc*, 500 Mich 327, 333; 901 NW2d 566 (2017). "We likewise review de novo questions of subject matter jurisdiction[.]" *Id.* "Further, the determination regarding the applicability of governmental immunity and a statutory exception to governmental immunity is a question of law that is also subject to review de novo." *Snead v John Carlo, Inc*, 294 Mich App 343, 354; 813 NW2d 294 (2011). Under MCR 2.116(C)(4), summary disposition is warranted when "[t]he court lacks jurisdiction of the subject matter." See also *Winkler*, 500 Mich at 333. Under MCR 2.116(C)(7), summary disposition is appropriate when a claim is barred based on "immunity granted by law." See also *Snead*, 294 Mich App at 354.

Subject-matter jurisdiction concerns the right of an adjudicative body to exercise judicial power over a class of cases; not the particular case before it, but rather the abstract power to try a case of the kind or character of the one pending. *Winkler*, 500 Mich at 333. The question of jurisdiction is not dependent on the truth or falsity of the allegations, but upon their nature. *Wayne Co v AFSCME Local 3317*, __ Mich App __, __; __ NW2d __ (2018); slip op at 11. The

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> and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section.

inquiry into subject-matter jurisdiction is determinable at the commencement of a case, not its conclusion. *Id.* There is a vast difference between want of jurisdiction, in which case a court has no power whatsoever to adjudicate the matter, and an error in the exercise of undoubted jurisdiction, in which case the court's action is not void, even though it may be subject to direct attack on appeal. *Id.*

"Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state." MCL 600.605; see also Const 1963, art 6, § 13 ("The circuit court shall have original jurisdiction in all matters not prohibited by law[.]").[6] With respect to the MTT, it has "exclusive and original jurisdiction" over "[a] proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, *special assessments*, allocation, or equalization, under the property tax laws of this state." MCL 205.731(a) (emphasis added). In *Hillsdale Co Senior Servs, Inc v Hillsdale Co*, 494 Mich 46, 53; 832 NW2d 728 (2013), our Supreme Court extrapolated four elements from MCL 205.731(a), observing:

> Thus, for the tribunal to have jurisdiction pursuant to MCL 205.731(a), four elements must be present: (1) a proceeding for direct review of a final decision, finding, ruling, determination, or order; (2) of an agency; (3) relating to an assessment, valuation, rate, special assessment, allocation, or equalization; (4) under the property tax laws. Where all such elements are present, the tribunal's jurisdiction is both original and exclusive.

"The divestiture of jurisdiction from the circuit court is an extreme undertaking[;]" however, "the Tax Tribunal Act[, MCL 205.701 *et seq.*,] clearly evidences a legislative intention

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[6] MCL 600.601(1) provides:

> The circuit court has the power and jurisdiction that is any of the following:
>
> (a) Possessed by courts of record at the common law, as altered by the state constitution of 1963, the laws of this state, and the rules of the supreme court.
>
> (b) Possessed by courts and judges in chancery in England on March 1, 1847, as altered by the state constitution of 1963, the laws of this state, and the rules of the supreme court.
>
> (c) Prescribed by the rules of the supreme court.

that the circuit court not have jurisdiction over matters within the tribunal's exclusive jurisdiction." *Wikman v City of Novi*, 413 Mich 617, 645; 322 NW2d 103 (1982).

MCL 205.731(a) expressly references "special assessments," and 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, 500; 502 NW2d 299 (1993). "In contrast to a tax, a special assessment is imposed to defray the costs of specific local improvements, rather than to raise revenue for general governmental purposes." *Id.* The Tax Tribunal Act grants the MTT "exclusive jurisdiction over . . . [a] proceeding seeking direct review of the governmental unit's decision concerning a special assessment for a public improvement." *Wikman*, 413 Mich at 626.

We conclude that the particular allegations in Counts I through III of plaintiff's complaint squarely presented a legal question regarding the effect of a tax foreclosure judgment on overdue special-assessment installment payments; it is a pure issue of statutory construction. In *Romulus City Treasurer v Wayne Co Drain Comm'r*, 413 Mich 728, 737-738; 322 NW2d 152 (1982), the Supreme Court described the composition of the MTT and the relevance of that composition, explaining:

> The tribunal that was created to exercise such jurisdiction was labeled a "quasi-judicial agency," whose membership is to be comprised of persons with various specified qualifications. Of the seven members, two must be attorneys with experience either in property tax matters or in judicial or quasi-judicial office. One member must be a certified assessor; one, an experienced professional real estate appraiser; and one, a certified public accountant with experience in state-local tax matters. . . . [P]ersons who are not members of any of the enumerated disciplines are required to have experience in state or local tax matters.
>
> The expertise of the tribunal members can be seen to relate primarily to questions concerning *the factual underpinnings of taxes*. In cases not involving special assessments, the tribunal's membership is well-qualified to resolve the disputes concerning those matters that the Legislature has placed within its jurisdiction: assessments, valuations, rates, allocation and equalization. In special assessment cases, the tribunal is competent to ascertain whether the assessments are levied according to the benefits received. Although the tribunal, in making its determinations, will make conclusions of law, the matters within its jurisdiction under MCL 205.731 most clearly relate to the basis for a tax . . . . [Citations omitted; emphasis added.]

In *Joy Mgt Co v Detroit*, 176 Mich App 722, 728; 440 NW2d 654 (1989), overruled in part on other grounds by *Detroit v Walker*, 445 Mich 682, 697 n 20 (1994), this Court noted that the MTT's "primary functions are to find facts," where its expertise chiefly relates "to questions concerning the factual underpinnings of taxes." The *Joy Mgt Co* panel ruled:

> In the instant case, plaintiff has not challenged a final decision regarding valuation, rates, allocation or assessment, nor is plaintiff asking for a refund or a redetermination of a tax. Rather, plaintiff has challenged the legality of

> the *method* used by defendant to enforce collection of the property taxes. Resolution of this issue depends not on findings of fact, but on conclusions of law based upon the construction of [MCL 211.47]. This is clearly within the scope of the circuit court's jurisdiction. Thus, the trial court did not err by denying defendant's motion for summary disposition pursuant to MCR 2.116(C)(4), lack of subject-matter jurisdiction. [*Joy Mgt Co*, 176 Mich App at 728-729.]

In *In re Petition of the Wayne Co Treasurer for Foreclosure*, 286 Mich App 108, 112-113; 777 NW2d 507 (2009), this Court indicated that when a "challenge does not require any findings of fact, but rather only construction of law—where no factual issues requiring the tribunal's expertise are present—the circuit court has jurisdiction to consider the issue." The Court observed that this "reasoning applies to any challenge to a tax assessment based not on the validity of the assessment per se, but on peripheral issues relevant to enforcing a tax assessment." *Id.* at 113.

Here, our review of Counts I through III of plaintiff's complaint reveals that plaintiff is not challenging the factual basis or the amount of the underlying assessments arising from the special assessment agreements; rather, plaintiff takes issue with the continuing enforceability of the assessments, at least in regard to outstanding past due installments, in light of the tax foreclosure, arguing that past debt was extinguished by the judgment of foreclosure. It is important to keep in mind that, even though plaintiff's arguments at the summary disposition stage may have deviated somewhat from the allegations in its complaint, it is the nature of those allegations alone that govern our resolution of whether the circuit court has subject-matter jurisdiction. *Grubb Creek Action Comm v Shiawassee Co Drain Comm'r*, 218 Mich App 665, 668; 554 NW2d 612 (1996) ("A court's subject-matter jurisdiction is determined only by reference to the allegations listed in the complaint."); see also *Reynolds v Robert Hasbany, MD PLLC*, 323 Mich App 426, 431; 917 NW2d 715 (2018); *Trost v Buckstop Lure Co, Inc*, 249 Mich App 580, 586; 644 NW2d 54 (2002); *Luscombe v Shedd's Food Prod Corp*, 212 Mich App 537, 541; 539 NW2d 210 (1995). Resolution of Counts I through III requires construction of the GPTA and the law of tax foreclosure, having nothing to do with the factual underpinnings of the special assessments. The proceedings, as framed by plaintiff's complaint, did not entail plaintiff seeking direct review of a final decision, finding, ruling, or determination by the city relating to special assessments under the property tax laws of this state. MCL 205.731(a). Instead, plaintiff sought review of various GPTA foreclosure provisions and application of those provisions *to the existing factual circumstances*, which is not within the wheelhouse of MTT's expertise. In Counts I through III, there is no allegation challenging the amount or the basis of a contractually-created special assessment, nor is there an allegation that an improvement did not benefit the property in correlation to the cost of the improvement. Counts I through III of plaintiff's complaint did not trigger the MTT's original and exclusive jurisdiction.

With respect to the deferred assessment agreement addressed in Count I and the landscape/irrigation agreement challenged in Count III, defendants, as recognized by the circuit court, maintained that the city does not seek to recover or hold plaintiff responsible for any amounts owing under those agreements/assessments. In light of this position, and given our ruling on subject-matter jurisdiction, we deem the appropriate course of action to be a remand to the circuit court for entry of declaratory relief in favor of plaintiff on those two counts, making

clear that plaintiff owes nothing in regard to those agreements/assessments, nor is plaintiff's property to be subject to any lien or encumbrance connected to the two agreements/assessments.

With respect to Count II and the VSADA and the amendment of the VSADA post-foreclosure judgment but pre-foreclosure sale, which amended agreement is addressed in Count IV of plaintiff's complaint, it is necessary to examine the record in more detail. The VSADA was entered into in 2004, and it provided that "[t]he term of the special assessment will not exceed ten (10) years." The VSADA further stated that it "shall be effective as of the date first written above and shall remain in effect until all the obligations of the Owner under this Agreement have been met." Additionally, the VSADA provided that "the final amount of any special assessment, the term of years for the special assessment and similar matters associated with the establishment of a special assessment district for the Owner-Contracted Infrastructure Improvements will be determined by resolution of the City Commission *in its discretion*." (Emphasis added.)

A resolution adopted by the city on July 15, 2014, indicated that a balloon payment totaling $403,620 was due on September 7, 2014, under the VSADA. The resolution, referring back to the city's right to exercise its discretion as stated in the VSADA, further provided:

> Without re-confirming the District's special assessment roll, the City Commission has determined that extending the term of the special assessment for one additional year [September 7, 2015] is in the public interest in order to allow the owner of the Property an opportunity to cause the balloon payment to be made and to bring the taxes and special assessment on the Property current, to make the Property more marketable, and to enhance economic development opportunities within the City.

On March 6, 2015, before the expiration of the one-year extension adopted by the city, the judgment of foreclosure was entered, vesting title in the county treasurer. The judgment became final and unappealable on April 1, 2015. In June 2015, the city and the county treasurer entered into the amended VSADA. The amended VSADA recited the history of the original VSADA, noted the foreclosure proceedings, referenced the language, quoted above, found in the city's resolution adopted in July 2014, acknowledged the balance of $403,620, and set forth a payment structure requiring nine annual payments of $54,000 starting on September 7, 2015, with a final payment of $48,307 due on September 7, 2024. The amended VSADA also provided:

> The parties acknowledge and agree that the City, consistent with the terms of the [VSADA] and City Ordinance No. 4-67, as amended, has reserved to itself the right to extend the term of years for payment of the above-described special assessment without changing the date of the confirmation of the Roll or exposing the City to a challenge of the special assessment or Roll, as amended, and that it is the parties' intent that all challenges, claims or causes of action to any special assessment associated with the Property or the Roll are released and waived by the [county treasurer], its successors and assigns as against the City.

The amended VSADA was recorded with the register of deeds on June 23, 2015. In November 2015, plaintiff purchased the property at the tax foreclosure sale for $36,500.

We have already determined that the circuit court has subject-matter jurisdiction over Count II of the complaint concerning the VSADA, standing on its own. And we now hold that the circuit court also has subject-matter jurisdiction over Count IV of the complaint pertaining to the amended VSADA. With respect to Count IV, as stated earlier, plaintiff alleged that "[t]here was no authority for the [d]efendants to enter into the [amended] . . . VSADA in an attempt to restore an assessment that had been voided by the GPTA." Plaintiff asserted that the amended VSADA was not supported by any consideration and that it was against public policy. Regardless of the substantive soundness of plaintiff's argument, Count IV effectively alleged the creation or existence of a legally invalid contract that gave rise to a special assessment or the extension of a special assessment, resulting in an encumbrance on plaintiff's property.

The MTT does not have subject-matter jurisdiction over contract disputes simply because the substance of the contract regards special assessments. In *Highland-Howell Dev Co, LLC v Marion Twp*, 469 Mich 673, 677-678; 677 NW2d 810 (2004), our Supreme Court, after citing and quoting the language from *Romulus City Treasurer* that we alluded to earlier, ruled:

> While the Tax Tribunal's membership is particularly competent to resolve disputes related to the basis for and amounts of taxes, its membership is not qualified to resolve common-law tort or contract claims. Clearly, this supports our conclusion that the Legislature did not intend the Tax Tribunal's exclusive jurisdiction to encompass matters outside the realm of those tax matters specified in the statute.

As alleged by plaintiff, Count IV presented a question of contract law, as shaped by the construction of provisions in the GPTA. Count IV does not require any findings of fact nor entail the factual underpinnings of taxes; rather, it concerns the construction of law—contract law and the GPTA. Therefore, the circuit court and not the MTT has jurisdiction over Count IV.

That concluded, we must nonetheless continue our analysis, because the circuit court supplemented its jurisdictional ruling with a determination that plaintiff's action was fatally flawed even if the court had subject-matter jurisdiction. The circuit court first found that the judgment of foreclosure was entered *before* the amended VSADA was executed. And therefore, pursuant to MCL 211.78k(5)(c), future installments of a special assessment are at issue, which necessarily could not have been extinguished by the foreclosure judgment. The court's ruling assumes the soundness and validity of the amended VSADA from which the special assessment arose. However, the allegations in Count IV of the complaint challenge the legal validity of the amended VSADA. If the amended VSADA and resulting assessment are void or voidable, the language in MCL 211.78k(5)(c) excepting future assessment installments from extinguishment becomes irrelevant, because there is no assessment to enforce.

The circuit court next observed that plaintiff was not a party to the amended VSADA and thus "likely lacks standing to challenge it." We do not find this language to reflect a conclusive ruling on standing, and any standing issue can certainly be entertained more fully and conclusively on remand. We do note that the special assessment based on the amended VSADA encumbers plaintiff's property to the tune of over half a million dollars. The circuit court did not address the allegations in Count IV of plaintiff's complaint that the amended VSADA was

invalid because there was a lack of consideration and because it violated public policy. The legal validity of the amended VSADA must be addressed and resolved on remand.

Finally, with respect to Count V, the circuit court summarily dismissed the claim based on governmental immunity. In *Moraccini v City of Sterling Hts*, 296 Mich App 387, 391-392; 822 NW2d 799 (2012), this Court set forth the basic analytical framework concerning governmental immunity:

> Except as otherwise provided, the governmental tort liability act (GTLA), MCL 691.1401 *et seq.*, broadly shields and grants to governmental agencies immunity from tort liability when an agency is engaged in the exercise or discharge of a governmental function. MCL 691.1407(1); *Duffy v Dep't of Natural Resources*, 490 Mich 198, 204; 805 NW2d 399 (2011); *Grimes v Dep't of Transp*, 475 Mich 72, 76-77; 715 NW2d 275 (2006). "The existence and scope of governmental immunity was solely a creation of the courts until the Legislature enacted the GTLA in 1964, which codified several exceptions to governmental immunity that permit a plaintiff to pursue a claim against a governmental agency." *Duffy*, 490 Mich at 204. A governmental agency can be held liable under the GTLA only if a case falls into one of the enumerated statutory exceptions. *Grimes*, 475 Mich at 77; *Stanton v Battle Creek*, 466 Mich 611, 614-615; 647 NW2d 508 (2002). . . . This Court gives the term "governmental function" a broad interpretation, but the statutory exceptions must be narrowly construed. [Citation omitted.]

"[T]he burden . . . fall[s] on the governmental employee to raise and prove his entitlement to immunity as an affirmative defense." *Odom v Wayne Co*, 482 Mich 459, 479; 760 NW2d 217 (2008). But "[a] plaintiff filing suit against a governmental agency must initially plead his claims in avoidance of governmental immunity." *Id.* at 478-479.

The sole argument posed by plaintiff on appeal is that defendants were not engaged in the exercise or discharge of a governmental function when attempting to collect an extinguished obligation. This argument lacks merit, failing to appreciate the difference between having the authority to generally engage in a particular governmental function and the negligent, improper, or wrongful performance of the authorized function. A "governmental function" is defined as "an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law." MCL 691.1401(b).

A "city may in its charter provide . . . [f]or assessing and reassessing the costs, or a portion of the costs, of a public improvement to a special district." MCL 117.4d(1)(a). The Kentwood Code of Ordinances (KCO) grants the city authorization to impose special assessments. See KCO, § 10.1; KCO, § 50-2 ("The whole cost, or any part thereof, of any local public improvement may be defrayed by special assessment upon the lands especially benefitted by the improvement in the manner provided in this chapter."). Furthermore, KCO, § 50-13 authorizes the creation of liens relative to special assessments, providing that "[s]pecial assessments . . . shall become a personal obligation to the city . . . and, until paid, shall be and remain a lien upon the property assessed . . . ." Indeed, MCL 211.78k(5)(c) (see footnote 5 of this opinion), which plaintiff cites in its complaint as supporting extinguishment of existing

special assessments, recognizes the authority of governmental entities to record liens against property for special assessments.

In light of the authorities, the city was plainly engaged in the exercise and discharge of a governmental function for purposes of MCL 691.1407(1) and governmental immunity with respect to the special assessments at issue, their collection, and the resulting recorded liens. Plaintiff's argument simply challenges the specific manner in which the city carried out the governmental functions, alleging that the city clouded plaintiff's title by improperly attempting to collect payment on special assessments, making payment demands, and allowing recorded instruments to remain in place, where the special assessments had been extinguished. In determining whether a governmental agency was engaged in the exercise of a governmental function, the focus must be on the general activity, not the particular conduct involved at the time the alleged tort was committed. *Tate v Grand Rapids*, 256 Mich App 656, 661; 671 NW2d 84 (2003). The improper performance of an activity authorized by law is, regardless of the impropriety, still authorized for purposes of the governmental function test. *Richardson v Jackson Co*, 432 Mich 377, 385; 443 NW2d 105 (1989). A governmental agency is not engaged in the exercise or discharge of a governmental function when it lacks the legal authority to perform the activity "in any manner." *Id.* at 387. Such is not the situation in the instant case. Plaintiff has not established that the circuit court erred in summarily dismissing plaintiff's claim for slander of title.

Affirmed in part, and reversed and remanded in part for further proceedings. We do not retain jurisdiction. No party having fully prevailed on appeal, we decline to award taxable costs under MCR 7.219.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Jane M. Beckering

EXHIBIT tabbies 2

RECD KENT COUNTY
2015 MAY -6 AM

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Kent Cnty MI Rgstr 05/06/2015 SEAL

Notice of Judgement of Foreclosure

Michigan Department of Treasury
3731 (3-04)

Required by section 78k(8) of The General Property Tax Act, 1893 PA 206, as amended, MCL 211.78k(8).

On March 6, 2015, in Civil Action No. 14-05292-CZ, in the Circuit Court of Kent County, the Kent County Treasurer entered a Judgement of Foreclosure in the Matter of the Petition of the County Treasurer against the property described below, vesting absolute title to the real property in the County of Kent, by the Kent County Treasurer, as provided by Section 78k of The General Property Tax Act, 1893 PA 206, as amended, MCL 211.78k, if not redeemed by April 1, 2015. Under the General Property Act, the Judgement of Foreclosure became final and unappealable on April 1, 2015.

Parcel No. 41-18-22-426-001	Property Forfeited to County Treasurer on March 3, 2014. Certificate of Forfeiture recorded on Instrument # 201404100028284
Property Address (if available): 4101 SHAFFER AVE SE KENTWOOD MI 49512	Owner: 44TH/SHAFFER AVENUE LLC
County: KENT COUNTY · Local Unit Name: CITY OF KENTWOOD · Local Unit Code: 65	
Legal Description of the Property: PART OF E 1/2 COM AT E 1/4 COR TH S 3D 35M 29S E ALONG E SEC LINE 60.07 FT TH S 88D 09M 27S W 40.01 FT TO W LINE OF SHAFFER AVE & BEG OF THIS DESC - TH S 3D 10M 02S E ALONG SD W LINE 1263.17 FT TH S 89D 54M 32S W 629.94 FT TH S 3D 10M 02S E 60.95 FT TH S 90D 00M 00S W 708.24 FT TH N 45D 00M 00S W 67.88 FT TH S 90D 00M 00S W 530.0 FT TH N 50D 00M 00S W 235.0 FT TH N 44D 18M 31S E 199.74 FT TH N 77D 07M 45S E 307.02 FT TH N 41D 46M 39S E 334.95 FT TH N 8D 47M 09S E 226.61 FT TH N 11D 02M 04S W 245.78 FT TH N 25D 03M 50S E 281.40 FT TO A PT ON E&W 1/4 LINE SD PT BEING (CONTINUED)	
April 22, 2015	County Treasurer Signature: Kenneth D. Parish
Notary Public, State of Michigan, County of Kent My Commission Expires on October 5, 2018 Acting in the County of Kent Subscribed to and sworn before me on this 22nd day of April 2015 Denise M. Terpstra Denise M. Terpstra, Notary Public	Drafted by and when recorded, return to: County Treasurer for the County of Kent Address: 300 MONROE AVE NW PO BOX Y GRAND RAPIDS MI 49501

20150506-0038676
Mary Hollinrake P:2/2 8:58AM
Kent Cnty MI Rgstr 05/06/2015 SEAL

*** CONTINUATION OF LEGAL - Property ID No 41-18-22-426-001 ***
1290.96 FT S 89D 49M 02S W FROM E 1/4 COR TH N 70D 13M 01S E 266.80 FT TH S 75D 46M 26S E 333.65 FT TH S 69D 14M 04S E 227.04 FT TH N 88D 09M 27S E 467.76 FT TO BEG * SEC 22 T6N R11W 47.77 A

EXHIBIT 3

11/5/8

(3)

DEFERRED ASSESSMENT AGREEMENT

This Deferred Assessment Agreement (the "Agreement") is executed this 18th day of March, 2004, between the City of Kentwood, a Michigan municipal corporation, the address of which is 4900 Breton Avenue SE, PO Box 8848, Kentwood, Michigan 49518-8848 (the "City"), Ravines Capital Management, LLC, a Michigan limited liability company, the address of which is 301 Douglas Avenue, Holland, Michigan 49424 ("RCM") and 44th/ Shaffer Avenue, LLC, a Michigan limited liability company, the address of which is 850 Stephenson Highway, Suite #200, Troy, MI 48083 ("44th LLC").

RECITALS

A. 44th LLC and RCM own approximately 300 acres of real property located at the northwest corner of 44th Street and Shaffer Avenue in the City of Kentwood, Kent County, Michigan (the "Property"), more specifically described on the attached Exhibit A, which is incorporated by reference.

B. In 1981, 1983, 1995 and 2000, special assessment districts were established by the City to finance certain public improvements benefiting particular properties in the City, including the Property. The special assessment rolls corresponding to the special assessment districts for the Property were confirmed by the City Commission.

C. In total, special assessments in the amount $327,004.68, were assessed against the Property (the "Special Assessments"). The Special Assessments are a lien on the Property.

D. Under the terms of the rolls confirming the Special Assessments, collection of the Special Assessments was deferred until certain developments occurred on the Property.

E. The Property was formerly zoned R1-C, single family residential. 44th LLC sought and received approval from the City to develop the Property in phases having multiple uses including commercial and residential development of single family, townhouses and attached condominiums (the "Project"). To accomplish this, the Property was rezoned, at 44th LLC's request, to a R-PUD1 designation, high density residential Planned Unit Development District ("PUD"). A preliminary PUD site plan, as required by the City's Zoning Ordinance, depicting the Project is attached as Exhibit B and incorporated by reference.

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F. 44th LLC contemplates the sale of all or portions of the Property to third party builders ("Builder" or "Builders") who will succeed to and be responsible for complying with the obligations of 44th LLC as to that portion of the Property purchased from 44th LLC, and 44th LLC will have no further obligation with regard to the purchased Property. Wherever the term "44th LLC" is used, it shall mean during the period that 44th LLC remains the owner of the portion of the Property affected and thereafter it shall mean the Builder or Builders.

G. To facilitate development of the Property in an orderly fashion, the parties have agreed to enter into this Agreement with respect to treatment of the outstanding deferred Special Assessments.

AGREEMENT

For good and valuable consideration including, but not limited to, the covenants and pledges contained herein and the City's willingness to forego payment of all Special Assessments upon any development of the Property, the sufficiency of which is acknowledged, the parties agree as follows:

Section 1. Acknowledgement of Lien. Notwithstanding the existence of the Agreement or any provision herein, 44th LLC and RCM acknowledge and agree that the deferred Special Assessments on the Property, in the total amount of $327,004.68, confirmed pursuant to City of Kentwood Resolution Nos. 38-81, 68-83, and 28-00 are and shall remain valid and enforceable liens that run with the Property.

Section 2. Payment Schedule. 44th LLC has requested, consistent with the terms of the resolution confirming the rolls for the Special Assessments, that it or its successors be permitted to pay the Special Assessments in three (3) installments, subject to the terms and conditions of this Agreement, and the City has agreed to this request.

A. Initial Payment. Concurrent with the execution of this Agreement, 44th LLC shall pay to the City the sum of $110,827.68, representing the portion of the deferred Special Assessments due and owing for certain sanitary sewer, watermain and detention pond improvements for approximately 1020 lineal feet of the Property along Shaffer Avenue, S.E., as shown on Exhibit B.

B. Remainder. The remainder of the outstanding deferred Special Assessment in the amount of $216,177.00 (the "Remainder") shall be paid to the City in accordance with the following terms and conditions and consistent with the following schedule:

(1) Not less than 60 days following the execution of this Agreement, 44th LLC shall post with the City an irrevocable letter of credit in the amount of $216,177.00, which letter of credit shall be in a form satisfactory to the City in its reasonable discretion. A combination of irrevocable letters of credit from qualified banks may be used by 44th LLC to satisfy this provision. The letter(s) of credit shall provide that the City may draw or demand for payment on the letter(s) of credit if an official designated by the City attests that payments for the Special Assessments due under the terms of this Agreement have not been made to the City as required herein. The letter(s) of credit shall further contain language providing that it (they) may not be revoked or rescinded without first providing the City with at least

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thirty (30) days prior written notice. The letter(s) of credit shall be released only upon the satisfactory payment of the Special Assessments as provided for herein; provided, however, that the letter(s) of credit shall be released proportionately as the Special Assessment payments called for herein are made to the City. The parties acknowledge and agree that no foundation or building permits shall be issued for any portion of the Project unless and until the letter(s) of credit referred to herein are posted with the City.

(2) For purposes of this Agreement the PUD shall be divided into three (3) distinct component development areas, as separately shown and described on Exhibit C, incorporated by reference. Prior to the time any foundation or building permit is issued within any of the development areas in the PUD (i.e., the Commercial Corner, Bosgraaf Parcel or 44th/Shaffer Parcel), a payment in the amount shown for the relevant development area on Exhibit C, plus interest then due and owing as provided for herein, shall be paid to the City by 44th LLC or the successor Builder.

(3) Interest shall accrue on each component constituting the Remainder, as collectively identified on Exhibit C, at the rate of ten percent (10%) per annum from the date of the execution of this Agreement. Any component of the Remainder that remains unpaid shall continue to accrue interest at the rate of ten percent (10%) per annum.

(4) The parties acknowledge and agree that the construction of Pfeiffer Woods Drive, or any portion of the same, by 44th LLC or the Builders shall not be construed to require a payment under the terms of this Agreement, it being the parties' interpretation that development of Pfeiffer Woods Drive is not a development triggering an obligation to pay any part of the Special Assessments. Similarly, the parties acknowledge and agree that the demolition of any structures existing on the Property as of the date of this Agreement shall not be construed to require a payment under the terms of this Agreement.

(5) Regardless of the particular development schedule for the PUD pursued by 44th LLC or the Builders, any portion of the Special Assessment remaining unpaid as of December 31, 2006 shall be paid to the City with interest accrued to that date by 44th LLC or the Builders.

Section 3. Violation of Agreement. Nothing herein shall be deemed a waiver of the City's rights to seek enforcement of this Agreement or zoning approvals previously granted, to the extent otherwise authorized by law. Violations of the terms and conditions of this Agreement shall entitle the prevailing party, in the event of litigation to enforce this Agreement, to receive its reasonable attorney and consulting fees incurred.

Section 4. Amendment. Except as hereafter provided, this Agreement may only be amended in writing, signed by all parties. However, any amendment that only relates to a component development area shall not require the signature of the owners of the other properties unless such amendment has an effect on their property.

Section 5. Recording and Binding Effect. The obligations under this Agreement are covenants that run with the land, and shall bind all successors in title. It is the parties' intent that this Agreement shall be recorded with the Kent County Register of Deeds. The City shall be responsible for all costs associated with recording the Agreement.

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Mary Hollinrake T20040010449
Kent County MI Register SEAL

Section 6. Headings and Recitals. The parties acknowledge and agree that the headings and subheadings in this Agreement are for convenience only and shall have no bearing or effect. The parties further acknowledge and agree, however, that the Recitals hereto are and shall be considered an integral part of this Agreement proper to its correct understanding and interpretation.

Section 7. Miscellaneous.

A. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the enforceability or validity of the remaining provisions and this Agreement shall be construed in all respects as if any invalid or unenforceable provision were omitted.

B. Notices. Any and all notices permitted or required to be given shall be in writing and sent either by mail or personal delivery to the address first above given.

C. Waiver. No failure or delay on the part of any party in exercising any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude further exercise thereof or the exercise of any other right, power, or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

D. Governing Law. This Agreement is being executed and delivered and is intended to be performed in the State of Michigan and shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws thereof.

E. Authorization. The parties affirm that their representatives executing this Agreement on their behalf are authorized to do so and that all resolutions or similar actions necessary to approve this Agreement have been adopted and approved. The Developer further affirms that it is not in default under the terms of any land contract for all or part of the Property.

The parties have executed this Agreement on the day and year first above written.

WITNESSES:

Keith Van Beek

CITY OF KENTWOOD

Richard Root, Mayor

Jeff Scogett

Dan Kasunic, Clerk

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

On this 12th day of March, 2004, before me a Notary Public, personally appeared Richard Root and Dan Kasunic, the Mayor and Clerk, respectively, of the City of Kentwood, a Michigan municipal corporation, who, being first duly sworn, did say they signed this document on behalf of the City.

Julie E. Connor

Notary Public, Kent County, Michigan
My Commission Expires: 10-1-05

WITNESSES:

Craig S. Wandrie

Craig S. Wandrie

44TH/SHAFFER AVENUE, LLC

By: Michael J Damone

Its: Member

MICHAEL J DAMONE

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

On this 18 day of March, 2004, before me a Notary Public, personally appeared the member of 44th/Shaffer Avenue, LLC, a Michigan limited liability company, who, being first duly sworn, did say he signed this document on behalf of the company.

Michael J. Damone

CRAIG S. WANDRIE
NOTARY PUBLIC, BARRY COUNTY
ACTING IN KENT COUNTY, MICHIGAN
MY COMMISSION EXPIRES
NOVEMBER 15, 2007

Notary Public, Kent County, Michigan
My Commission Expires:

20040607-0043212 04/07/2004
P:7 of 11 F:$44.00 8:28AM
Mary Hollinrake T20040051843
Kent County MI Register SRL

WITNESSES:

RAVINES CAPITAL MANAGEMENT, LLC

Craig S. Wandrie

By: Michael L. Bosgraf
Its: Manager

Craig S. Wandrie

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

On this 18 day of March, 2004, before me a Notary Public, personally appeared the manager of Ravines Capital Management, LLC a Michigan limited liability company, who, being first duly sworn, did say he signed this document on behalf of the company.

Michael L Bosgraf

Notary Public, Kent County, Michigan
My Commission Expires:

CRAIG S. WANDRIE
NOTARY PUBLIC, BARRY COUNTY
ACTING IN KENT COUNTY, MICHIGAN
MY COMMISSION EXPIRES
NOVEMBER 15, 2007

Drafted By/Return To:
Jeff Sluggett
Law, Weathers & Richardson, PC
333 Bridge, NW, Suite 800
Grand Rapids, MI 49504
616-732-1751

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P:8 of 11 F:$44.00 8:28AM
Mary Hollinrake T20040043212
Kent County MI Register SEAL

Exhibit A

Legal Description of Property

Part of the NE 1/4 and part of the SE 1/4, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: BEGINNING at the NE corner of Section 22; thence S03°35'29"E 395.00 feet along the East line of said NE 1/4; thence S89°42'31"W 258.00 feet; thence S03°35'29"E 120.00 feet; thence N89°42'31"E 258.00 feet; thence S03°35'29"E 705.38 feet along the East line of said NE 1/4; thence N54°47'03"W 395.85 feet; thence S89°45'47"W 308.00 feet; thence S03°35'29"E 330.00 feet; thence N89°45'47"E 424.00 feet along the South line of the N 1/2 of the NE 1/4 of Section 22; thence S03°35'29"E 153.00 feet; thence N89°45'47"E 193.00 feet; thence S03°35'29"E 273.18 feet along the East line of said NE 1/4; thence S86°24'31"W 40.00 feet; thence S03°35'29"E 891.81 feet along the West line of Shaffer Avenue to the South line of said NE 1/4; thence S03°10'02"E 1324.40 feet along the West line of Shaffer Avenue; thence S89°54'32"W 629.94 feet along the North line of the S 1/2 of the SE 1/4 of Section 22; thence S03°10'02"E 550.00 feet; thence N89°54'32"E 629.94 feet; thence S03°10'02"E 325.92 feet along the West line of Shaffer Avenue; thence S82°24'32"W 10.03 feet; thence S03°10'02"E 372.08 feet along said West line; thence S43°24'59"W 34.36 feet; thence S90°00'00"W 1908.53 feet along the North line of 44th Street; thence N03°04'04"W 40.00 feet and S90°00'00"W 180.00 feet and S03°04'04"E 40.00 feet and S90°00'00"W 481.20 feet along said North line; thence N03°02'05"W 2590.11 feet along the West line of the SE 1/4 of Section 22 to the center of said Section; thence N03°29'48"W 2635.49 feet along the West line of the NE 1/4 of Section 22 to the N 1/4 corner of said Section; thence N89°42'31"E 2633.71 feet along the North line of said NE 1/4 to the place of beginning. This parcel contains 299.85 acres.

EXHIBIT B

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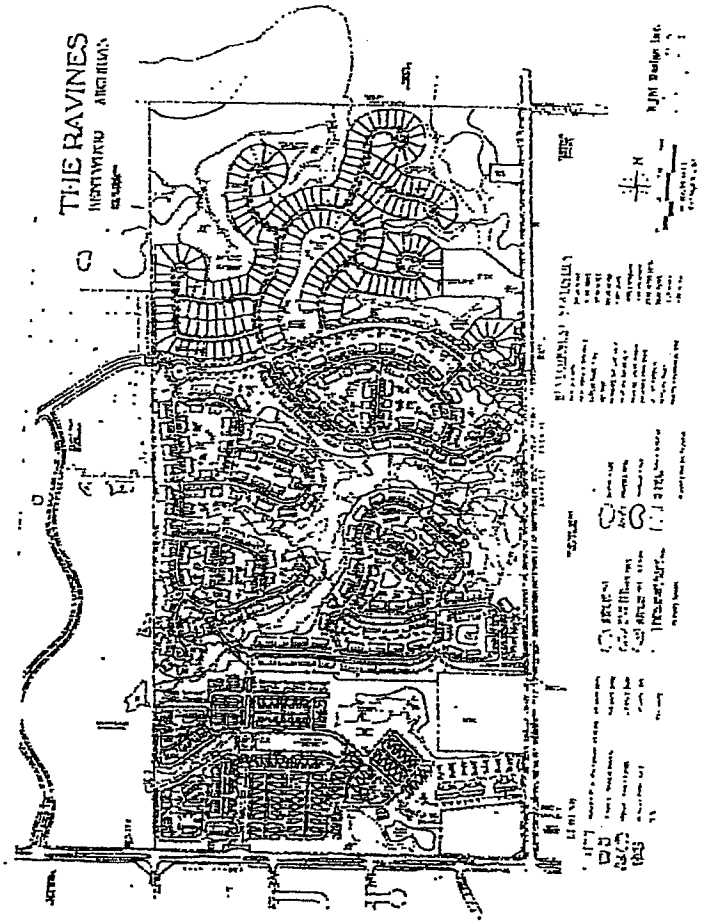

EXHIBIT C -COMPONENT DEVELOPMENT AREAS

Commercial Corner Neighborhood

Legal Description

Part of the SE ¼, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: Commencing at the SE corner of Section 22; thence S 90°00'00"W 75.08 feet along the South line of said SE ¼; thence N03°10'02"W 50.08 feet to the North line of 44th Street and the PLACE OF BEGINNING of this description; thence S90°00'00"W 585.47 feet along said North line; thence N00°00'00"E 318.04 feet; thence N82°24'32"E 593.74 feet; thence S03°10'02"E 372.08 feet along the West line of Shaffer Avenue; thence S43°24'59"W 34.36 feet to the place of beginning. This parcel contains 4.92 acres.

Portion of Remainder: $32,700.42

Bosgraaf Parcel Neighborhood

Legal Description

Part of the SE ¼, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: Commencing at the S ¼ corner of Section 22; thence N03°02'05"W 50.07 feet along the West line of said SE ¼ to the PLACE OF BEGINNING of this description; thence N03°02'05"W 1150.11 feet along said West line; thence N77°56'20"E 333.73 feet; thence N42°36'50"E 260.00 feet; thence S50°00'00"E 235.00 feet; thence N90°00'00"E 530.00 feet; thence S45°00'00"E 67.88 feet; thence N90°00'00"E 708.24 feet; thence S03°10'02"E 489.05 feet; thence N89°54'32"E 629.94 feet; thence S03°10'02"E 325.92 feet along the West line of Shaffer Avenue; thence S82°24'32"W 603.77 feet; thence S00°00'00W 318.04 feet; thence S90°00'00"W 1323.06 feet along the North line of 44th Street; thence N03°04'04"W 40.00 feet and S90°00'00"W 180.00 feet and S03°04'04"E 40.00 feet and S90°00'00"W 481.20 feet along said North line to the place of beginning. This parcel contains 61.44 acres.

Portion of Remainder: $75,210.97

44th/Shaffer Parcel Neighborhood

Legal Description

Part of the NE ¼ and part of the SE ¼, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: BEGINNING at the NE corner of Section 22; thence S03°35'29"E 395.00 feet along the East line of said NE ¼; thence S89°42'31"W 258.00 feet; thence S03°35'29"E 120.00 feet; thence N89°42'31"E 258.00 feet; thence S03°35'29"E 705.38 feet along the East line of said NE ¼; thence N54°47'03"W 395.85 feet; thence S89°45'47"W 308.00 feet; thence S03°35'29E 330.00 feet; thence N89°45'47"E 424.00 feet along the south line of the N ½ of the NE ¼ of Section 22; thence S03°35'29"E 153.00 feet; thence N89°45'47"E 193.00 feet; thence S03°35'29"E 278.18 feet along the East line of said NE ¼; thence S86°24'31"W 40.00 feet; thence S03°35'29"E 891.81 feet along the West line of

Shaffer Avenue to the South line of said NE ¼; thence S03°10'02"E 1324.40 feet along the West line of Shaffer Avenue; thence S89°54'32"W 629.94 feet along the North line of the S ½ of the SE ¼ of Section 22; thence S03°10'02"E 60.95 feet; thence S90°00'00"W 708.24 feet; thence N45°00'00"W 67.88 feet; thence S90°00'00"W 530.00 feet; thence N50°00'00"W 235.00 feet; thence S42°36'50"W 260.00 feet; thence S77°56'20"W 333.73 feet; thence N03°02'05"W 1440.00 feet along the West line of the SE ¼ of Section 22 to the center of said Section; thence N03°29'48"W 2635.49 feet along the West line of the NE ¼ of Section 22 to the N ¼ corner of said Section; thence N89°42'31"E 2633.71 feet along the North line of said NE ¼ to the place of beginning. Subject to highway R.O.W. for Shaffer Avenue. This parcel contains 233.49 acres, including highway R.O.W.

Portion of Remainder: $108,265.19

EXHIBIT tabbies 4

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Kent County MI Register SEAL

LANDSCAPE/IRRIGATION AGREEMENT

This Landscape/Irrigation Agreement is made as of this 26th day of October, 2005 between the City of Kentwood, a Michigan municipal corporation, whose address is 4900 Breton Avenue, SE, Kentwood, MI 49508 (the "City"), 44th/Shaffer Avenue, L.L.C., a Michigan limited liability company, whose address is 850 Stephenson Highway, Suite #200, Troy, MI 48083 ("44th LLC"), Holland Home, a Michigan non-profit corporation, the address of which is 2100 Raybrook Avenue, S.E., Grand Rapids, MI 49546 ("Holland Home") and Ravines North, L.L.C, a Michigan limited liability company, whose address is 960 West River Drive, Suite A, Comstock Park, MI 49321 ("Ravines North")(44th LLC, Holland Home and Ravines North are collectively referred to herein as "Owner" or "Owners").

RECITALS

A. 44th LLC received approval from the City to rezone property it owned for a high-density residential planned unit development project. The property is legally described on attached Exhibit A, which is incorporated by reference (the "Property").

B. 44th LLC and the City entered into a Voluntary Special Assessment/Development Agreement dated September 7, 2004 (the "Agreement") by which the City contracted with 44th LLC to construct certain designated public improvements, which improvements benefited the Property (the "Owner-Contracted Infrastructure Improvements"). The Agreement further provided that the Owner-Contracted Infrastructure Improvements would be financed through the establishment of a special assessment district. The Agreement was recorded with the Kent County Register of Deeds at 20040917-0125700.

C. Subsequently, 44th LLC sold portions of the Property to Holland Home and Ravines North. As a result, an Amendment to Voluntary Special Assessment/Development Agreement dated March 15, 2005 was entered between the parties, which Amendment was recorded with the Kent County Register of Deeds at 20050405-0039643. Holland Home and Ravines North took their interests in the Property with knowledge of the Agreement and its provisions. As of the date first above written, 44th LLC, Holland Home and Ravines North are the owners of the Property.

D. Pursuant to the Agreement, 44th LLC is to dedicate all of the Owner-Contracted Infrastructure Improvements to the City. Pursuant to Resolution 32-05, on March 15, 2005, the

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City accepted for dedication certain of the Owner-Contracted Infrastructure Improvements completed to that date for all public purposes.

E. The Agreement provides that the parties will enter into a separate maintenance/conveyance agreement for landscaping and irrigation system improvements, which improvements are part of the Owner-Contracted Infrastructure Improvements, and that the Owners or their successors will accept the conveyance of the irrigation system improvements upon the termination of the special assessment district. The parties desire to implement these obligations as set forth herein.

AGREEMENT

For good and valuable consideration including, but not limited to, the covenants and pledges contained herein, the sufficiency of which is acknowledged, the parties agree as follows:

1. Landscaping Improvements. The landscaping improvements referenced on the approved landscaping plan, attached as Exhibit B hereto and incorporated by reference, shall, upon completion, be dedicated and conveyed to the City along with any necessary easements consistent with the terms of the Agreement. Without limiting the foregoing, the parties agree that the on-going maintenance responsibility for those landscaping improvements in the parkway included in the Owner-Contracted Infrastructure Improvements shall be assumed by the Owner or its successor(s) at the Owner or successor(s)'s sole cost and expense. The on-going maintenance obligations of the Owner or its successor(s) with respect to the landscaping improvements are generally described in attached Exhibit C hereto, and incorporated by reference. Nothing herein shall be construed or interpreted as granting the Owner or its successor(s) any interest in the landscaping after the landscaping is conveyed to the City, it being the parties' understanding that the City may remove or modify any landscaping within the public rights-of-way as the City deems necessary for the public health, safety and welfare and that the financing of these landscaping improvements by creation of a special assessment district shall not impact the City's rights. The City shall not require the removal or replacement of the initial landscaping if doing so will materially increase the Owner's burden to maintain the landscaping.

2. Irrigation Improvements. The irrigation system improvements referenced on the approved irrigation system plan, attached as Exhibit D hereto and incorporated by reference, shall, upon completion, be dedicated and conveyed to the City along with any necessary easements consistent with the terms of the Agreement. Without limiting the foregoing, the parties agree that the on-going maintenance responsibility for those irrigation system improvements included in the Owner-Contracted Infrastructure Improvements shall be assumed by the Owner or its successor(s) at the Owner or successor(s)'s sole cost and expense. As used in this Section 2, "maintain" or "maintenance" shall mean inspecting, cleaning out, repairing, and replacing any and all pipes, leads, valves, mains, equipment and similar appurtenances of the irrigation system such that failure to maintain is likely to impede the functioning of the irrigation system. Nothing herein shall be construed or interpreted as granting the Owner or its successor(s) any interest in the irrigation system after the irrigation systems is conveyed to the City; provided, however, that the irrigation system will be conveyed by the City back to the Owner or its successor(s) for the sum of $1.00, and shall be accepted by the Owner or its successor(s) on the termination of the special assessment district for the Owner-Contracted

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Infrastructure Improvements or on September 7, 2014, whichever is earlier. Conveyance of the irrigation system improvements by the City to the Owner or its successor(s) shall be effectuated by the City's execution of a bill of sale, and the Owner or its successor(s)'s acceptance of the same. The bill of sale utilized shall be substantially similar to the example, attached as Exhibit B hereto and incorporated by reference. The Owner or its successor(s) and the City shall execute any other documents reasonably necessary to effectuate the subsequent transfer and conveyance of the irrigation system improvements to the Owner or its successor(s).

3. Allocation of Costs. For purposes of allocating maintenance costs and other obligations among the parties (or their successors) to this Agreement, those costs and obligations shall be spread among Neighborhoods B-1 through B-4 of the Ravines, as defined in the Planned Unit Development Agreement, dated March 18, 2004, recorded at Instrument No. 20040402-0043209 with the Kent County Register of Deeds. The allocation of those costs and obligations by neighborhood shall be as follows:

Neighborhood	Cost/Obligation Allocation
B-1	24%
B-2	22%
B-3	33%
B-4	21%

4. Segment of Irrigation System. The City's temporary ownership of the irrigation system as described above in Section 2 shall extend only to the public side of the water meter, which water meter shall be installed within the public rights of way in such manner as approved by the City, all as designated on Exhibit D.

5. Indemnification. The Owner and its successor(s) shall indemnify and hold harmless the City and its officers and employees from any and all claims arising out of or related to the Owner or its successor(s)'s construction, operation or maintenance of the landscaping and irrigation systems that are included in the Owner-Contracted Infrastructure Improvements so long as the Owner or its successor(s) have obligations under the terms of this Landscape/Irrigation Agreement.

6. Miscellaneous.

(a) Interpretation. Each party had the advice of legal counsel and was able to participate in the creation of this agreement, so it shall be construed as mutually drafted. The captions are for convenience only. However, the recitals are deemed an integral part of this agreement. More than one copy may be signed, but it shall constitute only one agreement. It was drafted in Kent County, Michigan and is to be interpreted in accordance with Michigan law. The interpretation of this agreement shall not be affected by any course of dealing between the parties.

(b) Notices. All notices shall be complete when provided to the other party at the first address given above or such other address as a party shall request by notice. It may be made by personal delivery, express courier such as FedEx, by United States certified

mail, return receipt requested or by pre-paid United State first class mail. If made by first class mail, it shall be deemed completed 5 business days after mailing. Otherwise, it shall be deemed completed when actually delivered.

(c) Breach and Remedies.

(1) The parties agree that damages and other legal remedies are inadequate relief. Only specific performance, injunctive or other equitable relief may be sufficient. The parties agree that any breach of this agreement will result in irreparable harm to the other party.

(2) All remedies are cumulative of all remedies available at law or in equity. The pursuit of one remedy does not foreclose the pursuit of other remedies. Available remedies may be exercised simultaneously or individually.

(3) In any dispute pursuant to this agreement, the parties agree that, to the extent not otherwise prohibited by law, the jurisdiction and venue for any such dispute shall be solely within the state courts located in Kent County, Michigan. The parties further agree that in any such dispute the prevailing party shall, in addition to any other relief to which it may be entitled, be awarded its actual cost, including, without limitation, filing fees, discovery costs, actual reasonable attorneys' fees, expert witness fees, and other costs incurred to bring, maintain or defend any such action from its first accrual or notice thereof through all appellate and collection proceedings.

(d) Recording. The obligations under this agreement are covenants that run with the land, and shall bind all successors in title. This agreement shall be recorded with the Kent County Register of Deeds. 44th LLC shall be responsible for all costs associated with recording the agreement.

(e) Additional Documents. The parties agree to execute such other documents and any one of them may reasonably request to fully implement this agreement.

The parties have executed this Agreement on the day and year first above written.

CITY OF KENTWOOD, a Michigan home rule city

Richard L. Root, Mayor

Dan Kasunic, Clerk

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

On this 26th day of January, 2005, before me a Notary Public, personally appeared Richard L. Root and Dan Kasunic, the Mayor and Clerk, respectively of the City of Kentwood, a Michigan municipal corporation, who, being first duly sworn, did say they signed this document on behalf of the City.

Mary L. Bremer

Notary Public, State of Michigan, County of Kent
My Commission Expires: 8-9-10
Acting in the County of Kent

MARY L. BREMER
Notary Public, State of Michigan
Qualified in Kent County
Commission Expires August 9, 2010

44TH/SHAFFER AVENUE, LLC, a
Michigan limited liability company

Michael J. Damone, Manager

STATE OF MICHIGAN)
OAKLAND) ss.
COUNTY OF ~~KENT~~)

On this 26th day of Oct, 2005, before me a Notary Public, personally appeared Michael J. Damone, the Manager of 44th/Shaffer Avenue, L.L.C., a Michigan limited liability company, who, being first duly sworn, did say he signed this document on behalf of the Company.

Notary Public, State of Michigan, County of _____
My Commission Expires: CONSTANCE M. WALBY NOTARY PUBLIC, MACOMB COUNTY, MI MY COMMISSION EXPIRES: NOV 3, 2007
Acting in the County of _____ ACTING IN OAKLAND COUNTY, MI

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Mary Hollinrake 72006000013229
Kent County MI Register SEAL

HOLLAND HOME, a Michigan Non-Profit Corporation

Robert R. Israels
Its Vice Chair, Holland Home

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

On this 18th day of October, 2005, before me a Notary Public, personally appeared Robert R. Israels, the Vice Chair of Holland Home, a Michigan non-profit corporation, who, being first duly sworn, did say he signed this document on behalf of the corporation.

Deborah A. Westerhuis

Notary Public, State of Michigan, County of Kent
My Commission Expires: 9-12-2011
Acting in the County of Kent

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Mary Hollinrake T20050001529
Kent County MI Register SEAL

RAVINES NORTH, L.L.C., a Michigan limited liability company

A. Kurt Homesma
Its Member

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

On this 21st day of October, 2005, before me a Notary Public, personally appeared A Kurt Homesma, a member of Ravines North, L.L.C., a Michigan limited liability company, who, being first duly sworn, did say he signed this document on behalf of the company.

Theresa Watson
THERESA WATSON
Notary Public, State of Michigan, County of KENT
My Commission Expires: 3-11-08
Acting in the County of KENT

Drafted By/Return To:
Jeff Shuggett
Law, Weathers & Richardson, PC
333 Bridge, NW, Suite 800
Grand Rapids, MI 49504

20060125-0010084 01/25/2006
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Mary Hollinrake Kent County MI Register T20060010529 SERL

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Part of the Northeast one-quarter and part of the Southeast one-quarter, Section 22, Town 6 North, Range 11 West, City of Kentwood, Kent County, Michigan, described as follows: BEGINNING at the Northeast corner of Section 22; thence S03°35'29"E 395.00 feet along the East line of said Northeast one-quarter; thence South 89°42'31" West 258.00 feet; thence South 03°35'29" East 120.00 feet; thence North 89°42'31" East 258.00 feet; thence South 03°35'29" East 705.38 feet along the East line of said Northeast one-quarter; thence North 54°47'03" West 395.85 feet; thence South 89°45'47" West 308.00 feet; thence South 03°35'29" East 330.00 feet; thence North 89°45'47" East 424.00 feet along the South line of the North one-half of the Northeast one-quarter of Section 22; thence South 03°35'29" East 153.00 feet; thence North 89°45'47" East 193.00 feet; thence South 03°35'29" East 273.18 feet along the East line of said Northeast one-quarter; thence South 86°24'31" West 40.00 feet; thence South 03°35'29" East 891.81 feet along the West line of Shaffer Avenue; thence North 89°49'02" East 0.02 feet along the East-West one-quarter line of said Section; thence South 03°10'02" East 1324.40 feet along the West line of Shaffer Avenue; thence South 89°54'32" West 629.94 feet along the North line of the South one-half of the Southeast one-quarter of Section 22; thence South 03°10'02" East 60.95 feet; thence South 90°00'00" West 708.24 feet; thence North 45°00'00" West 67.88 feet; thence South 90°00'00" West 530.00 feet; thence North 50°00'00" West 235.00 feet; thence South 42°36'50" West 260.00 feet; thence South 77°56'20" West 333.73 feet; thence North 03°02'05" West 1258.70 feet along the West line of the Southeast one-quarter of Section 22; thence North 63°04'26" East 366.74 feet; thence Northwesterly 200.80 feet along a 375.00 foot radius curve to the right, the long chord of which bears North 12°06'23" West 198.41 feet; thence North 03°14'00" East 22.33 feet; thence Northwesterly 214.05 feet along a 325.00 foot radius curve to the left, the long chord of which bears North 15°38'05" West 210.20 feet; thence North 34°30'10" West 49.19 feet; thence Northwesterly 159.95 feet along a 275.00 foot radius curve to the right, the long chord of which bears North 17°50'24" West 157.71 feet; thence South 88°51'22" West 78.13 feet; thence North 07°38'58" West 121.92 feet; thence Northwesterly 16.28 feet along a 47.50 foot radius curve to the left, the long chord of which bears North 17°28'15" West 16.20 feet; thence North 27°17'32" West 13.47 feet; thence Northwesterly 59.87 feet along a 67.50 foot radius curve to the left, the long chord of which bears North 52°42'11" West 57.93 feet; thence Westerly 60.54 feet along a 460.00 foot radius curve to the left, the long chord of which bears North 81°53'03" West 60.49 feet to the West line of the Northeast one-quarter of said Section 22; thence North 03°29'48" West 1849.27 feet along the West line of the Northeast one-quarter of Section 22 to the North one-quarter corner of said Section; thence North 89°42'31" East 2633.71 feet along the North line of said Northeast one-quarter to the point of beginning. Subject to highway Right-of-Way for Shaffer Avenue. This parcel contains 228.49 acres, including highway Right-of-Way.

EXHIBIT B

APPROVED LANDSCAPING PLAN

Certain contract documents for Pfeiffer Woods Drive, Contract No. 3, prepared by Driesenga & Associates, Inc., dated April 12, 2005, drawings dated April 13, 2005, including, without limitation, Sheets L100 and L101.

EXHIBIT C

LANDSCAPING MAINTENANCE

1. **Spring Clean-Up:**

(a) All lawn and shrub beds are to be cleaned of accumulated late fall and winter debris by means of raking and/or mechanical sweeping. All debris is to be removed from the site.

(b) Prune and remove any downed or damaged limbs and branches.

(c) Remove all stakes and staking material from the trees and apply new layer of barkmulch throughout the project.

2. **Mowing:**

(a) Mowing height shall be maintained not less than 2" nor more than 3". Grass shall be mowed when it attains approximately 1 1/3 of its maximum height.

(b) The final cut shall leave the grass at 2 1/2 " height.

(c) The contractor shall vary the mowing direction to prevent tracking of the turf.

(d) All mowing equipment shall be maintained in order to provide a clean, sharp cut.

(e) Clippings shall remain on the lawn, but must be of a size that no grass deposits can be seen lying on top of the lawn. Any grass that does accumulate on top of the lawns shall be removed and disposed of off site.

(f) Mowing shall not occur when grass or subsoil is excessively wet.

3. **Edging shall consist of the following:**

(a) All lawns adjacent to walks and curbs shall be edged at 3-4 week intervals with suitable mechanical edger.

(b) All edging shall be done in a manner to leave a sharply defined edge.

(c) All edging shall continue as required throughout the season to maintain a neat appearance.

4. **Fertilization shall include the following:**

(a) Three (3) applications of lawn fertilizer with a preferred ratio of 2-1-1.

(b) The applications shall take place around May 15th, July 15th and September 15th.

(c) Application rate shall be one (1) pound of Nitrogen per 1,000 sq. ft.

(d) Fifty (50%) percent of the nitrogen is to be a slow release formulation.

(e) The formulation and brand the contractor desires to use must be approved by the owner.

5. **Weed Control shall consist of the following:**

(a) All lawn areas are to receive two (2) applications of broadleaf weed control at rates recommended by the manufacturer. The first application shall take place around May 15th and the second application around September 1st.

(b) The weed control produce and label must be submitted to the owner for approval.

(c) Complete weed control shall be the responsibility of the contractor.

(d) Hand weeding will be necessary where chemical and/or mechanical means is not possible, especially in the groundcover, annual flower beds and in the perennials plantings in the parking lot islands.

(e) All planting beds are to be kept free of weeds.

6. **Insecticide spraying shall consist of the following:**

(a) All plant material, trees, shrubs and evergreens shall be inspected and monitored every other week for infestation of insects and/or diseases. Plant material, trees, shrubs and evergreens shall be sprayed as reasonably necessary to prevent or treat infestation and/or diseases.

(b) The intent is to treat problems when they arise, and not to blanket spray to prevent a potential problem.

7. **Pruning and trimming shall consist of the following:**

(a) All plantings shall be pruned and/or trimmed twice a year to encourage growth and to maintain proper shape.

(b) Trimming and pruning shall be done in a manner that maintains the plants natural growth habit and appearance. Under to circumstance will plantings be sheared in ball or flat top shapes.

(c) Evergreen trees and shrubs may be pruned any time it is deemed necessary after new growth has emerged. Flowering trees and shrubs should be pruned after the flowering is finished. Do not prune spring flowering shrubs in the fall.

8. **Irrigation and Watering:**

(a) Trees, shrubs, groundcover and flowers and planters shall be monitored for adequate moisture for the plant material. Means shall be provided by the contractor to assure that the plant materials receive adequate watering.

(b) Monitoring of the existing irrigation system for adequate watering of plants adjacent to the mall itself is also included.

9. Trash Removal:

(a) The grounds shall be walked at least once per week, and especially before the mowing of the lawns, and all accumulated trash shall be removed and disposed of from the lawns, planting beds and the parking lot islands.

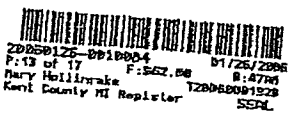

EXHIBIT D

IRRIGATION SYSTEM

Certain contract documents for Pfeiffer Woods Drive, Contract No. 3, prepared by Driesenga & Associates, Inc., dated April 12, 2005, drawings dated April 13, 2005, including, without limitation, Sheets I100 and I101.

EXHIBIT E

BILL OF SALE AND ASSIGNMENT

(IRRIGATION SYSTEM)

THIS BILL OF SALE AND ASSIGNMENT ("Bill of Sale") is made as of _____, 20___ by the City of Kentwood, a Michigan municipal corporation ("City") in favor of the _____ ("Owner").

RECITALS

WHEREAS, City and Owner are parties to a Landscape/Irrigation Agreement dated as of _____, 2005 (the "Landscape/Irrigation Agreement"); and

WHEREAS, in exchange for the consideration recited in the Landscape/Irrigation Agreement, City has agreed to convey to Owner City's right, title and interest in designated assets of the Irrigation System.

AGREEMENT

In consideration of the foregoing Recitals and for other good and valuable consideration, the sufficiency of which are acknowledged, the parties agree as follows:

SECTION 1. DEFINED TERMS. The terms used in this Bill of Sale and not otherwise defined in this Bill of Sale shall have the meanings assigned thereto in the Landscape/Irrigation Agreement.

SECTION 2. ASSIGNMENT. City does hereby sell, assign, convey, transfer, set over and quit claim to Owner and its respective successors and assigns, all right, title and interest of City in and to the following (the "Assets"):

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a. All components of the irrigation system improvements and its appurtenances as described or referenced in the Landscape/Irrigation Agreement;

b. All record plans of the irrigation system improvements;

c. All engineering and construction contracts entered into with respect to the design, construction and inspection of the irrigation system improvements; and

d. Any and all of City's claims or rights against any third parties, relating to the acquisition, design, construction, ownership, operation or maintenance of the irrigation system improvements.

SECTION 3. WARRANTY. The irrigation system improvements are conveyed hereby as is without warranty or recourse.

SECTION 4. ENTIRE AGREEMENT. No alteration, amendment, change or addition to this Bill of Sale shall be binding upon Owner or City unless reduced to writing and signed by City and Owner or their lawful successors.

SECTION 5. CAPTIONS AND SECTION NUMBERS. The captions and section numbers appearing in this Bill of Sale are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this Bill of Sale, nor in any way affect this Bill of Sale.

SECTION 6. FURTHER ASSURANCES. City, for itself, its successors and assigns, hereby covenants and agrees that, at any time and from time to time upon the request of Owner, City will execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, all such other and further instruments and assurances as may be reasonably requested by Owner in order for Owner and its respective successors and assigns to enjoy the benefits of the irrigation system improvements.

SECTION 7. EFFECTIVE DATE AND TIME. This Bill of Sale will be effective for all purposes as of 12:01 a.m., local time, on _____, 20___ ("Effective Date and Time").

SECTION 8. BINDING. This Bill of Sale and all of its provisions shall be binding upon, inure to the benefit of, and be enforceable by and against the respective successors and assigns of the City and Owner.

IN WITNESS WHEREOF, City has duly signed this Bill of Sale as of the day and year first above written.

CITY OF KENTWOOD

By: _____

Its _____

And: _____

Its _____

OWNER

By: _____

Its _____

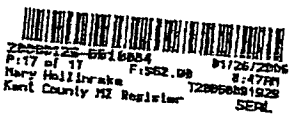

EXHIBIT 5

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VOLUNTARY SPECIAL ASSESSMENT/DEVELOPMENT AGREEMENT

This Voluntary Special Assessment/Development Agreement is made as of September 7, 2004 between the City of Kentwood, a Michigan municipal corporation, the address of which is 4900 Breton Avenue, SE, Kentwood, MI 49508 (the "City") and 44th Shaffer Avenue, LLC, a Michigan limited liability company, the address of which is 850 Stephenson Highway, Suite #200, Troy, MI 48083 ("44th LLC" or the "Owner").

RECITALS

A. 44th LLC currently owns or controls an approximately 233 acre site generally located at the northwest corner of 44th Street and Shaffer Avenue in the City, more specifically described on the attached Exhibit A, which is incorporated by reference (the "44th LLC Property").

B. The 44th LLC Property was formerly zoned R1-C, single family residential. 44th LLC sought and received approval from the City to rezone the 44th LLC Property as a phased high density residential Planned Unit Development project (the "Ravines"). A preliminary PUD site plan, as required by the City's Zoning Ordinance, depicting the Ravines is attached as Exhibit B and incorporated by reference.

C. 44th LLC contemplates the sale of all or portions of the 44th LLC Property to third party developers and builders ("Builder" or "Builders") who will succeed to and be responsible for complying with the obligations of 44th LLC as to that portion of the Property purchased from 44th LLC, and 44th LLC will have no further obligation with regard to the purchased Property. Wherever the term "44th LLC" is used, it shall mean during the period that 44th LLC remains the owner of the portion of the Property affected and thereafter it shall mean the Builder or Builders.

D. In order to develop the Ravines as approved, certain improvements must be made including, without limitation, certain public water, sanitary sewer and storm sewer/drainage improvements, streets, additional street lanes, curbs, gutters, sidewalks, and other public improvements to accommodate access and other needs. The City has no current plans to construct the improvements and has not budgeted funds for the same.

E. Consistent with prior City policies, the owner of a project, as the benefiting party, is responsible to install and pay for the types of public improvements outlined in Recital D, above. After such improvements are constructed and installed to City specifications, they are typically dedicated to the City or other governmental agency with appropriate jurisdiction.

F. Where appropriate, the City may specially assess the costs of public improvements against the property(ies) especially benefited.

G. The Owner concedes that the improvements outlined in Recital D, above, will benefit its parcels and represents that it owns more than fifty percent (50%) of the land proposed to be assessed for the public improvements as further described herein.

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H. The City has determined that construction of the street and road improvements associated with the Ravines, and particularly construction of Pfeiffer Woods Drive, will facilitate vehicular movement within this area of the City and constitutes the installation of a necessary collector roadway as specified in the City's master plan.

I. Because the Owner will have one or more contractors working on their parcels that may also be capable of constructing the improvements outlined in Recital D, above, the parties believe certain economies can be achieved by allowing the Owner to cause those contractors to construct some of the improvements.

J. The City has determined that entering into this Agreement is otherwise in the best interests of the public health, safety and general welfare and that special circumstances exist including, but not limited to, the ability to utilize on-site contactors and engineers and to expedite construction of a needed collector roadway.

TERMS AND CONDITIONS

NOW, THEREFORE, in exchange for the consideration in and referred to by this Agreement, the sufficiency of which is acknowledged, the parties agree as follows:

1. Owner-Contracted Infrastructure Improvements. The parties agree that for purposes of coordination of construction and for purposes of minimizing costs, the public will be best served if the portion of the public improvements detailed in the attached Exhibit C (the "Owner-Contracted Infrastructure Improvements") are made by contractors retained by the Owner. Such an arrangement is authorized pursuant to City ordinances and resolutions where special circumstances are found to exist. Having found that such circumstances exist, the Owner is hereby engaged by the City to design, construct and install the Owner-Contracted Infrastructure Improvements on behalf of the City subject to the terms of this Agreement.

(a) Construction Plans and Specifications. The Owner shall cause to be prepared final plans and specifications for the Owner-Contracted Infrastructure Improvements which comply with all applicable laws, ordinances, rules and regulations. Such plans and specifications shall be submitted to the City Engineer for review and approval. If changes are requested by the City Engineer in writing, such changes shall be made before approval of the final plans and specifications for the Owner-Contracted Infrastructure Improvements (the "Owner-Contracted Infrastructure Improvements Plans"). Any approval shall be effective when in writing signed by the City Engineer. All City reviews shall be completed on a timely basis.

Without limiting the foregoing, the parties acknowledge that the reviews conducted by the City as provided for herein shall be limited to a determination of compliance with City laws, ordinances, rules and regulations and that the plans and specifications must also be submitted for review and approval to other governmental entities with appropriate jurisdiction including the City of Grand Rapids relative to all utility matters.

The parties further agree that the Owner-Contracted Infrastructure Improvements must incorporate the following provisions:

(1) No lift stations shall be utilized in the design of the sanitary sewer system.

(2) The top course of any roadways shall be left off; it being the parties' intent that the City shall be solely responsible for the installation and all subsequent costs associated with installing the top course.

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(3) Manholes shall be raised to the top of the leveling course.

(4) Inlets shall be customized with the advance stormwater inlet at the low point.

(5) Pre-treatment ponds and detention ponds must be constructed as required by the City.

(6) Storm sewer outlets and inlets shall be constructed as part of the project as required by the City.

(7) Easements shall be provided as reasonably requested by the City or other governmental entity with jurisdiction.

(8) Sidewalks shall be installed concurrent with the installation of any streets.

(9) The project shall be designed in full compliance with the City's adopted soil erosion laws, rules and regulations.

(10) Sanitary stubs shall be extended to the next manhole subject to review and approval by the City of Grand Rapids.

(11) The Owner shall coordinate its efforts in the design and construction of the Owner-Contracted Infrastructure Improvements with the adjoining property owner, Holland Home, and the City. To this end, representatives of both property owners shall attend mandatory biweekly progress meetings at City Hall until such time as the Owner-Contracted Infrastructure Improvements have been conveyed consistent with Section 1(h) herein.

(b) Construction Easements and Permits. Prior to beginning construction, the Owner shall, at its sole expense, obtain any construction and permanent easements, rights-of-way and permits needed to construct the Owner-Contracted Infrastructure Improvements. The City shall cooperate with the Owner's efforts to do so as reasonably necessary. All easements and rights-of-way shall be fully assignable to the City or other appropriate governmental entity upon the completion of the Owner-Contracted Infrastructure Improvements and copies of the easements, rights-of-way and permits shall be presented to the City for review and approval prior to beginning construction.

(c) Inspection. The City and its agents shall have the right, but not the obligation, to inspect and test all construction of the Owner-Contracted Infrastructure Improvements and be contacted before the water mains, sanitary or storm sewer mains, or any other portions of the Owner-Contracted Infrastructure Improvements are covered after being laid. The City will not, simply by making such inspection(s) or testing(s), or by failing to raise any objections, relieve the Owner or its contractors from any obligations they may have, or waive any warranties or guarantees covering the construction. All costs incurred by the City to have the inspections or tests performed shall be included in the special assessments referenced in Section 2, herein. The City shall be notified of all scheduled progress meetings conducted by the Owner's engineer or principal contractor during the construction period and shall be afforded a reasonable opportunity to attend and participate in all such meetings.

(d) Construction. The Owner shall assure that the Owner-Contracted Infrastructure Improvements are constructed by a contractor acceptable to and approved in writing by the City's Purchasing Agent. The Owner shall further require that the Owner-Contracted Infrastructure Improvements are constructed in accordance with the approved Owner-

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Contracted Infrastructure Improvements Plans. The Owner shall obtain bids via sealed bids or by an alternate bid process approved by the City's Purchasing Agent for such work based on the Owner-Contracted Infrastructure Improvement Plans and shall open and/or tabulate those bids in the presence of the City's Purchasing Agent. The Owner shall provide the bid tabulation and, if requested by the City, the bids to the City Purchasing Agent for review and comment prior to any bid award. Owner shall indemnify and hold harmless the City for any claims, damages or liabilities arising out of the bidding process or award for the Owner-Contracted Infrastructure Improvements; provided, however, that the Owner's obligations shall not be construed or interpreted as applying to claims, damages or liabilities caused by the City, its officers or employees. The City shall have the right to inspect and copy any documents related to the construction, pricing or administration of the Owner-Contracted Infrastructure Improvements in the possession of Owner or its agent(s). Construction of Pfeiffer Woods Drive on the 44th LLC Property will be in accordance with the approved preliminary PUD site plan for the Ravines. The parties agree that the Owner-Contracted Infrastructure Improvements shall be completed by the Owner within 14 months after the Owner-Contracted Infrastructure Improvements Plans are approved in writing by the City.

(e) Indemnification and Insurance. The Owner shall hold the City (including its officers and employees) harmless from, indemnify it for, and defend it (with legal counsel reasonably acceptable to the City) against any and all demands, claims, liabilities, obligations, damages, awards, judgments, administrative or criminal penalties or other losses or expenses the City may receive or incur arising out of the Owner's design, award, or construction of the Owner-Contracted Infrastructure Improvements provided, however, that the Owner's obligations shall be limited to claims made, or which could have been made, prior to the Owner's conveyance of the Owner-Contracted Infrastructure Improvements as provided for in Section 1(h) herein. During construction and until construction is completed, the land is restored and the City has accepted the Owner-Contracted Infrastructure Improvements, the Owner shall obtain and maintain a general liability insurance policy naming the City, its officers and employees as insureds and certificate holders with coverages of at least $5,000,000 per occurrence. Such general liability insurance policy shall provide that it may not be canceled, modified or terminated without at least 30 days prior written notice to the City. During construction and until construction is completed, the land is restored and the City has accepted the Owner-Contracted Infrastructure Improvements, the Owner shall obtain and maintain an owner and contractor protective liability insurance policy, which policy names the City, its officers and employees as insureds with coverages of at least $1,000,000 per occurrence and $2,000,000 general aggregate. Such owner and contractor protective liability insurance policy shall provide that it may not be canceled, modified or terminated without at least 10 days prior written notice to the City. A copy of the certificate(s) and policy(ies) of insurance shall be provided to the City Public Works Director prior to the commencement of construction. In addition, the Owner shall assure that all necessary or required workers' disability compensation, unemployment compensation and other insurance has been obtained by its subcontractors.

(f) Liens and Encumbrances. The Owner shall use reasonable commercial efforts to keep the Owner-Contracted Infrastructure Improvements and all City property free of any and all liens and encumbrances including, without limitation, contractors', mechanics' or material supplier's liens. The Owner may dispute and bond off any liens so filed.

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(g) Construction Bonds. Prior to the commencement of construction, the Owner shall post with the City: (1) a performance bond in an amount not less than 25% of the total value of the Owner-Contracted Infrastructure Improvements and (2) a payment bond in the amount of 100% of the total value of the Owner-Contracted Infrastructure Improvements. The bonds shall be in a form approved in advance by the City.

(h) Conveyance and Warranty. Upon completion of the Owner-Contracted Infrastructure Improvements and the written opinion of the City Engineer that they have been completed in accordance with Owner-Contracted Infrastructure Improvements Plans and all applicable laws, ordinances, regulations and rules, the Owner shall convey and dedicate for public use the Owner-Contracted Infrastructure Improvements to the City or other appropriate governmental entity, together with all easements, rights-of-way, contractual guarantees and warranties, operations or other manuals and other information, all with such documentation in a form reasonably acceptable to the City. Owner and its agent(s) shall execute all documents reasonably requested by the City to effectuate the conveyance of the Owner-Contracted Infrastructure Improvements to the City or other appropriate governmental entity. The City shall then, within a reasonable time period, by resolution of the City Commission, accept such conveyance and dedication. The Owner shall, for a period of one (1) year after the City Commission's adoption of a resolution of conveyance and dedication, warrant and guarantee the construction and use of materials in the Owner-Contracted Infrastructure Improvements; provided, however, that the foregoing Owner's warranties and guarantees shall not apply to the leveling course or top course of any roadway. Within this one (1) year period, Owner will repair or replace, as reasonably determined in advance by the City in writing, any materials incorporated in the Owner-Contracted Infrastructure Improvements which may be defective. Owner further warrants and guarantees that the construction of the Owner-Contracted Infrastructure Improvements will be performed in a good and workmanlike manner, and that the Owner will repair any defects resulting from faulty workmanship. While the warranties referenced herein are in effect, the Owner shall post with the City a performance bond for the same, in a form satisfactory to the City, in the amount of two percent (2%) of the total cost of the Owner-Contracted Infrastructure Improvements.

(i) "As Builts". The Owner shall also provide the City with "as built" drawings, certified by a licensed engineer, showing the exact location of the Owner-Contracted Infrastructure Improvements and any deviations from the Owner-Contracted Infrastructure Improvements Plans. Such drawings shall be provided to the City prior to the conveyance and dedication required by the preceding subsection (h) and before the City accepts that conveyance and dedication.

(j) Payment. The City shall pay to the Owner the cost of constructing the Owner-Contracted Infrastructure Improvements as provided in this subsection.

(1) Payments will be made solely by the City in anticipation of special assessments levied against the 44th LLC Property. The City shall have no obligation for any payment of funds until after the conclusion of the special assessment proceedings referenced in Section 2 herein and the expiration of the period for appealing any special assessments. Any payments made by the City shall not effect the Owner's waiver and release of claims challenging the validity or enforceability of the special assessments provided for herein.

(2) Progress payments will be made during construction to reimburse the Owner for payments it has already made to its contractors and subcontractors. Such payments shall be made not more frequently than monthly and shall require City approval. Accordingly, it may take 30 or more days to process a reimbursement payment request, however, the City shall timely and diligently process such requests for payment.

(3) All requests for payment shall include statements from the Owner and its engineers that the work for which payment is sought has been completed in accordance with the Owner-Contracted Infrastructure Improvements Plans and waivers of liens from all contractors, subcontractors and suppliers are supplied. They shall be reviewed by the City Engineer before processing for payment and, if the City's inspectors have viewed the work, such payment requests shall also be subject to the approval of the City's inspectors.

(4) For up to one year after substantial completion of the Owner-Contracted Infrastructure Improvements, the City shall have the right to inspect, audit and copy all invoices, financial records, books, expense sheets, billing statements, contracts or similar documents in the possession of the Owner or its agent(s) related to the construction of and payment for the Owner-Contracted Infrastructure Improvements.

(5) Reimbursement payments to the Owner shall be made within 10 days after approval by the City.

2. Special Assessments. The City shall specially assess the costs of the Owner-Contracted Infrastructure Improvements against the 44th LLC Property.

(a) Defined. The costs of the Owner-Contracted Infrastructure Improvements shall include design, construction, installation, construction engineering, inspection, financing, insurance, administrative and all other costs incurred in connection with the construction, including all costs and fees incurred by the City relating to the establishment of a special assessment district and those costs associated with the inspection, review, approval, construction or acceptance of the Owner-Contracted Infrastructure Improvements incurred by the City.

(b) Agreed Value Enhancement and Waiver. The Owner represents, covenants and agrees that the 44th LLC Property will benefit and be enhanced in value by at least the amount to be specially assessed against the 44th LLC Property.

(c) Consent. The Owner consents to the levy of the special assessments and agrees to execute and deliver to the City such other consents, releases and waivers regarding the notice, hearing and levies associated with the special assessment as the City may reasonably request as it proceeds to levy the special assessments as provided for in this section.

(d) Notice of Conveyance. If the Owner conveys any interest in any of its real property to any other party prior to the conclusion of the special assessment

proceedings, the Owner shall provide the City a written copy of the conveying documents within 3 days of their execution.

(e) Terms for Special Assessment. Consistent with City Ordinance No. 4-67, as amended, the final amount of any special assessment, the term of years for the special assessment and similar matters associated with the establishment of a special assessment district for the Owner-Contracted Infrastructure Improvements will be determined by resolution of the City Commission in its discretion. Without limiting the foregoing, it is the parties' intent that the special assessments will be consistent with the following guidelines:

(1) The public improvements will only be those identified in Exhibit C.

(2) The term of the special assessment will not exceed ten (10) years.

(3) The interest rate charged will be a rate equal to one percentage (1%) point over the U.S. prime rate as published in the *Wall Street Journal*, which prime rate is in effect on the date the roll is confirmed as provided for in Ordinance No. 4-67, as amended.

(4) The following components of the Owner-Contracted Infrastructure Improvements will be paid for by the City at large as part of the special assessment:

(a) Difference in the cross section and unit costs between the standard 30-foot street residential cross section and the cross section as constructed to meet City requirements for the Ravines;

(b) Oversizing the watermain from eight (8) inches to twelve (12) inches; and

(c) Ten percent (10%) of the subcontractors' total costs for items 2(e)(4)(a) and 2(e)(4)(b), above; which figure represents the City's proportional share of administrative, engineering and similar fees associated with the project.

(5) 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 assessments and special assessment roll.

(6) The special assessment roll shall be modified so as not to exceed the actual costs reimbursed to the property owner pursuant to this Agreement and the costs and expenses of the City to which the City is lawfully entitled to be reimbursed including, but not limited to, all legal fees incurred by the City in establishing and preparing the special assessment district and special assessment roll.

(f) Valuation. The City's obligation to establish a special assessment district for the Owner-Contracted Infrastructure Improvements shall be contingent on the City's receipt of information, in a form and of a type reasonably satisfactory to the City, from the Owner confirming that the fair market value of the 44th LLC Property will support the anticipated special assessment liens in the event of a subsequent default. The Owner shall submit such information with thirty (30) days from the date hereof. The City will promptly review such submissions.

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(g) Allocation. Allocation of the special assessment shall be structured as follows:

(1) Except as otherwise provided herein, annual installment payments shall be interest only until the end of the term of the special assessment. Provision shall be made such that if any installment is not paid when due, then penalties shall be applied as are collected on delinquent ad valorem taxes.

(2) The principal shall be allocated among the various approved phases for Neighborhoods B-1 through B-4 of the Ravines as defined in a certain Planned Unit Development Agreement, dated March 18, 2004, recorded as Instrument No. 20040402-0043209 with the Kent County Register of Deeds. The fixed allocation of the special assessment district ("SAD") costs by neighborhood shall be as follows:

Neighborhood	Fixed SAD Cost Allocation
B-1	24%
B-2	22%
B-3	33%
B-4	21%

The fixed SAD costs by neighborhood may not be changed except by written amendment to this Agreement. The City has agreed to allow the SAD costs to be further apportioned to a maximum number of construction phases within each neighborhood as follows:

Neighborhood	Max. # of Phases
B-1	2
B-2	2
B-3	4
B-4	2

The number of phases within each neighborhood may not be changed except by written amendment to this Agreement. The process by which the SAD costs will be apportioned to each phase is as follows:

(a) Unless otherwise agreed to by the City, the Owner shall have one opportunity per neighborhood to apportion the SAD costs among the construction phases as described herein; provided, however, that any apportionment must equal the total fixed SAD costs for the relevant neighborhood.

(b) At the time Owner files the first application for final zoning approval for any land within a neighborhood, the Owner will also file an amended phasing plan for the entire neighborhood. The phasing plan will include the total housing

units expected to be constructed within the neighborhood and within each phase up to the maximum number of units and phases allowed for that neighborhood.

(c) The Owner will prepare, for the City's review and approval, a proposed apportionment of the SAD costs among the individual construction phases. The following example shows how the costs will be apportioned assuming a $1.6 Million total SAD cost:

[1] Allocate the costs to each neighborhood by multiplying the total SAD costs by the fixed allocation percentages:

Total SAD	Neighborhood	Fixed SAD % Allocation	SAD $ Allocation
$1,600,000	B-1	24%	$384,000
	B-2	22%	$352,000
	B-3	33%	$528,000
	B-4	21%	$336,000

[2] Determine the final number of housing units in each neighborhood and within each construction phase:

Neighborhood	Final # of Units	# of Units in Each Phase			
		1	2	3	4
B-1	248	124	124	N/A	N/A
B-2	190	95	95	N/A	N/A
B-3	210	57	59	47	47
B-4	178	100	78	N/A	N/A

[3] Calculate the percentage of housing units in each phase of a neighborhood relative to the total number of housing units in that neighborhood as determined in Section 2.(g)(2)(c)[2] above:

Neighborhood	% of Units in Each Phase			
	1	2	3	4
B-1	50%	50%	N/A	N/A
B-2	50%	50%	N/A	N/A
B-3	27%	28%	22%	22%
B-4	56%	44%	N/A	N/A

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[4] Calculate the SAD costs to be apportioned among each construction phase by multiplying the percentages calculated in the table in 2.(g)(2)(c)[3] above by the total SAD costs allocated to the neighborhood as calculated in 2.(g)(2)(c)[1] above.

Neighborhood	$ to be Allocated to Each Phase			
	1	2	3	4
B-1	$192,000	$192,000	N/A	N/A
B-2	$176,000	$176,000	N/A	N/A
B-3	$143,314	$148,343	$118,171	$118,171
B-4	$188,764	$147,236	N/A	N/A

(d) Principal payments, with interest thereon accrued on a pro rata basis, shall be due within 180 days of final zoning approval for a phase or upon the City's issuance of a soil erosion permit for the phase, whichever is earlier.

(3) It is an express condition of this Agreement that the Owner waives any right it may have under state or local law, rule or regulation to any further allocation or apportionment of special assessments for the Owner-Contracted Infrastructure Improvements (among lots, units, or other divisions of property) beyond that provided for herein or as otherwise provided for in the City Commission resolution confirming the roll for the Owner-Contracted Infrastructure Improvements.

3. The Ravines. The Owner represents and covenants that the Owner-Contracted Infrastructure Improvement costs incurred in the Ravines when completed will be at least $1,200,000.00, not including the value of the land. The Owner estimates the construction of the Owner-Contracted Infrastructure Improvements will be completed by December 31, 2005.

4. Other Rates, Fees and Charges. This Agreement shall not affect any rates, fees or charges for any City services. Accordingly, the Owner, the Builders or their successors in interest to portions of the 44th LLC Property who shall seek or require such connections or services, shall pay on a timely basis all rates, fees and charges due under City ordinances, rules, regulations, policies and permit requirements, including without limitation those for:

(a) Utilities. Connection to or use of the City's water or sanitary sewer systems.

(b) Construction Permits. Building, electrical, plumbing, mechanical, foundation, site preparation, occupancy and other construction permits and approvals.

(c) Inspections. Inspection, approval and acceptance of the Owner-Contracted Infrastructure Improvements.

(d) On-going Maintenance. Except as noted herein, the City or other appropriate governmental entity will be responsible for on-going maintenance after dedication of the Owner-Contracted Infrastructure Improvements and the Owner will be responsible for

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Kent County MI Register SEAL

on-going maintenance for the portion of the Owner-Contracted Infrastructure Improvements located on its property prior to dedication. The parties acknowledge and agree that prior to the dedication of the Owner-Contracted Infrastructure Improvements, the parties shall enter into a separate agreement which incorporates the following provisions:

(1) On-going maintenance responsibility for landscaping improvements in the parkway included in the Owner-Contracted Infrastructure Improvements shall be assumed by the Owner at the Owner's sole cost and expense. Nothing herein shall be construed or interpreted as granting the Owner any property interest in the landscaping, it being the parties' understanding that the City may remove or modify any landscaping within the public rights of way as the City deems necessary for the public health, safety and welfare and that payment for these improvements by special assessment shall not impact the City's rights. The City shall not require the removal or replacement of the initial landscaping if doing so will materially increase the Owner's burden to maintain.

(2) On-going maintenance responsibility for the irrigation system improvements included in the Owner-Contracted Infrastructure Improvements shall be assumed by the Owner at the Owner's sole cost and expense. Nothing herein shall be construed or interpreted as granting the Owner any immediate property interest in the irrigation system; provided, however, that the agreement shall further require that the irrigation system will be conveyed by the City to the Owner or its successor(s) and shall be accepted by the Owner or its successor(s) on the termination of the special assessment district for the Owner-Contracted Infrastructure Improvements.

(3) The City's ownership of the irrigation system shall extend only to the public side of the water meter, which water meter shall be installed within the public rights of way in such manner as approved in advance by the City.

(4) The Owner and its successor(s) shall indemnify and hold harmless the City and its officers and employees from any and all claims arising out of or related to the Owner's construction, operation or maintenance of the landscaping and irrigation systems that are included in the Owner-Contracted Infrastructure Improvements so long as the Owner's obligations remain.

5. Costs. Within 28 days of the City's invoice to the Owner therefore, 44th LLC shall reimburse the City for all costs incurred by the City related to the preparation of this Agreement.

6. Term and Termination. This Agreement shall be effective as of the date first written above and shall remain in effect until all the obligations of the Owner under this Agreement have been met.

7. Miscellaneous.

(a) Interpretation. This is the entire agreement between the parties with respect to its subject matter. It supersedes and replaces all other agreements, whether express or implied, written or verbal. There are no other agreements. Each party had the advice of legal counsel and was able to participate in its creation, so it shall be construed as mutually drafted. The captions are for convenience only. However, the recitals are deemed an integral part of this Agreement. More than one copy may be signed, but it shall constitute only one agreement. It was drafted in Kent County, Michigan and is to

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be interpreted in accordance with Michigan law. The interpretation of this Agreement shall not be affected by any course of dealing between the parties.

(b) Notices. All notices shall be complete when provided to the other party at the first address given above or such other address as a party shall request by notice. It may be made by personal delivery, express courier such as FedEx, by United States certified mail, return receipt requested or by pre-paid United State first class mail. If made by first class mail, it shall be deemed completed 5 business days after mailing. Otherwise, it shall be deemed completed when actually delivered.

(c) Breach and Remedies.

(1) The parties agree that damages and other legal remedies are inadequate relief. Only specific performance, injunctive or other equitable relief may be sufficient. The parties agree that any breach of this Agreement will result in irreparable harm to the other party.

(2) All remedies are cumulative of all remedies available at law or in equity. The pursuit of one remedy does not foreclose the pursuit of other remedies. Available remedies may be exercised simultaneously or individually.

(3) In any dispute pursuant to this Agreement, the parties agree that, to the extent not otherwise prohibited by law, the jurisdiction and venue for any such dispute shall be solely within the state courts located in Kent County, Michigan. The parties further agree that in any such dispute the prevailing party shall, in addition to any other relief to which it may be entitled, be awarded its actual cost, including, without limitation, filing fees, discovery costs, actual reasonable attorneys' fees, expert witness fees, and other costs incurred to bring, maintain or defend any such action from its first accrual or notice thereof through all appellate and collection proceedings.

(d) Assignment. Except as provided in Recital C, neither party may assign any of its interests in or rights, duties or obligations under this agreement without the prior written consent of the other party.

(e) Recording. The obligations under this Agreement are covenants that run with the land, and shall bind all successors in title. This Agreement shall be recorded with the Kent County Register of Deeds. The City shall be responsible for all costs associated with recording the Agreement.

(f) Additional Documents. The parties agree to execute such other documents and any one of them may reasonably request to fully implement this Agreement.

(g) No Other Beneficiaries. No other party is intended as a beneficiary of this Agreement.

(h) Meaning of 44th LLC. The term "44th LLC" as used in this Agreement so far as the covenants, agreements, stipulations or obligations on the part of 44th LLC are concerned is limited to mean and include only the owner of the 44th LLC Property or portion thereof effected at the time in question. In the event of any sale, transfer or conveyance of the title to such fee, 44th LLC will automatically be freed and relieved from and after the date of such sale, transfer or conveyance of all personal liability for the performance of any covenants of obligations on the part of 44th LLC contained in this Agreement thereafter to be performed as to the portion of the 44th LLC Property thereof sold, transferred or conveyed and 44th LLC's successor shall assume all commitments

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Kent County MI Register SEAL

with respect to said covenants, agreements, stipulations or obligations as to the portion of the 44th LLC Property acquired from 44th LLC.

THE PARTIES have caused this Agreement to be executed as of the date first written above.

CITY OF KENTWOOD

By: _____
Richard L. Root, Mayor

By: _____
Dan Kasunic, Clerk

STATE OF MICHIGAN
COUNTY OF KENT
Acknowledged before me in Kent County, Michigan on September 7, 2004, by Richard L. Root and Dan Kasunic, respectively the Mayor and Clerk of the City of Kentwood, a Michigan home rule city, on behalf of that entity.

_____

Notary Public, Kent County, MI
Acting in Kent County
My commission expires: 10/20/2004

44TH/SHAFFER AVENUE, LLC

By: _____
Member

STATE OF MICHIGAN
COUNTY OF KENT

Acknowledged before me in Kent County, Michigan on September 7, 2004, by Michael J. Damone, member of 44th/Shaffer Avenue, LLC, a Michigan limited liability company, for the company.

_____

Notary Public, Kent County, MI
Acting in Kent County
My commission expires: 10/20/2004

Drafted by:

Jeff Sluggett
LAW, WEATHERS & RICHARDSON, P.C.
Bridgewater Place, Suite 800
333 Bridge St. NW
Grand Rapids, MI 49504

When recorded return to:

Dan Kasunic, Clerk
City of Kentwood
4900 Breton Avenue, SE
PO Box 8848
Kentwood, MI 49518-8848

NO TRANSFER TAX IS OWED BECAUSE THIS AGREEMENT DOES NOT CONVEY ANY REAL PROPERTY.

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Kent County MI Register SEAL

EXHIBIT A

LEGAL DESCRIPTION OF 44TH/SHAFFER AVENUE LLC PROPERTY

Part of the NE ¼ and part of the SE ¼, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: BEGINNING at the NE corner of Section 22; thence S 03°35'29" E 395.00 feet along the East line of said NE ¼; thence S 89°42'31" W 258.00 feet; thence S 03°35'29" E 120.00 feet; thence N 89°42'31" E 258.00 feet; thence S 03°35'29" E 705.38 feet along the East line of said NE ¼; thence N 54°47'03" W 395.85 feet; thence S 89°45'47" W 308.00 feet; thence S 03°35'29" E 330.00 feet; thence N 89°45'47" E 424.00 feet along the South line of the N ½ of the NE ¼ of Section 22; thence S 03°35'29" E 153.00 feet; thence N 89°45'47" E 193.00 feet; thence S 03°35'29" E 273.18 feet along the East line of said NE ¼; thence S 86°24'31" W 40.00 feet; thence S 03°35'29" E 891.81 feet along the West line of Shaffer Avenue to the South line of said NE ¼; thence S 03°10'02" E 1324.40 feet along the West line of Shaffer Avenue; thence S 89°54'32" W 629.94 feet along the North line of the S ½ of the SE ¼ of Section 22; thence S 03°10'02" E 60.95 feet; thence S 90°00'00" W 708.24 feet; thence N 45°00'00" W 67.88 feet; thence S 90°00'00" W 530.00 feet; thence N 50°00'00" W 235.00 feet; thence S 42°36'50" W 260.00 feet; thence S 77°56'20" W 333.73 feet; thence N 03°02'05" W 1440.00 feet along the West line of the SE ¼ of Section 22 to the center of said Section; thence N 03°29'48" W 2635.49 feet along the West line of the NE ¼ of Section 22 to the N ¼ corner of said Section; thence N 89°42'31" E 2633.71 feet along the North line of said NE ¼ to the place of beginning. Subject to highway R.O.W. for Shaffer Avenue. This parcel contains 233.49 acres, including highway R.O.W.

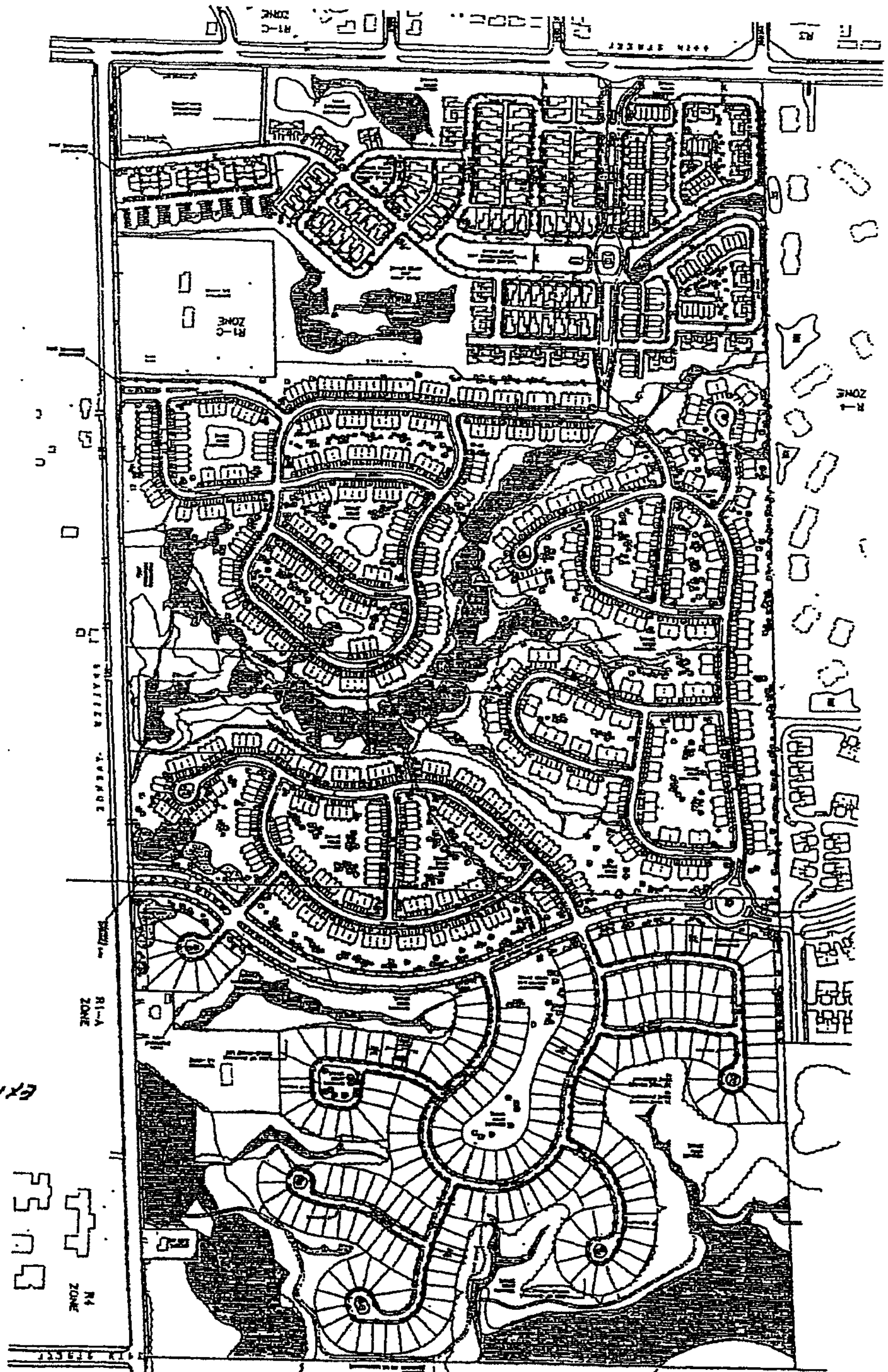

EXHIBIT B

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EXHIBIT C

OWNER-CONTRACTED INFRASTRUCTURE IMPROVEMENTS

Pfeiffer Woods Roadway

Sanitary Sewer

Water Main

Streetlighting

Landscaping

Irrigation System

Project Management

Liability Insurance

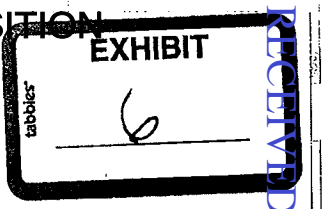
Design and Inspection Fees

Permits and Fees

City Legal and Other

Project Contingency

239445.06



CITY OF KENTWOOD

PFEIFFER WOODS DRIVE LANDSCAPING MAINTENANCE SPECIAL ASSESSMENT DISTRICT

(Ravines)

RESOLUTION NO. 8-06
(Resolution No. 5)

A RESOLUTION TO CONFIRM THE SPECIAL ASSESSMENT ROLL

Minutes of the regular meeting of the City Commission of the City of Kentwood, Kent County, Michigan, held in the City on January 17, 2006 at 7:30 P.M.

PRESENT: COMMISSIONERS: Brinks, Brown, Clanton, Raha and Mayor Root.

ABSENT: COMMISSIONERS: Coughlin and Cummings.

The following preamble and resolution were offered by Commissioner Brinks, and supported by Commissioner Clanton:

WHEREAS, consistent with City of Kentwood Ordinance No. 4-67 a special assessment roll has been prepared for the purpose of specially assessing that portion of the cost of the public improvements more particularly hereafter described to the properties specially benefited by the public improvements; and

WHEREAS, a copy of the special assessment roll is attached to this resolution as "Roll A" and is incorporated by reference; and

WHEREAS, the special assessment roll has been presented to the City Commission by the City Clerk; and

WHEREAS, the City Commission has held a public hearing to consider objections to the confirmation of the special assessment roll, which hearing was noticed in accordance with state and local law; and

WHEREAS, no objections having been made to the City either before or during the hearing, and the City Commission having otherwise fully reviewed proposed special assessment roll and finding it proper; and

WHEREAS, the City Commission also finds that due to the nature of the present and planned use and development of the premises within the district that it will be fair and equitable if the special assessment roll is confirmed as hereinafter provided which will contain the properties within the district as identified on "Roll A."

THEREFORE BE IT RESOLVED THAT:

1. The Special Assessment Roll marked as "Roll A," shall be designated as follows: Pfeiffer

Woods Drive Landscaping Maintenance Special Assessment District, Special Assessment District No. 808.051.145.

2. The special assessment roll in the amount of $160,899.15, as prepared and reported to the City Commission be and the same is hereby confirmed, containing the assessments shown on "Roll A" and associated attachments, which is attached to and made part of this Resolution, and is found to contain assessments proportional to the benefits received.

3. The special assessment roll shall be applied consistent with the terms of the Voluntary Special Assessment/Development Agreement dated December 6, 2005, between the City of Kentwood, 44th/Shaffer Avenue, LLC, Holland Home and Ravines North, LLC (the "Agreement").

4. Interest shall be paid on any unpaid balance of the special assessment roll at the rate of 8.25%.

5. The special assessment roll shall be filed in the office of the City Clerk and shall have the date of confirmation endorsed thereon. The date of the confirmation shall be January 17, 2006.

6. The assessments made in the special assessment roll as confirmed shall be deemed a lien on the property described and are hereby ordered and directed to be collected consistent with the terms thereof and the Agreement, and the City Clerk shall deliver a certified copy of the special assessment roll to the City Treasurer with his warrant attached commanding the Assessor to spread and the Treasurer to collect the assessments therein in accordance with the directions of the City Commission with the respect thereto, and the Treasurer is directed to collect the amounts assessed as the same above become due.

7. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same hereby are rescinded.

YEAS: Commissioners: Brinks, Brown, Clanton, Raha and Mayor Root.

NAYS: None.

ABSENT: Commissioners Coughlin and Cummings.

RESOLUTION NO. 8-06 DECLARED ADOPTED.

Dan Kasunic
Kentwood City Clerk

CERTIFICATION

The foregoing resolution was adopted at a regular meeting of the Kentwood City Commission held on January 17, 2006.

Dan Kasmic
Kentwood City Clerk

ROLL A

CITY OF KENTWOOD

PFEIFFER WOODS DRIVE LANDSCAPING MAINTENANCE SPECIAL ASSESSMENT DISTRICT
(Ravines)

CONFIRMED SPECIAL ASSESSMENT ROLL

Date of Confirmation: January 17, 2006

Subject Property:

Part of the NE 1/4 and part of the SE 1/4, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: BEGINNING at the NE corner of Section 22; thence S 03°35'29" E 395.00 feet along the East line of said NE 1/4; thence S 89°42'31" W 258.00 feet; thence S 03°35'29" E 120.00 feet; thence N 89°42'31" E 258.00 feet; thence S 03°35'29" E 705.38 feet along the East line of said NE 1/4; thence N 54°47'03" W 395.85 feet; thence S 89°45'47" W 308.00 feet; thence S 03°35'29" E 330.00 feet; thence N 89°45'47" E 424.00 feet along the South line of the N 1/2 of the NE 1/4 of Section 22; thence S 03°35'29" E 153.00 feet; thence N 89°45'47" E 193.00 feet; thence S 03°35'29" E 273.18 feet along the East line of said NE 1/4; thence S 86°24'31" W 40.00 feet; thence S 03°35'29" E 891.81 feet along the West line of Shaffer Avenue to the South line of said NE 1/4; thence S 03°10'02" E 1324.40 feet along the West line of Shaffer Avenue; thence S 89°54'32" W 629.94 feet along the North line of the S 1/2 of the SE 1/4 of Section 22; thence S 03°10'02" E 60.95 feet; thence S 90°00'00" W 708.24 feet; thence N 45°00'00" W 67.88 feet; thence S 90°00'00" W 530.00 feet; thence N 50°00'00" W 235.00 feet; thence S 42°36'50" W 260.00 feet; thence S 77°56'20" W 333.73 feet; thence N 03°02'05" W 1440.00 feet along the West line of the SE 1/4 of Section 22 to the center of said Section; thence N 03°29'48" W 2635.49 feet along the West line of the NE 1/4 of Section 22 to the N 1/4 corner of said Section; thence N 89°42'31" E 2633.71 feet along the North line of said NE 1/4 to the place of beginning. Subject to highway R.O.W. for Shaffer Avenue. This parcel contains 233.49 acres, including highway R.O.W.

Estimated Public Improvement Costs	Total Costs	Property Owners' Portion	City's Share
Pfeiffer Woods Drive Landscaping	150,130.15	150,130.15	0.00
Escrow Fee	250.00	250.00	0.00
Total Project Costs	150,380.15	150,380.15	0.00
Total Project Contingency/Inflation (5%)	7,519.00	7,519.00	0.00
City Legal and Administrative	3,000	3,000	0.00
SAD Total Costs	**160,899.15**	**160,899.15**	**0.00**

Owners of Property: 44th/Shaffer Avenue, LLC, a Michigan limited liability company, Holland Home, a Michigan non-profit corporation and Ravines North, LLC, a Michigan limited liability company.

Term: 8 years from confirmation of roll.

Installments:

A. Interest is charged at a rate equal to one percentage (1%) point over the U.S. prime rate as

published in the *Wall Street Journal*, which prime rate is in effect on the date the roll is confirmed as provided for in Ordinance No. 4-67, as amended. As of January 17, 2006, this aggregate interest rate is 8.25%.

B. A payment shall be due annually on the anniversary date of the confirmation of the roll (e.g., without limitation, January 17, 2007, January 17, 2008, January 17, 2009, etc.) in an amount equivalent to the simple interest on any unpaid principal amount.

C. Installments shall be collected without penalty until 60 days after the due date; thereafter, such penalties as are provided for in the City Charter for general *ad valorem* taxes shall be due and collected.

D. Anticipated allocations: See Voluntary Special Assessment/Development Agreement dated December 6, 2005, the terms of which are incorporated by reference.

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CITY OF KENTWOOD

PFEIFFER WOODS DRIVE CONSTRUCTION
(Ravines Special Assessment District)
STREET, STORM SEWER, NON-MOTORIZED TRAIL, SANITARY SEWER, AND WATERMAIN
SPECIAL ASSESSMENT DISTRICT.

RESOLUTION NO. 96 -04
(Resolution No. 5)

A RESOLUTION TO CONFIRM THE SPECIAL ASSESSMENT ROLL

Minutes of a regular meeting of the City Commission of the City of Kentwood, Kent County, Michigan, held in the Justice Center Community Room, 4742 Walma Avenue, S.E., in said City on September 7, 2004 at 7:30 P.M.

PRESENT: COMMISSIONERS: Brinks, Clanton, Coughlin, Cummings, McGookey and Mayor Root.

ABSENT: COMMISSIONERS: Brown.

The following preamble and resolution were offered by Commissioner McGookey and supported by Commissioner Coughlin

WHEREAS, consistent with City of Kentwood Ordinance No. 4-67 a special assessment roll has been prepared for the purpose of specially assessing that portion of the cost of the public improvements more particularly hereafter described to the properties specially benefited by the public improvements; and

WHEREAS, a copy of the special assessment roll is attached to this resolution as "Roll A" and is incorporated herein by reference; and

WHEREAS, the special assessment roll has been presented to the City Commission by the City Clerk; and

WHEREAS, the City Commission has held a public hearing to consider objections to the confirmation of the special assessment roll, which hearing was noticed in accordance with state and local law; and

WHEREAS, no objections having been made to the City either before or during the hearing, and the City Commission having otherwise fully reviewed said proposed special assessment roll and finding it proper; and

WHEREAS, the City Commission also finds that due to the nature of the present and planned use and development of the premises within the district that it will be fair and equitable if the special assessment roll is confirmed as hereinafter provided which will contain the properties within the district as identified on "Roll A."

THEREFORE BE IT RESOLVED THAT:

1. The Special Assessment Roll marked as "Roll A," shall be designated as follows: Pfeiffer Woods Drive Construction, Ravines Special Assessment District, Special Assessment District No. 808.051.141

2. The special assessment roll in the amount of $1,942,070.00, as heretofore prepared and reported to the City Commission be and the same is hereby confirmed, containing the assessments shown on "Roll A" and associated attachments, which is attached to and made part of this Resolution, and is found to contain assessments proportional to the benefits received.

3. The special assessment roll shall be deferred consistent with the terms of the Voluntary Special Assessment/Development Agreement dated September 7, 2004, between the City of Kentwood and 44th/Shaffer Avenue, LLC (the "Agreement"); provided that annual payments equivalent to the simple interest on any unpaid balance shall be due and payable on the anniversary date of the confirmation of this special assessment roll.

4. Interest shall be paid on any unpaid balance of the special assessment roll at the rate of 5.5%.

5. The special assessment roll shall be filed in the office of the City Clerk and shall have the date of confirmation endorsed thereon. The date of the confirmation shall be September 7, 2004.

6. The assessments made in the special assessment roll as confirmed shall be deemed a lien on the property described and are hereby ordered and directed to be collected consistent with the terms thereof and the Agreement, and the City Clerk shall deliver a certified copy of the special assessment roll to the City Treasurer with his warrant attached commanding the Assessor to spread and the Treasurer to collect the assessments therein in accordance with the directions of the City Commission with the respect thereto, and the Treasurer is directed to collect the amounts assessed as the same above become due.

7. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same hereby are rescinded.

YEAS: Commissioners: Brinks, Clanton, Coughlin, Cummings, McGookey and Mayor Root.

NAYS: None.

ABSENT: Commissioners: Brown.

RESOLUTION NO. 96-04 DECLARED ADOPTED.

Dan Kasunic
Kentwood City Clerk

CERTIFICATION

The foregoing resolution was adopted at a regular meeting of the Kentwood City Commission held on September 7, 2004.

Dan Kasunic
Kentwood City Clerk

243403.02

ROLL A

CITY OF KENTWOOD

PFEIFFER WOODS DRIVE CONSTRUCTION
(Ravines Special Assessment District)
STREET, STORM SEWER, NON-MOTORIZED TRAIL, SANITARY SEWER, AND WATERMAIN
SPECIAL ASSESSMENT DISTRICT

CONFIRMED SPECIAL ASSESSMENT ROLL

Date of Confirmation: September 7, 2004

Subject Property:

Part of the NE 1/4 and part of the SE 1/4, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: BEGINNING at the NE corner of Section 22; thence S 03°35'29" E 395.00 feet along the East line of said NE 1/4; thence S 89°42'31" W 258.00 feet; thence S 03°35'29" E 120.00 feet; thence N 89°42'31" E 258.00 feet; thence S 03°35'29" E 705.38 feet along the East line of said NE 1/4; thence N 54°47'03" W 395.85 feet; thence S 89°45'47" W 308.00 feet; thence S 03°35'29" E 330.00 feet; thence N 89°45'47" E 424.00 feet along the South line of the N 1/2 of the NE 1/4 of Section 22; thence S 03°35'29" E 153.00 feet; thence N 89°45'47" E 193.00 feet; thence S 03°35'29" E 273.18 feet along the East line of said NE 1/4; thence S 86°24'31" W 40.00 feet; thence S 03°35'29" E 891.81 feet along the West line of Shaffer Avenue to the South line of said NE 1/4; thence S 03°10'02" E 1324.40 feet along the West line of Shaffer Avenue; thence S 89°54'32" W 629.94 feet along the North line of the S 1/2 of the SE 1/4 of Section 22; thence S 03°10'02" E 60.95 feet; thence S 90°00'00" W 708.24 feet; thence N 45°00'00" W 67.88 feet; thence S 90°00'00" W 530.00 feet; thence N 50°00'00" W 235.00 feet; thence S 42°36'50" W 260.00 feet; thence S 77°56'20" W 333.73 feet; thence N 03°02'05" W 1440.00 feet along the West line of the SE 1/4 of Section 22 to the center of said Section; thence N 03°29'48" W 2635.49 feet along the West line of the NE 1/4 of Section 22 to the N 1/4 corner of said Section; thence N 89°42'31" E 2633.71 feet along the North line of said NE 1/4 to the place of beginning. Subject to highway R.O.W. for Shaffer Avenue. This parcel contains 233.49 acres, including highway R.O.W.

Estimated Public Improvement Costs	Total Costs	LLC Portion	City's Share
Pfeiffer Woods Roadway (22A)	475,000.00	360,000.00	115,000.00
Add for 21AA (Allowance)	17,000.00	0.00	17,000.00
Storm Sewer	200,000.00	200,000.00	0.00
Water Main	203,000.00	160,000.00	43,000.00
Lighting Allowance	66,000.00	66,000.00	0.00
Landscape Allowance	125,000.00	125,000.00	0.00
Irrigation Allowance	50,000.00	50,000.00	0.00
Testing & Construction Staking	55,000.00	55,000.00	0.00
Total Subcontractor Costs	1,191,000.00	1,016,000.00	175,000.00
Project Management (10%)	119,100.00	101,600.00	17,500.00
Liability Insurance	8,800.00	8,800.00	0.00

Design and Inspection Fees	115,000.00	115,000.00	0.00
Permits and Fees	20,000.00	20,000.00	0.00
Bonding Costs	15,000.00	15,000.00	0.00
City Legal and Other	25,000.00	25,000.00	0.00
Total Project Costs	1,493,900.00	1,301,400.00	192,500.00
Total Project Contingency/Inflation (30%)	448,170.00	448,170.00	0.00
SAD Total Costs	1,942,070.00	1,749,570.00	192,500.00

Owner of Property: 44th/Shaffer Avenue, LLC, a Michigan limited liability company

Term: 10 years from confirmation of roll; i.e., September 7, 2014. Any unpaid principal and interest is due in full upon termination date.

Deferred Installments:

A. Interest is charged at a rate equal to one percentage (1%) point over the U.S. prime rate as published in the *Wall Street Journal*, which prime rate is in effect on the date the roll is confirmed as provided for in Ordinance No. 4-67, as amended. As of September 7, 2004, this aggregate interest rate is 5.5%.

B. A payment shall be due annually on the anniversary date of the confirmation of the roll (e.g., without limitation, September 7, 2005, September 7, 2006, September 7, 2007, etc.) in an amount equivalent to the simple interest on any unpaid principal amount.

C. Principal payments, along with any unpaid simple interest on that portion of the principal, shall be due upon certain governmental approvals being issued consistent with the terms of a Voluntary Special Assessment/ Development Agreement dated September 7, 2004, between the City of Kentwood and 44th/Shaffer Avenue, LLC (the "Agreement").

D. In no event shall the amount of the special assessment exceed the actual costs reimbursed to the property owner pursuant to the Agreement and the costs and expenses of the City to which the City is lawfully entitled to be reimbursed including, but not limited to, all legal fees incurred by the City in establishing and preparing the special assessment district and special assessment roll.

E. Deferred installments shall be collected without penalty until 60 days after the due date; thereafter, such penalties as are provided for in the City Charter for general *ad valorem* taxes shall be due and collected.

F. Anticipated allocations: See attachments hereto which are incorporated by reference. Note that several of the specific dates included in the attachments are incorporated for purposes of example only and the payment amounts actually due will be determined based on the occurrence of certain governmental approvals being issued consistent with the terms of the Agreement.

CITY OF KENTWOOD
44/Schaffer - Pfeiffer Woods Drive
Special Assessment Roll

Allocation per Neighborhood

	Fixed Cost Allocation	Fixed Cost Amount	Principal Portion of SAD for each Phase 1	2	3	4
B-1	24.00%	419,896.80	209,948.40	209,948.40	0.00	0.00
B-2	22.00%	384,905.40	192,452.70	192,452.70	0.00	0.00
B-3	33.00%	577,358.10	156,711.48	162,210.13	129,218.24	129,218.24
B-4	21.00%	367,409.70	206,409.94	160,999.76	0.00	0.00
		1,749,570.00	765,523.53	725,612.99	129,221.24	129,222.24

Neighborhood B-1, Phase 1

Amount of SA Principal allocated to this Phase	C	209,948.40
Effective Date of Special Assessment		9/7/2004
1% over the WSJ Prime Rate on Effective Date		5.50%
Assumed days per year		360
Interest Only Payment due 9/7 each year (in effect until Trigger occurs and sets due date for Phase Payment)		11,547.16

Due Date Triggers

Final Zoning Approval for Phase		8/1/2007
180 days from Final Zoning Approval for Phase		1/28/2008
-OR-		
Erosion Permit for a Phase issued		9/7/2014
Computed Final Date for Phase payment		1/28/2008
Date Last Interest Payment Made		9/7/2007
Interest from Last Interest Payment Date To Due Date of Phase	A	4,586.79
OR		
Date Phase Payment Actually Made (If prior to Due Date)		11/15/2007
Date of last interest payment prior to this date		9/7/2007
Interest from Last Interest Payment Date To Date of Actual Payment	B	2,213.21

Total Due is the sum of either A or B plus C

For Example

A+C: If paid on the Final Date for Phase Payment	214,535.19
B+C: If payment made on earlier date shown above	212,161.61

*NOTE: All dates are for demonstration only.
When actual dates are inserted, the interest is automatically recalculated.

CITY OF KENTWOOD
44/Schaffer - Pfeiffer Woods Drive
City's and LLC's share of costs for Owner-Contracted Infrastructure Improvements

Subcontractor Costs	Total Costs	LLC Portion	City's Share
Pfeiffer Woods Roadway (22A)	475,000.00	360,000.00	115,000.00
Add for 21AA (Allowance)	17,000.00	0.00	17,000.00
Storm Sewer	200,000.00	200,000.00	0.00
Water Main	203,000.00	160,000.00	43,000.00
Lighting Allowance	66,000.00	66,000.00	0.00
Landscape Allowance	125,000.00	125,000.00	0.00
Irrigation Allowance	50,000.00	50,000.00	0.00
Testing & Construction Staking	55,000.00	55,000.00	0.00
Total Subcontractor Costs	1,191,000.00	1,016,000.00	175,000.00
Project Management (10%)	119,100.00	101,600.00	17,500.00
Liability Insurance	8,800.00	8,800.00	0.00
Design and Inspection Fees	115,000.00	115,000.00	0.00
Permits and Fees	20,000.00	20,000.00	0.00
Bonding Costs	15,000.00	15,000.00	0.00
City Legal and Other	25,000.00	25,000.00	0.00
Total Project Costs	1,493,900.00	1,301,400.00	192,500.00
Project Contingency/Inflation (30%)	448,170.00	448,170.00	0.00
SAD Total Costs	1,942,070.00	1,749,570.00	192,500.00

CITY OF KENTWOOD
44/Schaffer - Pfeiffer Woods Drive
Allocation of Special Assessments against 44th LLC Property

Allocation of Units

Neighborhood	Max. no. Phases	Total No. of Units	No. of Units in Each Phase				Percent of Units in each Phase			
			1	2	3	4	1	2	3	4
B-1	2	248	124	124	N/A	N/A	50.00%	50.00%		
B-2	2	190	95	95	N/A	N/A	50.00%	50.00%		
B-3	4	210	57	59	47	47	27.14%	28.10%	22.38%	22.38%
B-4	2	178	100	78	N/A	N/A	56.18%	43.82%		

Amounts per Phase

Neighborhood	Fixed Cost Allocation	Fixed Cost Amount	Principal Portion of SAD for each Phase			
			1	2	3	4
B-1	24%	419,896.80	209,948.40	209,948.40	0.00	0.00
B-2	22%	384,905.40	192,452.70	192,452.70	0.00	0.00
B-3	33%	577,358.10	156,711.48	162,210.13	129,218.24	129,218.24
B-4	21%	367,409.70	206,409.94	160,999.76	0.00	0.00
		1,749,570.00	765,523.53	725,612.99	129,221.24	129,222.24

CITY OF KENTWOOD
44/Schaffer - Pfeiffer Woods Drive
WSJ Prime Rate for date Special Assessment Roll is confirmed

Date	Prime Rate	Prime Rate plus 1%
9/7/2004	4.50%	5.50%

EXHIBIT 8

10/3/5

20140813-0065216
Mary Hollinrake P 1/10 11 47AM
Kent Cnty MI Rgstr 08/13/2014 SEAL

RECD KENT COUNTY, MI RC
2014 JUL 31 AM 9:20

RECD KENT COUNTY, MI RCC
2014 AUG -6 AM 9:08

AMENDMENT TO VOLUNTARY SPECIAL ASSESSMENT/DEVELOPMENT AGREEMENT (RAVINES NEIGHBORHOOD B2 [A AND B])

This Amendment to Voluntary Special Assessment/Development Agreement is dated July 15, 2014 ("Amendment") between the City of Kentwood, a Michigan municipal corporation, the address of which is 4900 Breton Avenue, SE, Kentwood, Michigan 49508 ("City") and Holland Home, a Michigan non-profit corporation, the address of which is 2100 Raybrook Avenue, SE, Grand Rapids, Michigan 49546 ("Holland Home" or "Owner").

RECITALS

A. On September 7, 2004, 44th/Shaffer Avenue, LLC ("44th/Shaffer") and the City entered into a Voluntary Special Assessment/Development Agreement ("Agreement") to facilitate 44th/Shaffer's development of property as a residential planned unit development. The Agreement was recorded with the Kent County Register of Deeds at Instrument No. 20040917-0125700 on September 17, 2004.

B The Agreement was subsequently amended in recognition of Holland Home's purchase of additional real property. The real property owned by Holland Home and which remains subject to the Agreement, as amended, is legally described on attached **Exhibit A**, which is incorporated by reference ("Property").

C The obligations set forth in the Agreement were covenants running with the land, and which bind all successors in title. Holland Home is the successor in title to 44th/Shaffer of the Property.

D. The Agreement provides, in part, that certain improvements benefitting the Property were to be financed through the establishment by the City of a special assessment district.

E. In accordance with its adopted ordinance and state law, the City Commission, on September 7, 2004, adopted Resolution No. 96-04 which established the special assessment district referenced above and confirmed a special assessment roll for the district (the special assessment roll as subsequently amended referred to herein as the "Roll"). Holland Home has made the payments attributable to the Property and required under the terms of the Roll to the date of this Amendment.

STATE OF MICHIGAN } ss
COUNTY OF KENT }
I certify that the foregoing is a true copy of the record on file in the office of the Register of Deeds of said County.
In Testimony Whereof, I have hereunto set my hand, and official seal at the City of Grand Rapids on
_____, 20__
Lisa Posthumus Lyons, Register of Deeds
By _____ Deputy

20140813-0065216
Mary Hollinrake P 2/10 11 47AM
Kent Cnty MI Rgstr 08/13/2014 SEAL

F. A balloon payment on the outstanding principal of $369,985.09 and interest of $12,990.02 attributable to the Property in the total amount of $382,975.11 is due on September 7, 2014 under the terms set forth as part of the Roll and the Agreement.

G. By letter dated June 9, 2014, Holland Home has requested that the City, without changing the original confirmation date or amount of the Roll, as amended, extend the term of years for payment of the remaining principal and interest. A copy of the letter is attached as **Exhibit B** and incorporated by reference ("Letter").

H. In reliance on Holland Home's representations as set forth in the Letter, and as permitted under Section 2(e) of the Agreement, the parties acknowledge that the City may extend the term of years for payment of the outstanding principal and interest on the Roll.

TERMS AND CONDITIONS

NOW, THEREFORE, for good and valuable consideration in and referred to by this agreement, the sufficiency of which the parties acknowledge, the parties agree as follows:

1. The parties affirm that the Recitals set forth above are correct, form an integral part of this Amendment, and are incorporated herein by reference.

2. Section 2(g) of the Agreement is amended to read in its entirety as follows:

(g) Allocation. Notwithstanding any provision in this Agreement to the contrary, allocation of the special assessment shall be structured as follows:

(1) Installment payments shall be made in accordance with the schedule attached as **Exhibit C** to this Amendment, which terms are incorporated by reference. Provision shall be made such that if any installment is not paid when due, then penalties shall be applied as are collected on delinquent ad valorem taxes.

(2) It is an express condition of the Agreement that the Owner waives any right it may have under state or local law, rule or regulation to any further allocation or apportionment of special assessments of the Owner-Contracted Infrastructure Improvements (among lots, units, or other divisions of property) beyond that provided for herein or as otherwise provided for in the City Commission resolution confirming the Roll for the Owner-Contracted Infrastructure Improvements, as amended.

(3) Owner agrees that the special assessment lien imposed against the Property for the Owner-Contracted Infrastructure Improvements shall not be satisfied or released as to the Property or any part thereof until such time as the entire aforesaid special assessment is paid in full.

(4) Notwithstanding anything herein to the contrary, the unpaid balance may be prepaid in whole without penalty or premium.

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Mary Hollinrake P 3/10 11 47AM
Kent Cnty MI Rgstr 08/13/2014 SEAL

3. The parties acknowledge and agree that the City, consistent with the terms of the Agreement and City Ordinance No. 4-67, as amended, has reserved to itself the right to extend the term of years for payment of the above-described special assessment without changing the date of the confirmation of the Roll or exposing the City to a challenge of the special assessment or Roll, as amended, and that it is the parties' intent that all challenges, claims or causes of action to the special assessment or Roll are released and waived by Holland Home, its successors and assigns as against the City. Without limiting the foregoing, Holland Home, on behalf of itself, its successors and assigns, waives and releases any claim it may have against the City predicated upon the existence of other resolutions, amendments, etc. impacting the special assessment or Roll.

4. Except as modified herein, the Agreement shall be and remain binding and in effect as between the parties, their successors and assigns.

5. The obligations under this Amendment are covenants that run with the land, and shall bind all successors in title. This Amendment shall be recorded with the Kent County Register of Deeds. Holland Home shall be responsible for all costs associated with recording the Amendment.

6. The parties agree to execute such other documents as either of them may reasonably request to fully implement this Amendment.

7. No other party is intended as a beneficiary of this Amendment.

The parties have caused this Amendment to be executed as of the date first written above.

CITY OF KENTWOOD

By: _____
Stephen Kepley, Mayor

By: _____
Dan Kasunic, City Clerk

MARY L. BREMER
Notary Public, State of Michigan
Qualified in Kent County
Commission Expires August 9, 2016

STATE OF MICHIGAN
COUNTY OF KENT
Acknowledged before me in Kent County, Michigan on July 16, 2014, by Stephen Kepley and Dan Kasunic, respectively the Mayor and Clerk of the City of Kentwood, a Michigan home rule city, on behalf of the city.

Mary L. Bremer
*

Notary Public, Kent County, Michigan
Acting in Kent County, Michigan
My commission expires: 8-9-2016

(Remainder of page left intentionally blank.)

HOLLAND HOME

By: _____
H. David Claus, President
and Chief Executive Officer

STATE OF MICHIGAN
COUNTY OF KENT
Acknowledged before me in Kent County, Michigan on July 28, 2014, by H. David Claus, the President and Chief Executive Officer of Holland Home, a Michigan non-profit corporation, for the corporation.

_____
Jack A. Siebers
Notary Public, Kent County, Michigan
Acting in Kent County, Michigan
My commission expires: 11/12/2017

*Name must be typed or printed in black ink beneath signature

Drafted by:
Jeff Sluggett
Bloom Sluggett Morgan, PC
15 Ionia Ave, SW, Suite 640
Grand Rapids, MI 49503
(616) 965-9341

When recorded return to:
Dan Kasunic, Clerk
City of Kentwood
4900 Breton Avenue, SE
PO Box 8848
Kentwood, MI 49518-884

NO TRANSFER TAX IS OWED BECAUSE THIS AMENDMENT DOES NOT CONVEY ANY REAL PROPERTY.

28933 02

20140813-0065216
Mary Hollinrake P 5/10 11 47AM
Kent Cnty MI Rgstr 08/13/2014 SEAL

EXHIBIT A
REAL PROPERTY LEGAL DESCRIPTION

Parcel B2-A: 41-18-22-401-002
PART OF E ½ OF SEC COM 1290.96 FT N 87D 18M 56S W ALONG E&W 1/4 LINE FROM E ¼ COR TH S 27D 55M 52S W 281.40 FT TH S 8D 10M 02S E 245.78 FT TH S 11D 39M 11S W 226.61 FT TH S 44D 38M 41S W 334.95 FT TH S 79D 59M 47S W 307.02 FT TH S 47D 10M 33S W 199.74 FT TH S 45D 28M 52S W 260.0 FT TH S 80D 48M 22S W 333.73 FT TO N&S ¼ LINE TH N 0D 10M 03S W ALONG N&S ¼ LINE 1258.70 FT TH N 89D 49M 57S E 180.0 FT TH N 76D 55M 11S E 197.47 FT TH S 83D 25M 40S E 50.0 FT TH NELY 38.06 FT ALONG A 225 FT RAD CURVE TO RT/LONG CHORD BEARS N 11D 25M 06S E 38.01 FT/TH NLY 213.22 FT ALONG A 275 FT RAD CURVE TO LT/LONG CHORD BEARS N 5D 56M 52S W 207.92 FT/TH N 28D 09M 35S W 415.77 FT TH NLY 112.19 FT ALONG A 183.30 FT RAD CURVE TO RT/LONG CHORD BEARS N 10D 37M 31S W 110.45 FT/TH N 6D 54M 33S E 46.65 FT TH NELY 38.51 FT ALONG A 50.50 FT RAD CURVE TO RT/LONG CHORD BEARS N 28D 45M 18S E 37.58 FT/TH N 50D 36M 02S E 11.60 FT TH NELY 21.81 FT ALONG A 52.50 FT RAD CURVE TO RT/LONG CHORD BEARS N 62D 30M 13S E 21.66 FT/TH NELY 88.04 FT ALONG A 777.50 FT RAD CURVE TO RT/LONG CHORD BEARS N 77D 39M 01S E 87.99 FT/TH N 80D 55M 19S E 199.94 FT TH NELY 102.72 FT ALONG A 840 FT RAD CURVE TO LT/LONG CHORD BEARS N 77D 25M 08S E 102.66 FT/TH S 27D 42M 09S E 393.92 FT TH S 61D 37M 23S E 183.51 FT TH S 51D 02M 19S E 346.87 FT TH S 33D 47M 53S E 187.39 FT TO BEG*SEC 22 T6N R11W 41.91 A.

and

Parcel B2-B: 41-18-22-178-003
PART OF N ½ & SE ¼ COM 1849.27 FT S 0D 37M 46S E ALONG N&S ¼ LINE FROM N ¼ COR TH ELY 60.54 FT ALONG A 460 FT RAD CURVE TO RT/LONG CHORD BEARS S 79D 01M 01S E 60.49 FT/TH SELY 59.87 FT ALONG A 67.50 FT RAD CURVE TO RT/LONG CHORD BEARS S 49D 50M 09S E 57.93 FT/TH S 24D 25M 30S E 13.47 FT TH SELY 16.28 FT ALONG A 47.50 FT RAD CURVE TO RT/LONG CHORD BEARS S 14D 36M 13S E 16.20 FT/TH S 4D 46M 56S E 121.91 FT TH S 88D 16M 36S E 78.13 FT TH S 6D 54M 33S W 8.19 FT TH SLY 112.19 FT ALONG A 183.30 FT RAD CURVE TO LT/LONG CHORD BEARS S 10D 37M 31S E 110.45 FT/TH S 28D 09M 35S E 415.77 FT TH SLY 213.22 FT ALONG A 275 FT RAD CURVE TO RT/LONG CHORD BEARS S 5D 56M 52S E 207.92 FT/TH SWLY 38.06 FT ALONG A 225 FT RAD CURVE TO LT/LONG CHORD BEARS S 11D 25M 06S W 38.01 FT/TH N 83D 25M 40S W 50.0 FT TH S 76D 55M 11S W 197.47 FT TH S 89D 49M 57S W 180.0 FT TO N&S ¼ LINE TH N 0D 10M 03S W ALONG N&S ¼ LINE 181.30 FT TO E&W ¼ LINE TH N 87D 21M 58S W ALONG E&W ¼ LINE 711.66 FT TH NWLY 115.53 FT ALONG A 333 FT RAD CURVE TO LT/LONG CHORD BEARS N 35D 54M 55S W 114.95 FT/TH N 45D 51M 17S W 122.41 FT TH NWLY 59.26 FT ALONG A 267 FT RAD CURVE TO RT/LONG CHORD BEARS N 39D 29M 47S W 59.14 FT/TH N 33D 08M 18S W 63.38 FT TH N 56D 51M 42S E 741.25 FT TH NELY 323.85 FT ALONG A 460 FT RAD CURVE TO RT/LONG CHORD BEARS N 77D 01M 50S E 317.20 FT/TO BEG*SEC 22 T6N R11W 18.00A.

Holland Home
Serving Grand Rapids Since 1892

June 9, 2014

Holland Home®
Corporate Office
2100 Raybrook Street SE
Suite 300
Grand Rapids, MI 49546
Phone 616 235 5000
Fax 616 235 5680
www.hollandhome.org

Holland Home Development

Breton Woods Campus
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& Living Centre
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Fulton Campus
Fulton Manor

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www.faithhospicecare.org

Trillium Woods®
Faith Hospice residence

HomeCare of Holland Home
homecareofhollandhome.org

Helpers of Holland Home
helpersofhollandhome.org

Admissions
Phone 616 235 5113

Stephen C.N. Kepley, Mayor
City of Kentwood
4900 Breton Avenue, SE
Kentwood, Michigan 49508

Re: INDUCEMENT AND INDEMNITY AGREEMENT
Pfeiffer Woods Drive Special Assessment District

To: Mayor Kepley

We have this day filed with the City of Kentwood ("City") a request to modify the payment terms of a pre-existing special assessment district, better known as the Pfeiffer Woods Drive Construction (Breton North Special Assessment District) Street, Storm Sewer, Non-Motorized Trail, Sanitary Sewer, and Watermain Special Assessment District ("District"). The District was finally established and confirmed by Resolution of the City Commission on September 7, 2004 ("Resolution").

As an inducement to the City to review and favorably consider and approve the request and to adopt such resolutions and take such other actions as are herein contemplated, and whether or not all or any part of the District's pre-existing payment terms are modified, the undersigned, on behalf of Holland Home ("Holland Home") and its officers, directors, employees, agents and successors of any kind, irrevocably agrees that it will:

(a) Pay all special assessments heretofore levied pursuant to the Resolution, on such terms and at such times as determined by the City Commission without further notice, hearing or appeal.

(b) At all times indemnify and hold harmless the City and its officers and employees against all losses, costs, damages, expenses and liabilities of whatsoever nature or kind (including, but not limited to attorney's fees, litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgment) directly or indirectly resulting from, arising out of or related to the acceptance, consideration and approval or disapproval of such request by Holland Home as aforesaid or the approval, adoption, issuance, or execution of any resolution, motion, contract or other action by which the City adjusts the terms of the pre-existing special assessment for the District and the property owner's on-going obligation to pay for the benefits received.

20140813-0065216
Mary Hollinrake P 8/10 11 47AM
Kent Cnty MI Rgstr 08/13/2014 SEAL

It is understood and agreed that this Inducement and Indemnity Agreement shall be continuing and shall survive and continue to be effective after any approval or disapproval of the request and the modification or failure to modify any such special assessment, special assessment term or similar matter. It is also understood that additional indemnity agreements may be required by the City from others such as guarantors, prior to the final approval of the request.

This Inducement and Indemnity Agreement shall be effective upon execution by Holland Home where indicated below as of the date hereof.

Sincerely,

HOLLAND HOME

By: _____
H. David Claus
President & CEO – Holland Home

Approved, accepted and agreed to this 12TH day of JUNE, 2014.

CITY OF KENTWOOD

By: _____
Stephen C.N. Kepley, Mayor

2348.docx
{99999-001-00024331.1}

EXHIBIT C

PAYMENT SCHEDULE

Attached

7/9/2014

Holland Home
Special Assessment District
Proposed Principal & Interest Payments

Ravines PUD Neighborhood B2 (22%)

Initial principal balance	$ 369,985.09
Interest rate	5.50%
# of days in year	365
Calculate initial interest from	1/17/2014
Target annual payment amount	$ 48,232.90

Payment Date	Interest Payment	Principal Payment	Total Payment	Outstanding Principal
1/17/2014				$ 369,985.09
9/7/2014	$ 12,990.02	$ 7,234.93	$ 20,224.95	$ 362,750.16
9/7/2015	$ 19,951.26	$ 28,281.64	$ 48,232.90	$ 334,468.52
9/7/2016	$ 18,446.17	$ 29,786.73	$ 48,232.90	$ 304,681.79
9/7/2017	$ 16,757.50	$ 31,475.40	$ 48,232.90	$ 273,206.39
9/7/2018	$ 15,026.35	$ 33,206.55	$ 48,232.90	$ 239,999.84
9/7/2019	$ 13,199.99	$ 35,032.91	$ 48,232.90	$ 204,966.93
9/7/2020	$ 11,304.07	$ 36,928.83	$ 48,232.90	$ 168,038.10
9/7/2021	$ 9,242.10	$ 38,990.80	$ 48,232.90	$ 129,047.30
9/7/2022	$ 7,097.60	$ 41,135.30	$ 48,232.90	$ 87,912.00
9/7/2023	$ 4,835.16	$ 43,397.74	$ 48,232.90	$ 44,514.26
9/7/2024	$ 2,448.28	$ 44,514.26	$ 46,962.54	$ -
	$ 131,298.50	$ 369,985.09	$ 501,283.59	

EXHIBIT 9

CITY OF KENTWOOD
KENT COUNTY, MICHIGAN

Motion by Brinks, seconded by Coughlin, to adopt the following resolution:

RESOLUTION NO. 49-14

A RESOLUTION TO EXTEND PAYMENT TERMS
FOR A CONFIRMED SPECIAL ASSESSMENT DISTRICT
(RAVINES NEIGHBORHOOD B3-B AND B4)

RECITALS

A. Pursuant to City of Kentwood Resolution No. 96-04 entitled "Pfeiffer Woods Drive Construction (Ravines Special Assessment District) Street, Storm Sewer, Non-Motorized Trail, Sanitary Sewer and Watermain Special Assessment District," as amended ("Resolution"), the Pfeiffer Woods Drive Construction, Ravines Special Assessment District was established ("District").

B. The Resolution was adopted to finance certain public improvements benefitting the property located within the District.

C. The Resolution included a special assessment roll for the District, which special assessment roll was confirmed on September 7, 2004. The amount of the special assessment as reflected in the roll, by law, became a lien on the property comprising the District.

D. The Resolution was subsequently amended by the City with respect to the amount of the total special assessment (Resolution No. 108-04), and to reduce the area subject to the special assessment terms (Resolution No. 28-05).

E. Subsequently, the owners of two large tracts (i.e., neighborhoods) of real property within the District became delinquent in paying property taxes and special assessments due and owing on their respective properties. As a result, and in accordance with Michigan's General Property Tax Act, Act No. 206 of the Public Acts of 1893, as amended, the properties were forfeited and judgment of foreclosure was entered with respect to each of the properties on March 31, 2014. As a result of the foreclosure, the properties are now titled to the Kent County Treasurer. (The real properties owned by the Kent County Treasurer within the District are identified herein, collectively, as the "Property".)

F. The Property is and remains subject to a lien for the portion of the special assessment set forth in the Resolution, as amended. The Property is legally described on the attached Exhibit A, which is incorporated by reference.

G. The District was established, in part, pursuant to a Voluntary Special Assessment/Development Agreement between the City and the owner of the Property dated September 7, 2004 and recorded with the Kent County Register of Deeds at Instrument No. 20040917-0125700 on September 17, 2004 ("Agreement").

H. The Agreement, at Section 2(e), provides, in part, that the "term of years" for the District's special assessment and similar matters are to be determined by resolution of the City Commission "in its discretion."

I. As further authorized by the Agreement, and without re-confirming the District's special assessment roll, the City Commission has determined that extending the term of years for payment of the District's special assessment with respect to the Property will serve a valuable public purpose including, without limitation, making the Property more marketable at public auction by the foreclosing governmental unit, enhancing economic development opportunities within the City, and facilitating private investment to increase the tax base.

NOW, THEREFORE, IT IS RESOLVED THAT:

1. The City affirms that the Recitals above are correct, form an integral part of this Resolution, and are incorporated herein by reference.

2. The special assessment roll attached to the Resolution as amended, and identified as "Roll A", is attached as **Exhibit B** and incorporated herein by reference ("Roll A").

3. A revised schedule of payment terms for the portion of the District's special assessment roll attributable to the Property, identified as "Roll A Supplemental", is attached as **Exhibit C** and incorporated herein by reference ("Roll A Supplemental").

4. Without modifying the confirmation date of the special assessment roll as amended, Roll A Supplemental shall hereby amend, supersede and replace any term or provision in Roll A to the contrary, to the extent of a conflict between Roll A and Roll A Supplemental, the provisions of Roll A Supplemental shall control. All remaining terms and provisions in Roll A not in conflict with Roll A Supplemental shall be and remain in effect.

5. Except as provided for herein, the Resolution and its terms are and shall remain binding and in effect. This resolution shall not be interpreted or construed to extend the period in which to challenge the underlying special assessment, which period has expired.

6. The Mayor, City Clerk and administrative officers of the City are hereby ordered and directed to take all actions reasonably necessary to effectuate this resolution including, without limitation, execution of the Amendment to Voluntary Special Assessment/Development Agreement dated July 15, 2014.

7. The City Clerk shall deliver a certified copy of this resolution and accompanying exhibits to the City Treasurer with his warrant attached commanding the Assessor to spread and the Treasurer to collect the assessment therein in accordance with the directions of the City Commission and the Treasurer is directed to collect the amounts assessed as the same become due.

8. All prior resolutions and parts of resolutions in conflict herewith are, to the extent of such conflict, hereby repealed.

YEAS: Commissioners: Artz, Brinks, Brown, Coughlin, DeMaagd, Haas and Mayor Kepley.

NAY: None.

ABSENT: None.

RESOLUTION NO. 49-14 ADOPTED.

Dan Kasunic
City Clerk

The foregoing resolution was adopted at a regular meeting of the City Commission of the City of Kentwood on July 15, 2014.

Dan Kasunic
City Clerk

EXHIBIT A
PROPERTY LEGAL DESCRIPTION

Parcel B3-B: 41-18-22-201-001
PART OF NE ¼ COM AT NE COR OF SEC TH S 3D 35M 29S E ALONG E SEC LINE 395.0 FT TH S 89D 42M 31S W 258.0 FT TH S 3D 35M 29S E 120.0 FT TH N 89D 42M 31S E 258.0 FT TH S 3D 35M 29S E 705.38 FT TH N 54D 47M 03S W 395.85 FT TH S 89D 45M 47S W 308.0 FT TH N 48D 05M 08S W 57.70 FT TH NWLY 85.19 FT ALONG A 185 FT RAD CURVE TO LT/LONG CHORD BEARS N 61D 16M 42S W 84.44 FT TH NWLY 317.79 FT ALONG A 726.68 FT RAD CURVE TO LT/LONG CHORD BEARS N 86D 59M 57S W 315.27 FT/TH N 6D 29M 36S W 3.24 FT TH NLY 24.30 ALONG A 345 FT RAD CURVE TO LT/LONG CHORD BEARS N 8D 46M 49S W 24.29 FT/TH N 10D 47M 53S W 144.99 FT TH NWLY 31.28 FT ALONG 444.86 FT RAD CURVE TO RT/LONG CHORD BEARS N 57D 59M 27S W 31.27 FT/TH N 55D 58M 35S W 154.50 FT TH N 64D 32M 33S W 11.03 FT TH N 71D 23M 21S W 59.08 FT TH NWLY 82.21 FT ALONG A 522.84 FT RAD CURVE TO LT/LONG CHORD BEARS N 76D 45M 27S W 82.13 FT/TH S 8D 30M 37S W 110.0 FT TH NWLY 60.08 FT ALONG A 320.0 RAD CURVE TO LT/LONG CHORD BEARS N 86D 52M 07S W 60.0 FT/TH S 2D 14M 52S E 60.0 FT TH S 5D 37M 05S E 120.40 FT TH S 21D 10M 34S W 454.76 FT TH S 0D 45M 27S E 325.54 FT TH S 64D 51M 03S W 319.71 FT TH SWLY 215.67 FT ALONG A 760 FT RAD CURVE TO RT/LONG CHORD BEARS S 72D 58M 49S W 214.94 FT/TH S 81D 06M 35S W 155.45 FT TH NWLY 31.99 FT ALONG A 47.5 FT RAD CURVE TO RT/LONG CHORD BEARS N 79D 35M 41S W 31.39 FT/TH NELY 42.22 FT ALONG A 177.50 FT RAD CURVE TO RT/LONG CHORD BEARS N 53D 29M 04S W 42.12 FT/TH NWLY 79.46 FT ALONG A 92.5 FT RAD CURVE TO LT/LONG CHORD BEARS N 71D 16M 48S W 77.04 FT/TH NWLY 128.57 FT ALONG A 452.5 FT RAD CURVE TO RT/LONG CHORD BEARS N 87D 45M 01S W 128.14 FT/TH NWLY 67.97 FT ALONG A 540 FT RAD CURVE TO LT/LONG CHORD BEARS N 83D 12M 58S W 67.92 FT/TO N&S ¼ LINE TH N 3D 29M 48S W ALONG N&S ¼ LINE 1768.48 FT TO N ¼ COR TH N 89D 42M 31S E N 89D 42M 31S E 2633.71 FT TO BEG*SEC 22 T6N R11W 74.11 A.

and

Parcel B4: 41-18-22-276-001
PART OF E ½ COM AT NE COR OF SEC TH S 3D 35M 29S E 1980.57 FT ALONG E SEC LINE TH S 89D 49M 02S W 40.07 FT TO W LINE OF SHAFFER AVE & BEG OF THIS DESC – TH S 3D 35M 29S E ALONG W LINE OF SD AVE 660.18 FT TO E&W ¼ LINE TH N 89D 49M 02S E ALONG E&W ¼ LINE 0.02 FT TH S 3D 10M 02S E 61.23 FT TH S 88D 09M 27S W 467.76 FT TH N 69D 14M 04S W 227.04 FT TH N 75D 46M 26S W 333.65 FT TH S 70D 13M 01S W 266.80 FT TO A PT ON E&W ¼ LINE SD PT BEING 1290.96 FT S 89D 49M 02S W FROM E ¼ COR TH N 36D 39M 55S W 187.39 FT TH N 53D 54M 21S W 346.87 FT TH N 64D 29M 25S W 183.51 FT TH N 30D 34M 11S W 393.92 FT TO S LINE OF PFEIFFER WOODS DR TH NELY 90.86 FT ALONG 840 FT RAD CURVE TO LT/LONG CHORD BEARS N 67D 56M 59S E 90.82 FT/TH N 64D 51M 03S E 368.73 FT TH ELY 1119.01 FT ALONG A 960 FT RAD CURVE TO RT/LONG CHORD BEARS S 81D 45M 22S E 1056.72 FT/TH S 41D 54M 24S W 17.75 FT TH S 47D 02M 47S E 91.85 FT TH SELY 208.54 FT ALONG A 277 FT RAD CURVE TO LT/LONG CHORD BEARS S 68D 36M 53S E 203.65/N 89D 49M 02S E 258.88 FT TO BEG*SEC 22 T6N R11W 34.57 A.

EXHIBIT B
ROLL A

Attached

ROLL A

CITY OF KENTWOOD

PFEIFFER WOODS DRIVE CONSTRUCTION
(Ravines Special Assessment District)
STREET, STORM SEWER, NON-MOTORIZED TRAIL, SANITARY SEWER, AND WATERMAIN
SPECIAL ASSESSMENT DISTRICT

CONFIRMED SPECIAL ASSESSMENT ROLL

Date of Confirmation: September 7, 2004; amended October 19, 2004 and March 15, 2005

Subject Property:

Part of the Northeast one-quarter and part of the Southeast one-quarter, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: COMMENCING at the Northeast corner of Section 22 and the POINT OF BEGINNING of this description; thence S03°35'29"E 395.00 feet along the East line of said Northeast one-quarter, thence South 89°42'31" West 258.00 feet; thence South 03°35'29" East 120.00 feet; thence North 89°42'31" East 258.00 feet; thence South 03°35'29" East 705.38 feet along the East line of said Northeast one-quarter; thence North 54°47'03" West 395.85 feet; thence South 89°45'47" West 308.00 feet; thence South 03°35'29" East 330.00 feet; thence North 89°45'47" East 424.00 feet along the South line of the North one-half of the Northeast one-quarter of Section 22; thence South 03°35'29" East 153.00 feet; thence North 89°45'47" East 193.00 feet; thence South 03°35'29" East 273.18 feet along the East line of said Northeast one-quarter; thence South 86°24'31" West 40.00 feet; thence South 03°35'29" East 891.81 feet along the West line of Shaffer Avenue; thence North 89°49'02" East 0.02 feet along the East-West one-quarter line of said Section; thence South 03°10'02" East 1324.40 feet along the West line of Shaffer Avenue; thence South 89°54'32" West 629.94 feet along the North line of the South one-half of the Southeast one-quarter of Section 22; thence South 03°10'02" East 60.95 feet; thence South 90°00'00" West 708.24 feet; thence North 45°00'00" West 67.88 feet; thence South 90°00'00" West 530.00 feet; thence North 50°00'00" West 235.00 feet; thence South 42°36'50" West 260.00 feet; thence South 77°56'20" West 333.73 feet; thence North 03°02'05" West 1258.70 feet along the West line of the Southeast one-quarter of Section 22; thence North 63°04'26" East 366.74 feet; thence Northwesterly 17.84 feet along a 375.00 foot radius curve to the right, the chord of which bears North 26°04'58" West 17.84 feet; thence Northerly 182.95 feet along a 375.00 foot radius curve to the right, the chord of which bears North 10°44'36" West 181.15 feet; thence North 03°14'00" East 22.33 feet; thence Northwesterly 214.05 feet along a 325.00 foot radius curve to the left, the chord of which bears North 15°38'05" West 210.20 feet; thence North 34°30'10" West 49.19 feet; thence Northwesterly 159.95 feet along a 275.00 foot radius curve to the right, the chord of which bears North 17°50'24" West 157.71 feet; thence South 88°51'22" West 78.13 feet; thence North 07°38'58" West 121.92 feet; thence Northwesterly 16.28 feet along a 47.50 foot radius curve to the left, the chord of which bears North 17°28'15" West 16.20 feet; thence North 27°17'32" West 13.47 feet; thence

Northwesterly 59.87 feet along a 67.50 foot radius curve to the left, the chord of which bears North 52°42'11" West 57.93 feet; thence Westerly 60.54 feet along a 460.00 foot radius curve to the left, the chord of which bears North 81°53'03" West 60.49 feet to the West line of the Southeast one-quarter of said Section 22; thence North 03°29'48" West 1849.27 feet along the West line of the Northeast one-quarter of Section 22 to the North one-quarter corner of said Section; thence North 89°42'31" East 2633.71 feet along the North line of said Northeast one-quarter to the point of beginning. Subject to highway R.O.W. for Shaffer Avenue. This parcel contains 228.49 acres, including highway R.O.W.

Estimated Public Improvement Costs	Total Costs	LLC Portion	City's Share
Pfeiffer Woods Roadway (22A)	500,000.00	360,000.00	140,000.00
Add for 21AA (Allowance)	17,000.00	0.00	17,000.00
Storm Sewer	200,000.00	200,000.00	0.00
Water Main	203,000.00	160,000.00	43,000.00
Lighting Allowance	66,000.00	66,000.00	0.00
Landscape Allowance	125,000.00	125,000.00	0.00
Irrigation Allowance	50,000.00	50,000.00	0.00
Testing & Construction Staking	55,000.00	55,000.00	0.00
Total Subcontractor Costs	1,216,000.00	1,016,000.00	200,000.00
Project Management (10%)	121,600.00	101,600.00	20,000.00
Liability Insurance	8,800.00	8,800.00	0.00
Design and Inspection Fees	115,000.00	115,000.00	0.00
Permits and Fees	20,000.00	20,000.00	0.00
Bonding Costs	15,000.00	15,000.00	0.00
City Legal and Other	25,000.00	25,000.00	0.00
Total Project Costs	1,521,400.00	1,301,400.00	220,000.00
Total Project Contingency/Inflation (25%)	380,350.00	380,350.00	0.00
SAD Total Costs	1,901,750.00	1,681,750.00	220,000.00

Owner of Property: 44th/Shaffer Avenue, LLC, a Michigan limited liability company

Term: 10 years from confirmation of roll; i.e., September 7, 2014. Any unpaid principal and interest is due in full upon termination date.

Deferred Installments:

A. Interest is charged at a rate equal to one percentage (1%) point over the U.S. prime rate as published in the *Wall Street Journal*, which prime rate is in effect on the date the roll is confirmed as provided for in Ordinance No. 4-67, as amended. As of September 7, 2004, this aggregate interest rate is 5.5%.

B. A payment shall be due annually on the anniversary date of the confirmation of the roll (e.g., without limitation, September 7, 2005, September 7, 2006, September 7, 2007, etc.) in an

amount equivalent to the simple interest on any unpaid principal amount.

C. Principal payments, along with any unpaid simple interest on that portion of the principal, shall be due upon certain governmental approvals being issued consistent with the terms of a Voluntary Special Assessment/ Development Agreement dated September 7, 2004, between the City of Kentwood and 44th/Shaffer Avenue, LLC (the "Agreement").

D. In no event shall the amount of the special assessment exceed the actual costs reimbursed to the property owner pursuant to the Agreement and the costs and expenses of the City to which the City is lawfully entitled to be reimbursed including, but not limited to, all legal fees incurred by the City in establishing and preparing the special assessment district and special assessment roll.

E. Deferred installments shall be collected without penalty until 60 days after the due date; thereafter, such penalties as are provided for in the City Charter for general *ad valorem* taxes shall be due and collected.

F. Anticipated allocations: See attachments hereto which are incorporated by reference. Note that several of the specific dates included in the attachments are incorporated for purposes of example only and the payment amounts actually due will be determined based on the occurrence of certain governmental approvals being issued consistent with the terms of the Agreement.

EXHIBIT C

ROLL A SUPPLEMENTAL

Extended Term: Until September 7, 2024.

Installments:

A. Interest is charged at a rate equal to one percentage (1%) point over the U.S. prime rate as published in the *Wall Street Journal*, which prime rate was in effect on the date the roll was confirmed as provided for in Ordinance No. 4-67, as amended. As of September 7, 2004, this aggregate interest rate was 5.5%.

B. A payment shall be due annually on the anniversary date of the original confirmation of the roll for the remaining term of the roll (e.g., September 7, 2014, September 7, 2015, etc.), consistent with the schedule of principal and interest payments set forth on the payment schedule, attached as Exhibit C and incorporated by reference.

C. Notwithstanding anything herein to the contrary, the unpaid balance may be prepaid in whole without penalty or premium.

Payment Schedules: Attached

Pfeiffer Woods Drive
Special Assessment District
Proposed Principal & Interest Payments

7/9/2014

Ravines PUD Neighborhood B3-B

Initial principal balance	$ 396,795.51
Interest rate	5.50%
# of days in year	365
Calculate initial interest from	1/17/2014
Target annual payment amount	$ 50,000.00

Payment Date	Interest Payment	Principal Payment	Total Payment	Outstanding Principal
1/17/2014				$ 396,795.51
9/7/2014	$ 13,931.33	$ 21,068.67	$ 35,000.00	$ 375,726.84
9/7/2015	$ 20,664.98	$ 29,335.02	$ 50,000.00	$ 346,391.82
9/7/2016	$ 19,103.75	$ 30,896.25	$ 50,000.00	$ 315,495.57
9/7/2017	$ 17,352.26	$ 32,647.74	$ 50,000.00	$ 282,847.83
9/7/2018	$ 15,556.63	$ 34,443.37	$ 50,000.00	$ 248,404.46
9/7/2019	$ 13,662.25	$ 36,337.75	$ 50,000.00	$ 212,066.71
9/7/2020	$ 11,695.62	$ 38,304.38	$ 50,000.00	$ 173,762.33
9/7/2021	$ 9,556.93	$ 40,443.07	$ 50,000.00	$ 133,319.26
9/7/2022	$ 7,332.56	$ 42,667.44	$ 50,000.00	$ 90,651.82
9/7/2023	$ 4,985.85	$ 45,014.15	$ 50,000.00	$ 45,637.67
9/7/2024	$ 2,510.07	$ 45,637.67	$ 48,147.74	$ -
	$ 136,352.23	$ 396,795.51	$ 533,147.74	

Pfeiffer Woods Drive
Special Assessment District
Proposed Principal & Interest Payments

7/9/2014

Ravines PUD Neighborhood B4

Initial principal balance	$ 353,167.50
Interest rate	5.50%
# of days in year	365
Calculate initial interest from	1/17/2014
Target annual payment amount	$ 45,000.00

Payment Date	Interest Payment	Principal Payment	Total Payment	Outstanding Principal
1/17/2014				$ 353,167.50
9/7/2014	$ 12,399.57	$ 17,600.43	$ 30,000.00	$ 335,567.07
9/7/2015	$ 18,456.19	$ 26,543.81	$ 45,000.00	$ 309,023.26
9/7/2016	$ 17,042.84	$ 27,957.16	$ 45,000.00	$ 281,066.10
9/7/2017	$ 15,458.64	$ 29,541.36	$ 45,000.00	$ 251,524.74
9/7/2018	$ 13,833.86	$ 31,166.14	$ 45,000.00	$ 220,358.60
9/7/2019	$ 12,119.72	$ 32,880.28	$ 45,000.00	$ 187,478.32
9/7/2020	$ 10,339.56	$ 34,660.44	$ 45,000.00	$ 152,817.88
9/7/2021	$ 8,404.98	$ 36,595.02	$ 45,000.00	$ 116,222.86
9/7/2022	$ 6,392.26	$ 38,607.74	$ 45,000.00	$ 77,615.12
9/7/2023	$ 4,268.83	$ 40,731.17	$ 45,000.00	$ 36,883.95
9/7/2024	$ 2,028.62	$ 36,883.95	$ 38,912.57	$ -
	$ 120,745.07	$ 353,167.50	$ 473,912.57	

EXHIBIT 1

CITY OF KENTWOOD 41.18.22.576.001
Pfeiffer Woods Drive Construction SAD - Revised
Neighborhood B-4, Phase 1
Computation of Interest on Special Assessment

			2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	TOTAL
		1-Sep Installment	44th/Shaffer LLC	44th/Shaffer LLC	44th/Shaffer LLC	44th/Shaffer LLC	44th/Shaffer LLC	44th/Shaffer LLC	44th/Shaffer LLC	44th/Shaffer LLC	44th/Shaffer LLC		principal 198,400.71
Amount of SA Principal allocated to this Phase	C 198,400.71	billed	11/6/2007	11/6/2007	11/6/2007	10/17/2008	9/16/2009	9/16/2010	9/20/2011	9/10/2012	9/13/2013		
Effective Date of Special Assessment	9/1/2004	paid	int only pymts	int only pymts	int only pymts	11/18/2008	9/24/2009	9/19/2010					
1% over the WSJ Prime Rate in effect on that date	5.50%					check #271	check#314	check#371					
Assumed days per year	360		9/7/04-9/7/05	9/7/05-9/7/06	9/7/06-9/7/07	9/7/07-9/7/08	9/7/08-9/7/09	9/7/09-9/7/10					
Interest Only Payment due 9/1 each year (in effect until Trigger occurs and sets due date for Phase Payment)	10,912.48		10,912.48	10,912.48	10,912.48	10,912.48	10,912.48	10,912.48	10,912.48	10,912.48	10,912.48	10,912.48	109,124.80
			added to 2013 winter tax bill						added to 2013 WTAX		Added to 2013 WTAX		

Due Date Triggers

Final Zoning Approval for Phase		6/1/2006
180 days from Final Zoning Approval for Phase		10/28/2006
-OR-		
Building Permit for a Phase issued		9/1/2014
Computed Final Date for Phase payment		10/28/2006
Date of last interest payment prior to this date		9/7/2006
Interest from Last Interest Payment Date To Due Date of Phase	A	1,645.93
OR		
Date Phase Payment Actually Made (If prior to Due Date)		9/16/2006
Date of last interest payment prior to this date		9/7/2006
Interest from Last Interest Payment Date To Date of Actual Payment	B	242.50

Total Due is the sum of either A or B plus C

A+C: If paid on the Final Date for Phase Payment	200,046.64
B+C: If payment made on earlier date shown above	198,643.21

*NOTE: All dates are for demonstration only.
When actual dates are inserted, the interest is automatically recalculated.

94938.B/F.1109942

B-4 Phase 1

EXHIBIT 10

7/3/5

20150623-0053765
Mary Hollinrake P:1/7 2:03PM
Kent Cnty MI Rgstr 06/23/2015 SEAL

RECD KENT COUNTY, MI ROD
2015 JUN 23 PM 2:02

AMENDMENT TO VOLUNTARY SPECIAL ASSESSMENT/DEVELOPMENT AGREEMENT (RAVINES NEIGHBORHOOD B1)

This Amendment to Voluntary Special Assessment/Development Agreement is dated June 16, 2015 ("Amendment") between the City of Kentwood, a Michigan municipal corporation, the address of which is 4900 Breton Avenue, SE, Kentwood, Michigan 49508 ("City") and the Kent County Treasurer, a Michigan county official, whose address is Kent County Administration Building, 300 Monroe Avenue NW, Grand Rapids MI 49503 ("KCT" or "Owner").

RECITALS

A. On September 7, 2004, 44th/Shaffer Avenue, LLC ("44th/Shaffer") and the City entered into a Voluntary Special Assessment/Development Agreement ("Agreement") to facilitate 44th/Shaffer's development of property as a residential planned unit development. The Agreement was recorded with the Kent County Register of Deeds at Instrument No. 20040917-0125700 on September 17, 2004.

B. The Agreement was subsequently amended in 2005, which amendment was recorded with the Kent County Register of Deeds at Instrument No. 20050405-0039643 on April 5, 2005, in recognition of the conveyance of certain real property.

C. Subsequently, the owner of a tract of real property (i.e., neighborhood) subject to the Agreement became delinquent in paying property taxes and special assessments due and owing on its property. As a result, and in accordance with Michigan's General Property Tax Act, Act No. 206 of the Public Acts of 1893, as amended, the property was forfeited and a judgment of foreclosure was entered with respect to the property on March 31, 2015. As a result of the foreclosure, the property is now titled to the KCT.

D. The real property owned by the KCT remains subject to the terms of the Agreement, as amended, is legally described on attached **Exhibit A**, which is incorporated by reference ("Property").

E. The obligations set forth in the Agreement were covenants running with the land which bind all successors in title. The KCT is the successor in title to 44th/Shaffer of the Property. The Agreement provides, in part, that certain improvements benefitting the Property were to be financed through the establishment by the City of a special assessment district.

20150623-0053765
Mary Hollinrake P:2/7 2:03PM
Kent Cnty MI Rgstr 06/23/2015 SEAL

F. In accordance with its adopted ordinances and state law, the City Commission, on September 7, 2004, adopted Resolution No. 96-04 which established the special assessment district referenced above and confirmed a special assessment roll for the district (the special assessment roll as subsequently amended referred to herein as the "Roll").

G. A balloon payment in the principal amount of $403,620 plus accrued interest is due on September 7, 2015 under the terms set forth as part of the Roll and the Agreement.

H. As permitted under Section 2(e) of the Agreement, and without re-confirming the district's special assessment roll, the City Commission has determined that extending the term of years for payment of the district's special assessment with respect to the Property will serve a valuable public purpose including, without limitation, making the Property more marketable, enhancing economic development opportunities within the City, and facilitating the maintenance of the Property on the tax rolls.

TERMS AND CONDITIONS

NOW, THEREFORE, for good and valuable consideration in and referred to by this agreement, the sufficiency of which the parties acknowledge, the parties agree as follows:

1. The parties affirm that the Recitals set forth above are correct, form an integral part of this Amendment, and are incorporated herein by reference.

2. Section 2(g) of the Agreement is amended to read in its entirety as follows:

(g) Allocation. Notwithstanding any provision in this Agreement to the contrary, allocation of the special assessment shall be structured as follows:

(1) Installment payments for the Property subject to this Amendment shall be payable in accordance with the schedule attached as **Exhibit B** to this Amendment, which terms are incorporated by reference. Provision shall be made such that if any installment is not paid when due, then penalties shall be applied as are collected on delinquent ad valorem taxes.

(2) It is an express condition of this Agreement that the Owner waives any right it may have under state or local law, rule or regulation to any further allocation or apportionment of special assessments of the Owner-Contracted Infrastructure Improvements (among lots, units, or other divisions of property) beyond that provided for herein or as otherwise provided for in the City Commission resolution confirming the Roll for the Owner-Contracted Infrastructure Improvements, as amended.

(3) Owner agrees that the special assessment lien imposed against the Property for the Owner-Contracted Infrastructure Improvements shall not be satisfied or released as to the Property or any part thereof until such time as the entire aforesaid special assessment is paid in full.

(4) Notwithstanding anything herein to the contrary, the unpaid balance may be prepaid in whole without penalty or premium.

20150623-0053765
Mary Hollinrake P:3/7 2:03PM
Kent Cnty MI Rgstr 06/23/2015 SEAL

3. The parties acknowledge and agree that the City, consistent with the terms of the Agreement and City Ordinance No. 4-67, as amended, has reserved to itself the right to extend the term of years for payment of the above-described special assessment without changing the date of the confirmation of the Roll or exposing the City to a challenge of the special assessment or Roll, as amended, and that it is the parties' intent that all challenges, claims or causes of action to any special assessment associated with the Property or the Roll are released and waived by the KCT, its successors and assigns as against the City. Without limiting the foregoing, the KCT, on behalf of his office and his successors and assigns, waives and releases any claim he may have against the City predicated upon the existence of other resolutions, amendments, agreements, special assessments, etc. which impact the special assessment or Roll as amended herein.

4. Except as modified herein, the Agreement shall be and remain binding and in effect as between the parties, their successors and assigns.

5. The obligations and pledges contained in this Amendment are covenants that run with the land, and shall bind all successors in title. This Amendment shall be recorded with the Kent County Register of Deeds. The City shall be responsible for all costs associated with recording the Amendment.

6. The parties agree to execute such other documents as either of them may reasonably request to fully implement this Amendment.

7. No other party is intended as a beneficiary of this Amendment.

The parties have caused this Amendment to be executed as of the date first written above.

CITY OF KENTWOOD

By: _____
Stephen Kepley, Mayor

By: _____
Dan Kasunic, City Clerk

STATE OF MICHIGAN
COUNTY OF KENT
Acknowledged before me in Kent County, Michigan on June 18, 2015, by Stephen Kepley and Dan Kasunic, respectively the Mayor and Clerk of the City of Kentwood, a Michigan home rule city, on behalf of the city.

Mary L. Bremer
* MARY L. BREMER
Notary Public, Kent County, Michigan
Acting in Kent County, Michigan
My commission expires: 08-09-2016

MARY L. BREMER
Notary Public, State of Michigan
Qualified in Kent County
Commission Expires August 9, 2016

KENT COUNTY TREASURER

STATE OF MICHIGAN

KENT COUNTY TREASURER

By: Kenneth D. Parrish
Kenneth Parrish

STATE OF MICHIGAN
COUNTY OF KENT
Acknowledged before me in Kent County, Michigan on June 23, 2015, by Kenneth Parrish, the Treasurer of Kent County, Michigan, for that office.

Rose Heys
*
Rose Heys
Notary Public, Kent County, Michigan
Acting in Kent County, Michigan
My commission expires: 5/26/2020

*Name must be typed or printed in black in beneath signature.

Drafted by:
Jeff Sluggett
Bloom Sluggett Morgan, PC
15 Ionia Ave, SW, Suite 640
Grand Rapids, MI 49503
(616) 965-9341

When recorded return to:
Dan Kasunic, Clerk
City of Kentwood
4900 Breton Avenue, SE
PO Box 8848
Kentwood, MI 49518-884

NO TRANSFER TAX IS OWED BECAUSE THIS AMENDMENT DOES NOT CONVEY ANY REAL PROPERTY.

EXHIBIT A

REAL PROPERTY LEGAL DESCRIPTION

Parcel B-1: 41-18-22-426-001

PART OF E ½ COM AT E ¼ COR TH S 3D 35M 29S E ALONG E SEC LINE 60.07 FT TH S 88D 09M 27S W 40.01 FT TO W LINE OF SHAFFER AVE & BEG OF THIS DESC – TH S 3D 10M 02S E ALONG SD W LINE 1263.17 FT TH S 89D 54M 32S W 629.94 FT TH S 3D 10M 02S E 60.95 FT TH S 90D 00M 00S W 708.24 FT TH N 45D 00M 00S W 67.88 FT TH S 90D 00M 00S W 530.0 FT TH N 50D 00M 00S W 235.0 FT TH N 44D 18M 31S E 199.74 FT TH N 77D 07M 45S E 307.02 FT TH N 41D 46M 39S E 334.95 FT TH N 8D 47M 09S E 226.61 FT TH N 11D 02M 04S W 245.78 FT TH N 25D 03M 50S E 281.40 FT TO A PT ON E&W ¼ LINE SD PT BEING 1290.96 FT S 89D 49M 02S W FROM E ¼ COR TH N 70D 13M 01S E 266.80 FT TH S 75D 46M 26S E 333.65 FT TH S 69D 14M 04S E 227.04 FT TH N 88D 09M 27S E 467.76 FT TO BEG * SEC 22 T6N R11W 47.77 A

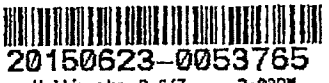

EXHIBIT B

PAYMENT SCHEDULE

Attached

Pfeiffer Woods Drive

Special Assessment District

Proposed Principal & Interest Payments

Ravines PUD Neighborhood B1

Initial principal balance	$ 403,620.00
Interest rate	5.50%
# of days in year	365
Calculate initial interest from	9/7/2014
Target annual payment amount	$ 54,000.00

Payment Date	Interest Payment	Principal Payment	Total Payment	Outstanding Principal
9/7/2014				$ 403,620.00
9/7/2015	$ 22,199.10	$ 31,800.90	$ 54,000.00	$ 371,819.10
9/7/2016	$ 20,506.08	$ 33,493.92	$ 54,000.00	$ 338,325.18
9/7/2017	$ 18,607.88	$ 35,392.12	$ 54,000.00	$ 302,933.06
9/7/2018	$ 16,661.32	$ 37,338.68	$ 54,000.00	$ 265,594.38
9/7/2019	$ 14,607.69	$ 39,392.31	$ 54,000.00	$ 226,202.07
9/7/2020	$ 12,475.20	$ 41,524.80	$ 54,000.00	$ 184,677.27
9/7/2021	$ 10,157.25	$ 43,842.75	$ 54,000.00	$ 140,834.52
9/7/2022	$ 7,745.90	$ 46,254.10	$ 54,000.00	$ 94,580.42
9/7/2023	$ 5,201.92	$ 48,798.08	$ 54,000.00	$ 45,782.34
9/7/2024	$ 2,524.93	$ 45,782.34	$ 48,307.27	$ -
	$ 130,687.27	$ 403,620.00	$ 534,307.27	

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6/2/2015

CITY OF KENTWOOD
KENT COUNTY, MICHIGAN

Motion by Brinks, seconded by Coughlin, to adopt the following resolution:

RESOLUTION NO. 50-14

A RESOLUTION TO EXTEND PAYMENT TERMS FOR A CONFIRMED SPECIAL ASSESSMENT DISTRICT (RAVINES NEIGHBORHOOD B1)

RECITALS

A. Pursuant to City of Kentwood Resolution No. 96-04 entitled "Pfeiffer Woods Drive Construction (Ravines Special Assessment District) Street, Storm Sewer, Non-Motorized Trail, Sanitary Sewer and Watermain Special Assessment District," as amended ("Resolution"), the Pfeiffer Woods Drive Construction, Ravines Special Assessment District was established ("District").

B. The Resolution was adopted to finance certain public improvements benefitting the property located within the District.

C. The Resolution included a special assessment roll for the District, which special assessment roll was confirmed on September 7, 2004. The amount of the special assessment as reflected in the roll, by law, became a lien on the property comprising the District.

D. The Resolution was subsequently amended by the City with respect to the amount of the total special assessment (Resolution No. 108-04), and to reduce the area subject to the special assessment terms (Resolution No. 28-05).

E. Subsequently, the owner of a large tract of real property (i.e., a neighborhood) within the District became delinquent in paying property taxes and special assessments due and owing on its property. As a result, the property is at risk of having a judgment of foreclosure entered. (The subject real property referred to as the "Property".)

F. The Property is and remains liable for a portion of the special assessment set forth in the Resolution, as amended. The Property is legally described on the attached **Exhibit A**, which is incorporated by reference.

G. The District was established, in part, pursuant to a Voluntary Special Assessment/Development Agreement between the City and the owner of the Property dated September 7, 2004 and recorded with the Kent County Register of Deeds at Instrument No. 20040917-0125700 on September 17, 2004 ("Agreement").

H. A balloon payment on the outstanding principal of $403,620.00 and interest of $22,199.10 (totaling $425,819.10) attributable to the Property is due on September 7, 2014 under the terms set forth as part of the Agreement and accompanying special assessment roll.

I. The Agreement, at Section 2(e), provides, in part, that the "term of years" for the District's special assessment and similar matters are to be determined by resolution of the City Commission "in its discretion."

J. Without re-confirming the District's special assessment roll, the City Commission has determined that extending the term of the special assessment for one additional year is in the public interest in order to allow the owner of the Property an opportunity to cause the balloon payment to be made and to bring the taxes and special assessment on the Property current, to make the Property more marketable, and to enhance economic development opportunities within the City.

NOW, THEREFORE, IT IS RESOLVED THAT:

1. The City affirms that the Recitals above are correct, form an integral part of this resolution, and are incorporated herein by reference.

2. The special assessment roll attached to the Resolution as amended, and identified as "Roll A", is attached as **Exhibit B** and incorporated herein by reference ("Roll A").

3. A revised schedule of payment terms for the portion of the District's special assessment roll attributable to the Property, identified as "Roll A Supplemental", is attached as **Exhibit C** and incorporated herein by reference ("Roll A Supplemental").

4. Without modifying the confirmation date of the special assessment roll as amended, Roll A Supplemental shall hereby amend, supersede and replace any term or provision in Roll A to the contrary; to the extent of a conflict between Roll A and Roll A Supplemental, the provisions of Roll A Supplemental shall control. All remaining terms and provisions in Roll A not in conflict with Roll A Supplemental shall be and remain in effect.

5. Except as provided for herein, the Resolution and its terms are and shall remain binding and in effect. This resolution shall not be interpreted or construed to extend the period in which to challenge the underlying special assessment, which period has expired.

6. The Mayor, City Clerk and administrative officers of the City are hereby ordered and directed to take all actions reasonably necessary and authorized by law to effectuate this resolution and to provide notice of its passage to the Property's owner.

7. The City Clerk shall deliver a certified copy of this resolution and accompanying exhibits to the City Treasurer with his warrant attached commanding the Assessor to spread and the Treasurer to collect the assessment therein in accordance with the directions of the City Commission and the Treasurer is directed to collect the amounts assessed as the same become due.

8. All prior resolutions and parts of resolutions in conflict herewith are, to the extent of such conflict, hereby repealed.

YEAS: Commissioners: Artz, Brinks, Brown, Coughlin, DeMaagd, Haas and Mayor Kepley

NAY: None

ABSENT: None

RESOLUTION NO. 50-14 ADOPTED.

Dan Kasunic
City Clerk

The foregoing resolution was adopted at a regular meeting of the City Commission of the City of Kentwood on July 15, 2014.

Dan Kasunic
City Clerk

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

Parcel B-1: 41-18-22-426-001
PART OF E ½ COM AT E ¼ COR TH S 3D 35M 29S E ALONG E SEC LINE 60.07 FT TH S 88D 09M 27S W 40.01 FT TO W LINE OF SHAFFER AVE & BEG OF THIS DESC – TH S 3D 10M 02S E ALONG SD W LINE 1263.17 FT TH S 89D 54M 32S W 629.94 FT TH S 3D 10M 02S E 60.95 FT TH S 90D 00M 00S W 708.24 FT TH N 45D 00M 00S W 67.88 FT TH S 90D 00M 00S W 530.0 FT TH N 50D 00M 00S W 235.0 FT TH N 44D 18M 31S E 199.74 FT TH N 77D 07M 45S E 307.02 FT TH N 41D 46M 39S E 334.95 FT TH N 8D 47M 09S E 226.61 FT TH N 11D 02M 04S W 245.78 FT TH N 25D 03M 50S E 281.40 FT TO A PT ON E&W ¼ LINE SD PT BEING 1290.96 FT S 89D 49M 02S W FROM E ¼ COR TH N 70D 13M 01S E 266.80 FT TH S 75D 46M 26S E 333.65 FT TH S 69D 14M 04S E 227.04 FT TH N 88D 09M 27S E 467.76 FT TO BEG * SEC 22 T6N R11W 47.77 A

EXHIBIT B

ROLL A

Attached

ROLL A

CITY OF KENTWOOD

PFEIFFER WOODS DRIVE CONSTRUCTION
(Ravines Special Assessment District)
STREET, STORM SEWER, NON-MOTORIZED TRAIL, SANITARY SEWER, AND WATERMAIN
SPECIAL ASSESSMENT DISTRICT

CONFIRMED SPECIAL ASSESSMENT ROLL

Date of Confirmation: September 7, 2004; amended October 19, 2004 and March 15, 2005

Subject Property:

Part of the Northeast one-quarter and part of the Southeast one-quarter, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: COMMENCING at the Northeast corner of Section 22 and the POINT OF BEGINNING of this description; thence S03°35'29"E 395.00 feet along the East line of said Northeast one-quarter, thence South 89°42'31" West 258.00 feet; thence South 03°35'29" East 120.00 feet; thence North 89°42'31" East 258.00 feet; thence South 03°35'29" East 705.38 feet along the East line of said Northeast one-quarter; thence North 54°47'03" West 395.85 feet; thence South 89°45'47" West 308.00 feet; thence South 03°35'29" East 330.00 feet; thence North 89°45'47" East 424.00 feet along the South line of the North one-half of the Northeast one-quarter of Section 22; thence South 03°35'29" East 153.00 feet; thence North 89°45'47" East 193.00 feet; thence South 03°35'29" East 273.18 feet along the East line of said Northeast one-quarter; thence South 86°24'31" West 40.00 feet; thence South 03°35'29" East 891.81 feet along the West line of Shaffer Avenue; thence North 89°49'02" East 0.02 feet along the East-West one-quarter line of said Section; thence South 03°10'02" East 1324.40 feet along the West line of Shaffer Avenue; thence South 89°54'32" West 629.94 feet along the North line of the South one-half of the Southeast one-quarter of Section 22; thence South 03°10'02" East 60.95 feet; thence South 90°00'00" West 708.24 feet; thence North 45°00'00" West 67.88 feet; thence South 90°00'00" West 530.00 feet; thence North 50°00'00" West 235.00 feet; thence South 42°36'50" West 260.00 feet; thence South 77°56'20" West 333.73 feet; thence North 03°02'05" West 1258.70 feet along the West line of the Southeast one-quarter of Section 22; thence North 63°04'26" East 366.74 feet; thence Northwesterly 17.84 feet along a 375.00 foot radius curve to the right, the chord of which bears North 26°04'58" West 17.84 feet; thence Northerly 182.95 feet along a 375.00 foot radius curve to the right, the chord of which bears North 10°44'36" West 181.15 feet; thence North 03°14'00" East 22.33 feet; thence Northwesterly 214.05 feet along a 325.00 foot radius curve to the left, the chord of which bears North 15°38'05" West 210.20 feet; thence North 34°30'10" West 49.19 feet; thence Northwesterly 159.95 feet along a 275.00 foot radius curve to the right, the chord of which bears North 17°50'24" West 157.71 feet; thence South 88°51'22" West 78.13 feet; thence North 07°38'58" West 121.92 feet; thence Northwesterly 16.28 feet along a 47.50 foot radius curve to the left, the chord of which bears North 17°28'15" West 16.20 feet; thence North 27°17'32" West 13.47 feet; thence

Northwesterly 59.87 feet along a 67.50 foot radius curve to the left, the chord of which bears North 52°42'11" West 57.93 feet; thence Westerly 60.54 feet along a 460.00 foot radius curve to the left, the chord of which bears North 81°53'03" West 60.49 feet to the West line of the Southeast one-quarter of said Section 22; thence North 03°29'48" West 1849.27 feet along the West line of the Northeast one-quarter of Section 22 to the North one-quarter corner of said Section; thence North 89°42'31" East 2633.71 feet along the North line of said Northeast one-quarter to the point of beginning. Subject to highway R.O.W. for Shaffer Avenue. This parcel contains 228.49 acres, including highway R.O.W.

Estimated Public Improvement Costs	Total Costs	LLC Portion	City's Share
Pfeiffer Woods Roadway (22A)	500,000.00	360,000.00	140,000.00
Add for 21AA (Allowance)	17,000.00	0.00	17,000.00
Storm Sewer	200,000.00	200,000.00	0.00
Water Main	203,000.00	160,000.00	43,000.00
Lighting Allowance	66,000.00	66,000.00	0.00
Landscape Allowance	125,000.00	125,000.00	0.00
Irrigation Allowance	50,000.00	50,000.00	0.00
Testing & Construction Staking	55,000.00	55,000.00	0.00
Total Subcontractor Costs	1,216,000.00	1,016,000.00	200,000.00
Project Management (10%)	121,600.00	101,600.00	20,000.00
Liability Insurance	8,800.00	8,800.00	0.00
Design and Inspection Fees	115,000.00	115,000.00	0.00
Permits and Fees	20,000.00	20,000.00	0.00
Bonding Costs	15,000.00	15,000.00	0.00
City Legal and Other	25,000.00	25,000.00	0.00
Total Project Costs	1,521,400.00	1,301,400.00	220,000.00
Total Project Contingency/Inflation (25%)	380,350.00	380,350.00	0.00
SAD Total Costs	**1,901,750.00**	**1,681,750.00**	**220,000.00**

Owner of Property: 44th/Shaffer Avenue, LLC, a Michigan limited liability company

Term: 10 years from confirmation of roll; i.e., September 7, 2014. Any unpaid principal and interest is due in full upon termination date.

Deferred Installments:

A. Interest is charged at a rate equal to one percentage (1%) point over the U.S. prime rate as published in the *Wall Street Journal*, which prime rate is in effect on the date the roll is confirmed as provided for in Ordinance No. 4-67, as amended. As of September 7, 2004, this aggregate interest rate is 5.5%.

B. A payment shall be due annually on the anniversary date of the confirmation of the roll (e.g., without limitation, September 7, 2005, September 7, 2006, September 7, 2007, etc.) in an

amount equivalent to the simple interest on any unpaid principal amount.

C. Principal payments, along with any unpaid simple interest on that portion of the principal, shall be due upon certain governmental approvals being issued consistent with the terms of a Voluntary Special Assessment/ Development Agreement dated September 7, 2004, between the City of Kentwood and 44th/Shaffer Avenue, LLC (the "Agreement").

D. In no event shall the amount of the special assessment exceed the actual costs reimbursed to the property owner pursuant to the Agreement and the costs and expenses of the City to which the City is lawfully entitled to be reimbursed including, but not limited to, all legal fees incurred by the City in establishing and preparing the special assessment district and special assessment roll.

E. Deferred installments shall be collected without penalty until 60 days after the due date; thereafter, such penalties as are provided for in the City Charter for general *ad valorem* taxes shall be due and collected.

F. Anticipated allocations: See attachments hereto which are incorporated by reference. Note that several of the specific dates included in the attachments are incorporated for purposes of example only and the payment amounts actually due will be determined based on the occurrence of certain governmental approvals being issued consistent with the terms of the Agreement.

BLOOM SLUGGETT MORGAN
COUNSELORS & ATTORNEYS

Jeffrey V.H. Sluggett
Direct Dial (616) 965-9342
Direct Fax (616) 965-9352
jsluggett@bsmlawpc.com

July 18, 2014

Mr. Michael J. Damone, President
The Damone Group, LLC
850 Stephenson, Suite 200
Troy, Michigan 48083

Re: City of Kentwood / 44th/Shaffer Avenue, LLC
Ravines Neighborhood B1 Special Assessment District

Dear Mr. Damone:

As you are aware, we are general counsel to the City of Kentwood. As I believe you also know the City, several months ago, received a request from Holland Home asking that the City extend for an additional ten-year period the installment payments due on the portion of the captioned special assessment district for which Holland Home is the owner. This past Tuesday the City Commission adopted a resolution granting that request and extending until 2024 the payment schedule for Holland Home.

We spoke with you several weeks ago to determine if 44th/Shaffer Avenue, LLC ("44th/Shaffer") wished to receive a similar extension of payment terms on neighborhood B1, which is still owned, we understand, by your company. At the conclusion of our discussion we understood that 44th/Shaffer did not wish to expend any further time on the special assessment process.

Nonetheless, to provide 44th/Shaffer with additional time to analyze its options, the City Commission also adopted at last Tuesday night's meeting a copy of the enclosed resolution. The resolution extends the balloon payment on the special assessment for the B1 Neighborhood for an additional one year (see Exhibit C). Should 44th/Shaffer have any interest in extending the balloon payment out beyond the one year period, we would be glad to discuss that matter with you.

Please contact us should there be any questions.

Very truly yours,

Jeffrey V.H. Sluggett

Enclosure

DAMGHANI v. CITY OF KENTWOOD, ET AL

TOM CHASE

November 29, 2016

Prepared by

Network Reporting
STATEWIDE COURT REPORTERS

depos@networkreporting.com
Phone: 800.632.2720
Fax: 800.968.8653
www.networkreporting.com

Let us assist you GLOBALLY for all of your deposition needs.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

MAJID DAMGHANI,

Plaintiff,

v

File No. 15-11405-CH

HON. DONALD A. JOHNSTON

CITY OF KENTWOOD and
KENT COUNTY TREASURER,

Defendants.

_____/

DEPOSITION OF TOM CHASE

Taken by the Plaintiff on the 29th day of November, 2016, at 4900 Breton Avenue, SE, Grand Rapids, Michigan, at 9:30 a.m.

APPEARANCES:

For the Plaintiff:	MR. DONALD R. VISSER (P27961) MR. DONOVAN J. VISSER (P70847) And MR. JEREMY J. VOORHEES (P80872) Visser & Associates PLLC 2480 44th Street, SE, Suite 150 Kentwood, Michigan 49512 (616) 531-9860
For the Defendant City of Kentwood:	MR. DAVID K. OTIS (P31627) Plunkett Cooney 325 East Grand River Avenue, Suite 250 East Lansing, Michigan 48823 (517) 324-5612
RECORDED BY:	Marie de la Vega, CER 7614 Certified Electronic Recorder Network Reporting Corporation Firm Registration Number 8151 1-800-632-2720

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Kentwood, Michigan

Tuesday, November 29, 2016 - 9:48 a.m.

(Deposition Exhibit 1 marked)

REPORTER: Do you solemnly swear or affirm that the testimony you're about to give will be the whole truth?

MR. CHASE: Yes.

TOM CHASE

having been called by the Plaintiff and sworn:

EXAMINATION

BY MR. DONALD VISSER:

Q Mr. Chase, can you simply tell me a bit -- little bit about your history with the city?

A I started with the city in 1993 as the finance director and I've been serving in that role since then.

Q Have you had any other roles at all during that time?

A Under the finance director role I supervised information technology and I currently supervise purchasing. Those are the only things that were added in the interim and since -- until just recently when IT was split off as a separate department.

Q So you had -- didn't start with IT, but you ended up with IT for awhile and now --

A 16 years, yup.

Q -- and now it's off on its own?

A Yes, it is.

Q And you've shed yourself of both credit and responsibility for their -- for whatever they do now?

A They're now a direct report to the mayor.

Q Can you tell me a little bit about your background? First of all, your residential address?

A I live in Grand Rapids Township, 3154 Wild Ridge Drive, northeast.

Q And how long have you resided there?

A 29 years.

Q Reside there with anyone?

A My wife.

Q What about your educational background?

A I graduated in 1978 from Northwood University, at the time called Northwood Institute, with an accounting degree and a -- that was my major, accounting.

Q Was that a bachelor's?

A Yes.

Q At that time where was Northwood Institute located?

A Midland, Michigan.

Q Did you get your degree by in-residence courses or correspondence?

A Residence.

Q That was a bachelor's degree I assume?

A Correct.

Q After that have you had any additional education?

A No.

Q So you had roughly 15 years in between when you graduated and when you started here at Kentwood as a financing -- finance director?

A Yup. I worked for two CPA firms, the first one in Bay City, Michigan and the second one in Grand Rapids.

Q And who was the one in Grand Rapids?

A BDO.

Q And who was in Bay City?

A Weinlander Fitzhugh. Actually it was a longer name at the time but that's what it's been shortened to now.

Q And what did you do for Weinlander?

A I did during the busy season -- well, I should say predominantly I worked on government and not-for-profit audits. I did do some manufacturing audits. And then of course during the winter with a small firm you do tax returns and things of that sort, but most of the year I was working on government and nonprofit -- not-for-profit audits.

Q And for BDO Seidman?

A It ended up that because of my background at the local firm I was -- ended up being hired and they -- I specialized in government auditing and not-for- -- not so much not-for-profit; mostly governmental auditing.

Q So mostly auditing there?

A Yes.
Q Tell me –
A And I was certified as a CPA in 1981.
Q So tell me, what does the job of financing director at the city of Kentwood entail?
A Finance director oversees the accounting operation, which includes budgeting, auditing – or the annual financial audit, but also includes payroll, accounts payable, cash and investments; a number of different areas. Risk management is another area that we work with.
Q Anything else that you can think of at least right now?
A Well, budget and audit take up a lot of the year, but the rest of it -- I used to do some human-resource-type stuff, but we now have a human resources director. I do -- oh. Another big one is the pension administration; defined benefit -- closed defined benefit plan and a defined contribution pension plan; both.
Q Does that include, like, the police department and so forth?
A Uh-huh (affirmative).
REPORTER: Is that a "yes"?
A Includes all city employees.
REPORTER: I need you to say "yes" instead of "uh-huh."
A Oh. I'm sorry. Yes. These are general plans for all city employees, so we don't differentiate. Yup.

Q So is this -- these functions other than less human resources now than what you did at one time, has that pretty well been a steady course of responsibilities during your employ as finance director?
A Yes. And I should say -- I mentioned earlier about -- that purchasing came under --
Q Yes.
A -- finance, centralized under finance, also, so that is a big one. But there's two people that work on that specifically.
Q And who do you -- who are you responsible to or who do you account to?
A Directly to the mayor, but I serve at the pleasure of the mayor and the city commission. The mayor makes -- recommends appointments of my sort and then the city commission confirms.
Q But you're directly account to the mayor?
A That is correct.
Q Do you have anyone that accounts to you?
A Yes.
Q And who would that be?
A I have five staff members presently.
Q Who are they?
A A deputy finance director and purchasing agent. She handles two tasks as well as risk management. The buyer is also in

the department. And then we have a person that does the general ledger and payroll functions, and another that does -- or another two that do work on accounts payable and other functions.
Q And who's the deputy finance director?
A Lorna Nenciarini, N-e-n-c-i-a-r-i-n-i. I've had to spell it before.
Q You have? And your buyer, who's that?
A Carla Kane, C-a-n-e -- or I mean K-a-n-e. I'm sorry.
Q And who does your general ledger payroll functions?
A Susan Strong.
Q And accounts payable?
A Patty Smith and Ann Nickels, N-i-c-k-e-l-s.
Q The English spelling not the Dutch spelling.
A Uh-huh (affirmative).
Q Now I'd like you to look at a document that I've given to you. I've had it marked as Deposition Exhibit 1. And it's the Answers to First Interrogatories. And I think it lists you as being a signatory. Have you seen these before?
A I have.
Q Did you provide the answers?
A I did not. One of my staff members did.
Q Who was that?
A Lorna Nenciarini, deputy finance director.
Q So she provided all of the answers?

A I would say she provided the answers that required documents to be provided.
Q What about the ones that did not have documents to be provided, just simply – go ahead.
A Those were developed jointly, I believe, amongst our group.
(Mr. Donovan Visser and Mr. Jeremy Voorhees enter deposition)
MR. DONALD VISSER: If you want, for the record Donovan Visser and Jeremy Voorhees are present.
Q Well, there's a spot there for your signature but it's not signed. Do you know why that is?
A I'm not sure why. I do remember signing some of the documents, but I don't know whether this one was one.
Q You either reviewed or provided the answers that are contained here?
A I reviewed the document.
Q The documents that were provided -- before I go there, the answers that are included are the -- when you reviewed them or either provided them, were they true?
A Yes.
Q You were aware that in 2014 the property that's currently owned by Mr. Damghani went to tax sale?
A Yes.
Q Were you involved at all in any events leading up to that tax sale?

A No.
Q You weren't involved with transferring, making demand on the county for payment of the taxes or --
A That would be our city treasurer or the Kent County treasurer, I believe.
Q Right. But you just -- you weren't one that was involved in that process? It usually is from the treasurer to the county treasurer?
A That is correct. I was not involved.
Q Did you become involved after the tax -- I'm sorry -- after the foreclosure with any efforts to put an agreement together between the city of Kentwood and the county of Kent?
A Yes.
Q How did you become involved in that?
A I was asked to look at initially a request for payment -- a revision to the payment schedule for Holland Home. And then with that, we ended up applying that similar -- a similar approach to the other properties in the Ravines area.
Q Who was it at Holland Home that made the request?
A Dave Tiesenga.
Q And did he make it to you?
A I don't recall if -- where he made his first request.
Q So tell me, within the city who brought it -- who was the first person that brought it to your attention that there

was a request being made?
A I don't recall. I know that I was brought in, but I don't recall exact -- who the first person was.
Q Why were you brought in?
A To look at the payment schedule, to check it for accuracy and make suggestions, if there needed to be any.
Q Who asked you to check for accuracy?
A Dave Tiesenga sent it to us, so that was the -- again, that was the Holland Home repayment schedule. I don't recall exactly who asked me. It came to me. I believe we had a -- possibly the conversation with the mayor, possibly, but I don't recall for sure.
Q Who all was involved with the process?
A Would have been the mayor, the city attorney are the ones that I --
Q Anyone else?
A Possibly treasurer.
Q So that we just simply have names for the record, the mayor at that time was?
A I'm trying to remember. There's been some turnover recently.
MR. OTIS: 2014.
A '14 would have been two years ago, so it would have been Stephen Kepley.
Q Who was the city attorney?

A Jeff Sluggett.
Q And who would have been the treasurer?
A I believe Laurie Sheldon. We've had some turnover in the positions. The mayor in 2014 would have been Stephen Kepley. He's been the mayor for three years now.
Q Is it your testimony that -- let me have this marked.
(Deposition Exhibit 2 marked)
Q I'm showing you now what's been marked as Exhibit Number 2. Is that the document that ultimately resulted from those discussions?
(Witness reviews exhibit)
A I believe so, yes. The part that I had in it was the payment schedules at the end.
Q At the end. That would have been your role in reviewing those?
A Correct.
Q Now, is it your testimony, then, that that was initiated by Holland Home and not by somebody within the city government?
A No, it is not. What I said is the genesis of the approach to revising the payment schedule started with the Breton North payment schedule. But it was found that -- I believe either the Kent County treasurer or somebody within our organization felt that that would be a good approach to take with the others as well.
Q When did the discussions begin on the Breton North repayment

schedule?
A I don't recall.
Q Did it begin before or after the tax sale?
A It would have been before.
Q And when I talk about the tax sale, I'm talking about the Damghani parcel?
A Uh-huh (affirmative).
Q "Yes"?
A Yes. Sorry.
Q If I ever catch you, again, just say that I'm not trying to be --
A Not at all.
Q -- disrespectful to you --
A Not at all.
Q -- or anything else. Okay?
A Nope, I understand. Yup.
Q How much before the tax sale would those discussion have been going on with Mr. Tiesenga?
A Probably at least half a year. But they -- the Holland Home property wasn't going through tax sale. That was independent of the other properties, the special assessments on the other properties.
Q Did you have a partial pay agreement in place for the Tiesenga parcel?
A What do you mean about partial pay?

Q Did you have -- well, maybe I'd just back up. Tell me the genesis of why there were discussions with Mr. Tiesenga regarding his parcel.
A The Holland Home parcel?
Q The Holland Home parcel, yes.
A That, I believe that they were looking at refinancing or possibly some other financial decisions that they needed to make and they asked for an extension of the payment terms beyond the balloon payment that would have been due in September of 2014.
Q And did the city give them an extension prior or payment schedule prior to Exhibit 2 being assigned?
A I believe so. I believe it happened before.
Q And what was the agreement made at that time with Holland Home?
A A payment schedule very similar to the last two pages in the exhibit.
Q Was there a separate agreement then written with Mr. Tiesenga for --
A Yes.
Q -- Holland Home?
A Holland Home is separate, was entered in -- the agreement was entered into separately originally and for the extension or the revision to the payment terms.
Q So we could expect to find somewhere a document somewhat

similar to --
A Yes.
Q -- Exhibit 2 for affecting the Holland Home parcel?
A Yes.
Q At that point, so you had a discussion and actually an agreement with Holland Home as to their parcel. What was it that was then -- made the city or the county decide to go ahead and execute or develop and execute Exhibit B?
MR. OTIS: Exhibit 2?
MR. DONALD VISSER: Exhibit 2. I'm so sorry. I can't ready my own writing. Exhibit 2.
Q As they were approaching -- as we were approaching the tax sale, one of the things that was considered is that -- whether or not the parcels would be attractive to purchasers through the tax sale. And by extending the payment timing it was felt that it would be more attractive as a purchase through tax sale rather than having a balloon that would come due in September, the September following the tax sale.
Q So if you had a balloon after the tax sale there was a thought that it would have a negative effect on buyers interest because of the huge burden?
A In the tax sale it would be the same burden, but it would be spread out over a longer period of time.
Q And therefore possibly more palatable to more buyers?
A Correct.

Q But if you had the -- if you had a balloon immediately after the sale you thought that would have a negative impact on potential buyers?
A I believe that's what the thought process was.
Q How many parcels did the assessments involve? How many parcels did they cover?
A Three or four.
Q Does Exhibit 2 cover the Holland Home?
A No. There's Holland Home and then there's the Ravines subdivision, so the other -- the parcel that's in question that we're discussing is separate from the Holland Home.
Q So we have the Holland Home parcel and we had the Ravines parcel?
A Parcels.
Q Parcels. And do you know how many there were?
A I think there were five ultimately. Holland Home bought one of them. I think that one of them was split actually and Holland Home bought it. So Holland Home actually owns one portion -- one parcel in the Ravines now. They did not originally.
Q Did they buy that after or before Exhibit 2 was signed?
A Well before.
Q So they bought that before?
A Yes.
Q So what is your understanding as to the parcels or

properties that are affected by Exhibit 2?
A My understanding is this is -- this was entered into with Kent County to put into place payment terms that were different than originally agreed to in the voluntary special assessment agreement.
(Deposition Exhibit 3 marked)
Q Showing you what's been marked now as Exhibit Number 3. It's a document that I believe is related to this, but that's why I'm here to ask you questions. Is that document related to Exhibit Number 2?
(Witness reviews exhibit)
A Yes.
Q How is it related?
A In order to enter into the agreement that is Exhibit 2 the city commission would have had to adopt the resolution first and this is the resolution that adopted the -- or that the city commission adopted.
Q So if we look at sequencing that, Exhibit 3 would come before Exhibit 2?
A That is correct.
Q But it wouldn't have come before basically the contents of Exhibit 2 had essentially been agreed to; right?
A I would say the general contents certainly it was agreed to before, and probably the agreement was drafted as part of the package of documents related to the resolution.

Q Who negotiated the Exhibit Number 2 on behalf of the county?
A I believe Ken Parrish, county treasurer.
Q Did you ever have any discussions with him over the substance of the document?
A No.
Q Do you know anybody that had any discussions with him over the substance of the document?
A I mean, I know there were people that talked with him about it, but I'm not sure who.
MR. OTIS: Did you mean from the city of Kentwood.
Q People from the city of Kentwood having negotiations with the county?
A I don't recall who it would have been.
Q Would it be a fair characterization to say that the county of -- Kent County simply was willing to sign anything that the city of Kentwood wanted in regards to this parcel?
A No.
Q Tell me what, then, was the city of -- I'm sorry -- the county's position relative to this particular amendment as it's called?
A They were interested in -- it's my understanding at least they were interested in having the parcels be as attractive as possible during tax sale.
Q And did they have any advice as to how to make them attractive?

A I don't know if -- where it might have come from, but certainly there were discussions with the county is my understanding.
Q Who initiated discussions over this document? Was it the city of Kentwood or --
MR. DTIS: Which document? Exhibit 2?
MR. DONALD VISSER: Exhibit 2.
A I'm not sure.
Q You don't know that anyone from the county initiated anything on this, do you?
A I do not.
Q Were you the driving factor behind this from the city of Kentwood's perspective?
A I expressed support for the change, but not -- I wouldn't call myself the driving force.
Q So you weren't the person that initiated the discussion. You were there as a supportive -- in the supportive role. You reviewed the payments schedule?
A Uh-huh (affirmative). I shared what conver- -- or what involve -- what was involved with the Holland Home. So when they approached us originally, that I shared with others. And so that started the thought process.
Q So who was on the city's behalf is your understanding that was involved? If you were only supportive, who was the lead?

A My guess is -- this is speculation, but I believe city attorneys, Jeff Sluggett, was involved in the specifics because that would -- it involved drafting documents for the resolution and the agreements.
Q But who was the one -- who in the city was the initiating --
A Probably Mayor Kepley.
Q Mayor Kepley? Okay. That would -- from what you know, and that would be direct or hearsay basically that -- indirect knowledge?
A Indirect knowledge.
Q Anyone else that your knowledge of the city functioning and so forth here that you might say could have had a lead role in negotiating Exhibit 2?
A No, not that I'm aware of. Well, let me see. I'm not sure. We have a deputy administrator position, so there may -- that deputy administrator may have been involved in some of the conversations, but I don't know that that's -- to what --
Q And who would that be?
A At the time his name was Rich Houtteman, H-o-u-t-t-e-m-a-n. But I don't believe he was the driver on it. He might have been involved in some of the conversations.
Q From your knowledge of how this developed did Mayor Kepley have an interest in amending this (indicating)? Did that start before or after the tax sale?

A Before.
Q So before the tax sale he was -- who was he talking to to your knowledge about this?
A I would say city attorney, Jeff Sluggett, and -- again, I don't know whether he had conversations directly with County Treasurer Parrish or not.
Q What is it that makes you think that that occurred before the tax sale?
A Because the documents were approved by the city commission before the tax sale, if I recall.
Q Any other reason that you would think that?
A No; no, wait a minute. Wait a minute.
MR. OTIS: To clarify the record, what is the date of the tax sale in reference to the questions that you're asking about the tax sale?
Q I think the tax sale was in September. So do you know if it was before or after the tax sale, the discussions?
MR. OTIS: Well, the documents have --
A Documents have a date on it.
MR. OTIS: The documents have dates on them, Mr. Visser. This -- an empirical question.
MR. DONALD VISSER: Well, I'm talking from his memory.
Q Do you want to look --
(Counsel hands documents to witness)

A At whatever point the county took possession as part of the tax sale, that's --
Q Is that when the discussions started?
A That's when the action was taken. I believe the discussions were started in advance of that, and so it would have been before the tax sale.
Q So before the tax sale. What about before the tax foreclosure order?
A I don't know.
Q Before the property was foreclosed on for failure to pay taxes?
A Again, I'm not familiar with the exact process of -- the order of the process. What I do know is the county assumed ownership at some point. Whether that was before or after the foreclosure step or not, I'm not sure, because I'm not familiar with that process.
Q What I'm trying to figure out was whether the discussions with the county treasurer began in anticipation of the county taking ownership through the tax foreclosure process or only after the county had taken possession.
A I'm not sure, but I --
Q How would we ferret that out?
MR. OTIS: Ferret? Ferret what out?
Q The date when first discussions began.
A I'm not sure.

Q Were there documents, memos or e-mails that were exchanged over the issue?
A There may have been. I don't know.
Q Did you send any?
A I sent information regarding the payment schedules.
Q Like what would you have sent?
A I used the Holland Home payment schedule as the starting point and adapted it to the information related to the other Ravines properties.
Q When you say "adapted it," meaning adjusted it for different numbers, that type of thing?
A Yes.
Q But then how would you communicate that? Would you walk down the hallway and give a presentation to the mayor or would you send it in an e-mail or what?
A I probably would have sent it in an e-mail but also had conversations about it.
Q Do you recall who it was that first initiated you to the idea that you might have to do some work on reviewing a proposed amendment?
A I don't recall who initiated it.
Q Were there ever any discussions that you recall about concern that the taxes would be foreclosed by the foreclosure -- or the past due taxes would be foreclosed by the tax foreclosure process?

A I'm not sure what --
Q Thank you. That's probably another good rule. If you don't understand the question, don't try to answer it.
A Right.
Q Because we could be --
A Right.
Q In regards to the special assessments that were involved, were there ever any discussions concerning the fact that without an amendment that some of those special assessments might be terminated through the tax foreclosure sale?
A No.
Q Never had that discussion with anyone?
A No, because the balloon payment was due after the foreclosure process.
Q What do you understand about balloon payments? Have you ever been involved with a mortgage that has a certain amortization schedule but it has an earlier balloon?
A Yes.
Q So balloon payments don't necessarily always mean or define the amortization schedule?
A They may be a part of it.
Q Have you ever seen land contracts with a payment schedule amortized out but the last one has all remaining payments become due on the --
A Not a land contract. Other loans, EDC loan -- Economic

Development Corporation loans.
Q Where there's a amortization schedule and the last payment --
A Yes.
Q -- is whatever else is due, right?
A That's correct, yes.
Q And that doesn't mean that everything is deferred until the last payment?
A If it's set up with monthly payments or annual payments or it could be interest-only payments. It could be any number of things that -- there's a number of ways to do an amortization schedule.
Q You would understand, then, a balloon payment, then, as I do to be whatever --
A Whatever the remainder is.
Q -- whatever the remainder is?
A Uh-huh; yes.
Q Exhibit 3, you didn't understand that to be a new assessment, did you?
A No.
Q You just understood it to be approval of a contract?
A It was a revision to the payment terms for an existing assessment.
Q And that was being done by contract with the county treasurer?

A Being the successor owner, yes.
A There wasn't notice being sent out to the property owners and following the normal process for completing an assessment, was there; a special assessment?
A You mean a notice other than talking to the only owner?
Q Correct. There wasn't a public notice?
A I don't recall whether there was public notice or whether there was a hearing or not on this particular item.
Q You're not aware that there was a public notice and you're not -- first of all; right?
A Yes.
Q And you're not aware that there was a public hearing on it; right?
A Right. I just am not aware of it.
Q Did you have anything to do with whether -- with determining whether the city had any authority to enter into Exhibit 3?
A My understanding is that the payment terms were developed under the voluntary special assessment agreement originally with the balloon payment in September of 2014 and that that voluntary agreement could be amended.
Q Because it was an agreement?
A Yes. That's my understanding of it.
Q And where did you get that understanding?
A Through reading drafts of the documents.
Q So you thought that the city had authority to sign this

because it was just an amendment of a previous agreement? Is that what I understood?
A No. It referred to the voluntary special assessment agreement. I don't recall whether I reviewed the document at that time.
Q Do you know if anybody did an analysis of whether the county treasurer had any authority to sign this document?
A I believe so because the -- he -- the county treasurer of the county was the successor owner and I believe the voluntary special assessment agreement applied to any successor owners.
Q So by virtue of the agreement you -- since it was an agreement, the original was an agreement, that the county as a successor would have the ability to modify that agreement?
A Yes, I believe so.
Q Now, is that -- is just -- is that your analysis or the discussion that was over here at the city or where is it -- where's your understanding coming from?
A I'm thinking it was part of discussions, but I don't know ex- -- I can't attribute it to one particular discussion.
Q So it's not just something that you came up with yourself, it's part of a collective discussion --
A Yes.
Q -- that occurred here at the city?
A Yes.

Q Would that have included, then, the mayor in that discussion?
A City attorney as well. The mayor and city attorney.
Q Now, relative to this property there were a number -- at least it appears to me to be a number of different assessments or charges.
MR. OTIS: Speaking of the Damghani property?
MR. DONALD VISSER: The Damghani property.
Q Is that your understanding as well?
A I believe there were more than the street and other improvements that were assessed at some point in the past.
Q Can you tell me -- so that I get these probably in a better vernacular than what I have -- what assessments or what charges eventually became special assessments or labeled special assessments?
A You mean as far as related to the present special assessment?
Q No, to any of the --
A Or any?
Q -- yeah -- any of them that were in place, because I see that there appear to be a number of them related to this property. I know we have labeled them in various ways, but that might not be the best way to proceed today.
MR. OTIS: We're talking about in place in 2014?
MR. DONALD VISSER: Yes.

A Seems to me that in 2014 the properties -- any past special assessments had been added to the tax roll already, so it would have been -- but I'm not as familiar with the -- I can tell you by the type of assessment there might have been.
Q Why don't we do that? And then I'm going to try to match my terminology to yours.
A Okay. Well, Shaffer Avenue, of course, is adjoining the property. And so at some point they probably put sidewalk, water and sewer, other improvements in that area. So again, not being familiar with the exact special assessments that would have been, but that is probably where the other special assessments were, what types they might have been.
Q In 2014 were there more than --
A I don't believe there were -- well --
Q -- one special assessment that was due?
A There was a landscaping special assessment that was directly related to the Pfeiffer Woods Drive area. All the others that I described a moment ago were, I believe, earlier -- from an earlier time period; not related to the construction of Pfeiffer Woods Drive.
Q So when we talked about the Shaffer Avenue sidewalk, sewer and so forth, were there any amounts due and owing --
A I don't believe so.
Q -- in 2014 at --
A I don't believe there were because I believe they were added

to taxes at an earlier point.
Q So there were none -- so that would not then be a charge currently against -- currently or in the future against the Damghani property for the -- what you call the Shaffer Avenue improvements?
A That's correct.
Q Now, there's landscaping. Would that have had some amounts due and owing on it in 2014?
A I believe it came due -- seems to me it came due before the tax sale.
Q And do you know -- okay. Any other ones?
A Not that I'm aware of.
Q I'm going to try to match up what -- then what we have and use your terms. We had something listed which we called a -- came due by resolution, I think, 8-06, originally about $160,899.15. Do you know, would that be that -- what you call the landscaping special assessment?
A No; no. The landscaping was in the -- about the $35,000 range.
Q About 35,000?
A Something in that range.
Q That's close enough. All right. So you had a -- that one was due prior to 2014 or in 2014, you're not sure?
A I don't recall exactly.
Q Were there any other special assessments that you're aware

of?
A Other than the street and landscaping for Pfeiffer Woods and the earlier special assessments, no.
Q What did Exhibit 2 -- what was that intended to apply to?
A Just the construction special assessment.
Q So there is a construction special assessment.
A Right.
Q Is that one of those that you've been talking about before?
A That's what I referred to when I talked about Pfeiffer Woods Drive, the construction of Pfeiffer Woods Drive.
Q So we call that Pfeiffer --
A Pfeiffer Woods Drive.
Q -- Woods Drive special assessment, is that --
A That would be a reasonable description of it.
Q And that's what Exhibit 2 is intended to apply to?
A That's correct. Just the construction.
Q And do you know roughly how much the original assessment was?
A The original assessment was exactly what was due and payable at the time that this schedule was put in place. For the property that we're talking about it was the outstanding principal, $353,167.50.
Q Now, that was the portion that had been attributed to the Damghani parcel?
A That's correct.

Q Other than the Damghani parcel does this cover any other parcels?
A It does. It covers -- I'm not sure which parcel it is, but it's B-3, I believe. We designated the neighborhoods by B and then a number following.
Q So simply for the record, what would the Damghani parcel be referred to in Exhibit 2?
A B-4. Ravines neighborhood B-4.
Q Other than that special assessment are you aware that there are any other special assessments due by -- due and payable against or by the Damghani parcel?
A Currently?
Q Yes.
A At the current date?
Q At the current date.
A The only one that I'm aware of is this Pfeiffer Woods construction -- Drive construction special assessment.
(Deposition Exhibit 4 marked)
Q Let me show you number -- Exhibit Number 4; may make some of my questions a lot shorter. That's Resolution B-06, I believe, with what we call -- what we have referred to as the landscaping special assessment. I'm not sure if it's the same one that you called landscaping special assessment.
A I believe this relates to the landscaping special assessment.

Q So that's the one that you indicated there's nothing owing on it anymore by this parcel?
A It was added to taxes and I believe it was on the tax -- in the tax -- well, I believe it's not due and payable anymore, but I guess I would need to look at it further.
Q When you say it was added to the taxes, is that part of the before or after the foreclosure?
A I'd have to check on it, I guess, at this point.
Q How would you check on it?
A I would check with the treasurer, city treasurer to get specific dates.
Q So you believe it was added to the taxes but not sure when it was added to the taxes?
A Correct.
Q Why was it added to the taxes?
A Because it was not paid.
Q For this special assessment reflected by Exhibit Number 4, was that done by agreement, also?
A I'm not sure.
Q Were you involved with the process?
A No.
Q Were you involved in making any payment schedules?
A There was only a balloon payment for this, I believe.
Q When was that balloon due?
A I would have to check record -- I would have to check back

in my notes. I don't have any notes with me.
Q You don't?
A No.
Q Are they in your office?
A I do have some documents in my office, yes.
Q Because probably then maybe when you take a break we can figure that out then.
A Uh-huh (affirmative). Okay.
Q Was this supposed to be an interest-only assessment as well?
A I believe so, but I'd have to look at that as well.
Q Where would that be in this particular document that --
MR. OTIS: Talking about Exhibit 4?
MR. DONALD VISSER: Exhibit 4, yes.
A Well, it's not interest-only, but there is an interest rate attributable to the special assessment role. Item number 4 on page 2 -- or 3 I guess it would be. 8.25 percent. So I'm not sure what the timing of the payments was for the interest.
(Deposition Exhibit 5 marked)
MR. OTIS: Are those two-sided documents?
MR. DONALD VISSER: Yes, they are.
MR. OTIS: It looks to me like you've got two copies of the same document there, but that's just from eyeballing them across the table.
MR. VOORHEES: Yeah.

MR. DONALD VISSER: Seriously?
MR. OTIS: Yeah. I think you have one document starting at the top and the copy of it starting from the bottom, but that's -- I'm just looking across the table.
MR. VOORHEES: No, that's the start of the next one.
MR. DONALD VISSER: We may have to --
MR. OTIS: Which document -- or do you have there 9604?
MR. VOORHEES: Yup.
MR. DONALD VISSER: Why do we have this on the back page?
MR. VOORHEES: That's the start of the next --
MR. DONALD VISSER: Let's go off the record a second.
MR. OTIS: All right.
(Off the record)
Q Showing you what's been marked as Exhibit Number 5.
A Yes.
Q And simply for the record here, it appear -- these are double-sided pages. And the last page appears to be a different resolution, so I have put a line through that and as that's not part of this exhibit as I at least understand it. So were you involved in the passing of this resolution?
A No.

Q Did you know about it?
A I was aware of it, but not involved in the creation of it.
Q Did you do any accounting for it?
A Only following the special assessment roll being levied.
Q So up to that time you had no involvement with the numbers associated with the special assessment at all?
A That's correct.
Q You weren't involved in negotiating the underlying contract with the property owners?
A No.
Q You're aware that this was passed?
A Yes.
Q When did you first become aware that it was passed?
A When a special assessment, the resolution 5 is adopted, then that's my trigger to record the financial information on the city's financial records, basically the dollar amount in the general ledger. So that would be following -- I would have found out about it following --
Q So sometime --
A -- adoption.
Q Sometime, probably a reasonably short time period after passing, you would have been aware that this resolution passed? Certainly within a matter of weeks, maybe a matter of days?
A Well, again, I attend all city commission -- basically most

of the city commission meetings, so I'm aware of the documents working their way through the process, but I did not have a hand in preparing them.
Q So you were aware that this was ongoing from attending city commission meetings?
A Yes.
Q And you were aware that there were negotiations with some property owners for doing some improvements and reaching agreement on them and then passing a special assessment roll?
A Yes.
Q Then you say that you -- after this occurs that you do something with the city's books?
A I record the receivable on the city's books.
Q And how is that recorded? Just simply as a receivable?
A We set up a separate account for this and we recorded it in that account on the general ledger.
Q Where does it show up on the city's balance sheet then?
A It shows up in the special assessment revolving fund as an asset of that fund.
Q And that's simply one line item?
A Yes.
Q And if somebody wanted to know what was in that revolving fund and needed to know details, what would they need to have or what would they need to ask you for?

A On the actual record they would just ask -- have to ask for a trial balance.
Q So that'd be a trial balance of all of the accounts or just the special assessment revolving fund account?
A You would get it just from the special assessment revolving fund trial balance. It wouldn't be in any of the other documents or any of the other funds.
Q And that would show there as to what total amounts were due or just grosses or would it be by parcel or how would you record that?
A It would just be the gross amount due for all parcels.
Q Where would the information be recorded as to the gross amount due for each parcel?
A I believe that would be in the treasurer's office.
Q And how would that be recorded there to your knowledge?
A At the time it was manual records or in spreadsheets.
Q Would the spreadsheet have also been manual at that time?
A I'm assuming so. I'm not sure. I mean, it wouldn't have been generated from an accounting system.
Q Well, I know under Excel and so forth we can do spreadsheets and so forth, so --
A Right; right.
Q -- it's tough to know, when you say a spreadsheet, if that was different than manual. So you believed at that point that would be a manual --

A It would be manual as well.
Q What types of -- or physically describe those records to your knowledge. Is there a separate sheet for each assessment or is there a separate sheet for each property or both?
MR. OTIS: Are you talking about records in the treasurer's office?
MR. DONALD VISSER: In the treasurer's office.
A I'm not sure what -- to what level they went as far as the detail. I believe what I've seen is each parcel had a separate tab in the spreadsheet, so that would have been what I would have -- what I recall seeing it related to the special assessment roll.
Q So as you -- at least as your mind tends to remember it at this point, and I'm admitting you're not saying it's absolute, but you think each of the manual records were kept by assessment with a tab then for each property?
A In a spreadsheet for a tab -- with a tab for each prop- -- or with the -- for each neighborhood, each one that was designated as a B number.
Q Now, were there more than one phase to your recollection? Was there more than one phase for this improvement?
A No, I don't believe so.
Q Just a single phase?
A Yes, I believe there was only one phase.

Q If to your knowledge, and again going over what you recall about the treasurer's office, if there were multiple phases would there be a separate record, then, for each phase?
A There were not separate phases. The whole street was put in all at once.
Q So a single phase?
A Right.
Q Now, as we go through Exhibit Number 5, I'm just -- and I want to confess, sir, that I am not sure that all of the documents belong together. That's going to be the scope of our inquiry here. I understand that the first three pages would be part of the resolution and then the next page is roll A. Is that part of the resolution as well?
A I believe it's incorporated by reference in the resolution.
Q So then page number 5, which has "design and inspection fees" at the top of the page, that would be also part of the resolution?
MR. OTIS: (Pointing)
A Yes, that's part of roll A document.
Q Now we go to another page. And the reason that I question whether it's part of the roll is it seems to have a different document number in the lower left-hand corner. See, it says 0693-537. -- I'm sorry. Start over again. 06939.537.240784.1. See that?
A Yes, I do.

Q First of all, do you know whose document numbers those are?
A That's Law Weathers. It's a Law Weathers document number.
Q Now, the previous page had a different document number, so that suggests to me the one that has "design and inspection fees" in the -- on the first line. Do you know whether this is or is not part of the special assessment roll? In the lower right corner it says "SA Roll"?
A Lower right corner? What, you mean as far as the next page?
Q Yes.
A Okay.
Q Is that part of the special assessment -- I'm sorry. Is that part of the resolution or not to your knowledge?
A I'm not sure.
Q What about the next page that says "cost"? Is that part of the resolution? In the lower right-hand corner again that has --
A It's not specifically referred to in the resolution.
Q So you're not sure whether it is or is not part?
A That's correct.
Q And what about the next page, which has in the lower right corner "Prime Rate"?
A Again, it's not specifically mentioned in the resolution.
Q The next page has in the lower right corner "B-1 Phase 1." Do you know if that's part of the resolution?
A I don't know whether it is or isn't.

Q What about the next page, which has "B-1 Phase 2"?
A I don't know.
Q The next one has "B-2 Phase 1." Do you know if that's part of the resolution?
A I do not.
Q The next page, "B-2 Phase 2," do you know if that's part of the resolution?
A I do not.
Q What about "B-3 Phase 1"?
A I do not.
Q "B-3 Phase 2," which is on the next page?
A I do not.
Q Would it be the same for the next two pages, which are phase 3 and 4?
A Yes.
Q And then the next two pages, which reference B-4 Phase 1 and Phase 2, be the same thing?
A It would be the same answer, yes.
Q Now, while you're on the last page, what -- do you know what the intention of what these pages say? Let's start at the last page, B-4 phase 2.
A I think it was intended to provide guidance to the city treasurer on how to go about administering the roll.
Q You're just guessing or is that something you've seen before or you know that?

A I've seen this before.
Q In what context?
A I've seen it in some of the spreadsheets that I received from -- I have received it in the past from the treasurer's office.
Q And what was the purpose that you would receive the spreadsheets?
A If we were -- it would have been included in other spreadsheets -- or in the spreadsheets related to the -- that I mentioned earlier about a tab for each --
Q So those would have been sent to you?
A I have received them, yes.
Q Have you maintained copies of any of them?
A Yes.
Q And are they in your office?
A They're on my computer.
Q On your computer? Okay. Can they be printed?
A Well, let me --
Q Or do we have to look at your computer?
A No, I would say -- I'd have to look at specifically -- let me correct. I'm not sure that this (indicating) is in a file on my computer. I'd have to look at it more closely.
Q Does the city treasurer maintain copies of those spreadsheets?
A I believe so.

Q So we might not have to go to your computer? We might be able to get those directly from the treasurer?
A Uh-huh (affirmative). This (indicating) included --
MR. OTIS: Are we talking about a document that we're actually looking at right now?
MR. DONALD VISSER: No.
MR. OTIS: What do we need to get if we're looking at the document?
MR. DONALD VISSER: Explanation as to what this is for that -- from the spreadsheets.
MR. OTIS: Well, that's a different question. We haven't established that such a document exists. We've been talking about the documents that are right in front of us. Are you asking him if there's some other document that he's aware of that explains the documents you just asked him about?
MR. DONALD VISSER: Well, that's what he testified to, the spreadsheet.
MR. OTIS: No; no; no. He didn't testify to that. You were asking him if he had these (indicating) actual documents on his computer.
MR. DONALD VISSER: No, I was asking about the spreadsheets. Let's make the question clear.
Q Did you understand my question to be that I was asking about the spreadsheets that the treasurer had sent to you?

A I don't know that they included these (indicating).
Q Right. But you have received spreadsheets?
A I have received some spreadsheets related to the special assessments.
Q And that's what you were referring to were on your computer?
A Yes.
MR. DONALD VISSER: I understood him correctly.
MR. OTIS: Well, Mr. Visser, just so the record's clear, I believe the spreadsheets you're talking about are the spreadsheets that we produced to you earlier this summer that have a spreadsheet for each parcel.
MR. DONALD VISSER: It may or may not. I don't know at this point.
MR. OTIS: Well, I don't want to be there a bunch of confusion in the record. I want you to ask him about those documents so that we're not in front of the court, you asking the judge to send us on a wild goose chase for spreadsheets that were produced to you earlier this summer. You have spreadsheets that are associated with the documents you just asked the witness about. So I don't want there to be confusion on the record about this.
MR. DONALD VISSER: Well, I think what --
MR. OTIS: And we held up that spreadsheet in court on your motion to compel.
MR. DONALD VISSER: You held up a spreadsheet.

MR. OTIS: Right.
MR. DONALD VISSER: I guess.
MR. OTIS: We can clarify that right now because you have that spreadsheet. That's my point.
Q Now, when you talk about spreadsheets, did they look like this?
A I don't believe so, no.
MR. DONALD VISSER: I think, Counsel, that answers the question.
MR. OTIS: It doesn't answer any question at all. These (indicating) are obviously not a spreadsheet, Mr. Visser, and they wouldn't look like --
THE WITNESS: It's a Word document.
MR. OTIS: -- a spreadsheet because they're not a spreadsheet.
MR. DONALD VISSER: Correct. So you told me you produced the spreadsheets, they looked like this and he just testified --
MR. OTIS: I didn't say they looked like that. I just said they don't --
MR. DONALD VISSER: You did. You held --
MR. OTIS: -- they don't look like that.
MR. DONALD VISSER: You held it up in court. It looks like that.
MR. OTIS: Mr. Visser, you're trying to create

confusion here and this is not going to be the proper basis for a motion to compel later on.
MR. DONALD VISSER: David, we're here. We're here with the understanding that you have records that we can look at today. I'm going to narrow those down. We're going to pull some of those records. We're going to look at it and there won't be any confusion because we'll have the records in front of us.
A The spreadsheets that I'm referring to were ones that were prepared by the treasurer to keep track of interest-only payments made along the way. That's what I'm referring to, not anything in this format.
Q Not the original --
(Witness reviews document)
THE WITNESS: Yes, these are the spreadsheets that I'm referring to.
MR. OTIS: The spreadsheets that the witness has been referring to are part of the documents that were produced to you in response to the city's Answers to Interrogatories. And it is the document that I held up in court on your motion to compel. There's no confusion about this issue. You have the spreadsheets that the witness has been testifying to. Now, shall we mark one of these, Mr. Visser, so there's no confusion?
MR. DONALD VISSER: Sure we can mark one. I think

that's actually a good idea.
(Deposition Exhibit 6 marked)
Q When we're talking about spreadsheets, you're talking about documents or spreadsheets that look like Exhibit Number 6?
A That is correct.
Q Why were those provided to you?
A As we have turnover in a position, it's helpful to have documents of that sort that carry on some of the institutional knowledge. So it would have been solely for purposes of trying to make sure we had historical documents.
Q What is Exhibit Number 6 telling us?
A It's telling us that there were interest-only payments made in the time between -- or the time since the special assessment roll was adopted.
Q So as I look at that -- and what are you referring to there, the --
A I'm referring to the lines at the top.
Q Top, the horizontal --
A Yes.
Q -- lines, maybe -- what? -- six, seven lines, eight lines deep?
A Yes. It would be --
Q Going --
A -- the subtotal; would show the subtotal.
Q And it starts with 2005 and ends with 2014?

A Correct.
Q And then what is the remainder of the information below that section?
A I was just, I think, mirroring the -- intended to mirror the information in the other document.
Q And this was obviously -- well, do you know when this -- I guess not obviously. Do you know when this was completed?
A I do not.
Q It was obviously, though, completed either after 2013 or after 2014; right?
A It probably was used many times over a several-year period --
Q Well, it has --
A -- and the last one -- last --
Q I'm sorry.
A -- entry probably would have been related to the -- added the 2013 winter tax.
Q So it has specific information -- and I'm sorry, sir. I did not mean to start talking while you -- I thought you were done.
A Uh-huh (affirmative).
Q So did not mean to cut you off. It has information under the column 2013?
A Yes.
Q So that is specific information indicating that at least

after September 12 of 2013 this information was put in, either that day or after; right?
A I believe so.
Q We have 2014, but there's no information listed there; right? So we don't know if that's just a column there in anticipation of 2014 or whether it was prepared in 2014?
A It doesn't look like it was updated in 2014.
Q And who provided the information on this spreadsheet? You or is this from the treasurer?
A This would have been maintained by the city treasurer.
Q Is it accurate to your knowledge?
A I have not verified anything.
Q Do you know any reason that it would not be accurate?
A I do not know any reason why it would not be accurate.
Q Now, it says -- in the bottom right-hand corner it's got a couple of notations there. What does it say on yours?
A "B-4 Phase 2."
Q What does that refer to?
A That refers to the Ravines neighborhood B-4, and then there -- I believe there were two -- but it refers to neighborhood B-4.
Q This suggests that there was more than one phase; right?
A That I don't know, but I -- it probably was incorporated in the -- this is something that was approved under a planned unit development, so I'd have to -- I don't know

exactly what the phase means as it relates to this neighborhood. It indicates that there's more than one.
Q What does B-4 stand for?
A B-4 is the neighborhood that was assigned -- the number -- neighborhood number that was assigned to that parcel.
Q Is that a specific parcel?
A I believe it's the Damghani property.
Q Are there similar schedules or spreadsheets like this for the other parcels?
A I believe so.
Q How many other parcels?
A I think there was 1 through 4; B-1 through 4.
Q And so there we should expect to be able to find similar spreadsheets for parcels B-1, B-2 and B-3?
A I believe so. I think we've just identified them in the exhibits or in the documents already provided.
MR. OTIS: They're all B-4.
THE WITNESS: They're all B-4?
MR. OTIS: I think so.
THE WITNESS: -- narrowed it down to that?
(Deposition Exhibit 7 marked)
Q I'm showing you now what's been marked B-7 and I think this is a copy that we were -- or Exhibit 7 -- copy that we were provided in court the other day. That's a similar type of schedule, but this one says at the bottom "B-4 Phase 1."

What does that mean?
A That means that's the same neighborhood as the other, B-4. Appears there were two phases originally or may- -- at least two.
Q How much is -- I mean, it reflects -- on Exhibit Number 6 it reflects that $154,758.79 is due; right?
A That's the amount of the special assessment principal allocated.
Q Is that the amount that you understand is --
A I've not dealt with it in individual phases. I've only dealt with it by the neighborhood.
Q By the neighborhood do you think there's a different number due from the Damghani parcel?
A No.
Q You think that's the number?
A I'd have to add it up and compare it to something, but these were prepared at the time that the special assessment roll was created, so -- and there were no payments on -- of principal on the -- on that neighborhood.
Q If you look at Exhibit 7 do you believe -- well, again, that was a document provided to you by the treasurer?
A This was maintained by the treasurer.
Q And did you make any alterations to it?
A I did not.
Q So to your knowledge does this contain true and accurate

information?
A Yes, to my knowledge.
Q It was sent to you so you could rely on it, though; right?
A I didn't need to rely on it because the accounting records had already reflected anything that was collected. It was only providing additional information if I needed to look further.
Q Now, other than this (indicating) do you have any spreadsheets? I just want to make sure because I understood differently. Do you have any spreadsheets that you've maintained?
A These are the ones that I'm referring to. The only other ones would be the revised payment schedule that I've maintained -- or that I created for the -- that's in the earlier exhibit.
Q Oh, that Exhibit 2 when the payments were extended?
A Yes.
Q But you haven't maintained any other schedules or spreadsheets?
A If we did it was in connection with the annual audit or other things of that sort.
Q And do you have similar sheets as Exhibit 7 here for B-1, B-2 and B-3?
A I believe they are -- that -- those are the tabs I was referring to on the spreadsheet, similar to this, but for

those neighborhoods.
Q So you would have those on your computer as well?
A **Well, yes, I would have those and the treasurer's office would also have those.**
MR. DONALD VISSER: I'll make -- when we go off the record I'll give you a list of a couple things -- gather them and then we can come back together.
(Deposition Exhibit 8 marked)
Q I'm showing you what's been marked as Exhibit 8 now.
A **Yes.**
Q By the way, maybe before I forget, on Exhibit 5 we had those additional pages that you weren't sure that -- whether they were or were not part of the special assessment -- I mean of the assessment roll?
A **Well, normally what I see is the resolution and the list of the parcels from a special assessment roll. That's more than what I would normally see with a special assessment resolution.**
Q Where would we go today to figure out what -- whether those are or are not really part of the assessment -- the resolution?
A **The city clerk's office maintains the record, but sometimes what's actually in the resolution along with the resolution may be just extra information that isn't necessarily part of the resolution. So say, for example, when I do a budget**

adoption, because I want the record to show a little bit more -- or some more detail than what is specifically dealt with in the resolution, I include in the clerk's file documents that provide additional information so that I have only one place to go back to if I want to find that information. And so it may be that even though these aren't incorporated in the resolution, that they're in the file in the city clerk's office with the resolution.
Q Just because they were provided for information at the time?
A **I believe so. That's what I would speculate. It's not referred to in the resolution.**
Q So we could go to the official books and records, and even though it's not in the -- part of the resolution still find them appended to or next to the resolution as part of the materials that are in the city's books?
A **In the city clerk's files.**
Q So the best way to figure it out is whether the information is actually referenced to in the resolution itself?
A **That would be my --**
Q I understand. All right. Sorry for that little deviation.
A **No, that's all right.**
Q You're looking now at Exhibit --
A **Exhibit 8.**
Q -- Number 8; right?
A **Yup; yup. Voluntary special assessment development**

agreement.
Q You've seen that document before?
A **I have.**
Q Did you see that back when the resolution was passed?
A **I don't believe so.**
Q You did not?
A **No, I don't believe so. Well, I just don't recall.**
Q Do you know what that is? Have you seen it since?
A **I have.**
Q What do you understand that document to be?
A **It's the agreement between the city of Kentwood and 44th and Shaffer Avenue LLC related to the improvements made on Pfeiffer Woods Drive.**
Q What relationship does that have with the -- what you have termed as the Pfeiffer Woods Drive special assessment, if any?
A **This would be related to the construction, not the landscaping.**
Q So Exhibit 8 is related to the construction. Do you know when it was -- was it negotiated before or after the special assessment roll?
A **I don't know. I would have to assume that it was in the discussions leading up to adoption because it's dated as of the date of the adoption of the resolution.**
Q Do you know whether that was the controlling document or

whether the special assessment was the controlling document for what's referred to now as the Pfeiffer Woods Drive special assessment?
A **I believe the special assessment resolution would be because I believe it refers to this document in that, if I recall. It refers to it on Exhibit 5, number 3.**
Q Exhibit 5, number 3? I'm sorry.
A **It's Resolution 96-04 and item number 3 refers to the voluntary special assessment/development agreement dated September 7th, 2004.**
Q Well, as we go -- if you could also grab number 5 for me. I'd just kind of like to walk through both of those. Keep both of those in front of you.
A **Uh-huh (affirmative).**
Q Exhibit Number 5 refers to, on what I would have there as page 5, the design and inspection fees. Now, do you know whether this was part of the special assessment now? This is part of roll A, wasn't it?
A **This is part of roll A, yes.**
Q So this page would -- you believe would be part of the special assessment; right?
A **Yes.**
Q I see there that -- a paragraph called "Deferred Installments."
A **Okay.**

Q Do you see that?
A Yes, I do.
Q Is there anything that's there that says "Interest only"?
A Not those words specifically, no.
Q Now, it does -- "Term" up there does talk about a balloon -- right? -- upon termination date?
A That the principal is due --
Q Any unpaid --
A -- ten years from confirmation of the roll.
Q Yeah, and it says, "Any unpaid principal and interest is due in full upon termination date"; right?
A It does say that there, yes.
Q It doesn't say "balloon payment," but that's what a --
A That's what it's intended to be.
Q We use balloon payment terms, but that's what you would understand that to be?
A The principal is due, yes.
Q Then paragraph C says,

"Principal payments, along with unpaid simple Interest on that portion of the principal shall be due upon certain governmental approvals being issued consistent with the terms of a Voluntary Special Assessment/ Development Agreement dated September 7."

What does that mean as far as you know?
A I'm not sure what that means. As far as the term "certain

governmental approvals," I'm not sure.
Q That does refer, though, to principal payments; right?
A It does. It has that in the paragraph, yes.
Q And it also says "along with any unpaid simple interest," which would be kind of a sub-balloon payment; right? Picking up all unpaid simple interest; right?
A To that date; right.
Q To that date. "Shall be due upon certain governmental approvals -- consistent with the term (sic)" -- would you agree that that paragraph anticipates that payments are going to be principal payments on the assessment are going to be made in accordance with whatever's set forth in the September 7 agreement?
A There may be certain reasons for principal payments to be due.
Q Well, whatever that paragraph says about principal payments, that's when they would be due; right?
A Based on the voluntary special assessment/development agreement it basically says when that shall be due, so principal payments would be due upon certain governmental approvals.
Q To your knowledge did anybody in the city track the -- any of those events under paragraph -- under that paragraph, paragraph C?
A I believe the treasurer's office in coordination with the

engineering office would be involved in that --
Q They would --
A -- or inspections and engineering.
Q Would that be their responsibility or yours?
A Not mine, no.
Q I expected that answer.
A Uh-huh (affirmative).
Q You just put the numbers where they belong and you're not doing the -- basically the enforcement aspect of the special assessment?
A The billing and collection I do not have any hand in.
Q If you get the money you put it in the account?
A Uh-huh (affirmative).
Q If you don't get the money you show it as an account receivable?
A Right. It remains in accounts receivable, yes.
Q Yes, it remains there?
A Uh-huh (affirmative).
Q Because you put it there --
A Initially.
Q -- initially on that special assessment?
A When it was adopted or established. I think that what they were contemplating is that construction would actually take place on the parcel and that if construction were to take place, that that would trigger the special assessment's

receivable payments and principal payments.
Q So as I understand this, there was an agreement in place, and maybe that's -- I need to follow that up, make sure my understanding is correct, that there was an agreement in place but there -- at the time the special assessment roll was passed that there were still loose ends that needed to be done before everything would get going?
A Probably the biggest uncertainty would have been when would the developer move forward with development.
Q Yeah. Certain things that the city didn't have in its control, basically this -- correct?
A It would not be in our control.
Q And since I'm familiar with some of these, I basically look at this as a financing tool for a developer to put certain improvements in that obviously the city's in favor of or willing to go along with, but that allows the city's finances to basically -- to be used to do the development and then recoup it over time?
A To construct the street --
Q To construct the street.
A -- and the improvements related to this that were adjacent or under the street.
Q Things that would typically be infrastructure for a developer oftentimes eventually in dedicated roads and so forth that would become city improvements, but necessary for

development of a property?
A That would be -- it would facilitate it.
Q Right. A developer wouldn't need a special assessment to do this. He or she could simply take the money out of the bank, put the improvements in and get to the same position; correct?
A That's correct.
Q So when I talk about it as a financing tool back in those days, that was not atypical for a city to use or a municipality to use a special assessment agreement to basically finance infrastructure within the city's -- within new streets and so forth?
A For the purposes of putting a street through it's not uncommon for a special assessment --
Q To do that?
A -- to do that.
Q Under the Exhibit 8 that you're looking at, it's -- if you'd turn to paragraph 10 with me -- or page 10. I'm sorry.
A Yes.
Q Do you have that?
A I do.
Q Does that -- let me get there a minute. That lays out certain cost at the top of the page of calculation apportionment between properties?
A Yes.

Q As you look down there under paragraph sub (d), which is about a third of the way down there right after the chart there, does it set forth when principal payments are going to be due?
A Under certain circumstances, yes.
Q First of all, what are the circumstances?
A Within 180 days of final zoning approval for a phase or upon city issuance of a soil erosion permit for the phase, whichever is earlier.
Q Are there any other conditions?
A I think the balloon payment's due on September 7th of 2014.
Q Anything in that paragraph, conditions reflected -- or that subparagraph?
A Other than that it discusses a pro rated bas- -- a pro rata basis, other than that, no.
Q Does that pro rata refer to the chart above showing neighborhood B-1, B-2, B-3 and B-4?
A It relates to that, but I think that's where the phases come in. So if the phase 1 of neighborhood B-4 were to be started, construction were -- or development were to be started --
Q This chart --
A -- that would be the --
Q I'm sorry.
A It's associated with it, but it's not exactly -- in other

words, it refers to "for the phase." So these -- the neighborhoods B-1 through B-4 in the table above are -- it doesn't show the individual phases that there might be for each neighborhood.
Q Does this refresh your recollection that there was actually intended to be four phases?
A There's four neighborhoods. I'm not -- well, let me -- the construction of the street was only one phase. There were neighborhoods that were anticipated to be developed over a period of time and I believe those phases refer to those phases that they anticipated for development of the properties.
Q If you look horizontally for the -- under the B-3, --
A Uh-huh (affirmative).
Q -- there it reflects actually four phases; right? The last two phases being $118,171 each time?
A Yes, it appears that there's two phases for neighborhoods B-1, 2 and 4, and four phases for B-3. But that's construction of the properties themselves, not the street.
Q So now, did any of these phases receive -- or any of these parcels receive final zoning approval? They all did; right?
A No.
Q Which ones did not?
A Well, I can't -- I'm not sure what final zoning approval would be. I think that's related to not the planned unit

development. I'm not sure what that refers to, I guess, final zoning approval.
Q It was approved for PUD, was it not?
A It was approved for PUD, but I think that there was a step beyond that that this contemplated.
Q Which was -- at what step was that?
A I'm not sure exactly. I'm not as familiar with that process. I think once they decided to move forward with the actual development of a phase they would have to go through some additional approval processes.
Q Approval processes for what?
A To actually commence development of the phase.
Q To actually, like, get permits; right?
A I'm assuming that.
Q For construction?
A I'm assuming that.
Q That's what you're -- when you're referring need some additional approvals?
A I would believe so, yes.
Q Anything else, though, that needed to be done for final zoning approval that did not occur that was contemplated by this agreement that you're aware of?
A I'm not familiar with that.
MR. OTIS: I think he was just testifying in relation to the document that you're asking him about.

A. Not the actual process of the zoning or the approvals.
Q. Paragraph 3 indicates that it's estimated that the construction will be completed by December 31 of 2005. See that?
A. I see that.
Q. Do you know when it was actually completed?
A. No, I do not. This is --
MR. OTIS: -- talking about --
A. Again, this is referring to the street.
Q. Yes.
MR. OTIS: Pfeiffer Woods Drive; correct?
Q. That's what we're talking about. We're not talking about the individual houses and --
A. Correct.
Q. -- or condos or whatever was going to go in; right?
A. We're talking about the construction of the street itself.
Q. Are there any other contracts that are related to the special assessment that we've talked about now as the Pfeiffer Woods Drive special assessment, other than Exhibit 8?
THE WITNESS: Would amendments of this constitute separate agreements or --
MR. OTIS: I don't think the witness understands your question, Mr. Visser.
Q. Prior to the adoption of the special assessment for Pfeiffer

Woods, were there any other contracts that were in place that impacted that resolution?
A. Not that I'm aware of.
Q. Afterwards your previous answer suggested that there were some amendments?
A. I believe so, yes.
Q. Was that done also by agreement with the owner or owners?
A. Yes, I believe so.
Q. To your knowledge they didn't go through the process of having a public hearing and --
A. I'm not sure what steps were taken.
Q. But you believe it was done pursuant to just simply agreement?
A. I believe that the amendment was documented in a -- any amendments to this document were carried out through the city commission resolution adoption process.
Q. Now, if you'll turn with me to Exhibit Number 7, who put -- if you go down the -- about a third of the way down where it says "due date triggers," who put that information in? Did you?
A. No.
Q. City treasurer?
A. I'm not sure. I think the original spreadsheet was created by the law firm.
Q. So when it says 180 days from final zoning approval, what's

that date that's listed there?
A. It shows October 28th, 2006.
Q. Do you believe that to be true and accurate?
A. I do not.
Q. You do not?
A. Because the parcel has not been developed.
Q. Is it your belief that final zoning approval equals development?
A. I think it would be evidenced by development.
Q. So it would be evidenced. What do you think final zoning approval is then? Or I guess what I'm looking for is your foundation as to why you don't think that's an accurate number, even though the treasurer put it in there.
A. I don't know that the treasurer put it in there. It may have been hypothetical at the time that it was created by the attorney anticipating that there would be construction at some point in the near -- more near term as opposed to extending out as it ended up happening.
Q. So you're just guessing now that it's hypothetical?
A. Well, again, not knowing who put it in there I can't necessarily say. But I don't believe -- because the neighborhood didn't develop, that's my rationale for the --
Q. So you're associating final development with final zoning approval?
A. At least the commencement of it, I believe. But I don't --

again, I don't deal with the zoning.
Q. Would it be, then, contrary to your thinking that somebody could get final zoning approval and decide not to go forward with the approved zoning?
A. I don't know that.
Q. I'm just trying to get to your experience in the areas because you have an opinion. I'm just trying to figure out --
A. Right.
Q. -- what the foundation of that opinion is.
A. Yup.
Q. If you go down on your exhibit there, it says phase date -- or date phase payment actually made. What's the date there do you see?
A. I believe it says September 16th, 2006, I believe, or 8. Is it 8?
Q. Do you know when the final -- when that payment was made?
A. I don't believe it has been made yet.
Q. You had reflected on your books as to when you made payments; right?
A. We would reflect a payment if it were made.
Q. Correct. That's what I'm saying?
A. Right.
Q. At some point -- I'm assuming you do a double entry system --

A Yes.
Q -- with your bookkeeping?
A Yes.
Q So when you put an account receivable in for the special assessment, what did you do for the corresponding entry? Where did that go?
A We recorded it as deferred revenue.
Q So deferred -- well, that would be --
A It's not shown as revenue at the time, so it's shown as a liability -- or in the liability section of the balance sheet as a deferred revenue.
Q So you would have a -- you would show it as a liability called deferred revenue, and then as you made payment for the improvements that were made, that liability would be reduced; right?
A What would happen is the receivable would be reduced by the cash payment.
Q But if you had --
A And then we would recognize the special assessment revenue as a revenue by reducing the deferred revenue.
Q I think we might be not talking about the same here.
A Okay.
Q I'm not looking at the special assessment money coming in and so forth. What I'm talking about is at the same time that you're showing that being entered as deferred income or

an account receivable, you now have an asset; right?
A There is a receivable, yes.
Q You have a receivable as an asset and you have some type of liability; right? Don't you have a liability for the improvements that you've contracted by the agreement to make?
A No, that doesn't -- that transaction would not establish a liability of that sort.
Q You have a contract that says you're going to get in X number of dollars pursuant to the special assessment?
A Uh-huh (affirmative).
Q And you're going to pay the same number of dollars out for the improvement. Where does that reflect the obligation to make the payment?
A It wouldn't be reflected until the costs were incurred for the improvements. So as the construction happened, as the street construction happened, the bills were paid and it was expensed.
Q Let me follow that when you -- from that end. Let's say you pay $100,000 out for excavating.
A Uh-huh (affirmative).
Q Where does that get charged to?
A It would be charged to a construction expenditure account in the special assessment revolving fund.
Q In the revolving fund?

A Yes.
Q So all of those payments would also be -- that you've made on this special assessment would be reflected if we get a trial balance for that account?
A Well, in this case I believe the actual construction was handled by the property owner. I would have to look back at it, but I believe the payments were made to the property owner.
Q But all those payments directly to the excavating contractor or the Consumers Power, whoever is putting the electric in or all of those improvements, they get paid for it? They get paid for it to somebody, either through the owner or directly to the contractor; right?
A It would be in this case to the owner, I believe.
Q If we get a trial balance for that special assessment fund, would those payments be reflected on there as well?
A In the trial balance, yes.
Q So if we get that during our break we should be able to figure out when payments were made on the special assessment; right? We wouldn't have to guess anymore; right?
A I wouldn't think so.
MR. DONALD VISSER: I think this would probably be a good time to get a couple of documents.
MR. OTIS: That's fine.

MR. DONALD VISSER: Let's do the trial balance. And I'm going to want the spreadsheets, also, for B-1, B-2 and B-3.
A That trial balance would include in that expenditure account any projects that might have happened in that same year. It would not have been detailed by just solely this project.
Q So we might have some extra lines?
A Some extra cost in that line.
Q Yeah. Okay. Your trial balance shows dates and so forth?
A It would show by year.
Q If we need dates further how do we -- how would we drill down to the actual date that the check was cut, if we need that?
A I'll have to look at it because that was on a previous accounting system.
MR. DONALD VISSER: So why don't we get what we figure out -- what we can figure out now?
MR. OTIS: What is it that we're trying to figure out that's possibly relevant to this case?
MR. DONALD VISSER: Well, we'll see when other principal payments are made on the other accounts when they're billed to see if they're consistent with this one. That's it. I don't think it's a huge thing to -- looks like to me another six sheets.
MR. OTIS: All right. Shall we go look for them?

THE WITNESS: Uh-huh (affirmative).
(Off the record)
(Deposition Exhibit 9 and 10 marked)
Q Showing you now what's been marked as Deposition Exhibit 9. Is that copies of similar spreadsheets that you've obtained from your computer regarding parcels?
A It's the --
Q Remaining three parcels?
A -- the tabs -- prints of the tabs on the same spreadsheet that were used to generate the other document.
MR. OTIS: For B-1, B-2 and B-3.
A Yes.
Q And these were also things that were sent to you by the treasurer?
A The treasurer sent them to me, yes.
Q And you maintained them?
A I do not maintain them. I have not changed them. I have not revised them at all with the exception of preparing them for printing that document.
Q And that was probably a bad word to use as far as maintaining. You've just simply kept them as they were sent to you by the treasurer?
A That is correct.
Q There is a page in here, the fifth page in, which seems to be a different format. What is that?

A That's a page that shows what actually happened for the only neighborhood and phase that actually has been developed in the Ravines area. So this one -- and that's the only one of those special assessment receivable that are actually paid off.
Q This is for parcel B-3; correct?
A Neighborhood B-3, phase 1.
Q Phase 1. Did you receive other documents similar to that for any of the other parcels or any of the other phases?
A No.
Q So this is the only one like this that you received from the treasurer?
A This is the only one that in that spreadsheet was like that.
Q And this is as received from the treasurer again?
A That is correct. And the reason why it differs is because the -- that's the only neighborhood and phase that actually has been constructed. And that receivable is paid off.
Q As we look at the last page of that document --
MR. OTIS: Talking about Exhibit 9?
MR. DONALD VISSER: Exhibit 9; correct.
Q Again, on the top 2 inches or so, 3 inches of the document in the horizontal spreadsheet there, on the -- what appears to be the second line, it says, "Effective date of special assessment." See that?
A I do see that line.

Q Follow that across. It says in 2005 it says interest -- or I think that's "int" stands for "interest" -- only payments?
A Only payments; right.
Q I'm correct with that assumption?
A That is correct.
Q Then the next column, 2006, it says 11-29 of 2007 instead of interest only. Why is that?
A I'm not sure why except that to the left of the -- of that line where it says interest only payments, if you look just to the left, it said "paid." It may be that the treasurer entered those dates in there as the dates that payment was actually made.
Q You don't know?
A I do not know. It looks like -- but it appears at least that the first -- the line above that was the date it was billed and the second line is the date it was paid is what it appears, and what check number it was paid by is the next line.
Q Then the line just above it says, "Amount of SA" -- I assume that stands for special assessment?
A Yes.
Q -- "principal allocated to this phase"?
A Yes.
Q And then it has dates in there, 11-6 of 2007 going all the way up 'til 2008, then it's 10-15 of 2008. What does that

refer to?
A I believe it refers to the date that it was billed by the treasurer. The 112,000 is what was used as the basis for the interest calculation. But just to the right of that 112,000 is the word "billed." And then the dates I believe drive -- or are based on what date it was billed, not what date the principal was due.
Q For that fifth page, that odd -- the one that's different, it has a number of dates entered under "due date triggers." See that?
A Uh-huh (affirmative).
Q "Yes"?
A Yes, I see it. I'm sorry.
Q No problem. Then on the right-hand side it indicates apparently where the source is?
A For that date, I believe.
Q For that date. And for the first one, final zoning would be from planning?
A Yes.
Q And then from -- then the next calculation is per the formula, it's 180 days from the final date?
A From the final zoning approval date.
Q Which was in this case 3-1 of 2005?
A The final zoning approval date is shown as, on this document, March 1st of 2005. I believe that the August

28th, 2005, date is 180 days after that as calculated by formula, is what I think it means.
Q Then the next one for the erosion permits and so forth, this indicates that data was derived from engineering and inspections?
A I believe that's the case, yes.
Q And that would be typically where erosion permits would be issued?
A Yes.
Q And then the final date of phase payment indicates is April 21 of 2005; correct?
A That is the date that's entered there, yes.
Q And that's also the same date that's entered a little lower and where it says, bold, "Date Phase Payment Actually Made"?
A Yes, that is the same date there.
Q Now, you've also given us what's been marked as Exhibit Number 10, which is a list of apparently payments and receipts related to this special assessment; correct?
A This is what I described previously as a trial balance. What it shows solely is a printout from our general ledger system for the special assessment revolving fund for the period when the construction was done and when the -- also when the receivable was set up.
Q So this shows all the payments that were made?
A No, it shows in the summary --

Q Well, let's go through it.
A Yup. I have a copy of it as well.
Q So the first entry shows in column number 1, that's a general ledger number?
A That is correct.
Q And this one happens to be 003 of line number 040?
A This actually -- it does say that but that is not related to the -- what -- this is what comes off of our financial accounting system.
Q Correct.
A And if you're looking for the receivable that's applicable in this case, you need to look on the second page. And it has the GL number as 808000051141. It's deferred Pfeiffer Woods Ravines. And it shows that as of June 30, 19- -- or June 30, 2004, there was a zero balance for that. During that next fiscal year the receivable was set up; in the June 30, 2005, fiscal year.
Q Correct.
A So that shows when the receivable was established or when it was recorded.
Q Now, this shows only through June 30 of 2007?
A Correct.
Q I'm assuming that's the parameters that you put in?
A That is correct.
Q We could have run it through 2014 or 2015?

A That's correct.
Q We're going to want to see the balance of those. Okay. So what we're looking for is 051.141; correct?
A That is the one that has all of the Ravines neighborhoods in it including the parcel that we're discussing.
Q So now as you get payments of principal back, would you assign it to that same line item?
A We would record it as a reduction of that line item.
Q So in the first column under general ledger number, we would -- you would be utilizing the same assignment number for that; correct?
A As we collect money on that receivable we would record it to that account.
Q So what I take from this is that in the -- sometime between June 30 of 2004 and June 30 of 2005 the city of Kentwood cut a check to somebody, or multiple checks, a combination totaling 1,585,926.23; right?
A Actually this balance reflects only the recording of the receivable based on the resolution that was adopted by the city commission.
Q Where do we get -- are the payments here then?
A Where you would see that is in the -- on the last page near the bottom, accounts 978 -- the 978 account numbers. So it would be in the expenditures area. During those two years we made --

Q Just a second here. I'm looking for 978. I'm not --
A Yup.
Q Way at the bottom of the --
A Yup, near the bottom.
Q -- page there? Okay.
A And you can see that in 20- -- fiscal year 20- -- that ended in June of 2005 and June of 2006 that there were costs that -- or expenditures made for right-of-way costs, Ravines special -- or Pfeiffer Woods Drive and Breton North Pfeiffer Woods. And the total of all that should be the total of the amounts that were billed in special assessments.
Q So as we look at this, there's expenditures for certain -- you said 978?
A Yeah, the 978's. They have it as .001, .006 and .007 are most likely what it is.
Q What about the 000?
A I'm not sure as far as that, whether that particular one is related to this project.
Q So we have roughly 1,780,000 being expended in between June of 2004 and June of 2005 on the project?
A 1.7 million approximately; correct. Yeah, between 1.7 and 1.8 million.
Q Right. And then in 2006 you showed it 2.66 total for all of the columns, but maybe 108,000 isn't attributable?
A It may or may not be, depending on how the accounts were --

how the payments were coded.
Q So we have between 1.55 -- or 2.55 and 2.6 probably being --
A Yes.
Q -- expended on the project in that year?
A In that year, yes. Well, in -- yes.
Q And then after that and for the next year from 2006 to 2007 we have $424 for legal expenses that may or may not be related to this project?
A My guess is probably they were not related to the project.
Q But certainly we have no construction costs being disbursed anymore?
A Not in that year. My understanding was -- from an earlier document that we looked at was that the construction was to be done by December 31st of 2005, so that would have been during 2006 fiscal year.
Q And we can safely draw a conclusion that at least by June 30 of 2006 all of the funds that were going to be expended by the city on this project for construction had been expended?
A Yes.
Q In Damghani's Complaint there was also another assessment which was referred to as the -- go back to you to Exhibit 1 as the ADAA assessment. Do you know which one that is? I'll give you a chance to get caught up with me. And I want to focus your attention on --
A Which page are you referring to?

Q The question number 32 and 37. I just want to confirm.
(Witness reviews exhibit)
A What does ADAA refer to?
Q You're not familiar?
A In the context of this document I'm not sure that it's not defined elsewhere.
Q Was there an amendment to the deferred assessment agreement?
A I believe there was, but I believe it only affected the parcel that Holland Home purchased.
Q And I believe you're correct. I just want to clarify that.
(Deposition Exhibit 11 marked)
Q Hopefully we get copies of this later. Here's a resolution with an amendment. And it's our understanding -- and the reason I'm asking is because it currently isn't pairing the title to the Damghani property. And I don't believe there's any amounts due and owing, but the title company can't get that straight. So that's what we refer to in the Complaint as the ADAA, the amendment to the deferred assessment agreement. And in questions number 32 and 37 I think you confirmed that those -- that there was nothing due from the Damghani parcel arising out of this (indicating) document?
A I believe that's correct.
Q Basically what that did is it took part of the assessment and put it elsewhere -- actually took it off the Damghani parcel; right?

A Because the property was no longer theirs.
Q Thank you. Were you involved at all with the foreclosure sale process?
A Not from the actual process.
Q Correct. You seemed to hesitate a little bit, so there might -- apparently I maybe didn't ask a broad enough question. You say not with the actual process. What --
A I was familiar with it because it was discussed in meetings and that sort, so -- but I wasn't involved in the actual -- our treasurer would have been involved in that.
Q Are there any other revisions or amendments to special assessments for any special assessment districts in the city that you're aware of?
A My understanding is that there is provision for that in the code of ordinances for special assessment code. I am not aware -- I'm not familiar with how many there are or what there are, but I understand that's part of our process.
Q But are you aware that there -- that this -- other than this particular assessment are you aware that it's ever been done in regards to any other special assessments?
A I can't answer that.
Q So you're not aware of any?
A I'm not saying that. What I'm saying is that I was not involved in any of the process for it, so I can't speak to it directly.

MR. OTIS: Maybe I'm confused but I thought we started out with testimony about Holland Home's and this amendment with regard to the Damghani property arising out of the discussions relating to Holland Home's.
MR. DONALD VISSER: Let me clarify that.
Q Is the Holland Home assessment part of the Pfeiffer Woods Drive special assessment?
A Only the portion -- well, there are two. There were two resolutions adopted. One was the -- related solely to Holland Home and the other was related to the Ravines parcels. And with Holland Home purchasing a portion of one of the Ravines parcels, that's when that came into play. So there's more than just Ravines.
Q So there is -- Holland Home is involved with more than Ravines, but was the special assessment not dealing with the Ravines, only with Holland Home? Was that renegotiated as well?
A I'd have to look at it, but not -- oh. From what standpoint? Renegotiated how?
Q To change the term -- or repayment terms.
A Yes.
Q Both assessments were? The Ravines and the Holland Home parcel?
A As it related to Holland Home, both parcels had payment schedules put in place similar to what was for the Damghani

property.
Q So the special assessment dealing with -- that's what I'm trying to hone in on. Is the special assessment dealing only with Holland Home property, not that acquired from the Ravines? That repayment schedule was also modified?
A **Yes.**
MR. OTIS: I thought that's where we started out at the very beginning of the deposition.
MR. DONALD VISSER: I understood that only to be the Ravines, so that's --
MR. OTIS: Oh. Okay. All right.
MR. DONALD VISSER: And you may have understood it differently because you have a different background than what I do. So if you have more knowledge, you have to share that with me, you see.
MR. OTIS: I'm just glad we're getting things clarified.
Q Why was the city concerned at the -- when the taxes went up for -- or the property went up for sale, the Damghani property? Why was the city concerned as to how much money the parcel would bring at tax sale, if the city was concerned at all?
A **The county, in order to cover their -- again, I'm speaking from a layman's term. They sell tax anticipation notes, I believe, and they need to have the sale cover that amount at**

least across the entire county. And so what they're looking at is they're trying to make sure that their tax sale generates sufficient sales to cover the tax foreclosed property, the taxes and the other assessments and things of that sort that are on those properties countywide. And so they're interested in making it as attractive as possible on the first sale.
Q You aware of county initiatives on any other properties where they've tried to make it more attractive?
A **I'm not aware of it. It doesn't mean it doesn't --**
Q Correct.
A **-- hasn't happened, but I'm not aware of it.**
Q Right. Okay. That's all I can ask you, is about what you're aware of.
A **Uh-huh (affirmative).**
Q So this is the first one where you've been aware that the county was concerned about that?
A **Solely on that.**
Q Any reason why the city didn't exercise an option to take the property prior to going to tax sale?
A **We're not a developer.**
Q That's the only reason? Was it discussed?
A **It was actually offered to us and we declined.**
Q When you say "we," who was --
A **The city I mean.**

Q Who was involved in that discussion?
A **The Damone Group, the original owner of the property before it was -- went through the tax sale, offered it to sale for -- or for sale to us and we declined.**
Q Did you ever talk --
A **The city declined, I should say.**
Q Did the city ever talk about picking it up as part of the tax foreclosure sale, in other words, between the time that the county treasurer acquired title to it and the time it went up for public auction?
A **No.**
Q You never heard of anybody discussing that option?
A **We had eliminated the ownership of the parcel in its entirety prior to that even.**
Q Just simply by -- the city was not interested in being a developer?
A **Right.**
Q Have you had any involvement at all with any of the tax foreclosure sales?
A **No.**
Q Anybody here in the city that's been involved with the foreclosure sales as you --
A **My understanding is the treasurer is involved because the tax roll -- she maintains the tax roll.**
Q And what is your understanding as to how she's involved --

she or he? Because I know it's apparently switched.
A **Well, she maintains the tax roll, so levies the taxes and posts the collections. She also settles with the county at the end of the tax collection period, so -- and then that's -- if there's unpaid taxes for two or three years, I think, it's when it actually goes up for tax sale, is when -- if it's three -- I think it's the third year is when it actually goes to the tax sale.**
Q But other than turning it over to the treasurer do you -- does the treasurer have any involvement at all with --
A **I wouldn't think that --**
Q -- the tax sale?
A **No, I don't. I wouldn't think that they would have any involvement other than turning over the delinquent taxes to the county treasurer.**
Q So past that you're not aware that your city treasurer has had fingers --
A **No; no. That's solely --**
Q -- in the process?
A **-- county process.**
Q Are you aware of any other special assessment districts in this city that have a ten-year interest only with a balloon at the end assessments?
A **I'm not aware of any. I'm not sure.**
Q Did anyone from the city have any discussions with the owner

of the Damghani parcel prior to the tax sale and offer them the same terms as the Holland Home agreement?
A I don't know.
Q Do you know how the amount that was due at the tax sale was determined; the minimum bid?
A I don't know.
Q Were any portions of the special assessment included in the amount due to avoid the tax foreclosure?
A No, not that I'm aware of.
Q Tax only?
A Well, there would be special assessment -- unpaid special assessments, but not the construction-related special assessments.
Q What unpaid special assessments would have been included?
A I think the landscaping might have been, but I'd have to verify that.
Q When you indicated that the -- strike that. When you indicated that the special -- landscape special assessment was added to the taxes is that because it wasn't paid?
A When it was added to the taxes -- I'd have to check with the treasurer about that to see --
Q That would be a --
A -- exactly when it was added and for what reason. It might have been that it was due.
Q That would be a question I really should direct to the

treasurer?
A Probably so.
Q You indicated earlier that the county treasurer could enter into the agreement. I think that's -- what is that? -- Exhibit Number 2. You indicated that that could be amended because it was a -- originally an agreement, so that the agreement could be amended. I just want to probe your understanding or your belief there. Is that because the county treasurer succeeded to the contractual rights of the owner or is it because of some legal provision under the statute?
A My understanding is that there was a point in time when the county treasurer became owner of the property and that at that time, as owner of the property, they had the ability to enter -- or to agree to an amendment to the agreement. That's my understanding. Whether it's legal or exactly what the legal basis for that is, I don't --
Q And because they became -- is that the bas- -- because they became owner and succeeded to the --
A I believe so.
Q -- interest of the --
A I believe so.
Q -- prior owner?
A Yes, because the original agreement did flow to the new owners, any new owners, I believe.

Q In your experience once a special assessment roll has been levied are you allowed to simply modify it by resolution or what steps do you have to go through to your --
A I'm not sure what they are.
Q How is the interest booked into your special assessment revolving fund?
A It was recorded as interest at the time it was collected.
Q Is it recorded then into the special assessment revolving fund?
A Yes.
Q Is the amount that's due ever recorded as a account receivable or is it handled on a cash basis only?
A Historically it was handled on a cash basis. I'm not sure what the system is presently, whether the billing records it in the system or not. We've integrated our accounting systems. But historically it's been recorded as it's been collected.
Q So it's been recorded as it's been collected. So if somebody doesn't make the payment, it doesn't get recorded?
A That would be what it was historically, yes.
Q As far as Exhibit 10 am I correct that the first two pages are one printout or one -- one specification for general ledger information and the third page is a separate -- has separate search criteria?
A No.

Q It's all --
A It's all the same printout.
Q So it's one --
A It's one printout.
Q The payments, where would -- as I see this sheet extended, if we would go out through 2015, where would the payments be reflected?
A The payments against the special assessment receivable, this particular one would be shown in that account number that I mentioned earlier, the 808000051141.
Q So that it would be shown as a -- on the same line number, just simply as a negative?
A No. Only if there's a payment will that number change. So that number is the balance that's receivable and only at the point where there's a payment made would that account balance change.
Q So as I'm looking on the second page, about three-quarters of the way down, there's a 051.99 and it has the parentheses referencing a negative number there.
A Uh-huh (affirmative).
Q Is that how a payment would show up?
A No; no. That was set up solely at that time to have on the record what we -- it was called suspense because it's -- we needed to take some additional actions, do some additional analysis in order to handle it. So from that -- that's the

reason why that shows up at all. That was later adjusted. You'll end up seeing -- if we run this out to 2015 you'll see that as being eliminated.

Q So maybe I better just wait until I -- what I'm trying to do is envision what payments look like, how they're reflected, if they're a bracketed number, a negative number, a positive number, a separate line --

A No, there's no -- it'll only be -- if there's a payment made on the account it will only be shown because the balance is a different balance on that particular line.

Q Oh. Okay. So we would look at the line and have to do the math, subtracting the prior -- using the prior line, subtracting the current line to determine the payments that were made in that year's period?

A That's correct.

Q That's why I didn't understand. Because I was thinking of it more in the line of detail, like you have on your third page and thought, well, it's going to reflect who made payments and so forth. It'll be which a gross payment -- a gross change in number?

A That's correct. The third page, though, the reason why it looks different is because there's not as many accounts. But you can see at the top of the page that there's total assets, which is a continuation from the previous first two pages. This is the subtotal for total assets, which

includes all the lines above. And then you see liabilities and equity, revenues and expenditures on the third page. It just happens that in a trial balance it's just a different -- these are different types of accounts and so they're showing separately.

(Deposition Exhibit 12 marked)

Q I'm showing you now what's been marked as Exhibit Number 12, one of the documents that you produced. Is that a document that comes out of your file, out of the treasurer's file or whose -- where did that originate from?

A It would be prepared in the treasurer's office. Not my file, not my process -- any process that I'm involved in.

Q I assume that this goes out on an annual basis?

A I believe so, yes. This is the interest billing for the -- appears B-1 phase 1 and phase 2 and B-4 phase 1 and phase 2.

Q That'd be for the Damghani parcel; right?

A B-4, yes.

Q And what does it show is due for interest?

A For B-4 phase 1 and phase 2 the total shows as $19,424.21.

Q Is there also a number for total due for principal?

A It shows a principal number, but the interest was the only amount that was due at that time.

Q What does that bill show, though, as far as the principal due?

A It shows a total 353,167.50 -- .607 -- .50.

Q Is there any doubt that in 2012 that was the amount of principal due?

A Absolutely because it was not --

Q It wasn't --

A It wasn't interest-only payments during that time period as is reflected on the -- and what you'll find in the tax record at least, what was added to the taxes was solely the interest.

Q Well, when you say that was only due, where are you drawing that from?

A From the previous exhibits that we provided.

Q I'm going to give you a chance to look at that again and show me where --

A Might I see that exhibit then, please?

Q Oh, sure.

(Witness reviews documents)

A Exhibit 7 for B-4, phase 1, the amount that was added -- it says was added to the 2012 taxes is 10,912.46 -- .48.

Q And which column is that, sir?

A That would be the -- I believe it was the 2011.

Q That's just your accounting there that does -- that's not the actual establishment of what's due; right?

A This is what's -- what was actually added to the tax roll.

Q But as far as the assessment documents themselves, is there any document that says interest only? We went over some

other ones that talked about when principal was due 180 days after. Is there any that says that interest only is due forever or the first -- well, I mean, for the first nine years?

(Witness reviews documents)

A I marked it on the copy that I had read.

Q Pardon me?

A I marked it. I do remember marking it on the copy that I reviewed.

Q As we're sitting here right now, though, you're not able to identify a provision in either the resolution or the agreement that says "interest only"?

A I believe line -- or section 3 of 96-04.

Q Resolution 96-04?

A Yup, Exhibit --

Q The one that talks --

A -- 5 is where it discusses the annual payments equal and to simple interest on any unpaid balance shall be due and payable on the anniversary date of the confirmation of this special assessment roll.

Q That, you believe, is the --

A I believe that's the section that deals with the interest only.

Q Now, other --

A Oh. Wait a minute. Actually I'd found it now. Let's see.

Yup. It's actually in the deferred installment. So it's in a -- it's on -- put this back together -- roll A under "deferred installments." Let's see. A payment shall be due annually on the anniversary date of the confirmation of the roll in an amount equivalent to simple interest on any unpaid principal amount. It's section B.

Q So that provision charges interest on any deferred payment; correct?

A Any unpaid principal balance.

Q Unpaid principal balance. So basically it establishes that -- you agree with me that it establishes interest if there's an unpaid principal balance, but it doesn't say that all principal is going to be deferred, does it?

A I think that's dealt with in the -- I am not finding it right now.

Q Well, let's go back to where you were because I think that's a good point. You were looking at subparagraph (b) under "Deferred Installments" -- right? -- of the resolution? And we're talking about, I think, roll A.

A We're talking about the resolution --

Q Roll --

A -- 96-04, roll A document.

Q Roll A; right?

A Yes. That's where I was pointing to.

Q At least look at it with me and see if you agree that it

could be read this way. That subparagraph (a) there under "Deferred Installments" talks about interest -- what the interest rate's going to be?

A Uh-huh; yes.

Q Subparagraph (b) applies that interest rate to the unpaid principal amount; right? It says "and that payment shall be due annually"; correct?

A Yes.

Q And then subparagraph (c) tells when the principal payments will be come due; right? So those three paragraphs all do a different function? Is that a fair reading of that document?

A It talks about principal payments being due -- shall be due upon certain governmental approvals being consistent with the terms of the voluntary special assessment agreement.

Q Correct. Would you agree that that's a fair reading of how that document's supposed to work?

A I think it would cause me to go and look at the voluntary special assessment agreement.

Q I understand. Now, you're not aware of any -- well, let's -- are you -- other than the role and the agreement itself are you aware of any other documents that contractually or by resolution affect how much is due and when it's due?

A There may be some but I'm not -- I couldn't think of them --

I can't think of them at the moment.

Q Well, that's what I'm trying to ferret out, because I'm aware of these, and I think my client takes a different position, which you've probably heard, than what the city does as to what these mean. But we all need to get on the same page at least as to what documents are involved with that process. So that's why I'm trying to identify if you're aware of any other documents that we need --

A I believe we've identified the ones that are attributable or related to this.

Q No other back room, unrecorded agreements or anything else that you're aware of?

A I'm not aware of anything of that sort. I think really where we're looking at in the voluntary special assessment agreement is on page 7 of the document under terms of the special assessment. It talks about the term of the special assessment will not exceed ten years. I think that's what fixes September 7th --

Q Sure.

A -- of 2014 as the date of the balloon payment.

Q Everything has to be done by that date is what that paragraph means; right?

A Unless other things happen, such as that would trigger it otherwise.

Q But that's in the agreement part; right?

A That's in the agreement, which is referred to in the resolution.

Q And that's the agreement that you believe was modified by the agreement with -- between the county treasurer and the city of Kentwood in 2014?

A I believe it was, yes.

Q Now, are you aware of any discussions that occurred with the previous owner back in 2011 or so?

A I mentioned earlier that the owner -- the previous owner did offer the property to the city.

Q Was that as a result of the city saying that principal payments needed to start being made pursuant to the terms of the agreement?

A No.

Q It wasn't any discussion -- do you know what his name was, by the way?

A Mike Damone.

Q Any discussions that you're aware of with him that said the triggering events of the agreement had been reached, it looks like you're going to probably need to start making some payments in addition to interest --

A No.

Q -- on the property?

A Because nothing had occurred of that sort. There was no -- again, as I mentioned earlier, the trigger was development

of the property as at least in my understanding.
Q Did he inform you back in -- inform the city back in 2011 that he couldn't make the payments and was going to stop making tax payments?
A He did.
Q Who did he talk to?
A I believe he -- I was in the meeting with him and the mayor.
Q And the mayor?
A Yes.
Q So would you tell me about that? Just one meeting?
A I think there may have been two.
Q Could you tell me about the first one, what was said?
A He provided what he wanted to sell the property for and asked the city if we would be interested in buying it. And the second meeting I believe was after some -- giving some thought to it we came back and declined.
Q So did you discuss the taxes at all during those meetings?
A Well, he did say that he was not going to be able to pay the taxes.
Q Did you discuss special assessments at all?
A I don't recall that we did.
Q Did he?
A He may have mentioned knowing that the balloon payment was coming up in 2014, but I don't recall that that -- it was basically before that was going to be when he was going to

be past due so far enough that it would have to go to tax sale.
Q I think I covered it, but I want to make sure. I may not have got entirely clear. Other than this special assessment that -- of some $300,000 that supposedly was carried over or extended pursuant to contract between the county treasurer and the city, are there any other special assessments that are due on this property, either now or in the future on --
A Only the construction special assessments are due as future installments.
Q That's the one special assessment covered by the agreement with the treasurer; correct?
A That is correct.
Q There was a landscape special assessment --
A Uh-huh (affirmative).
Q -- also that's -- but that's no longer due and payable for this property; right?
A I believe that's correct. It may be billed, but it may not be due and payable.
Q And it's not payable -- it's not an assessment in the future either against this property?
A It is not a future assessment that would be billed -- or an assessment that would be billed in the future.
Q Because that's also another one of the tax cloud -- or title clouds on the property that we need to get cleared. I think

I'm getting close. You want to take a lunch break or you want me to --
A No, let's just keep going.
Q -- finish and get done with you?
A Let's just keep going.
MR. DONALD VISSER: Same with you?
MR. OTIS: Yup.
MR. DONALD VISSER: I'd like the extended spreadsheet for the ledger.
MR. OTIS: Yup.
MR. DONALD VISSER: And also I'd like the tax bills for B-1, B-2 and B-3 for 2012, 2013, '14 and '15. And '16?
MR. DONOVAN VISSER: (Nodding head in affirmative)
MR. DONALD VISSER: That's right. We're in '16. Yes. So '12 through '16. I don't need them before then.
A So which parcels again?
Q B-1, 2 and 3. I don't know if you have those or if we have to run over to the treasurer's -- I mean, the -- yeah, it would be the treasurer's.
A We would get them from the treasurer.
Q Or they're in the big boxes. I don't know.
THE WITNESS: Through 2016?
MR. OTIS: -- '16.
THE WITNESS: Well, that's the tax bills, but I

want to make sure that I understand --
MR. OTIS: The trial balance?
THE WITNESS: Yeah.
MR. OTIS: What do you want the trial balance through, Don?
MR. DONALD VISSER: I'd like it through present.
MR. OTIS: Anything else?
MR. DONALD VISSER: Nope, I think that's it.
(Off the record)
(Deposition Exhibit 13 and 14 marked)
Q You've given me now a couple of documents. First of all, sir, one of them is what's been marked as Exhibit 13. It also has a "B-1" that somebody handwrote in blue on, which I think is your counsel. I assume that wasn't on there to start with.
A I wrote it on to identify because what you have there is the tax billing history. And there's three different printouts. One is for properties that have been designated as B-1, B-2 and B-3, one each, in that packet.
Q Now, I assume that for -- that this is internal compilation?
A It's right off of our tax system.
Q Now, I assume for each of those parcels, though, that there's documents that look like Exhibit 12; correct?
A I would say that they're -- I'd have to check. There probably is. It was just going to be tak- -- it would take

more time to get it.
Q I think what we'll do, I'm going to conclude the deposition today but ask you to provide those through your counsel for the years -- the individual tax bills for those B-1, B-2 and B-3, same years for --
A This is actually a special assessment billing, not a tax billing.
Q So that's what I'll be looking for, is --
A You're looking for this (indicating)?
Q For the special assessment billing for those years for the parcels.
A Okay.
Q And if you do them at your leisure over the next week or so and give them to your counsel.
MR. OTIS: For what years now, Don?
MR. DONALD VISSER: '12 through '16 for the three --
A So you're looking actually for the special assessment billing rather than the billing?
Q I probably slipped up in what I was saying.
A No worries.
Q Thank you.
A So what you have here is the tax billing in Exhibit -- 13 is it?
Q And there would be something like this, if I had said the

right word, for special assessments maybe?
A Actually we're headed toward, I think, individual pages like that is my guess.
Q Thank you. Appreciate your efforts in that and I'm sorry I used the wrong terminology.
A No worries.
Q Now, Exhibit 14 is the extended spreadsheet of the prior sheet?
A Yes.
Q And I am -- oh, man. I forgot the numbers I'm looking for.
A 141 is the last three numbers, so it's about two-thirds of the way down the second page.
Q And so on this one we see that the same number extends all of the way through June 30 of 2014 of the 1 million 523; is that correct?
A It started out as 1 million 585, changed in June of '09.
Q And then continued --
A Yup.
Q -- with that number until June of 2005; correct?
A Until June of --
Q Of '15?
A -- 2014, and then '15 -- 2015 year was when the payment schedules were put in place. And so payments started to come in from other --
Q What caused the change between 2008 and 2009?

A I'm not sure.
Q Was it a payment or a reduction in -- a recapture of unspent funds?
A I'm not sure, but there was one -- one of them that paid off. Let's see my earlier document.
(Witness reviews documents)
THE WITNESS: This one, 9?
MR. OTIS: Page 5, yeah.
A I'm not sure what the reason was. I'll have to look at -- I'll have to do some research, I guess. But it changed. My guess is that the amount, it is related to an adjustment, but I'm not sure.
Q How would we find that out?
A I'd have to research it.
Q Would there be another detail sheet that would provide that information?
A It may.
Q Because this appears to be a summary sheet?
A This is the general ledger; at the general ledger level. So it just shows what the account balance was year to year.
Q It's possible to ask for the same thing with detail? That would probably expand it by volumes, but --
A Well, I guess the question would be -- it would probably be only for that particular account that you'd be looking for, so I'd have to see what we can run -- we could run from our

system on that. In other words, I wouldn't suggest running the entire fund. What I would suggest was -- is if you're interested in just seeing how that particular account changed, we may be able to run that.
Q I will communicate, if it's acceptable to you, with your -- after I take a look at this a little bit more -- detail with your counsel.
A Uh-huh (affirmative).
Q All right. And then the -- after 2014 to 2015 the amount dropped again. Was that because of payments?
A Yes. That would be because the payment schedules were put in place and so payments were actually being made at that point.
Q Now, you indicated you did the audit of the special assessment revolving fund or do you have an outside auditor that looks at those?
A We have an outside auditor that provides audit services and provides us with financial statements on an annual basis.
Q And who is that?
A Presently it's Vredeveld Haefner LLC.
Q And who was it --
A Previously it was Rehmann Robson.
Q In the years from 2004 through present has that independent or outside auditor ever raised any questions about the special assessment revolving fund?

A **No.**
Q Do you know of any other instances where one owner in a special assessment district has been able to negotiate a new repayment schedule?
A **The ordinance provides for either payment in full or a ten-year payment schedule on any other type of assessment, but this is different than those.**
Q But in this instance Holland Home negotiated a different payment schedule before the ordinance was changed; right?
A **Well, the ordinance was not changed. It was just simply an amendment to their agreement.**
Q And that included one part of the Ravines or the Pfeiffer Woods Drive assessment?
A **They have two payment schedules. One is the Breton North and the other is their portion of the Ravines.**
Q Do you know of any other situation other than this where one property's within a special assessment district has been able to negotiate a different schedule than what the assessment -- special assessment provided?
A **I'm not aware of any.**
Q I thought I heard you indicate that your interpretation of the assessment was that the trigger for the principal was development of the property?
A **Whatever steps moved forward with development. That's my understanding of it.**

Q Now, the Damghani parcel B-4 isn't being developed, is it?
A **No.**
Q Why is the city seeking to collect principal now if the goal was to defer until development?
A **The ten-year term -- if it had developed prior to September 7th of 2014, some portion of it might have been due -- or would have been due and payable. It's because we're past the September 7th, 2014, date, which was the term of the voluntary special assessment agreement.**
Q So your belief that prior to the ten years the only thing that would have triggered it is development?
A **Right; that's correct.**
Q And development of the parcel or development of any of the parcel within the district?
A **They would have had probably to move forward with a phase, an entire phase, in order to move forward with development.**
Q And what do you mean by "phase"?
A **Well, as we saw on the earlier one there's one of them that has four phases, the rest have two phases, designated phases as part of the -- probably as part of the planned unit development approval.**
Q So then it would be moving forward with one of those phases that would trigger it?
A **That would be what I would believe.**
Q Other than a couple follow-ups that I'll do with your

counsel, including those tax bills from the -- I mean the assessment bills --
A **Yes.**
Q -- special assessment bills from your counsel, I am finished and I much appreciate your time, sir.
A **Very well. Thank you.**
MR. DONALD VISSER: Thank you.
MR. OTIS: I don't have any questions.
(Deposition concluded at 2:00 p.m.)

-0-0-0-

I certify that this transcript, consisting of 112 pages, is a complete, true and correct record of the testimony of Tom Chase held in this case on November 29, 2016.

I also certify that prior to taking this deposition, Tom Chase was duly sworn to tell the truth.

December 12, 2016

Marie de la Vega

Marie De La Vega, CER 7614
Notary Public, State of Michigan
County of Kent
My commission expires 05/2017
Network Reporting Corporation
2604 Sunnyside Drive
Cadillac, Michigan 49601-8749

Cheryl Poley

From: Jeff Sluggett
Sent: Thursday, June 26, 2014 3:51 PM
To: Ken.Parrish@kentcountymi.gov
Cc: Chase, Tom; Rich Houtteman
Subject: Kentwood Matter
Attachments: Kentwood-KCT-B3-B and B-4 - Amendment to Voluntary SAD Agreement (00029024).docx; Kentwoood - Resolution to Extend Payment Term -KCT-B3-B and B-4 (00029022).docx

Ken:

Attached for your review are ***drafts*** of the documentation which I anticipate using for the extension of payment terms which we've discussed.

I know that there will be some provisions/additions/subtractions to these, but this should give you an overview of the approach I'd recommend taking. The documentation for the Holland Home portion of the SAD will be treated in a similar fashion.

I have not included the various exhibits, etc. and those will of course need to be finalized over the next couple of weeks. Still, this should give your office and the City an opportunity to start fine tuning.

Would be glad to discuss questions or concerns. Otherwise, will plan to finalize by end of next week so you can review before City Commission meeting on the 15th of July.

Thanks.

Jeff

Jeffrey V.H. Sluggett
Direct Dial: (616) 965-9341
Direct Fax: (616) 965-9351
Email: jsluggett@bsmlawpc.com

June 29, 2015

Mr. Kenneth Parrish
Kent County Treasurer
Kent County Administration Building
300 Monroe Ave. NW
Grand Rapids, MI 49503-2288

Re: City of Kentwood / Ravines Neighborhood B1
Amendment to Voluntary Special Assessment/Development Agreement

Dear Ken:

Enclosed for your records is an original *Amendment to Voluntary Special Assessment/Development Agreement (Ravines Neighborhood B1)* recorded with the Kent County Register of Deeds on June 23, 2015. Also enclosed is a copy of *A Resolution to Extend Payment Terms for a Confirmed Special Assessment District (Ravines Neighborhood B1)*, adopted by the Kentwood City Commission on June 16, 2015.

Please contact us should there be any questions. Thank you for all your help on this matter.

Very truly yours,

Jeffrey V.H. Sluggett

Enclosures

{05939-004-00044121.1}

AMENDMENT TO VOLUNTARY SPECIAL ASSESSMENT/DEVELOPMENT AGREEMENT (RAVINES NEIGHBORHOOD B1)

This Amendment to Voluntary Special Assessment/Development Agreement is dated June 16, 2015 ("Amendment") between the City of Kentwood, a Michigan municipal corporation, the address of which is 4900 Breton Avenue, SE, Kentwood, Michigan 49508 ("City") and the Kent County Treasurer, a Michigan county official, whose address is Kent County Administration Building, 300 Monroe Avenue NW, Grand Rapids MI 49503 ("KCT" or "Owner").

RECITALS

A. On September 7, 2004, 44th/Shaffer Avenue, LLC ("44th/Shaffer") and the City entered into a Voluntary Special Assessment/Development Agreement ("Agreement") to facilitate 44th/Shaffer's development of property as a residential planned unit development. The Agreement was recorded with the Kent County Register of Deeds at Instrument No. 20040917-0125700 on September 17, 2004.

B. The Agreement was subsequently amended in 2005, which amendment was recorded with the Kent County Register of Deeds at Instrument No. 20050405-0039643 on April 5, 2005, in recognition of the conveyance of certain real property.

C. Subsequently, the owner of a tract of real property (i.e., neighborhood) subject to the Agreement became delinquent in paying property taxes and special assessments due and owing on its property. As a result, and in accordance with Michigan's General Property Tax Act, Act No. 206 of the Public Acts of 1893, as amended, the property was forfeited and a judgment of foreclosure was entered with respect to the property on March 31, 2015. As a result of the foreclosure, the property is now titled to the KCT.

D. The real property owned by the KCT remains subject to the terms of the Agreement, as amended, is legally described on attached **Exhibit A**, which is incorporated by reference ("Property").

E. The obligations set forth in the Agreement were covenants running with the land which bind all successors in title. The KCT is the successor in title to 44th/Shaffer of the Property. The Agreement provides, in part, that certain improvements benefitting the Property were to be financed through the establishment by the City of a special assessment district.

F. In accordance with its adopted ordinances and state law, the City Commission, on September 7, 2004, adopted Resolution No. 96-04 which established the special assessment district referenced above and confirmed a special assessment roll for the district (the special assessment roll as subsequently amended referred to herein as the "Roll").

G. A balloon payment in the principal amount of $403,620 plus accrued interest is due on September 7, 2015 under the terms set forth as part of the Roll and the Agreement.

H. As permitted under Section 2(e) of the Agreement, and without re-confirming the district's special assessment roll, the City Commission has determined that extending the term of years for payment of the district's special assessment with respect to the Property will serve a valuable public purpose including, without limitation, making the Property more marketable, enhancing economic development opportunities within the City, and facilitating the maintenance of the Property on the tax rolls.

TERMS AND CONDITIONS

NOW, THEREFORE, for good and valuable consideration in and referred to by this agreement, the sufficiency of which the parties acknowledge, the parties agree as follows:

1. The parties affirm that the Recitals set forth above are correct, form an integral part of this Amendment, and are incorporated herein by reference.

2. Section 2(g) of the Agreement is amended to read in its entirety as follows:

(g) Allocation. Notwithstanding any provision in this Agreement to the contrary, allocation of the special assessment shall be structured as follows:

(1) Installment payments for the Property subject to this Amendment shall be payable in accordance with the schedule attached as **Exhibit B** to this Amendment, which terms are incorporated by reference. Provision shall be made such that if any installment is not paid when due, then penalties shall be applied as are collected on delinquent ad valorem taxes.

(2) It is an express condition of this Agreement that the Owner waives any right it may have under state or local law, rule or regulation to any further allocation or apportionment of special assessments of the Owner-Contracted Infrastructure Improvements (among lots, units, or other divisions of property) beyond that provided for herein or as otherwise provided for in the City Commission resolution confirming the Roll for the Owner-Contracted Infrastructure Improvements, as amended.

(3) Owner agrees that the special assessment lien imposed against the Property for the Owner-Contracted Infrastructure Improvements shall not be satisfied or released as to the Property or any part thereof until such time as the entire aforesaid special assessment is paid in full.

(4) Notwithstanding anything herein to the contrary, the unpaid balance may be prepaid in whole without penalty or premium.

20150623-0053765
Mary Hollinrake P:3/7 2:03PM
Kent Cnty MI Rgstr 06/23/2015 SEAL

3. The parties acknowledge and agree that the City, consistent with the terms of the Agreement and City Ordinance No. 167, as amended, has reserved to itself the right to extend the term of years for payment of the above-described special assessment without changing the date of the confirmation of the Roll or exposing the City to a challenge of the special assessment or Roll, as amended, and that it is the parties' intent that all challenges, claims or causes of action to any special assessment associated with the Property or the Roll are released and waived by the KCT, its successors and assigns as against the City. Without limiting the foregoing, the KCT, on behalf of his office and his successors and assigns, waives and releases any claim he may have against the City predicated upon the existence of other resolutions, amendments, agreements, special assessments, etc. which impact the special assessment or Roll as amended herein.

4. Except as modified herein, the Agreement shall be and remain binding and in effect as between the parties, their successors and assigns.

5. The obligations and pledges contained in this Amendment are covenants that run with the land, and shall bind all successors in title. This Amendment shall be recorded with the Kent County Register of Deeds. The City shall be responsible for all costs associated with recording the Amendment.

6. The parties agree to execute such other documents as either of them may reasonably request to fully implement this Amendment.

7. No other party is intended as a beneficiary of this Amendment.

The parties have caused this Amendment to be executed as of the date first written above.

CITY OF KENTWOOD

By: _____
Stephen Kepley, Mayor

By: _____
Dan Kasunic, City Clerk

STATE OF MICHIGAN
COUNTY OF KENT
Acknowledged before me in Kent County, Michigan on June 18, 2015, by Stephen Kepley and Dan Kasunic, respectively the Mayor and Clerk of the City of Kentwood, a Michigan home rule city, on behalf of the city.

Mary L. Bremer
* Mary L. Bremer
Notary Public, Kent County, Michigan
Acting in Kent County, Michigan
My commission expires: 08-09-2016

MARY L. BREMER
Notary Public, State of Michigan
Qualified in Kent County
Commission Expires August 9, 2016

KENT COUNTY TREASURER

STATE OF MICHIGAN

20150623-0053765
Mary Hollinrake P:4/7 2:03PM
Kent Cnty MI Rgstr 06/23/2015 SEAL

KENT COUNTY TREASURER

By: Kenneth D. Parrish
Kenneth Parrish

STATE OF MICHIGAN
COUNTY OF KENT

Acknowledged before me in Kent County, Michigan on June 23, 2015, by Kenneth Parrish, the Treasurer of Kent County, Michigan, for that office.

Rose Heys
*

Notary Public, Kent County, Michigan
Acting in Kent County, Michigan
My commission expires: 5/26/2020

*Name must be typed or printed in black in beneath signature.

Drafted by:
Jeff Sluggett
Bloom Sluggett Morgan, PC
15 Ionia Ave, SW, Suite 640
Grand Rapids, MI 49503
(616) 965-9341

When recorded return to:
Dan Kasunic, Clerk
City of Kentwood
4900 Breton Avenue, SE
PO Box 8848
Kentwood, MI 49518-884

NO TRANSFER TAX IS OWED BECAUSE THIS AMENDMENT DOES NOT CONVEY ANY REAL PROPERTY.

20150623-0053765
Mary Hollinrake P:5/7 2:03PM
Kent Cnty MI Regtr 06/23/2015 SEAL

EXHIBIT A

REAL PROPERTY LEGAL DESCRIPTION

Parcel B-1: 41-18-22-426-001

PART OF E ½ COM AT E ¼ COR TH S 3D 35M 29S E ALONG E SEC LINE 60.07 FT TH S 88D 09M 27S W 40.01 FT TO W LINE OF SHAFFER AVE & BEG OF THIS DESC – TH S 3D 10M 02S E ALONG SD W LINE 1263.17 FT TH S 89D 54M 32S W 629.94 FT TH S 3D 10M 02S E 60.95 FT TH S 90D 00M 00S W 708.24 FT TH N 45D 00M 00S W 67.88 FT TH S 90D 00M 00S W 530.0 FT TH N 50D 00M 00S W 235.0 FT TH N 44D 18M 31S E 199.74 FT TH N 77D 07M 45S E 307.02 FT TH N 41D 46M 39S E 334.95 FT TH N 8D 47M 09S E 226.61 FT TH N 11D 02M 04S W 245.78 FT TH N 25D 03M 50S E 281.40 FT TO A PT ON E&W ¼ LINE SD PT BEING 1290.96 FT S 89D 49M 02S W FROM E ¼ COR TH N 70D 13M 01S E 266.80 FT TH S 75D 46M 26S E 333.65 FT TH S 69D 14M 04S E 227.04 FT TH N 88D 09M 27S E 467.76 FT TO BEG * SEC 22 T6N R11W 47.77 A

Pfeiffer Woods Drive
Special Assessment District
Proposed Principal & Interest Payments

Ravines PUD Neighborhood B1

Initial principal balance	$ 403,620.00
Interest rate	5.50%
# of days in year	365
Calculate initial interest from	9/7/2014
Target annual payment amount	$ 54,000.00

Payment Date	Interest Payment	Principal Payment	Total Payment	Outstanding Principal
9/7/2014				$ 403,620.00
9/7/2015	$ 22,199.10	$ 31,800.90	$ 54,000.00	$ 371,819.10
9/7/2016	$ 20,506.08	$ 33,493.92	$ 54,000.00	$ 338,325.18
9/7/2017	$ 18,607.88	$ 35,392.12	$ 54,000.00	$ 302,933.06
9/7/2018	$ 16,661.32	$ 37,338.68	$ 54,000.00	$ 265,594.38
9/7/2019	$ 14,607.69	$ 39,392.31	$ 54,000.00	$ 226,202.07
9/7/2020	$ 12,475.20	$ 41,524.80	$ 54,000.00	$ 184,677.27
9/7/2021	$ 10,157.25	$ 43,842.75	$ 54,000.00	$ 140,834.52
9/7/2022	$ 7,745.90	$ 46,254.10	$ 54,000.00	$ 94,580.42
9/7/2023	$ 5,201.92	$ 48,798.08	$ 54,000.00	$ 45,782.34
9/7/2024	$ 2,524.93	$ 45,782.34	$ 48,307.27	$ -
	$ 130,687.27	$ 403,620.00	$ 534,307.27	

2064.xlsx

6/2/2015

Cheryl Poley

From:	Jeff Sluggett
Sent:	Thursday, July 10, 2014 10:01 AM
To:	Ken.Parrish@kentcountymi.gov
Cc:	Rich Houtteman ()
Subject:	FW: Kentwood-Ravines Neighborhood B3-B and B4 Resolution & Amendment
Attachments:	Kentwood- Ravines Neighborhood B3-B and B4 Resolution Amendment (00029510).PDF

Ken: This is going in next week's agenda packet for Kentwood's Commission. I've asked that they approve Thursday night. Assuming they do, we'll get copies for you signature on Wednesday if you are available.(?)

Thanks.

Jeff

From: Sandra Cameron
Sent: Thursday, July 10, 2014 9:58 AM
To: Jeff Sluggett
Subject: Kentwood-Ravines Neighborhood B3-B and B4 Resolution & Amendment

Cheryl Poley

From: Jeff Sluggett
Sent: Monday, April 06, 2015 1:36 PM
To: Parrish,Kenneth
Subject: RE: Questions

Thanks.

From: Parrish,Kenneth [mailto:ken.parrish@kentcountymi.gov]
Sent: Monday, April 06, 2015 12:04 PM
To: Jeff Sluggett
Subject: Re: Questions

1. land sale proceeds account

2. You are correct.

Ken

Sent from my iPhone

On Apr 6, 2015, at 10:51 AM, Jeff Sluggett <jsluggett@bsmlawpc.com> wrote:

> Ken: Sorry to bother you but had two quick questions if you have a moment --
>
> 1. The fund into which delinquent property revenues (from foreclosure sales) is deposited is called what?
>
> 2. My recollection is that so long as the overall sales revenues from the annual foreclosure process exceed taxes and special assessments due, that County typically does not seek reimbursement for taxing units, is that correct?
>
> Thanks.

Jeffrey V.H. Sluggett

<image003.jpg>
15 Ionia Ave. SW, Suite 640
Grand Rapids, MI 49503
(616) 965-9340

Direct Dial (616) 965-9341
Direct Fax (616) 965-9351
jsluggett@bsmlawpc.com

Ken, I'm really hoping to get the amendment for neighborhoods B3-B and B-4 to the Kent County Register of Deeds tomorrow if possible so changes can be made to the County's auction website (if there is one and as relevant) and to the City's records.

~~Holland Home is not, I believe, as pressing in terms of timing, and after I get the certified resolutions and~~ amendments back for those properties I will mail the originals to you Jack, asking that you return to me for recording (or that you proceed to get recorded with copies to me [I'm fine either way]).

My assistant, Sandra, has been asked to coordinate the above and so feel free to direct questions her way.

Thanks again to everyone for all of your help on this project.

Jeff

Jeffrey V.H. Sluggett

BLOOM SLUGGETT MORGAN

15 Ionia Ave. SW, Suite 640
Grand Rapids, MI 49503
(616) 965-9340

Direct Dial (616) 965-9341
Direct Fax (616) 965-9351
jsluggett@bsmlawpc.com

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Jeffrey V.H. Sluggett

<image003.jpg>
15 Ionia Ave. SW, Suite 640
Grand Rapids, MI 49503
(616) 965-9340

Direct Dial (616) 965-9341
Direct Fax (616) 965-9351
jsluggett@bsmlawpc.com

Cheryl Poley

From: Jeff Sluggett
Sent: Tuesday, May 26, 2015 5:05 PM
To: Alex Santos
Subject: FW: B1 Tax Foreclosure SAD Restructure
Attachments: Damone.xlsx; Voluntary SAD Amendment B3-B4 2014.pdf; Ravines PP Presentation 2014.pptx

PPT

From: Houtteman, Rich [mailto:HouttemanR@ci.kentwood.mi.us]
Sent: Monday, April 27, 2015 1:46 PM
To: Sheldon, Laurie; 'ken.parrish@kentcounty.org'
Cc: Jeff Sluggett; Chase, Tom; Ring, Debby; Johnson, Andy; Kasunic, Dan; 'Terpstra,Denise'
Subject: B1 Tax Foreclosure SAD Restructure

Good Afternoon,

The attachments (I believe) provide clues to how we proceed with the restructuring of B-1. Tom stopped by and was wondering if it may make more sense to have a 9 year payback so that all the SADs' get paid back in full at the same time.

As you may recall, we were unable to restructure B1 because it was not yet in the Tax Foreclosure process. I suppose we should get clarification of the deadline when the current property owner has lost all rights to the property. We should also establish when City Commission action is desired to enact the restructuring and have filed with the County.

Ok. Thanks for your input in advance!

Rich

44th Shaffer/LLC

(Damone Property)

2013	41.18.22.426.001 B-1	41.18.22.276.001 B-4	Total
2013 Delinquent Taxes	57,412.77	45,543.73	102,956.50
Construction Balloon Due 9/1/2014	403,600.00	353,167.50	756,767.50
Landscape Balloon Due 1/1/2014	38,615.80	33,788.82	72,404.62
Landscape Interest Due 2014	3,185.80	2,787.58	5,973.38
Construction Interest Due 2014	22,199.10	19,424.21	41,623.31
	525,013.47	454,711.84	**979,725.31**

2012	41.18.22.426.001 B-1	41.18.22.276.001 B-4	Total
2012 Summer Tax	25,055.42	18,131.92	43,187.34
2012 Winter Tax	12,574.62	10,165.89	22,740.51
SA Construction (added to WTAX)	98,712.77	97,121.05	195,833.82
SA Landscape (added to WTAX)	6,371.60	5,575.16	11,946.76
	142,714.41	130,994.02	**273,708.43**

2011	41.18.22.426.001 B-1	41.18.22.276.001 B-4	Total
2011 Summer Tax	24,262.64	17,558.20	41,820.84
2011 Winter Tax	8,093.54	5,857.05	13,950.59
	32,356.18	23,415.25	**55,771.43**

Cheryl Poley

From: Jeff Sluggett
Sent: Thursday, May 28, 2015 5:22 PM
To: Parrish,Kenneth
Subject: RE: Pfeiffer Woods Neighborhood B-1

Thanks Ken, this will help

From: Parrish,Kenneth [mailto:ken.parrish@kentcountymi.gov]
Sent: Thursday, May 28, 2015 2:57 PM
To: Jeff Sluggett; Rich Houtteman (houttemanr@ci.kentwood.mi.us)
Cc: Sheldon, Laurie; Chase, Tom
Subject: RE: Pfeiffer Woods Neighborhood B-1

All,

The date of judgment of foreclosure is March 31, 2015.

$383,397.30 is the minimum bid for the first auction. That includes taxes, special assessments, local administration fees and interest, and delinquent fees and interest. The special assessments break down as follows:

2011: No assessments

2012: Construction $98,712.77
Landscape $ 6,371.60

2013: Construction $22,199.10
Landscape $ 3,185.80

2014: Landscape $44,568.45

I agree with the other statements.

Ken

---

ken.parrish@kentcountymi.gov
Kenneth D. Parrish CPA, CGMA
Kent County Treasurer
Treasurer's Office
(616) 632-7513

From: Jeff Sluggett [mailto:jsluggett@bsmlawpc.com]
Sent: Wednesday, May 27, 2015 5:02 PM
To: Rich Houtteman (houttemanr@ci.kentwood.mi.us)

Cheryl Poley

From:	Jeff Sluggett
Sent:	Tuesday, June 09, 2015 10:42 AM
To:	Johnson, Andy
Subject:	RE: Ravines B1 Neighborhood

Thanks.

From: Johnson, Andy [mailto:johnsona@ci.kentwood.mi.us]
Sent: Tuesday, June 09, 2015 10:40 AM
To: Jeff Sluggett; Ken.Parrish@kentcountymi.gov; Houtteman, Rich
Cc: Sheldon, Laurie; Chase, Tom
Subject: RE: Ravines B1 Neighborhood

I have verified the legal and the parcel numbers to make sure they are correct. They match our tax description. I also sketched it to make sure the parcel according to the legal looked correct and it does.

Andy Johnson, MMAO
Deputy Assessor
City of Kentwood

From: Jeff Sluggett [mailto:jsluggett@bsmlawpc.com]
Sent: Monday, June 08, 2015 5:07 PM
To: Ken.Parrish@kentcountymi.gov; Houtteman, Rich
Cc: Sheldon, Laurie; Chase, Tom; Johnson, Andy
Subject: Ravines B1 Neighborhood

Am attaching my initial drafts of the proposed Resolution to extend the payment terms for the SAD for Neighborhood B1, and to amend the Voluntary SAD Agreement. Please review the legal description, numbers, etc. The pattern follows that which we used last year, but also acknowledges that the history on this parcel is different. Anyway, I'll wait for your comments.

As an aside, please look at what I calculated to be the balloon payment on the P&I for the SAD (Recital G in Amendment). I used that figure based on 44th Shaffer/LLC worksheet I got from the City in April. If I'm mistaken feel free to mark up and send back to me.

Would appreciate any comments as soon as possible. Thanks.

Jeff

Jeffrey V.H. Sluggett

BLOOM SLUGGETT MORGAN

15 Ionia Ave. SW, Suite 640 Direct Dial (616) 965-9341

From: Parrish,Kenneth [mailto:ken.parrish@kentcountymi.gov]
Sent: Tuesday, June 09, 2015 4:39 PM
To: Jeff Sluggett
Cc: Houtteman, Rich; Sheldon, Laurie; Chase, Tom; Johnson, Andy
Subject: Re: Final Drafts ?

I reviewed yesterday's version and thought they looked fine. I'm sure today's version is just as fine.

Ken

Sent from my iPhone

On Jun 9, 2015, at 4:16 PM, Jeff Sluggett <jsluggett@bsmlawpc.com> wrote:

> Am attaching what I think will be the final drafts.
>
> Changes made to what you were sent yesterday were minimal.
>
> Anyway, if you can get your comments/questions to me by early afternoon tomorrow that will allow us to make any final changes and get to City Clerk for inclusion in City Commission packet. Particularly, I'd like Tom and Laurie to weigh in on the balloon amount shown as due and owing in Recital "G" of the Amendment, which is to be spread as part of the Payment Schedule.
>
> Ken, if you see anything of concern please advise.
>
> Thanks.
>
> Jeff

Jeffrey V.H. Sluggett

BLOOM SLUGGETT MORGAN

15 Ionia Ave. SW, Suite 640
Grand Rapids, MI 49503
(616) 965-9340

Direct Dial (616) 965-9341
Direct Fax (616) 965-9351
jsluggett@bsmlawpc.com

EXHIBIT 15

A 4 15

20140716-0055364
Mary Hollinrake P 1/8 1 11PM
Kent Cnty MI Rgstr 07/16/2014 SEAL

AMENDMENT TO VOLUNTARY SPECIAL ASSESSMENT/DEVELOPMENT AGREEMENT (RAVINES NEIGHBORHOOD B3-B AND B4)

This Amendment to Voluntary Special Assessment/Development Agreement is dated July 15, 2014 ("Amendment") between the City of Kentwood, a Michigan municipal corporation, the address of which is 4900 Breton Avenue, SE, Kentwood, Michigan 49508 ("City") and the Kent County Treasurer, a Michigan county official, whose address is Kent County Administration Building, 300 Monroe Avenue NW, Grand Rapids MI 49503 ("KCT" or "Owner").

RECITALS

A On September 7, 2004, 44th/Shaffer Avenue, LLC ("44th/Shaffer") and the City entered into a Voluntary Special Assessment/Development Agreement ("Agreement") to facilitate 44th/Shaffer's development of property as a residential planned unit development. The Agreement was recorded with the Kent County Register of Deeds at Instrument No. 20040917-0125700 on September 17, 2004.

B. The Agreement was subsequently amended in 2005, which amendment was recorded with the Kent County Register of Deeds at Instrument No. 20050405-0039643 on April 5, 2005, in recognition of the purchase of additional real property by 44th/Shaffer.

C. Subsequently, the owners of two large tracts of real property (i.e., neighborhoods) subject to the Agreement became delinquent in paying property taxes and special assessments due and owing on their respective properties. As a result, and in accordance with Michigan's General Property Tax Act, Act No. 206 of the Public Acts of 1893, as amended, the properties were forfeited and judgments of foreclosure were entered with respect to each of the properties on March 31, 2014. As a result of the foreclosure, the properties are now titled to the KCT.

D. The real properties owned by the KCT, and which remain subject to the terms of the Agreement, as amended, are legally described on attached **Exhibit A**, which is incorporated by reference (collectively referred to herein as the "Property").

E. The obligations set forth in the Agreement were covenants running with the land, and which bind all successors in title. The KCT is the successor in title to 44th/Shaffer of the Property. The Agreement provides, in part, that certain improvements benefitting the Property were to be financed through the establishment by the City of a special assessment district.

F. In accordance with its adopted ordinance and state law, the City Commission, on September 7, 2004, adopted Resolution No. 96-04 which established the special assessment

20140716-0055364
Mary Hollinrake P 2/8 1 11PM
Kent Cnty MI Rgstr 07/16/2014 SEAL

district referenced above and confirmed a special assessment roll for the district (the special assessment roll as subsequently amended referred to herein as the "Roll").

G. A balloon payment on the outstanding principal and interest attributable to the Property in the amount of $791,210.98 is due on September 7, 2014 under the terms set forth as part of the Roll and the Agreement, allocated as follows:

Neighborhood	Principal	Interest	Total
B3-B	$396,795.51	$21,823.76	$418,619.27
B4	$353,167.50	$19,424.21	$372,591.71
Total	$749,963.01	$41,247.97	$791,210.98

H. As permitted under Section 2(e) of the Agreement, and without re-confirming the district's special assessment roll, the City Commission has determined that extending the term of years for payment of the district's special assessment with respect to the Property will serve a valuable public purpose including, without limitation, making the Property more marketable at public auction by the foreclosing governmental unit, enhancing economic development opportunities within the City and facilitating the maintenance of the Property on the tax rolls.

TERMS AND CONDITIONS

NOW, THEREFORE, for good and valuable consideration in and referred to by this agreement, the sufficiency of which the parties acknowledge, the parties agree as follows:

1. The parties affirm that the Recitals set forth above are correct, form an integral part of this Amendment, and are incorporated herein by reference.

2. Section 2(g) of the Agreement is amended to read in its entirety as follows:

(g) Allocation. Notwithstanding any provision in this Agreement to the contrary, allocation of the special assessment shall be structured as follows:

(1) Installment payments for the Property subject to this Amendment shall be made in accordance with the schedules attached as **Exhibit B** to this Amendment, which terms are incorporated by reference. Provision shall be made such that if any installment is not paid when due, then penalties shall be applied as are collected on delinquent ad valorem taxes.

(2) It is an express condition of this Agreement that the Owner waives any right it may have under state or local law, rule or regulation to any further allocation or apportionment of special assessments of the Owner-Contracted Infrastructure Improvements (among lots, units, or other divisions of property) beyond that provided for herein or as otherwise

20140716-0055364
Mary Hollinrake P 3/8 1 11PM
Kent Cnty MI Rgstr 07/16/2014 SEAL

provided for in the City Commission resolution confirming the Roll for the Owner-Contracted Infrastructure Improvements, as amended.

(3) Owner agrees that the special assessment lien imposed against the Property for the Owner-Contracted Infrastructure Improvements shall not be satisfied or released as to the Property or any part thereof until such time as the entire aforesaid special assessment is paid in full.

(4) Notwithstanding anything herein to the contrary, the unpaid balance may be prepaid in whole without penalty or premium.

3. The parties acknowledge and agree that the City, consistent with the terms of the Agreement and City Ordinance No. 4-67, as amended, has reserved to itself the right to extend the term of years for payment of the above-described special assessment without changing the date of the confirmation of the Roll or exposing the City to a challenge of the special assessment or Roll, as amended, and that it is the parties' intent that all challenges, claims or causes of action to the special assessment or Roll are released and waived by the KCT, its successors and assigns as against the City. Without limiting the foregoing, KCT, on behalf of his office and his successors and assigns, waives and releases any claim he may have against the City predicated upon the existence of other resolutions, amendments, etc. impacting the special assessment or Roll.

4. Except as modified herein, the Agreement shall be and remain binding and in effect as between the parties, their successors and assigns.

5. The obligations under this Amendment are covenants that run with the land, and shall bind all successors in title. This Amendment shall be recorded with the Kent County Register of Deeds. The City shall be responsible for all costs associated with recording the Amendment.

6. The parties agree to execute such other documents as either of them may reasonably request to fully implement this Amendment.

7. No other party is intended as a beneficiary of this Amendment.

The parties have caused this Amendment to be executed as of the date first written above.

(Remainder of page left intentionally blank.)

20140716-0055364
Mary Hollinrake P 4/8 1 11PM
Kent Cnty MI Rgstr 07/16/2014 SEAL

CITY OF KENTWOOD

By: _____
Stephen Kepley, Mayor

By: _____
Dan Kasunic, City Clerk

MARY L. BREMER
Notary Public, State of Michigan
Qualified in Kent County
Commission Expires August 9, 2016

STATE OF MICHIGAN
COUNTY OF KENT
Acknowledged before me in Kent County, Michigan on July 16, 2014, by Stephen Kepley and Dan Kasunic, respectively the Mayor and Clerk of the City of Kentwood, a Michigan home rule city, on behalf of the city.

Mary L. Bremer
*

Notary Public, Kent County, Michigan
Acting in Kent County, Michigan
My commission expires: 8-9-2016

KENT COUNTY TREASURER

By: _____
Kenneth Parrish

DENISE M. TERPSTRA
Notary Public, State of Michigan
County of Kent
My Commission Expires: 10/05/2018
Acting in the County of Kent

STATE OF MICHIGAN
COUNTY OF KENT
Acknowledged before me in Kent County, Michigan on 7-16-14, by Kenneth Parrish, the Treasurer of Kent County, Michigan, for that office.

Denise M. Terpstra
*

Notary Public, Kent County, Michigan
Acting in Kent County, Michigan
My commission expires: _____

*Name must be typed or printed in black in beneath signature.

Drafted by:
Jeff Sluggett
Bloom Sluggett Morgan, PC
15 Ionia Ave, SW, Suite 640
Grand Rapids, MI 49503
(616) 965-9341

When recorded return to:
Dan Kasunic, Clerk
City of Kentwood
4900 Breton Avenue, SE
PO Box 8848
Kentwood, MI 49518-884

NO TRANSFER TAX IS OWED BECAUSE THIS AMENDMENT DOES NOT CONVEY ANY REAL PROPERTY.

29024

20140716-0055364
Mary Hollinrake P 5/8 1 11PM
Kent Cnty MI Rgstr 07/16/2014 SEAL

EXHIBIT A

REAL PROPERTY LEGAL DESCRIPTION

Parcel B3-B: 41-18-22-201-001
PART OF NE ¼ COM AT NE COR OF SEC TH S 3D 35M 29S E ALONG E SEC LINE 395.0 FT TH S 89D 42M 31S W 258.0 FT TH S 3D 35M 29S E 120.0 FT TH N 89D 42M 31S E 258.0 FT TH S 3D 35M 29S E 705.38 FT TH N 54D 47M 03S W 395.85 FT TH S 89D 45M 47S W 308.0 FT TH N 48D 05M 08S W 57.70 FT TH NWLY 85.19 FT ALONG A 185 FT RAD CURVE TO LT/LONG CHORD BEARS N 61D 16M 42S W 84.44 FT TH NWLY 317.79 FT ALONG A 726.68 FT RAD CURVE TO LT/LONG CHORD BEARS N 86D 59M 57S W 315.27 FT/TH N 6D 29M 36S W 3.24 FT TH NLY 24.30 ALONG A 345 FT RAD CURVE TO LT/LONG CHORD BEARS N 8D 46M 49S W 24.29 FT/TH N 10D 47M 53S W 144.99 FT TH NWLY 31.28 FT ALONG 444.86 FT RAD CURVE TO RT/LONG CHORD BEARS N 57D 59M 27S W 31.27 FT/TH N 55D 58M 35S W 154.50 FT TH N 64D 32M 33S W 11.03 FT TH N 71D 23M 21S W 59.08 FT TH NWLY 82.21 FT ALONG A 522.84 FT RAD CURVE TO LT/LONG CHORD BEARS N 76D 45M 27S W 82.13 FT/TH S 8D 30M 37S W 110.0 FT TH NWLY 60.08 FT ALONG A 320.0 RAD CURVE TO LT/LONG CHORD BEARS N 86D 52M 07S W 60.0 FT/TH S 2D 14M 52S E 60.0 FT TH S 5D 37M 05S E 120.40 FT TH S 21D 10M 34S W 464.76 FT TH S 0D 45M 27S E 325.54 FT TH S 64D 51M 03S W 319.71 FT TH SWLY 215.67 FT ALONG A 760 FT RAD CURVE TO RT/LONG CHORD BEARS S 72D 58M 49S W 214.94 FT/TH S 81D 06M 35S W 155.45 FT TH NWLY 31.99 FT ALONG A 47.5 FT RAD CURVE TO RT/LONG CHORD BEARS N 79D 35M 41S W 31.39 FT/TH NELY 42.22 FT ALONG A 177.50 FT RAD CURVE TO RT/LONG CHORD BEARS N 53D 29M 04S W 42.12 FT/TH NWLY 79.46 FT ALONG A 92.5 FT RAD CURVE TO LT/LONG CHORD BEARS N 71D 16M 48S W 77.04 FT/TH NWLY 128.57 FT ALONG A 452.5 FT RAD CURVE TO RT/LONG CHORD BEARS N 87D 45M 01S W 128.14 FT/TH NWLY 67.97 FT ALONG A 540 FT RAD CURVE TO LT/LONG CHORD BEARS N 83D 12M 58S W 67.92 FT/TO N&S ¼ LINE TH N 3D 29M 48S W ALONG N&S ¼ LINE 1768.48 FT TO N ¼ COR TH N 89D 42M 31S E N 89D 42M 31S E 2633.71 FT TO BEG*SEC 22 T6N R11W 74.11 A.

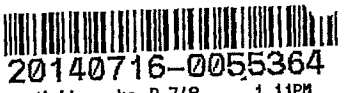
and

Parcel B4: 41-18-22-276-001
PART OF E ½ COM AT NE COR OF SEC TH S 3D 35M 29S E 1980.57 FT ALONG E SEC LINE TH S 89D 49M 02S W 40.07 FT TO W LINE OF SHAFFER AVE & BEG OF THIS DESC – TH S 3D 35M 29S E ALONG W LINE OF SD AVE 660.18 FT TO E&W ¼ LINE TH N 89D 49M 02S E ALONG E&W ¼ LINE 0.02 FT TH S 3D 10M 02S E 61.23 FT TH S 88D 09M 27S W 467.76 FT TH N 69D 14M 04S W 227.04 FT TH N 75D 46M 26S W 333.65 FT TH S 70D 13M 01S W 266.80 FT TO A PT ON E&W ¼ LINE SD PT BEING 1290.96 FT S 89D 49M 02S W FROM E ¼ COR TH N 36D 39M 55S W 187.39 FT TH N 53D 54M 21S W 346.87 FT TH N 64D 29M 25S W 183.51 FT TH N 30D 34M 11S W 393.92 FT TO S LINE OF PFEIFFER WOODS DR TH NELY 90.86 FT ALONG 840 FT RAD CURVE TO LT/LONG CHORD BEARS N 67D 56M 59S E 90.82 FT/TH N 64D 51M 03S E 368.73 FT TH ELY 1119.01 FT ALONG A 960 FT RAD CURVE TO RT/LONG CHORD BEARS S 81D 45M 22S E 1056.72 FT/TH S 41D 54M 24S W 17.75 FT TH S 47D 02M 47S E 91.85 FT TH SELY 208.54 FT ALONG A 277 FT RAD CURVE TO LT/LONG CHORD BEARS S 68D 36M 53S E 203.65/N 89D 49M 02S E 258.88 FT TO BEG*SEC 22 T6N R11W 34.57 A.

EXHIBIT B

PAYMENT SCHEDULES

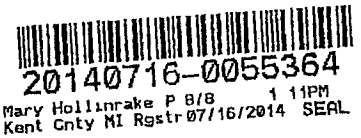
Attached



Pfeiffer Woods Drive
Special Assessment District
Proposed Principal & Interest Payments

7/9/2014

Ravines PUD Neighborhood B3-B				
	Initial principal balance	$	396,795.51	
	Interest rate		5.50%	
	# of days in year		365	
	Calculate initial interest from		1/17/2014	
	Target annual payment amount	$	50,000.00	
Payment Date	Interest Payment	Principal Payment	Total Payment	Outstanding Principal
1/17/2014				$ 396,795.51
9/7/2014	$ 13,931.33	$ 21,068.67	$ 35,000.00	$ 375,726.84
9/7/2015	$ 20,664.98	$ 29,335.02	$ 50,000.00	$ 346,391.82
9/7/2016	$ 19,103.75	$ 30,896.25	$ 50,000.00	$ 315,495.57
9/7/2017	$ 17,352.26	$ 32,647.74	$ 50,000.00	$ 282,847.83
9/7/2018	$ 15,556.63	$ 34,443.37	$ 50,000.00	$ 248,404.46
9/7/2019	$ 13,662.25	$ 36,337.75	$ 50,000.00	$ 212,066.71
9/7/2020	$ 11,695.62	$ 38,304.38	$ 50,000.00	$ 173,762.33
9/7/2021	$ 9,556.93	$ 40,443.07	$ 50,000.00	$ 133,319.26
9/7/2022	$ 7,332.56	$ 42,667.44	$ 50,000.00	$ 90,651.82
9/7/2023	$ 4,985.85	$ 45,014.15	$ 50,000.00	$ 45,637.67
9/7/2024	$ 2,510.07	$ 45,637.67	$ 48,147.74	$ -
	$ 136,352.23	$ 396,795.51	$ 533,147.74	



Pfeiffer Woods Drive
Special Assessment District
Proposed Principal & Interest Payments

7/9/2014

Ravines PUD Neighborhood B4				
	Initial principal balance	$	353,167.50	
	Interest rate		5.50%	
	# of days in year		365	
	Calculate initial interest from		1/17/2014	
	Target annual payment amount	$	45,000.00	

Payment Date	Interest Payment	Principal Payment	Total Payment	Outstanding Principal
1/17/2014				$ 353,167.50
9/7/2014	$ 12,399.57	$ 17,600.43	$ 30,000.00	$ 335,567.07
9/7/2015	$ 18,456.19	$ 26,543.81	$ 45,000.00	$ 309,023.26
9/7/2016	$ 17,042.84	$ 27,957.16	$ 45,000.00	$ 281,066.10
9/7/2017	$ 15,458.64	$ 29,541.36	$ 45,000.00	$ 251,524.74
9/7/2018	$ 13,833.86	$ 31,166.14	$ 45,000.00	$ 220,358.60
9/7/2019	$ 12,119.72	$ 32,880.28	$ 45,000.00	$ 187,478.32
9/7/2020	$ 10,339.56	$ 34,660.44	$ 45,000.00	$ 152,817.88
9/7/2021	$ 8,404.98	$ 36,595.02	$ 45,000.00	$ 116,222.86
9/7/2022	$ 6,392.26	$ 38,607.74	$ 45,000.00	$ 77,615.12
9/7/2023	$ 4,268.83	$ 40,731.17	$ 45,000.00	$ 36,883.95
9/7/2024	$ 2,028.62	$ 36,883.95	$ 38,912.57	$ -
	$ 120,745.07	$ 353,167.50	$ 473,912.57	

STATE OF MICHIGAN

IN THE COURT OF APPEALS

PETERSEN FINANCIAL, LLC,

Plaintiff-Appellant,

v

CITY OF KENTWOOD AND KENT COUNTY TREASURER,

Defendants-Appellees.

COA No. 339399
LC No. 16-011820-CH

_____/

JOINT BRIEF ON APPEAL OF DEFENDANTS-APPELLEES CITY OF KENTWOOD AND KENT COUNTY TREASURER

***** ORAL ARGUMENT REQUESTED *****

By: LINDA S. HOWELL (P44006)
SANGEETA GHOSH (P73833)
Attorneys for Defendant-Appellee
Kent County Treasurer
300 Monroe NW, Suite 303
Grand Rapids, MI 49503
(616) 632-7574

PLUNKETT COONEY

BY: JOSEPHINE A. DELORENZO (72170)
DAVID K. OTIS (P31627)
Attorneys for Defendant-Appellee
City of Kentwood
38505 Woodward Ave., Suite 100
Bloomfield Hills, MI 48304
(313) 983-4338

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Page

(referred to in the resolution as Ravines Special Assessment District) and a special assessment in the amount of $1,942,070.00. **Exhibit A**, Complaint, ¶¶ 18-19; **Exhibit A-7**, Resolution 96-04.

The special assessment roll originally set a term of ten years for the special assessment, with annual interest payments and a balloon payment due on September 7, 2014. **Exhibit A-7**, Resolution 96-04. However, under paragraph 2.(e)of the Terms and Conditions section of the Voluntary Special Assessment/Development Agreement, which addressed terms for the special assessment, the agreement expressly reserved to the City the authority, through resolution, to establish final terms for the special assessment district "in its discretion" **Exhibit A-6**, Voluntary Special Assessment/Development Agreement, p 7.[3] On July 15 2014, before the final installment was due on the special assessment, the City Commission adopted Resolution No. 50-14, extending the term of the special assessment for the Subject Property by an additional one year (or until September 7, 2015). **Exhibit B**, Resolution 50-14.

Because Ravines Capital Management and Shaffer became delinquent on base taxes and the special assessments owing on the Subject Property, it was forfeited, and a Judgment of Foreclosure was entered on March 6, 2015, resulting in absolute title to the Subject Property vesting in the County Treasurer. **Exhibit A**, Complaint ¶ 22; **Exhibit A-2**, Notice of Judgment Foreclosure. Then, in June 2015, the County and City entered into an agreement entitled Amendment to Voluntary Special Assessment/Development

[3] Other terms of the special assessment, such as the allocation of costs among the different neighborhoods and the number of phases within each neighborhood, could be changed by written amendment to the agreement. **Exhibit A-6**, Voluntary Special Assessment/Development Agreement, p 8.

Agreement, which specified that the Subject Property, now owned by the Kent County Treasurer, remained subject to the Voluntary Special Assessment/Development Agreement. **Exhibit A-9,** Amendment to Voluntary Special Assessment/Development Agreement. In the Amendment, in order to make the subject property more attractive to a potential buyer, the City, citing Section 2.(e) of the Voluntary Special Assessment/Development Agreement, agreed to extend into ten installments a balloon payment otherwise due on September 7, 2015. *Id.* The Amendment specified that it was not a reconfirmation of the District's special assessment roll, but simply the extension of the term of the pre-existing roll. *Id.*

Five months after this Amendment was entered into, Petersen Financial purchased the Subject Property from the County at a tax foreclosure sale on November 10, 2015. **Exhibit A**, Complaint ¶ 9; **Exhibit A-3**, Quit Claim Deed.

C. Course of proceedings.

In December 2016, Petersen Financial filed an action against Defendants seeking declaratory relief and damages for slander of title with respect to the Subject Property. Petersen Financial challenged the creation of the special assessment district, asserting that all the requirements for a valid special assessment district "were not fulfilled." **Exhibit A**, Complaint, ¶ 21. Likewise, Petersen Financial asserted that Defendants lacked authority to enter into the Amendment to Voluntary Special Assessment/Development Agreement. *Id.*, ¶ 65. Further, Petersen Financial alleged that Section 78k of the General Property Tax Act, MCL 211.78k(5)(c), operates to extinguish certain special assessment installment payments that are the subject of this case. *Id.*, ¶¶ 11, 24, 31, 46, 53, and 59.

PLAINTIFF'S RENEWED MOTION FOR SUMMARY DISPOSITION

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

* * * * *

PETERSEN FINANCIAL LLC,

Plaintiff,

-vs-

CITY OF KENTWOOD and
KENT COUNTY TREASURER,

Defendants.

Case No. 16-11820-CH

HON. GEORGE JAY QUIST
Circuit Court Judge

Donald R. Visser (P27961)
VISSER AND ASSOCIATES, PLLC
Attorneys for Plaintiff
2480 - 44th Street, SE - Ste. 150
Kentwood, MI 49512
(616) 531-9860

David K. Otis (P31627)
PLUNKETT COONEY
Attorneys for Defendant City of Kentwood
325 E. Grand River Ave., Ste. 250
East Lansing, MI 48823
(517) 324-5612

Craig A. Paull (P76605)
Linda S. Howell (P44006)
Kent County Corporate Counsel
Attorney for Kent County Treasurer
300 Monroe, NW - Ste. 303
Grand Rapids, MI 49503
(616) 632-7594

NOTICE OF MOTION

PLEASE TAKE NOTICE that *Plaintiff's Renewed Motion for Summary Disposition* will be brought before this Honorable Court for hearing on ***Friday, July 19, 2019*** at ***9:00 a.m.*** or as soon thereafter as counsel may be heard.

Dated: June____, 2019

VISSER AND ASSOCIATES, PLLC

Donald R. Visser (P27961)
Attorneys for Plaintiff

PROOF OF SERVICE

A copy of this document was served upon all parties of record by electronic delivery and/or U.S. Mail on June 26, 2019, pursuant to MCR 2.107(C).

Kelly A. Eefsting

VISSER AND ASSOCIATES, PLLC
LEGAL AND MEDIATION SERVICES
2480 - 44TH STREET, S.E. – SUITE 150
KENTWOOD, MICHIGAN 49512
Telephone: (616) 531-9860
Facsimile: (616) 531-9870

June 28, 2019

Clerk of the Court
Kent County Circuit Court
180 Ottawa, NW
Grand Rapids, MI 49503

Re: ***Petersen Financial v City of Kentwood, et al.***
Case No. 16-11820-CH
Our File No. 16-464

Dear Madam/Sir:

Enclosed please find an original and judge's copy of *Plaintiff's Renewed Motion for Summary Disposition*, *Brief in Support of Motion,* and *Notice of Motion* (with our *Proof of Service* stamped thereon) for filing in the above-referenced case. Also enclosed is the required motion fee.

Thank you for your cooperation. If you have any questions, please do not hesitate to contact us.

Very truly yours,

Donald R. Visser

DRV/kae
Enclosures

cc (w/enc): Linda Howell, Esq.
David Otis, Esq.
Petersen Financial

00560.7884 1

APPROVED MINUTES OF THE REGULAR MEETING
OF THE KENTWOOD CITY COMMISSION
HELD JUNE 16, 2015
Commission Chambers

Mayor Stephen Kepley called the meeting to order at 7:00 P.M.

Commissioner Artz led the Pledge of Allegiance to the Flag.

Pastor (retired) Paul Bailey gave the invocation.

Roll Call: Present: Commissioners: Betsy Artz, Michael W. Brown, Robert Coughlin, Jerry DeMaagd, Erwin Haas, Steve Redmond and Mayor Stephen Kepley.

Staff Present: City Engineer Tim Bradshaw, Finance Director Tom Chase, Economic Development Planner Lisa Golder, Public Works Director John Gorney, Deputy Administrator Rich Houtteman, City Assessor Andy Johnson, City Clerk Dan Kasunic, Fire Chief Brent Looman, Assistant Finance Director Lorna Nenciarini, Assistant Planner Joe Pung, Fire Department Administrative Assistant Nancy Shane, City Attorney Jeffrey Sluggett, Deputy Police Chief Don Tuuri.

Twenty (20) citizens and members of the news media attended the meeting.

Motion by Coughlin, supported by Artz, to **approve the agenda** with the following addenda: move 7(f) to 10(c).

Motion Carried.

ACKNOWLEDGE VISITORS AND NON-AGENDA ITEMS:

The owner of Little Smiles Daycare is requesting they be allow to place sign for two weeks for enrollment at 1718-44th Street. Mayor Kepley took the information and will have staff contact her.

CONSENT AGENDA: (All items under this section are considered to be routine and will be enacted by one motion with no discussion. If discussion is desired by a Commission member, that member may request removal of an item from the Consent Agenda.)

Motion by Brown, supported by Haas, to approve the Consent Agenda as follows:

A. Receive and file minutes of the Committee of the Whole Meeting held on June 2, 2015.
B. Resolution 28–15 to approve the Water and Sewer Operating and Capital Budgets and to set the rates for Water and Sewer services in the City of Kentwood (Wyoming District) for Fiscal Year 2015-16.
C. Authorize the Mayor to enter into a contract with Mark 1 Restoration Services for the amount not to exceed $73,000.00 (including a 15% contingency) for the tuck

pointing and staining of the City Hall exterior with funds from the FY 2015-16 Property and Building Funds budget.

D. Resolution 29–15 to adopt the Freedom of Information Policy.
E. Resolution 30–15 to revoke Industrial Facilities Exemption Certificate No. 2006-147 issued to Borisch Manufacturing Corporation located at 4550 Air West Drive, SE; under Act 198.
F. Resolution 31–15 to extend payment terms for a Confirmed Special Assessment District for Ravines Neighborhood B1.
G. Payables for the City totaling $417,057.23.
H. Authorize the Mayor to enter into a construction agreement with Bosco Construction, LLC, owners of the property known as Wildflower Creek #2 which is located north of 52nd Street and west of East Paris Avenue, to authorize the Developer to install storm sewers and streets in preparation for the City's acceptance of them as public, and to set up escrow arrangements to offset the City's costs relative to construction inspection of those improvements.

Roll Call Vote: Yeas: All. Nays: None. Absent: None.

Motion Carried.
Resolutions Adopted.

Motion by Artz supported by Haas, to **approve the minutes** of the June 2, 2015 City Commission Meeting.

Motion Carried.

COMMUNICATIONS AND PETITIONS:

DENY REQUEST BY TOTAL HEALTH CHIROPRACTIC FOR A POLE SIGN AT 2172 EAST PARIS AVENUE.

Economic Development Planner Golder reviewed the request and the recommendation of the Planning Commission's Findings of Fact dated June 9, 2015.

Motion by Haas, supported by DeMaagd, to deny the request by Total Health Chiropractic for a pole sign at 2172 East Paris Avenue, SE. based on the reasons provided by the Planning Commission's Findings of Fact dated June 9, 2015.

Motion Carried.

APPROVE REQUEST FOR WAIVER FROM THE SIGN ORDINANCE REQUIREMENTS FOR SHELDON CLEANERS AT 3000 BRETON AVENUE.

Assistant Planner Pung reviewed the request and the recommendations of the Planning Commission's Findings of Fact dated June 10, 2015.

Motion by Artz supported by DeMaagd, to approve the request to waive the sign ordinance requirements for Sheldon Cleaners located at 3000 Breton Ave., SE.

Motion Carried.

City Commission Meeting
June 16, 2015.

APPROVE THE CITY'S ANNUAL CONTRIBUTION TO THE EMPLOYEE PENSION PLAN.

Finance Director Chase reviewed the decisions and actions of the Pension Board.

Motion by Artz, supported by Haas, to approve the City's annual contribution of $1,560,000.00 to the City of Kentwood Employee Pension Plan custody account at Fifth Third Bank.

Motion Carried.

BIDS:

SALT STORAGE BUILDING ROOF REPLACEMENT FOR DEPARTMENT OF PUBLIC WORKS.

Public Works Director Gorney reviewed his memorandum dated June 9, 2015 regarding the roof replacement.

Motion by Artz, supported by Coughlin, to authorize the Mayor to enter into a contract with Free Spirit Construction, Inc. (low bidder) for the re-shingling of the salt storage building roof at a cost not-to-exceed $25,000.00 (including a 15% contingency), with funds from the FY 2015-16 DPW Equipment Fund budget.

Motion Carried.

TRUCK HOIST FOR THE DEPARTMENT OF PUBLIC WORKS.

Public Works Director Gorney reviewed his memorandum dated June 10, 2015 regarding the purchase of a replacement truck hoist and the benefits to a wireless system.

Motion by DeMaagd, supported by Haas, to approve the purchase of a "Rotary" brand wireless portable truck hoist system for the City's Public Works Department from American Hoist, Air & Lube Equipment Company in the amount of $41,053.00 (after trade-in), with funds from the FY 2015-16 DPW Equipment Fund budget.

Motion Carried.

RESOLUTIONS:

ADOPT RESOLUTION 32–15 TO APPROVE AN APPLICATION FOR AN INDUSTRIAL FACILITIES EXEMPTION CERTIFICATE FOR LACKS.

Economic Development Planner Golder reviewed the improvement dollars and proposed additional jobs.

Motion by Artz, supported by DeMaagd, to adopt Resolution 32–15 to approve an application for an Industrial Facilities Exemption Certificate in the City of Kentwood for Lacks Enterprises, Inc. located at 4975 Broadmoor Avenue, SE; under Act 198.

Roll Call Vote: Yeas: All. Nays: None. Absent: None.

Resolution Adopted.

City Commission Meeting
June 16, 2015.

ADOPT RESOLUTION 33–15 REGARDING THE INSTALLATION OF SIDEWALKS ON ARTERIAL AND COLLECTOR STREETS.

Assistant City Engineer VanderHeide reviewed the resolution and brief discussion ensued pertaining to the wording used and working with the Madison Ave. Church to reduce the financial burden installing sidewalks.

Motion by Coughlin, supported by Brown, to adopt Resolution 33–15 regarding the installation of sidewalks on arterial and collector streets.

Roll Call Vote: Yeas: Artz, Brown, Coughlin, Redmond and Kepley. Nays: DeMaagd and Haas. Absent: None.

Resolution Adopted.

APPOINTMENTS AND RESIGNATIONS:

CONFIRM APPOINTMENT OF EVAN ANDREW JOHNSON AS CITY ASSESSOR.

Mayor Kepley gave a brief history of Andy's time with the City and level of education as an assessor.

Motion by Coughlin, supported by Haas, to confirm the appointment of Evan Andrew Johnson as City Assessor.

Motion Carried.

ADMINISTER OATH OF OFFICE TO EVAN ANDREW JOHNSON AS CITY ASSESSOR.

City Clerk Kasunic administered the Oath of Office to Evan (Andy) Johnson as City Assessor, with family members in attendance.

COMMENTS OF COMMISSIONERS AND MAYOR:

Commissioner Coughlin-Spoke of the first Farmer's Market turnout last Saturday.

Mayor Kepley-Spoke of the non-motorized trail that is close by the site and of the Library.

Commissioner Artz-Informed the Commission of the Kentwoodpalooza this Wednesday.

Commissioner Haas-Informed the Commission of pending legislation at the State regarding asset forfeiture and requested the commission to learn more about this pending legislation.

The meeting was adjourned at 7:40 P.M.

Dan Kasunic
City Clerk

Stephen C.N. Kepley
Mayor

CITY OF KENTWOOD
KENT COUNTY, MICHIGAN

Motion by Brown, seconded by Haas, to adopt the following resolution:

RESOLUTION NO. 31-15

A RESOLUTION TO EXTEND PAYMENT TERMS FOR A CONFIRMED SPECIAL ASSESSMENT DISTRICT (RAVINES NEIGHBORHOOD B1)

RECITALS

A. Pursuant to City of Kentwood Resolution No. 96-04 entitled "Pfeiffer Woods Drive Construction (Ravines Special Assessment District) Street, Storm Sewer, Non-Motorized Trail, Sanitary Sewer and Watermain Special Assessment District," as amended ("Resolution"), the Pfeiffer Woods Drive Construction, Ravines Special Assessment District was established ("District").

B. The Resolution was adopted to finance certain public improvements benefitting the property located within the District.

C. The Resolution included a special assessment roll for the District, which special assessment roll was confirmed on September 7, 2004. The amount of the special assessment as reflected in the roll, by law, became a lien on the property comprising the District.

D. The Resolution was subsequently amended by the City with respect to the amount of the total special assessment (Resolution No. 108-04), to reduce the area subject to the special assessment terms (Resolution No. 28-05), and to extend the term for payment of the special assessment for an additional year (Resolution No. 50-14).

E. The owner of a large tract of real property (i.e., a neighborhood) within the District became delinquent in paying property taxes and special assessments due and owing on its property. As a result, and in accordance with Michigan's General Property Tax Act, Act No. 206 of the Public Acts of 1893, as amended, the property was forfeited and judgment of foreclosure was entered with respect to the property on March 31, 2015. As a result, the property is now titled to the Kent County Treasurer. (The real property owned by the Kent County Treasurer within the District is identified herein as the "Property".)

F. The Property is and remains liable for a portion of the special assessment set forth in the Resolution, as amended. The Property is legally described on the attached **Exhibit A**, which is incorporated by reference.

G. The District was established, in part, pursuant to a Voluntary Special Assessment/Development Agreement between the City and the owner of the Property dated September 7, 2004 and recorded with the Kent County Register of Deeds at Instrument No. 20040917-0125700 on September 17, 2004 ("Agreement").

H. The Agreement, at Section 2(e), provides, in part, that the "term of years" for the District's special assessment and similar matters are to be determined by resolution of the City Commission "in its discretion."

I. As further authorized by the Agreement, and without re-confirming the District's special assessment roll, the City Commission has determined that extending the term of years for payment of the District's special assessment with respect to the Property will serve a public purpose including, without limitation, making the Property more marketable, enhancing economic development opportunities within the City, and facilitating private investment to increase the tax base.

NOW, THEREFORE, IT IS RESOLVED THAT:

1. The City affirms that the Recitals above are correct, form an integral part of this resolution, and are incorporated herein by reference.

2. The special assessment roll attached to the Resolution as amended, and identified as "Roll A", is attached as **Exhibit B** and incorporated herein by reference ("Roll A"). Roll A was amended pursuant to Resolution No. 50-14 to extend the payment term of the special assessment and the amended roll is attached as **Exhibit C** and incorporated by reference ("Roll A Supplemental").

3. A revised schedule of payment terms for the portion of the District's special assessment roll attributable to the Property, identified as "Roll A Supplemental 2015", is attached as **Exhibit D** and incorporated herein by reference ("Roll A Supplemental 2015").

4. Without modifying the confirmation date of the special assessment roll as amended, Roll A Supplemental 2015 shall hereby amend, supersede and replace any term or provision in Roll A or Roll A Supplemental to the contrary; to the extent of a conflict between Roll A, Roll A Supplemental or Roll A Supplemental 2015, the provisions of Roll A Supplemental 2015 shall control. All remaining terms and provisions in Roll A, as amended, and not in conflict with Roll A Supplemental 2015, shall be and remain in effect.

5. Except as provided for herein, the Resolution and its terms are and shall remain binding and in effect. This resolution shall not be interpreted or construed to extend the period in which to challenge the underlying special assessment, which period has expired.

6. The Mayor, City Clerk and administrative officers of the City are hereby ordered and directed to take all actions reasonably necessary and authorized by law to effectuate this resolution including, without limitation, execution of the Amendment to Voluntary Special Assessment/Development Agreement dated June 16, 2015.

7. The City Clerk shall deliver a certified copy of this resolution and accompanying exhibits to the City Treasurer with his warrant attached commanding the Assessor to spread and the Treasurer to collect the assessment therein in accordance with the directions of the City Commission and the Treasurer is directed to collect the amounts assessed as the same become due.

8. All prior resolutions and parts of resolutions in conflict herewith are, to the extent of such conflict, hereby repealed.

YEAS: Commissioners: Artz, Brown, Coughlin, DeMaagd, Haas, Redmond and Mayor Kepley.

NAYS: None.

ABSENT: None.

RESOLUTION NO. 31-15 ADOPTED.

Dan Kasunic
City Clerk

The foregoing resolution was adopted at a regular meeting of the City Commission of the City of Kentwood on June 16, 2015.

Dan Kasunic
City Clerk

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

Parcel B-1: 41-18-22-426-001

PART OF E ½ COM AT E ¼ COR TH S 3D 35M 29S E ALONG E SEC LINE 60.07 FT TH S 88D 09M 27S W 40.01 FT TO W LINE OF SHAFFER AVE & BEG OF THIS DESC – TH S 3D 10M 02S E ALONG SD W LINE 1263.17 FT TH S 89D 54M 32S W 629.94 FT TH S 3D 10M 02S E 60.95 FT TH S 90D 00M 00S W 708.24 FT TH N 45D 00M 00S W 67.88 FT TH S 90D 00M 00S W 530.0 FT TH N 50D 00M 00S W 235.0 FT TH N 44D 18M 31S E 199.74 FT TH N 77D 07M 45S E 307.02 FT TH N 41D 46M 39S E 334.95 FT TH N 8D 47M 09S E 226.61 FT TH N 11D 02M 04S W 245.78 FT TH N 25D 03M 50S E 281.40 FT TO A PT ON E&W ¼ LINE SD PT BEING 1290.96 FT S 89D 49M 02S W FROM E ¼ COR TH N 70D 13M 01S E 266.80 FT TH S 75D 46M 26S E 333.65 FT TH S 69D 14M 04S E 227.04 FT TH N 88D 09M 27S E 467.76 FT TO BEG * SEC 22 T6N R11W 47.77 A

EXHIBIT B

ROLL A

Attached

EXHIBIT C

ROLL A SUPPLEMENTAL

Extended Term: Until September 7, 2015.

Principal due September 7, 2015	$403,620.00
Interest due for one-year period ending September 7, 2015	$ 22, 199.10
Total due September 7, 2015	$425,819.10

Note: Interest still due for one-year period ending September 7, 2014 $ 22, 199.10

EXHIBIT D

ROLL A SUPPLEMENTAL 2015

Extended Term: Until September 7, 2024.

Installments:

A. Interest is charged at a rate equal to one percentage (1%) point over the U.S. prime rate as published in the *Wall Street Journal*, which prime rate was in effect on the date the roll was confirmed as provided for in Ordinance No. 4-67, as amended. As of September 7, 2004, this aggregate interest rate was 5.5%.

B. A payment shall be due annually on the anniversary date of the original confirmation of the roll for the remaining term of the roll (e.g., September 7, 2015, September 7, 2016, etc.), consistent with the schedule of principal and interest payments set forth on the payment schedule, attached to this Exhibit D and incorporated by reference.

C. Notwithstanding anything herein to the contrary, the unpaid balance may be prepaid in whole without penalty or premium.

Payment Schedule: Attached

AMENDMENT TO VOLUNTARY SPECIAL ASSESSMENT/DEVELOPMENT AGREEMENT (RAVINES NEIGHBORHOOD B1)

This Amendment to Voluntary Special Assessment/Development Agreement is dated June 16, 2015 ("Amendment") between the City of Kentwood, a Michigan municipal corporation, the address of which is 4900 Breton Avenue, SE, Kentwood, Michigan 49508 ("City") and the Kent County Treasurer, a Michigan county official, whose address is Kent County Administration Building, 300 Monroe Avenue NW, Grand Rapids MI 49503 ("KCT" or "Owner").

RECITALS

A. On September 7, 2004, 44th/Shaffer Avenue, LLC ("44th/Shaffer") and the City entered into a Voluntary Special Assessment/Development Agreement ("Agreement") to facilitate 44th/Shaffer's development of property as a residential planned unit development. The Agreement was recorded with the Kent County Register of Deeds at Instrument No. 20040917-0125700 on September 17, 2004.

B. The Agreement was subsequently amended in 2005, which amendment was recorded with the Kent County Register of Deeds at Instrument No. 20050405-0039643 on April 5, 2005, in recognition of the conveyance of certain real property.

C. Subsequently, the owner of a tract of real property (i.e., neighborhood) subject to the Agreement became delinquent in paying property taxes and special assessments due and owing on its property. As a result, and in accordance with Michigan's General Property Tax Act, Act No. 206 of the Public Acts of 1893, as amended, the property was forfeited and a judgment of foreclosure was entered with respect to the property on March 31, 2015. As a result of the foreclosure, the property is now titled to the KCT.

D. The real property owned by the KCT remains subject to the terms of the Agreement, as amended, is legally described on attached **Exhibit A**, which is incorporated by reference ("Property").

E. The obligations set forth in the Agreement were covenants running with the land which bind all successors in title. The KCT is the successor in title to 44th/Shaffer of the Property. The Agreement provides, in part, that certain improvements benefitting the Property were to be financed through the establishment by the City of a special assessment district.

F. In accordance with its adopted ordinances and state law, the City Commission, on September 7, 2004, adopted Resolution No. 96-04 which established the special assessment district referenced above and confirmed a special assessment roll for the district (the special assessment roll as subsequently amended referred to herein as the "Roll").

G. A balloon payment in the principal amount of $403,620 plus accrued interest is due on September 7, 2015 under the terms set forth as part of the Roll and the Agreement.

H. As permitted under Section 2(e) of the Agreement, and without re-confirming the district's special assessment roll, the City Commission has determined that extending the term of years for payment of the district's special assessment with respect to the Property will serve a valuable public purpose including, without limitation, making the Property more marketable, enhancing economic development opportunities within the City, and facilitating the maintenance of the Property on the tax rolls.

TERMS AND CONDITIONS

NOW, THEREFORE, for good and valuable consideration in and referred to by this agreement, the sufficiency of which the parties acknowledge, the parties agree as follows:

1. The parties affirm that the Recitals set forth above are correct, form an integral part of this Amendment, and are incorporated herein by reference.

2. Section 2(g) of the Agreement is amended to read in its entirety as follows:

(g) Allocation. Notwithstanding any provision in this Agreement to the contrary, allocation of the special assessment shall be structured as follows:

(1) Installment payments for the Property subject to this Amendment shall be payable in accordance with the schedule attached as **Exhibit B** to this Amendment, which terms are incorporated by reference. Provision shall be made such that if any installment is not paid when due, then penalties shall be applied as are collected on delinquent ad valorem taxes.

(2) It is an express condition of this Agreement that the Owner waives any right it may have under state or local law, rule or regulation to any further allocation or apportionment of special assessments of the Owner-Contracted Infrastructure Improvements (among lots, units, or other divisions of property) beyond that provided for herein or as otherwise provided for in the City Commission resolution confirming the Roll for the Owner-Contracted Infrastructure Improvements, as amended.

(3) Owner agrees that the special assessment lien imposed against the Property for the Owner-Contracted Infrastructure Improvements shall not be satisfied or released as to the Property or any part thereof until such time as the entire aforesaid special assessment is paid in full.

(4) Notwithstanding anything herein to the contrary, the unpaid balance may be prepaid in whole without penalty or premium.

3. The parties acknowledge and agree that the City, consistent with the terms of the Agreement and City Ordinance No. 4-67, as amended, has reserved to itself the right to extend the term of years for payment of the above-described special assessment without changing the date of the confirmation of the Roll or exposing the City to a challenge of the special assessment or Roll, as amended, and that it is the parties' intent that all challenges, claims or causes of action to any special assessment associated with the Property or the Roll are released and waived by the KCT, its successors and assigns as against the City. Without limiting the foregoing, the KCT, on behalf of his office and his successors and assigns, waives and releases any claim he may have against the City predicated upon the existence of other resolutions, amendments, agreements, special assessments, etc. which impact the special assessment or Roll as amended herein.

4. Except as modified herein, the Agreement shall be and remain binding and in effect as between the parties, their successors and assigns.

5. The obligations and pledges contained in this Amendment are covenants that run with the land, and shall bind all successors in title. This Amendment shall be recorded with the Kent County Register of Deeds. The City shall be responsible for all costs associated with recording the Amendment.

6. The parties agree to execute such other documents as either of them may reasonably request to fully implement this Amendment.

7. No other party is intended as a beneficiary of this Amendment.

The parties have caused this Amendment to be executed as of the date first written above.

CITY OF KENTWOOD

By: _____
Stephen Kepley, Mayor

By: _____
Dan Kasunic, City Clerk

STATE OF MICHIGAN
COUNTY OF KENT
Acknowledged before me in Kent County, Michigan on June 18, 2015, by Stephen Kepley and Dan Kasunic, respectively the Mayor and Clerk of the City of Kentwood, a Michigan home rule city, on behalf of the city.

Mary L. Bremer
* MARY L. BREMER
Notary Public, Kent County, Michigan
Acting in Kent County, Michigan
My commission expires: 08-09-2016

MARY L. BREMER
Notary Public, State of Michigan
Qualified in Kent County
Commission Expires August 9, 2016

KENT COUNTY TREASURER

STATE OF MICHIGAN

By: _____
Kenneth Parrish

COUNTY OF KENT
Acknowledged before me in Kent County, Michigan on _____, by Kenneth Parrish, the Treasurer of Kent County, Michigan, for that office.

_____
*
Notary Public, Kent County, Michigan
Acting in Kent County, Michigan
My commission expires: _____

*Name must be typed or printed in black in beneath signature.

Drafted by:
Jeff Sluggett
Bloom Sluggett Morgan, PC
15 Ionia Ave, SW, Suite 640
Grand Rapids, MI 49503
(616) 965-9341

When recorded return to:
Dan Kasunic, Clerk
City of Kentwood
4900 Breton Avenue, SE
PO Box 8848
Kentwood, MI 49518-884

NO TRANSFER TAX IS OWED BECAUSE THIS AMENDMENT DOES NOT CONVEY ANY REAL PROPERTY.

EXHIBIT A

REAL PROPERTY LEGAL DESCRIPTION

Parcel B-1: 41-18-22-426-001

PART OF E ½ COM AT E ¼ COR TH S 3D 35M 29S E ALONG E SEC LINE 60.07 FT TH S 88D 09M 27S W 40.01 FT TO W LINE OF SHAFFER AVE & BEG OF THIS DESC – TH S 3D 10M 02S E ALONG SD W LINE 1263.17 FT TH S 89D 54M 32S W 629.94 FT TH S 3D 10M 02S E 60.95 FT TH S 90D 00M 00S W 708.24 FT TH N 45D 00M 00S W 67.88 FT TH S 90D 00M 00S W 530.0 FT TH N 50D 00M 00S W 235.0 FT TH N 44D 18M 31S E 199.74 FT TH N 77D 07M 45S E 307.02 FT TH N 41D 46M 39S E 334.95 FT TH N 8D 47M 09S E 226.61 FT TH N 11D 02M 04S W 245.78 FT TH N 25D 03M 50S E 281.40 FT TO A PT ON E&W ¼ LINE SD PT BEING 1290.96 FT S 89D 49M 02S W FROM E ¼ COR TH N 70D 13M 01S E 266.80 FT TH S 75D 46M 26S E 333.65 FT TH S 69D 14M 04S E 227.04 FT TH N 88D 09M 27S E 467.76 FT TO BEG * SEC 22 T6N R11W 47.77 A

EXHIBIT B

PAYMENT SCHEDULE

Attached

ROLL A

CITY OF KENTWOOD

PFEIFFER WOODS DRIVE CONSTRUCTION
(Ravines Special Assessment District)
STREET, STORM SEWER, NON-MOTORIZED TRAIL, SANITARY SEWER, AND WATERMAIN
SPECIAL ASSESSMENT DISTRICT

CONFIRMED SPECIAL ASSESSMENT ROLL

Date of Confirmation: September 7, 2004; amended October 19, 2004 and March 15, 2005

Subject Property:

Part of the Northeast one-quarter and part of the Southeast one-quarter, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: COMMENCING at the Northeast corner of Section 22 and the POINT OF BEGINNING of this description; thence S03°35'29"E 395.00 feet along the East line of said Northeast one-quarter, thence South 89°42'31" West 258.00 feet; thence South 03°35'29" East 120.00 feet; thence North 89°42'31" East 258.00 feet; thence South 03°35'29" East 705.38 feet along the East line of said Northeast one-quarter; thence North 54°47'03" West 395.85 feet; thence South 89°45'47" West 308.00 feet; thence South 03°35'29" East 330.00 feet; thence North 89°45'47" East 424.00 feet along the South line of the North one-half of the Northeast one-quarter of Section 22; thence South 03°35'29" East 153.00 feet; thence North 89°45'47" East 193.00 feet; thence South 03°35'29" East 273.18 feet along the East line of said Northeast one-quarter; thence South 86°24'31" West 40.00 feet; thence South 03°35'29" East 891.81 feet along the West line of Shaffer Avenue; thence North 89°49'02" East 0.02 feet along the East-West one-quarter line of said Section; thence South 03°10'02" East 1324.40 feet along the West line of Shaffer Avenue; thence South 89°54'32" West 629.94 feet along the North line of the South one-half of the Southeast one-quarter of Section 22; thence South 03°10'02" East 60.95 feet; thence South 90°00'00" West 708.24 feet; thence North 45°00'00" West 67.88 feet; thence South 90°00'00" West 530.00 feet; thence North 50°00'00" West 235.00 feet; thence South 42°36'50" West 260.00 feet; thence South 77°56'20" West 333.73 feet; thence North 03°02'05" West 1258.70 feet along the West line of the Southeast one-quarter of Section 22; thence North 63°04'26" East 366.74 feet; thence Northwesterly 17.84 feet along a 375.00 foot radius curve to the right, the chord of which bears North 26°04'58" West 17.84 feet; thence Northerly 182.95 feet along a 375.00 foot radius curve to the right, the chord of which bears North 10°44'36" West 181.15 feet; thence North 03°14'00" East 22.33 feet; thence Northwesterly 214.05 feet along a 325.00 foot radius curve to the left, the chord of which bears North 15°38'05" West 210.20 feet; thence North 34°30'10" West 49.19 feet; thence Northwesterly 159.95 feet along a 275.00 foot radius curve to the right, the chord of which bears North 17°50'24" West 157.71 feet; thence South 88°51'22" West 78.13 feet; thence North 07°38'58" West 121.92 feet; thence Northwesterly 16.28 feet along a 47.50 foot radius curve to the left, the chord of which bears North 17°28'15" West 16.20 feet; thence North 27°17'32" West 13.47 feet; thence

Northwesterly 59.87 feet along a 67.50 foot radius curve to the left, the chord of which bears North 52°42'11" West 57.93 feet; thence Westerly 60.54 feet along a 460.00 foot radius curve to the left, the chord of which bears North 81°53'03" West 60.49 feet to the West line of the Southeast one-quarter of said Section 22; thence North 03°29'48" West 1849.27 feet along the West line of the Northeast one-quarter of Section 22 to the North one-quarter corner of said Section; thence North 89°42'31" East 2633.71 feet along the North line of said Northeast one-quarter to the point of beginning. Subject to highway R.O.W. for Shaffer Avenue. This parcel contains 228.49 acres, including highway R.O.W.

Estimated Public Improvement Costs	Total Costs	LLC Portion	City's Share
Pfeiffer Woods Roadway (22A)	500,000.00	360,000.00	140,000.00
Add for 21AA (Allowance)	17,000.00	0.00	17,000.00
Storm Sewer	200,000.00	200,000.00	0.00
Water Main	203,000.00	160,000.00	43,000.00
Lighting Allowance	66,000.00	66,000.00	0.00
Landscape Allowance	125,000.00	125,000.00	0.00
Irrigation Allowance	50,000.00	50,000.00	0.00
Testing & Construction Staking	55,000.00	55,000.00	0.00
Total Subcontractor Costs	1,216,000.00	1,016,000.00	200,000.00
Project Management (10%)	121,600.00	101,600.00	20,000.00
Liability Insurance	8,800.00	8,800.00	0.00
Design and Inspection Fees	115,000.00	115,000.00	0.00
Permits and Fees	20,000.00	20,000.00	0.00
Bonding Costs	15,000.00	15,000.00	0.00
City Legal and Other	25,000.00	25,000.00	0.00
Total Project Costs	1,521,400.00	1,301,400.00	220,000.00
Total Project Contingency/Inflation (25%)	380,350.00	380.350.00	0.00
SAD Total Costs	**1,901,750.00**	**1,681,750.00**	**220,000.00**

Owner of Property: 44th/Shaffer Avenue, LLC, a Michigan limited liability company

Term: 10 years from confirmation of roll; i.e., September 7, 2014. Any unpaid principal and interest is due in full upon termination date.

Deferred Installments:

A. Interest is charged at a rate equal to one percentage (1%) point over the U.S. prime rate as published in the *Wall Street Journal*, which prime rate is in effect on the date the roll is confirmed as provided for in Ordinance No. 4-67, as amended. As of September 7, 2004, this aggregate interest rate is 5.5%.

B. A payment shall be due annually on the anniversary date of the confirmation of the roll (e.g., without limitation, September 7, 2005, September 7, 2006, September 7, 2007, etc.) in an

amount equivalent to the simple interest on any unpaid principal amount.

C. Principal payments, along with any unpaid simple interest on that portion of the principal, shall be due upon certain governmental approvals being issued consistent with the terms of a Voluntary Special Assessment/ Development Agreement dated September 7, 2004, between the City of Kentwood and 44th/Shaffer Avenue, LLC (the "Agreement").

D. In no event shall the amount of the special assessment exceed the actual costs reimbursed to the property owner pursuant to the Agreement and the costs and expenses of the City to which the City is lawfully entitled to be reimbursed including, but not limited to, all legal fees incurred by the City in establishing and preparing the special assessment district and special assessment roll.

E. Deferred installments shall be collected without penalty until 60 days after the due date; thereafter, such penalties as are provided for in the City Charter for general *ad valorem* taxes shall be due and collected.

F. Anticipated allocations: See attachments hereto which are incorporated by reference. Note that several of the specific dates included in the attachments are incorporated for purposes of example only and the payment amounts actually due will be determined based on the occurrence of certain governmental approvals being issued consistent with the terms of the Agreement.

Pfeiffer Woods Drive
Special Assessment District
Proposed Principal & Interest Payments

Ravines PUD Neighborhood B1

Initial principal balance	$ 403,620.00
Interest rate	5.50%
# of days in year	365
Calculate initial interest from	9/7/2014
Target annual payment amount	$ 54,000.00

Payment Date	Interest Payment	Principal Payment	Total Payment	Outstanding Principal
9/7/2014				$ 403,620.00
9/7/2015	$ 22,199.10	$ 31,800.90	$ 54,000.00	$ 371,819.10
9/7/2016	$ 20,506.08	$ 33,493.92	$ 54,000.00	$ 338,325.18
9/7/2017	$ 18,607.88	$ 35,392.12	$ 54,000.00	$ 302,933.06
9/7/2018	$ 16,661.32	$ 37,338.68	$ 54,000.00	$ 265,594.38
9/7/2019	$ 14,607.69	$ 39,392.31	$ 54,000.00	$ 226,202.07
9/7/2020	$ 12,475.20	$ 41,524.80	$ 54,000.00	$ 184,677.27
9/7/2021	$ 10,157.25	$ 43,842.75	$ 54,000.00	$ 140,834.52
9/7/2022	$ 7,745.90	$ 46,254.10	$ 54,000.00	$ 94,580.42
9/7/2023	$ 5,201.92	$ 48,798.08	$ 54,000.00	$ 45,782.34
9/7/2024	$ 2,524.93	$ 45,782.34	$ 48,307.27	$ -
	$ 130,687.27	$ 403,620.00	$ 534,307.27	

2064.xlsx 6/2/2015

ORIGINAL COMPLAINT

Approved, SCAO

Original - Court
1st copy - Defendant

2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN JUDICIAL DISTRICT 17th JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT	CASE NO. 16-11820-CH

Court address
180 Ottawa, NW, Grand Rapids, MI 49503

Court telephone no.
(616) 632-5480

Plaintiff name(s), address(es), and telephone no(s).	v	Defendant name(s), address(es), and telephone no(s).
PETERSEN FINANCIAL LLC 2480 - 44th St., SE Kentwood, MI 49512		CITY OF KENTWOOD 4900 Breton Ave., SE Kentwood, MI 49508 GEORGE JAY QUIST (P-43884)
Plaintiff attorney, bar no., address, and telephone no. Donald R. Visser (P27961) Jeremy J. Voorhees (P80872) Visser & Associates, PLLC 2480 44th St., SE - Ste. 150 Kentwood, MI 49512		

SUMMONS **NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state). MCR 2.111(C)
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued	This summons expires	Court clerk
DEC 28 2016	MAR 29 2017	MARY HOLLINRAKE

*This summons is invalid unless served on or before its expiration date.
This document must be sealed by the seal of the court.

COMPLAINT ***Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.***

Family Division Cases

☐ There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.

☐ An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

General Civil Cases

☑ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

VENUE

Plaintiff(s) residence (include city, township, or village)	Defendant(s) residence (include city, township, or village)
Kenwood, MI	Kentwood, MI
Place where action arose or business conducted Kentwood, MI	

12-22-16
Date

Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you to fully participate in court proceedings, please contact the court immediately to make arrangements.

MC 01 (3/06) **SUMMONS AND COMPLAINT** MCR 2.102(B)(11), MCR 2.104, MCR 2.105, MCR 2.107, MCR 2.113(C)(2)(a), (b), MCR 3.206(A)

ORIGINAL COMPLAINT

PROOF OF SERVICE

SUMMONS AND COMPLAINT
Case No.

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

☐ **OFFICER CERTIFICATE**
I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party [MCR 2.104(A)(2)], and that: (notarization not required)

OR

☐ **AFFIDAVIT OF PROCESS SERVER**
Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

☐ I served personally a copy of the summons and complaint,
☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with _____
List all documents served with the Summons and Complaint

_____

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

☐ I have personally attempted to serve the summons and complaint, together with any attachments on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

Service fee	Miles traveled	Mileage fee	Total fee
$		$	$

_____
Signature

_____
Title

Subscribed and sworn to before me on _____ (Date), _____ County, Michigan.

My commission expires: _____ (Date) Signature: _____ (Deputy court clerk/Notary public)

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____ (Attachments)

_____ on _____ (Day, date, time)

_____ on behalf of _____.
Signature

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

* * * * *

PETERSEN FINANCIAL LLC,

Plaintiff,

-vs-

CITY OF KENTWOOD and
KENT COUNTY TREASURER,

Defendants.

Case No. 16- 11820 -CH

HON.
Circuit Court Judge GEORGE JAY QUIST (P-43884)

Donald R. Visser (P27961)
Jeremy J. Voorhees (P80872)
VISSER AND ASSOCIATES, PLLC
Attorneys for Plaintiff
2480 - 44th Street, SE - Ste. 150
Kentwood, MI 49512
(616) 531-9860

COMPLAINT

THERE IS NO OTHER PENDING OR RESOLVED CIVIL LITIGATION ARISING OUT OF THE SAME TRANSACTION OR OCCURRENCE AS ALLEGED IN THE COMPLAINT.

COMES NOW Plaintiff, by and through its attorneys, Visser and Associates, PLLC, and for its Complaint against Defendants states as follows:

PARTIES AND JURISDICTION

1. Plaintiff, Petersen Financial LLC, is a limited liability company organized and existing under the laws of the State of Michigan with its principal office located in Kentwood, County of Kent, State of Michigan.

2. Defendant Kent County Treasurer is an elected official of Kent County, Michigan, a county organized by and within the State or Territory of Michigan.

3. Defendant City of Kentwood is a Michigan municipal corporation located in the County of Kent, Michigan.

4. Plaintiff seeks declaratory relief, as well as damages for its slander of title claim, as to certain real property situated in the City of Kentwood, County of Kent, State of Michigan, and described fully on the attached **Exhibit 1**, hereinafter referred to as the "Subject Property".

5. This case is within this Court's jurisdiction as Plaintiff seeks equitable relief, the amount in controversy exceeds Twenty-five Thousand Dollars ($25,000.00) exclusive of interest and costs, and it is otherwise within the jurisdiction of this Court pursuant to MCL 600.2932 as it involves real property located in Kent County, Michigan.

6. Venue is proper in this Court pursuant to MCL 600.1605.

FACTUAL BACKGROUND

7. On March 6, 2015, a Judgment of Foreclosure for the Subject Property ("the Judgment") was entered in Kent County Circuit Court Action No. 14-05292-CZ as provided by Section 78k of the General Property Tax Act (MCL 211.78k)("GPTA"). Notice of the Judgment was recorded in Instrument No. 20150506-0038676. See attached **Exhibit 2**.

8. Title in the Subject Property vested in the Kent County Treasurer on April 1, 2015 when it was not redeemed by the previous owners.

9. Plaintiff purchased the Subject Property at a tax foreclosure sale on November 10, 2015, and the Kent County Treasurer conveyed its interest in the Subject Property to Plaintiff. See attached **Exhibit 3**.

10. Pursuant to MCL 211.78(k) and MCL 211.78(m), the November 10, 2015 purchase was free and clear from all liens except any future installments of special assessments.

11. Despite the fact that the November 10, 2015 conveyance of the Subject Property was fee simple absolute, the City of Kentwood continues to cloud Plaintiff's title to the Subject

Property by improperly attempting to revive past installments for special assessments as well as contractual obligations that were extinguished upon the final Judgment of Foreclosure, thereby depriving Plaintiff of peaceful use and quiet enjoyment of his property and depriving him of the ability to develop or sell the Subject Property.

The Three "Special Assessments" at issue.

12. On March 18, 2004, the City of Kentwood entered into a Planned Unit Development Agreement ("PUD Agreement") with then-owners Ravines Capital Management, LLC (hereinafter "Ravines") and 44th Shaffer Avenue, LLC (hereinafter "Shaffer"). See attached **Exhibit 4**.

13. At that time, Shaffer owned nearly 300 contiguous acres of real property in Kentwood, Michigan, which included the Subject Property now belonging to Plaintiff (approximately 47.77 acres).

14. In the PUD Agreement, Ravines and Shaffer agreed to pay deferred special assessments on the property pursuant to the Deferred Assessment Agreement between the parties. *See Exhibit 4*, Section 13.

15. In the Deferred Assessment Agreement ("DAA"), dated March 18, 2004, and recorded in Instrument No. 20040402-0043212, Ravines and Shaffer agreed to pay $327,004.68 in deferred special assessments (created in 1981, 1983, 1995, and 2000) which were outstanding liens on the property. See attached **Exhibit 5**.

16. Shortly after entering into the PUD Agreement, on September 7, 2004, Shaffer entered into another contract with the City of Kentwood which addressed payment terms for infrastructure associated with the new development. See Voluntary Special Assessment/Development Agreement attached as **Exhibit 6** ("Voluntary SADA").

17. The terms of the Voluntary SADA included:

a. Shaffer was engaged by the City to design, construct, and install certain public improvements (*see Exhibit 6*, p.2);

b. Payments for the public improvements were to be made solely by the City of Kentwood (*see Exhibit 6*, p.5); and

c. The City of Kentwood would recoup the payments made for the public improvements by specially assessing the costs against the property (*see Exhibit 6*, p.6).

18. On September 7, 2004, the City Commission of the City of Kentwood passed Resolution No. 96-04 - A Resolution to Confirm the Special Assessment Roll ('the Resolution"). See **Exhibit 7**, attached.

19. Resolution 96-04 purported to approve the Voluntary SADA calling it the Ravines Special Assessment District (hereinafter "Ravines SAD"), and a resulting special assessment in the amount of $1,942,070.00.

20. The special assessment was to be paid in annual installments, of interest only payments, until certain trigger dates occurred which would then trigger the principal amount of the applicable phase to be due in full.

21. Upon information and belief, all the requirements for a valid special assessment were not fulfilled.

22. Subsequent to the agreements and the Resolution, Shaffer became delinquent in paying both the property taxes and asserted special assessment.

23. As a result of the delinquencies, a Judgment of Foreclosure was entered against the Subject Property. *See Exhibit 2*.

24. As a result of the tax foreclosure, and pursuant to the General Property Tax Act ("GPTA"), "all liens against the property, including any lien for unpaid taxes or **special**

assessments, except future installments of special assessments … are extinguished." (see MCL 211.78k(5)(c) (emphasis added)).

25. Defendants City of Kentwood and Kent County Treasurer have wrongfully attempted to recoup past due special assessment installments and continue to charge Plaintiff for same despite their having been extinguished pursuant to the Judgment of Foreclosure and Michigan law.

26. Pursuant to the GPTA, the estate interest conveyed to a foreclosing governmental unit in the Subject Property is fee simple absolute. *See* MCL § 211.78(k)(6).

27. Fee simple absolute title to the Subject Property absolutely vested in the Kent County Treasurer upon foreclosure on April 1, 2015.

28. Section 211.78m(2) of the GPTA mandates the foreclosing governmental unit to sell by auction the Subject Property as foreclosed by the Judgment of Foreclosure.

29. Section 211.78m(2) of the GPTA mandates the foreclosing governmental unit to convey the foreclosed property by deed.

30. Section 211.78m(2) of the GPTA mandates the deed by the foreclosing governmental unit "vest fee simple title" in the buyer's name.

31. Accordingly, upon the entry of a Judgment of Foreclosure, all previously owed installments of the special assessment levied on the Subject Property were extinguished.

32. The GPTA does not give the foreclosing governmental unit any authority to deviate from the express provision of the GPTA in the sale of foreclosed properties.

33. The Defendants' assertion that a significant outstanding special assessment balance is due to Defendants constitutes a restriction on Plaintiff's right of alienation of a vested estate in the Subject Property.

34. The assertion by Defendants that Kent County Treasurer conveyed the Subject Property to Plaintiff conditional upon and subject to past-due and extinguished special

assessment payments, would constitute a fee tail when collected by Defendant.

35. The Michigan Supreme Court established that any condition or restriction which suspends all power of alienation of such an estate, even for a single day, is unreasonable and void. *See Mandlebaum v McDonell*, 29 Mich 78 (1874).

36. Plaintiff was and remains restricted from selling, transferring, or otherwise alienating the Subject Property due to the interest asserted by the City of Kentwood.

37. Michigan law states that "every estate which would be adjudged a fee tail… shall for all purposes be adjudged a fee simple; and if no valid remainder be limited thereon, shall be a fee simple absolute." MCL § 554.3.

38. The restriction on the right of alienation of Plaintiff's vested estate constitutes a fee tail and is improper.

39. Michigan law requires all estate interests of fee tail to be converted to a fee simple, accordingly, Plaintiff's interest in the Subject Property should be converted to fee simple interest that is no longer subject to the improper remainder interest claimed by the City of Kentwood for any outstanding special assessment balance.

40. This Court has the power under MCR 2.605 to adjudicate the matters at issue and enter Judgment declaring the rights of all parties to this action.

COUNT I - DECLARATORY RELIEF
[Deferred Assessment Agreement – Instrument No. 20040402-0043212]

41. Plaintiff hereby incorporates all preceding paragraphs by reference as if fully restated herein.

42. The total amount of outstanding special assessment payments sought to be recovered under the DAA is $327,004.68. *See Exhibit 5* at 1.

43. The outstanding special assessment districts to which the DAA refers, were established by the City in 1981, 1983, 1995 and 2000. *Id.*

44. The Initial Payment in the amount of $110,827.68, "representing the portion of the deferred Special Assessments due and owing for certain sanitary sewer, watermain and detention pond improvements for approximately 1020 lineal feet of the Property along Shaffer Avenue, S.E." was to be paid to the City "concurrent with the execution of this Agreement" on March 12, 2004. *See Exhibit 5*, Section 2(A).

45. The Remainder in the amount of $216,177.00, was to be paid to the City no later than December 31, 2006 as evidenced in the following language in the DAA:

> "Regardless of the particular development schedule for the PUD pursued by 44th LLC or the Builders, any portion of the Special Assessment remaining unpaid as of December 31, 2006 shall be paid to the City with interest accrued to that date by 44th LLC or the Builders." *Exhibit 5*, Section B(5).

46. All payments under the DAA were due on or before December 31, 2006, more than eight years prior to the tax foreclosure, and therefore any unpaid amounts were clearly not future installments and were ALL extinguished by the 2015 Judgment of Foreclosure.

47. Upon information and belief, the City of Kentwood is not claiming any amount is due under the DAA.

48. Despite the fact that the City is not claiming amounts are due under the DAA, it is necessary to obtain a recordable order from this Court to clear Plaintiff's title.

WHEREFORE, Plaintiff respectfully requests the Court to enter an order for the following:

A. Declaring the Deferred Assessment Agreement is void and unenforceable against the Subject Property; and

B. Declaring the instruments recorded at 20040402-0043212, and 20050405-0039642 to be void and unenforceable against the Subject Property; and

C. Declaring that Plaintiff owns fee simple absolute title to, and is entitled to the quiet and peaceful possession of the Subject Property; and

D. Enjoining the Defendants from levying, assessing, invoicing, or attempting to collect any obligations that have already been extinguished on March 6, 2015 pursuant to the Judgment of Foreclosure and prevailing law; and

E. Granting all other appropriate and equitable relief that the Court deems proper, including Plaintiff's actual and reasonable attorney fees and costs.

COUNT II - DECLARATORY RELIEF
[Voluntary Special Assessment/Development Agreement – Instrum. No. 20040917-0125700]

49. Plaintiff hereby incorporates all preceding paragraphs by reference as if fully restated herein.

50. As identified in the Special Assessment Roll attached to Resolution No. 96-04, the total amount of special assessment payments sought to be recovered by Defendants under the Voluntary SADA is $1,749,570.00. *See Exhibit 7.*

51. The Special Assessment Roll, confirmed on September 7, 2004, identified the termination date of the roll as "10 years from confirmation of roll; i.e., September 7, 2014." The language in the roll continues to declare that "[a]ny unpaid principal and interest is due in full upon termination date." *Id.*

52. Irrespective of the payments' initial due dates, no amount had an installment payment date after September 7, 2014.

53. All payments under the Voluntary SADA were due on or before September 7, 2014, more than six months prior to the tax foreclosure, and therefore any unpaid amounts were clearly not future installments and were ALL extinguished by the 2015 Judgment of Foreclosure.

WHEREFORE, Plaintiff respectfully requests the Court to enter an order for the following:

A. Declaring the Voluntary Special Assessment/Development Agreement is void and unenforceable against the Subject Property; and

B. Declaring the instrument recorded at 20040917-0125700 to be void and unenforceable against the Subject Property; and

C. Declaring the Ravines Special Assessment District to be exterminated concerning the Subject Property, and to be void and unenforceable against the Subject Property.

D. Declaring that Plaintiff owns fee simple absolute title to, and is entitled to the quiet and peaceful possession of the Subject Property; and

E. Enjoining the Defendants from levying, assessing, invoicing, or attempting to collect any obligations that have already been extinguished on March 6, 2015 pursuant to the Judgment of Foreclosure and prevailing law; and

F. Granting all other appropriate and equitable relief that the Court deems proper, including Plaintiff's actual and reasonable attorney fees and costs.

COUNT III - DECLARATORY RELIEF
[Landscape/Irrigation Agreement – Instrument No. 20060126-0010084]

54. Plaintiff hereby incorporates all preceding paragraphs by reference as if fully restated herein.

55. As identified in the Special Assessment Roll confirmed by Resolution No. 8-06, the total amount of special assessment payments sought to be recovered by Defendants under the SA Landscape is $160,899.15. See attached **Exhibit 8**.

56. The Special Assessment Roll, confirmed on January 17, 2006, identified the termination date of the roll as "8 years from confirmation of roll." *See Exhibit 8*.

57. Irrespective of the payments initial due dates, no amount had an installment payment date after January 17, 2014.

58. The Judgment of Foreclosure was entered on the Subject Property on March 6, 2015. *See Exhibit 2.*

59. All payments under the SA Landscape were due on or before January 17, 2014, more than a year prior to the tax foreclosure, and therefore any unpaid amounts were clearly not future installments and were ALL extinguished by the 2015 Judgment of Foreclosure.

60. Upon information and belief, the City of Kentwood is not claiming any amount is due under the SA Landscape.

61. Despite the fact that the City is not claiming amounts are due under the SA Landscape, it is necessary to obtain a recordable order from this Court to clear Plaintiff's title.

WHEREFORE, Plaintiff respectfully requests the Court to enter an order for the following:

A. Declaring the Landscape/Irrigation Agreement is void and unenforceable against the Subject Property; and

B. Declaring the instrument recorded at 20060126-0010084 to be void and unenforceable against the Subject Property; and

C. Declaring the Pfieffer Woods Drive Landscaping Maintenance Special Assessment District to be exterminated concerning the Subject Property, and to be void and unenforceable against the Subject Property.

D. Declaring that Plaintiff owns fee simple absolute title to, and is entitled to the quiet and peaceful possession of the Subject Property; and

E. Enjoining the Defendants from levying, assessing, invoicing, or attempting to collect any obligations that have already been extinguished on March 6, 2015 pursuant to the Judgment of Foreclosure and prevailing law; and

F. Granting all other appropriate and equitable relief that the Court deems proper, including Plaintiff's actual and reasonable attorney fees and costs.

COUNT IV - DECLARATORY RELIEF
[Amendment to Voluntary Special Assessment/Development Agreement – Instrument No. 20150623-0053765]

62. Plaintiff hereby incorporates all preceding paragraphs by reference as if fully restated herein.

63. On June 23, 2015 and June 18, 2015 respectively, the Kent County Treasurer and the City of Kentwood, signed a document entitled Amendment to Voluntary Special Assessment/Development Agreement ("AVSADA") which was recorded as Instrument No. 20150623-0053765 with the Kent County Register of Deeds (see **Exhibit 9**).

64. The AVSADA is a cloud on Plaintiff's title.

65. There was no authority for the Defendants to enter into the AVSADA in an attempt to restore an assessment that had been voided by the GPTA.

66. There was no consideration for the AVSADA.

67. The AVSADA is against public policy.

WHEREFORE, Plaintiff respectfully requests the Court to enter an order for the following:

A. Declaring the Amendment to Voluntary Special Assessment/Development Agreement is void and unenforceable against the Subject Property; and

B. Declaring the instrument recorded at 20150623-0053765 to be void and unenforceable against the Subject Property; and

C. Declaring the Special Assessment/Development Agreement to be exterminated concerning the Subject Property, and to be void and unenforceable against the Subject Property.

D. Declaring that Plaintiff owns fee simple absolute title to, and is entitled to the quiet and peaceful possession of the Subject Property; and

E. Enjoining the Defendants from levying, assessing, invoicing, or attempting to

collect any obligations that have already been extinguished on March 6, 2015 pursuant to the Judgment of Foreclosure and prevailing law; and

F. Granting all other appropriate and equitable relief that the Court deems proper, including Plaintiff's actual and reasonable attorney fees and costs.

COUNT V – SLANDER OF TITLE

B. Plaintiff hereby incorporates all preceding paragraphs by reference as if fully restated herein.

C. Defendants continue to assert that substantial special assessments exist on the Subject Property.

D. Defendants have been notified that the Judgment of Foreclosure on the Subject Property extinguished all past installments for the special assessments.

E. Regardless, Defendants continued to maliciously assert this false position.

F. These assertions have been published, as the installments claimed owing on the special assessments appear in title work, the public tax records, and in instruments recorded with the Kent County Register of Deeds.

G. The misrepresentations made by Defendants have rendered the Subject Property unmarketable for its true value.

H. Despite having a potential buyer for the Subject Property, Plaintiff has been unable to complete the sale due to Defendants' slander.

I. As a direct result of these misrepresentations, Plaintiff has suffered damages in excess of $25,000.00 because the sale of the Subject Property has been delayed or prevented, and Plaintiff lost the ability to invest the proceeds from the sale and receive earnings on the proceeds.

WHEREFORE, Plaintiff respectfully requests the Court to order Defendants to pay Plaintiff damages in excess of $25,000.00 arising out of the slander of title, and award Plaintiff his actual attorney fees and costs.

VISSER AND ASSOCIATES, PLLC

Dated: December 23, 2016

Donald R. Visser (P27961)
Attorneys for Plaintiff

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

PETERSEN FINANCIAL LLC,

Plaintiff,

-vs-

Case No. 16-11820 - CH
HON. GEORGE JAY QUIST

CITY OF KENTWOOD and
KENT COUNTY TREASURER,

Defendant.
_____/

Donald R. Visser (P27961)
Jeremy J. Voorhees (P80872)
Attorneys for Plaintiff
VISSER AND ASSOCIATES, PLLC
2480 – 44th Street, S.E., Suite 150
Kentwood, Michigan 49512
(616) 531-9860

David K. Otis (P31627)
PLUNKETT COONEY
Attorneys for Defendant
325 E. Grand River Ave, Ste 250
East Lansing, MI 48823
(517) 324-5612

Linda S. Howell (P44006)
Kent County Corporate Counsel
Attorney for Kent County Treasurer
300 Monroe NW, Ste 303
Grand Rapids MI 49503
(616) 632-7594
_____/

DEFENDANT CITY OF KENTWOOD'S RESPONSE IN OPPOSITION TO PLAINTIFF'S RENEWED MOTION FOR SUMMARY DISPOSITION

Defendant City of Kentwood opposes Plaintiff's Renewed Motion for Summary Disposition and relies upon the following in that opposition:

1. Briefs previously filed in this action by the City of Kentwood;

2. The Court's Opinion and Order of July 7, 2017, wherein the Court denied Plaintiff's Motion for Summary Disposition and held that the subject assessment is not a contract (See Page 5);

3. Defendant's Motion for Summary Disposition and Brief in Support currently pending in this Court.

WHEREFORE, Defendant City of Kentwood respectfully requests that this Court deny Plaintiff's Renewed Motion for Summary Disposition.

Respectfully submitted,

Dated: 7-15-19

By: _____

David K. Otis (P31627)
PLUNKETT COONEY
Attorney for Defendants
325 E. Grand River, Ste 250
East Lansing, MI 48823
(517) 324-5612
dotis@plunkettcooney.com

PROOF OF SERVICE

Laura L. Cushman states that on the 15th day of July, 2019, she did cause to be served a copy of Defendant City of Kentwood's Response in Opposition to Plaintiff's Renewed Motion for Summary Disposition to all attorneys of record via email transmission and at their respective addresses, by placing said documents in an envelope properly addressed to said parties and depositing same in the U.S. Mail with postage fully prepaid. I declare under penalty of perjury that the above statement is true to the best of my knowledge, information and belief.

_____
Laura L. Cushman

Open.00560.70941.22460600-1

STATE OF MICHIGAN

SEVENTEENTH JUDICIAL CIRCUIT COURT (KENT COUNTY)

PETERSEN FINANCIAL, LLC,

Plaintiff,

v File No. 16-11820-CH

CITY OF KENTWOOD and KENT COUNTY TREASURER,

Defendants.
_____/

MOTION FOR SUMMARY DISPOSITION

BEFORE THE HONORABLE GEORGE JAY QUIST, CIRCUIT COURT JUDGE

Grand Rapids, Michigan - Friday, July 19, 2019

APPEARANCES:

For the Plaintiff:

MR. DONALD R. VISSER (P27961)
Visser and Associates, PLLC
2480 44th Street, Southeast
Suite 150
Grand Rapids, Michigan 49512
(616)531-9860

For the Defendants:

MR. DAVID K. OTIS (P31627)
Plunkett Cooney
325 East Grand River Avenue
Suite 250
East Lansing, Michigan 48823
(517)324-5612

MS. LINDA S. HOWELL (P44006)
Kent County Corporate Counsel
300 Monroe Avenue, Northwest
Suite 303
Grand Rapids, Michigan 49503
(616)632-7594

RECORDED BY:	FTR
TRANSCRIBED BY:	Marceedes Langlois, CER 9476 Certified Electronic Recorder (616)632-5076

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Grand Rapids, Michigan

Friday, July 19, 2019 - 10:24 a.m.

THE CLERK: All rise, please.

THE COURT: Okay. Be seated, please.

THE CLERK: This is number 7, Petersen Financial, LLC, versus City of Kentwood, et al.

THE COURT: Okay. I will try to briefly summarize what is going on here, if I can.

Attorney Donald Visser appears on behalf of the Plaintiff. The City of Kentwood is represented by David Otis, I believe and --

MR. OTIS: Yes, your Honor.

THE COURT: -- Linda Howell is here on behalf of the Kent County Treasurer.

This case was filed back in 2016. It involves tax -- special tax assessments. I guess we'll get into that a little bit more as we go along. The parties filed and argued competing motions for summary disposition some time ago, way back in 2017. This Court issued an opinion on July 7, 2017, dismissing Counts I through IV of Plaintiff's complaint due to lack of subject-matter jurisdiction. And the Court also dismissed Count V based on governmental immunity. Plaintiff appealed.

Apparently, the Court of Appeals thought I was 20 percent right, in that it affirmed me on Count V but it

reversed me on Counts I through IV. They said that the Circuit Court, rather than the Michigan Tax Tribunal, in fact did have jurisdiction over this matter.

The good thing is, at this point, I think we are down to two counts in controversy because the Court of Appeals ruled that Count I, involving the Deferred Assessment Agreement, and Count III, the Landscape/Irrigation Agreement, there is really no issue because I think the Defendants agree that the City does not seek to hold Plaintiffs responsible in these matters and they ask -- asked me to enter an order in favor of the Plaintiff for an entry of declaratory relief on those two counts. So, I will do that and maybe I will just do that as a separate order in addition to what we have going on right now.

So, the Court of Appeals ruled that Counts IV -- II and IV require more analysis on the record and these counts deal with something called a VSADA, which is a Voluntary Special Assessment and/or Development Agreement. Count II deals with a VSADA, I think, from 2004. And then Count IV deals with an amended VSADA, sometime in 2015, I believe.

So, where are we now? Well, again, the parties have filed competing motions for summary disposition, but as far as I am concerned, progress has been made because we had five counts and now we are down to two.

So, I have reviewed the briefs. I will take this

matter under advisement and do a written opinion, hopefully it will come to you guys next week. It will certainly be within two weeks. I -- but probably next week.

But, anyway, let me ask you a few questions, first of all, Mr. Visser. The issue versus a -- a contract versus an assessment, and why that is important here? Go ahead.

MR. VISSER: Do you --

THE COURT: Yeah, wherever you want to go is fine. If you want to go to the podium, that is fine or -- or -- or at the table is fine, too.

MR. VISSER: Your Honor, I'm not too sure --

THE COURT: That it matters?

MR. VISSER: -- that it -- well, I -- I won't say that. Looking at the entire -- from the beginning. For the first ten years it was important to look at it, to determine whether we would be analyzing it under subsection C or subsection E. In other words, is it going to be terminated and analyzed as past and future installments for a special assessment except -- an exception to subsection C, or is it going to be extinguished in its entirety as a contract under subsection E?

That has some residual effect because nobody disagrees that, in regards to this challenge by Petersen, the ten -- the initial ten years, either by assessment or by contract, whatever it was, ran in September of 2014, before

the tax (inaudible). The -- and so, it has some residual carryover when you start looking at, well, if it was extended, what was extended: a special assessment or a contract? So, that has some -- but I think you can really, actually, pinpoint a little bit more by looking at the details of the extension as to what its characters are because -- characteristics are because it, in fact, clearly, is a contract because whether by resolution in the City Counsel or by amended plead -- amendment to recorded document, everything recites its foundation being the voluntarily -- voluntary agreement.

So, that's really where -- where we -- where we come from, and I make reference to the City has a bit of a schizophrenic approach depending upon what they're focusing on right at the moment. First of all, they say it's a -- it's an assessment. And I'm talking about the one year extension now.

THE COURT: Okay.

MR. VISSER: The -- getting it past the date, because otherwise if it expired in September of 2014 -- or the final payment was due in 2014, it doesn't matter which analysis you use, under C or E, it's extinguished.

So, first of all, they say, well, it -- it really is an assessment, that extension is an assessment. Well, their own ordinances say you can't do that, you have to go through -- you have to have the notices, you have to have to --

THE COURT: Public hearings, that kind of thing, or?

MR. VISSER: Yeah, public hearing. You have to confirm the role. If you look at -- at what they are saying, without reconfirming the role, but more importantly, their own ordinances say it's final. It's final and conclusive. In other words, it's not final and conclusive as to everybody but us, but it's final and conclusive. So, that is final and conclusive.

Well, they say, well, but we had the latitude to do so under the VSADA, which is the agreement. Well, and then they site, well, we can do these things by contract, and by the way, there is a waiver. Well now -- well -- which -- where are we over here on -- on that? And they say, well, you waived it, do contract analysis. Well, if contract analysis puts it under subsection E, you're out. Well, but it really isn't either of those, it's a private restrictive -- private deed restriction.

And now, we -- we get into the last one and it -- well, that's not neither -- it's neither -- well, I guess a private deed restriction could be a contract but it's certainly not a -- a special assessment. So, it's really kind of like, where is it? And the Court says, private deed -- it's our position that private deed restriction really has no anchor at all in law, it's just a declaration and, you know, it just -- just calling something something doesn't make it --

I mean, calling a contract an assessment doesn't make it an assessment. It's named an assessment, but it's not with -- within the technical terms of the assessment. Same with -- similarly saying a contract for an obligation doesn't become a -- simply become a private deed restriction because that's what you would like it to be today.

There's -- there's no restrictions at all, really, under the VSADA or its amendment. What it is, is a -- is the attempt to place a lien. Same thing as any lien. Same thing as any mortgage, where -- where granting -- it's totally about obligations, nothing about restrictions, use restrictions, building restrictions, any type of restrictions at all that would fall within the normally conceived private deed restriction. Now, of course, the -- the act, General Property Tax Act, did not define that term, but if you look at all the generally accepted terms, it just doesn't get there.

So, that's -- so that's why we think it has some relevance.

THE COURT: Okay. But -- but regardless, it's a lien and the tax foreclosure extinguished the lien?

MR. VISSER: That's our position, yes.

THE COURT: Okay. Thank you.

Let me hear from Mr. Otis on a few matters. You know, you threw --

MR. OTIS: Well --

THE COURT: -- threw a lot of legal -- you can -- well why don't -- you can respond to him first and then --

MR. OTIS: Can I respond to that and then I'll --

THE COURT: Yeah --

MR. OTIS: Thank you, your Honor.

THE COURT: -- and then I'll -- yeah, go ahead. Sure.

MR. OTIS: I think Mr. Visser, on behalf of Petersen, is trying to create a lot of confusion. I think the Court of Appeals saw this issue as being quite simple and straight forward in the *Damghani* case, and we annexed the *Damghani* opinion to our brief as Exhibit G. And there is a whole section of the *Damghani* opinion, Section III, Nature of the Obligation. And the Court of Appeals took a careful look at the nature of the transaction and they addressed the Plaintiff's argument with regard to whether or not this obligation arose from a special assessment or a contract. And, they clearly rejected the Plaintiff's argument that the obligation arises from a contract. And, they made it very clear that a special assessment district was created, I'm on page 9 of the opinion, that the assessment district was not created by the VSADA, but it was created by Resolution 96-04, which is -- was adopted in 2004. The agreements then were incorporated into the special assessment and the Court of Appels in *Damghani* goes on to indicate that the Plaintiff has

supplied no authority to indicate that the City may not incorporate a contractual agreement into a special assessment. And so, the Court of Appeals in *Damghani*, doesn't see anything schizophrenic or inappropriate about the City, by resolution, creating a special assessment district and then creating terms, or obligations for that assessment through contractual arrangements. So, these arguments were completely rejected by the *Damghani* Court.

THE COURT: Okay. And then you are throwing a lot of other legal stuff at me, like standing waiver, statute of limitations. Thank you. You're doing your job.

MR. OTIS: Well, and -- and I think candidly, the standing argument comes back based on this Court's comment about standing, and in the Court's opinion back in 2017, but I -- I think there is a cluster of issues there in terms of both standing and/or what rights did Petersen take when Petersen purchased the property.

And so, there is a -- there is a thread of argument that is really on two levels. Number one, Petersen was never a party to any of these agreements and can't challenge them. And then secondarily, even if Petersen gained some interest in the property by acquiring it, he can't gain any rights greater than his predecessors in title, and his predecessors in title waived any claims arising out of defects in the special assessment district. Also, the Michigan Legislatures

recognize that in the same vain that a successor doesn't gain any rights, the successor doesn't gain a new accrual date for the transaction either. They've made it very clear, legislatively, that Petersen is stuck with the accrual dates that the original party to the transaction would've had.

Also, maybe a somewhat unique feature to Michigan's Statue of Limitations Law, our rule on accrual is that accrual occurs when the wrong occurred, not when the damage occurred. And I think what Mr. Visser is trying to do, on behalf of Petersen, is say, the accrual is in 2014, 2015, because that's when he sustained, that is, Petersen sustained some damage. Michigan says, no, accrual is when the wrong occurred, and the wrong here, according to the Plaintiff, was the City reserving to itself under the VSAD through 2(e), the right to amend the payment schedule. That wrong occurred in 2004.

So, that's -- that's the sort of the two levels of argument we make on all three of these issues: standing waiver, statute of limitations. The main thread is that Petersen can't gain any rights superior to what he took from the County Treasurer, or he never had standing to bring the case because he was never a party to the contracts.

THE COURT: Okay.

What about their argument that regardless of whether it's an assessment or a contract, this is a lien and is extinguished by the -- the GPTA? That's essentially one of --

that's one of their biggest arguments here. So...

MR. OTIS: Petersen completely ignores the fact that there was an extension of the balloon payment that was done by Resolution 50-14.

THE COURT: Uh-huh.

MR. OTIS: And all of his briefing and all of his argument completely ignores the fact that the due date on the balloon payment was extended by a year. And all the action taken with regard to establishing the AVSADA, the amended AVSADA, is proper because of the extension, the one-year extension of the balloon payment.

THE COURT: Uh-huh.

Okay. Now, if I read the Court of Appeals' decision correctly, it seems to me, they're remanding this to me and saying, listen, this a matter of statutory and contractual construction, the Circuit Court shall rule on this and there is really no more facts that need to be developed. So, I am just hoping, I'll make a decision, I'll try to do my best, but the Court of Appeals is going to reverse me or affirm me, it certainly won't remand me next time. Is there -- I mean, there is no other discovery or workup, I mean, we're -- we're done, it --

MR. OTIS: Well, --

THE COURT: -- is what it is and I'll make the decision, right or wrong.

MR. OTIS: We filed it as a C(8), your Honor.

THE COURT: Sure.

MR. OTIS: No question.

THE COURT: Yeah.

MR. OTIS: Yeah.

THE COURT: I know. He -- he -- he referred to C(10), but maybe it's just based on the documents.

MR. OTIS: That may be, your Honor. I think these are legal questions that the Court is addressing.

THE COURT: Right. But there is no other discovery or anything like that we need to worry about or --

MR. OTIS: Not -- not from our standpoint --

THE COURT: And I -- I -- well, I think that's the way Court of Appeals said it, too. It's like, okay, Circuit Court Judge, we are remanding you to do this, looking at these last two counts, you make your decision. But, it seems to me, I'll just make the right or wrong decision and the Court of Appeals will ultimately decide if I am right or wrong. So, I just wanted to confirm that there is no other documents or anything else that needs to be done, it's ripe for a decision on these issues, you'd agree?

MR. OTIS: As far as the City is concerned, your Honor.

THE COURT: Okay. Thank you.

Mr. Visser, anything else on this matter?

MR. VISSER: Yes, your Honor.

Let me start at the -- at the backend of that question. We think this matter is ripe for summary disposition based upon the legal matters.

THE COURT: Uh-huh.

MR. VISSER: We would -- we would indicate and reserve the right that if the Court disagrees with our position, that -- to be able to submit fact -- evidence on whether the -- the triggering events set forth in the -- in the contract and -- or the assessment, whatever it is, have been met. There were certain things that would trigger that. We -- I did address that in front of Judge Johnston in the *Damghani* case a bit, but that had really unique fact situations where the -- where discovery was truncated because there was a stipulation entered into and that stipulation then was reneged on at trial and that's, in essence, what the Court of Appeals ruled on. But, there would be -- we would -- if you don't agree that based upon the admitted events here, that it was extinguished, then we would reserve the right to present evidence that the triggering events had, in fact, occurred and therefore, the special assessment contract, whatever it was, was in fact due prior to September of 2014.

THE COURT: Okay.

MR. VISSER: But that's -- we don't -- we don't think you get there simply because of the -- of the rest of

the documents.

There was a comment made that Petersen ignores the fact that Resolution 50-14 extended the time period. We -- we fully acknowledge that. I think, even at the Court of Appeals, acknowledges that and sends it back. Is that -- was that a -- illegal, or what that against public policy, and so forth. And that's really where we are.

So, you have an attempt to extend it, I understand that. That's -- but it's invalid because the contract that it was based upon, they reserved the right, I didn't stay on that. We reserved the right. That's a contract, that was extinguished. So, you don't have a right to extend it. You don't have a right to extend it under statute because it's -- their own ordinance says, when you made that determination back in 2004, that was final and conclusive. You can't violate your own ordinances and simply say, well, maybe you can, but then you have to say, I'm doing it based upon contract. Well, then it's gone. I -- I mean, I -- I just don't know how they can get, other than truncating an argument and all of the sudden switching over and saying, well, I -- I have a different theory to cover that point. Well, the theories have to be consistent from beginning to -- to the end.

You know, the statute of limitations argument is troublesome to me because it seems to misdirect exactly what

the Court of Appeals ruled on. This is an interpretation, not of a challenge to something that happened in 2004, it's what are the effects of the tax foreclosure in March of 2015? That's when -- every issue that's involved here, focuses on that date. I don't know any statute of limitations that is shorter than the time period that this case was filed after -- after that -- that foreclosure. There -- and there is nothing -- they only get to a statue of foreclose -- I mean, statute of limitations argument by referencing back to 2004. And none of the theories are based upon a reference to 2004, it's aft 2014 and '15.

You know, and then we get -- we -- waived any defects in special assessment and it's kind of get -- it sounds -- it sounds okay, but that's the -- that's a contract -- so, you contractually waive defects in special assessments. So, that has to be analyzed contractually. Did that survive? It's gone, because it falls under subsection called -- under subsections E. That's -- that's our problem, generally, in following it. It is schizophrenic because it jumps from one thing to another to another and there is no -- nothing that the City can point to that says we had had authority. They point to their own statutes, which in essence say, you don't have authority, you -- for you to have a special -- a valid action, you have to have confirmation. For you to have a valid action, it has to be definite and it has to be confirmed

by the City Counsel and it's final and conclude (sic).

So, and finally, *Damghani*. I -- I -- I, frankly -- other than it's a somewhat favorable decision based upon how the weird facts of that case got into play with the stipulation, and so forth, it really is so far different from this case that it -- well, first of all, it's a nonpublished decision. We have a published decision in this case and it's law of the case in this case. So, at -- even if the two panels were diametrically opposed, then *Damghani* has no -- no role. But, I'm saying they -- they are not diametrically opposed because one very critical factor, which clears up any issues in *Damghani, is* this sale occurred a year later and therefore, after the ten-year statue ran. So, we have *Damghani,* was a -- was a March of 2014 sale. This property was a March of 2015 sale, and the ten years ran in September.

So, that -- it's -- it really -- it really doesn't provide any guidance. It certainly is not compelling. Petersen was not -- was not a party to that case and is entitled to develop its own facts and so forth in this case. But I -- I just think, to -- to try to say that what happened in *Damghani,* has any relevance is both factually and legally wrong in this case.

THE COURT: Okay. Thank you.

Ms. Howell, do you have anything to add to this matter?

MS. HOWELL: Good morning, your Honor.

As you noted at the outset, the County Treasurer, it should be out of this case per the Court of Appeals. I think Mr. Otis has set forth the timeline very clearly in his arguments and I don't want to add any confusion --

THE COURT: That's good.

MS. HOWELL: -- to a case that is very readily confused.

THE COURT: Okay.

MS. HOWELL: So, I think, if -- what I -- all I would do, is say, if you want a very short summary of the applicable timelines, look at the last page of Mr. Otis' brief, page 18, and he lays it out very concisely in four bullet points. And, that's the clearest way to -- to put it before the Court for your decision.

THE COURT: Okay. Thank you.

Mr. Otis, I know that you've got competing motions here, Mr. Visser has spoken twice, I'll let you conclude this matter. Hopefully --

MR. OTIS: Yes, thank you, your Honor.

THE COURT: -- briefly, but go ahead.

MR. OTIS: Very -- very briefly, your Honor.

The City clearly was authorized to engage in the special assessment district. There is a broad grant of authority in the Home Rule Cities Act. The Court should read

that grant of authority broadly. Plaintiff has not brought forth any case law to indicate that somehow the City was constrained to accomplish the special assessment district in the way it did. The Plaintiff keeps referring to this transaction being against public policy, but he never says what that is, and he says it lacks consideration. Well, it -- to the contrary, the City and the -- stated that public purpose, in Resolution 50-14 in Recital J, that the City indicates that extending the term one additional year is in the public interest in order to allow the owner of the property an opportunity to cause the balloon payment to be made and to bring the taxes and special assessment on the property current, to make the property more marketable, and to hance (sic) -- enhance economic development opportunities within the City. So, in fact, the City stated appropriate consideration in the Resolution, and stated of that it valid public purpose.

THE COURT: Okay. Thank you.

All right. Well, I will take this matter under advisement. As I stated, you'll get an opinion within a week or two. I don't like to sit on opinions, generally, but this is a little bit more complicated than things we normally deal with, here.

So, anything else Mr. Visser?

MR. VISSER: Only, your Honor, if you wanted me to

address public policy, if you had questions on it.

THE COURT: No. I think -- I think we're all set.

MR. VISSER: Okay.

THE COURT: Okay. Thank you very much, everybody.

MR. OTIS: Thank you, your Honor.

THE COURT: Sure.

MS. HOWELL: Thank you, sir.

THE COURT: Yep.

(At 10:48 a.m., proceedings concluded)

STATE OF MICHIGAN)

COUNTY OF KENT)

I certify that this transcript, consisting of 22 pages, is a complete, true, and correct transcript to the best of my ability, of the proceedings and testimony taken in this case on Friday, July 19, 2019.

9-25-19
Date

Marceedes Langlois

Marceedes Langlois, CER 9476
17th Circuit Court
180 Ottawa, N.W., Suite 12200A
Grand Rapids, Michigan 49503
(616) 632-5076

NOTICE OF FILING OF TRANSCRIPT AND AFFIDAVIT OF MAILING

STATE OF MICHIGAN - 17TH JUDICIAL CIRCUIT - KENT COUNTY

Appealed to: **Court of Appeals**
Circuit Court File No(s): **16-11820-CH**

Petersen Financial, LLC,
Plaintiff,
V

City of Kentwood, et al,
Defendants.

On behalf of Appellant:
Donald R. Visser (P27961)
2480 44th Street SE
Suite 150
Grand Rapids, MI 49512

On behalf of Defendants:
David K. Otis (P31627)
325 E. Grand River Ave
Ste 250
East Lansing, MI 48823

Clerk of the Court of Appeals:
350 Ottawa Avenue NW
Grand Rapids, MI 49503

Linda S. Howell (P44006)
300 Monroe Avenue NW
Ste 303
Grand Rapids, MI 49503

I am a certified electronic recorder for the Court designated above, and I certify that:

1. I have this date filed the required transcript(s) in this case in the trial court from 7-19-19.

2. I have notified all parties that the transcript has been filed.

Date: 9-25-19

Marceedes Langlois

Marceedes Langlois, CER 9476
Certified Electronic Recorder
180 Ottawa Avenue, N.W., Suite 12200A
Grand Rapids, MI 49503
(616)632-5076

CITY OF KENTWOOD ORDINANCE NO. 4-67

An Ordinance prescribing the complete special assessment procedure concerning the initiation of projects, plans and specifications, estimate of costs, determination of benefits received by the affected property and the respective proportions thereof, notice and hearing: the making and confirming of the assessment roll and correction of errors: the collection of special assessments, and any other matters concerning the making of local public improvements by special assessment. . .

THE CITY OF KENTWOOD ORDAINS:

Section 1. Defintions:

A. **Cost.**

The term "cost" as used in this ordinance when referring to the cost of any local public improvement shall include the costs of services, plans, condemnation, spreading of rolls, notices, advertising, financing, construction and legal fees and all other costs incident to the making of such improvement, the special assessments therefor and the financing thereof.

B. **Local Public Improvement.**

The term "local public improvement" as used in this ordinance shall mean any public improvement which is of such a nature as to benefit especially any real property or properties within a district in the vicinity of such improvement.

Section 2. Authorty to Assess.

The whole cost or any part thereof of any local public improvement may be defrayed by special assessment upon the lands specially benefitted by the improvement in the manner hereinafter provided.

Section 3. To Initiate Special Assessment Projects.

Proceedings for the making of local public improvements within the city may be commenced by resolution of the Commission. Such action may be requested by the filing with the City Clerk of a petition signed by at least 50% of the owners of the property to to be assessed for the improvement requesting that the improvement be made and the cost thereof be defrayed by special assessment upon the property benefitted, but such petition shall be advisory to the City Commission only.

Section 4. Survey and Report.

Before the Commission shall consider the making of any local public improvement, the same shall be referred by resolution to the City Clerk directing him to prepare a report which shall include necessary plans, profiles, specifications and detailed estimates of cost, an estimate of the life of the improvement, a description of the assessment district or districts, and such other pertinent information as will permit the Comission to decide the cost, extent and necessity of the improvement proposed and what part or proportion thereof should be paid by special assessments upon the property especially benefitted and what part, if any, should be paid by the City at large. The Commission shall not finally determine to proceed with the making of any local public improvement until such report of the City Clerk has been filed, nor until after a public hearing has been held by the Commission for the purpose of hearing objections to the making of such improvements.

Section 5. Determination of the Project, Notice.

After the City Clerk has presented the report required in Section 4 for making any local public improvement as requested in the resolution of the Commission, and the Commission has reviewed said report, a resolution

KENTWOOD CITY ORDINANCE

may be passed tentatively determining the necessity of the improvement, setting forth the nature thereof, prescribing what part or proportion of the cost of such improvement shall be paid by special assessment upon the property especially benefitted, determination of benefits received by affected properties, and what part, if any, shall be paid by the City at large; designating the limits of the special assessment district to be affected, designating whether to be assessed according to frontage or other information on file in the office of the Clerk, where the same may be found for examination, and directing the Clerk to give notice of public hearing on the proposed improvement, at which time and place opportunity will be given interested persons to be heard. Such notice shall be given by one publication in a newspaper published or circulated within the City and by first class mail addressed to each owner of or person in interest in property to be assessed as shown by the last general tax assessment roll of the City, said publication and mailing to be made at least ten (10) full days prior to the date of said hearing. The hearing required by this section may be held at any regular, adjourned, or special meeting of the Commission.

Section 6. Hearing on Necessity.

At the public hearing on the proposed improvement, all persons interested shall be given an opportunity to be heard, after which the Commission may modify the scope of the local public improvement in such a manner as they shall deem to be in the best interest of the City as a whole; provided that if the amount of work is increased or additions are made to the district, then another hearing shall be held pursuant to notice prescribed in Section 5. If the determination of the Commission shall be to proceed with the improvement, a resolution shall be passed approving the necessary profiles, plans, specifications, assessment district and detailed estimates of cost, determining the probable useful life of the improvement, and directing the Assessor to prepare a special assessment roll in accordance with the Commission's determination and report the same to the Commission for confirmation, provided, that if prior to the adoption of the resolution to proceed with the making of the public improvement, written objections thereto have been filed by the owners of property in the district, which, according to the City Clerk's report will be required to bear more than fifty per cent of the cost thereof, or by a majority of the owners of property to be assessed, no resolution determining to proceed with the improvement shall be adopted while such objections remain, except by the affirmative vote of five members of the Commission.

Section 7. Special Assessment Roll.

The Assessor 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 City Clerk as approved by the Commission.

Section 8. Assessor to File Assessment Roll.

When the Assessor shall have completed such assessment roll he shall file the same with the Clerk for presentation to the Commission for review and certification by it.

Section 9. Meeting to Review Special Assessment Roll — Objections in Writing.

Upon receipt of such special assessment roll, the Commission, by resolution, shall accept such assessment roll and order it to be filed in the office of the Clerk for public examination, shall fix the time and place the Commission will meet to review such special assessment roll and direct the Clerk to give notice of a public hearing for the purpose of affording an opportunity for interested persons to be heard. Such notice shall be given by one publication in a newspaper published or circulated within the City and by first class mail addressed to each owner of or person in interest in property to be assessed as shown by the last general tax assessment roll of the City, said publication and mailing to be made at least ten (10) full days prior to the date of said hearing. The hearing required by this section may be held at any regular, adjourned or special meeting of the Commission. At this meeting, all interested persons or parties shall present in writing their objections, if any, to the assessments against them. The Assessor shall be present at every meeting of the Commission at which a special assessment is to be reviewed.

Section 10. Changes and Corrections in Assessment Roll.

The Commission shall meet at the time and place designated for the review of such special assessment roll, and at such meeting, or a proper adjournment thereof, shall consider all objections thereto submitted in writing. The Commission may correct said roll as to any special assessment or description of any lot or parcel of land or other errors appearing therein; or it may, by resolution, annul such assessment roll and direct that new proceedings be instituted. The same proceedings shall be followed in making a new roll as in the making of the original roll. If, after hearing all objections and making a record of such changes as the Commission deems justified, the Commission determines that it is satisfied with said special assessment roll and that assessments are in proportion to benefits received, it shall thereupon pass a resolution reciting such determinations, confirming such roll, placing it on file in the office of the clerk and directing the Clerk to attach his warrant to a certified copy thereof within ten (10) days, therein commanding the Assessor to spread and the Treasurer to collect the various sums and amounts therein as directed by the Commission. Such 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 14 of this ordinance.

Section 11. Special Assessment—When Due.

All special assessments, except such installments thereof as the Commission shall make payable at a future time as provided in this ordinance, shall be due and payable upon confirmation of the special assessment roll.

Section 12. Partial Payments — When Due.

The Commission may provide for the payment of special assessments in annual installments. Such annual installments shall not exceed twenty (20) in number, the first installment being due upon confirmation of the roll or on such date as the Commission may determine. Interest shall be charged on all deferred installments at a rate of six per cent (6%) per annum, commencing on the due date of the first installment and payable on the due date of each subsequent in-

stallment; the full amount of all or any deferred installments, with interest accrued thereon to the date of payment, may be paid in advance of the due dates thereof. If the full assessment or the first installment thereof shall be due upon confirmation, each property owner shall have sixty (60) days from the date of confirmation to pay full amount of said assessment, or the full amount of any installments thereof, without interest or penalty. Following the said sixty (60) day period, the assessment or first installment thereof shall, if unpaid, be considered as delinquent and the same penalties shall be collected on such unpaid assessments or first installments thereof as are provided in the City Charter to be collected on delinquent general City taxes. Deferred installments shall be collected without penalty until sixty (60) days after the due date thereof, after which time such installments shall be considered as delinquent and such penalties on said installments shall be collected as are provided in the City Charter to be collected on delinquent general City taxes. After the Commission has confirmed the roll, the City Treasurer shall notify by mail each property owner on said roll that said roll has been filed, stating the amount assessed and the terms of payment. Failure on the part of the City Treasurer to give said notice or of such owner to receive said notice shall not invalidate any special assessment roll of the City or any assessment thereon, nor excuse the payment of interest or penalties.

Section 13. Creation of Lien.

Special assessments and all interest, penalties and charges thereon from the date of confirmation of the roll shall become a personal obligation to the City from the persons to whom they are assessed, and, until paid, shall be and remain a lien upon the property assessed, of the same character and effect as the lien created by general law for county and school taxes and by the City Charter for City taxes, and the lands upon which the same are a lien shall be subject to sale therefor the same as are lands upon which delinquent city taxes constitute a lien. In addition to the procedures established above for the collection of special assessments levied against property, the city may recover them in a suit in any court of competent jurisdiction. In any such suit, the confirmed special assessment roll upon which the special assessment concerned appears shall be prima facie evidence of the existence of the special assessment, of the regularity of the proceedings in making the special assessment, and of the right of the city to recover judgment therefor.

Section 14. Additional Assessments, Refunds.

The City Clerk shall, within sixty (60) days after the completion of each local public improvement, compile the actual cost thereof and certify the same to the Commission. When any special assessment roll shall prove insufficient to meet the cost of the improvement for which it was made, the Commission may make an additional pro rata assessment; Provided, however, that no property shall be assessed in excess of benefits received. The excess by which any special assessment proves larger than the actual cost of the improvement and expenses incidental thereto may be placed in the general fund of the City if such excess is less than five per cent (5%) of the total amount of the assessment roll, but should the assessment prove larger than said amount by five per cent (5%) or

more, the entire excess shall be refunded on a pro rata basis to the property assessed. Such refund shall be made by credit against future unpaid installments to the extent such installments then exist and the balance of such refund shall be in cash. No refunds may be made which contravene the provisions of outstanding evidence of indebtedness secured in whole or in part by such special assessment.

Section 15. Additional Procedures.

In any case where the provisions of this ordinance may prove to be insufficient to carry out fully the making of any special assessment, the Council shall provide by ordinance any additional steps or procedures required.

Section 16. Special Assessment Accounts.

Moneys raised by special assessment for any public improvement shall be credited to a special assessment account and shall be used to pay the special assessment portion of the cost of the improvement for which the assessment was levied and of expenses incidental thereto, including the repayment of the principal and interest on money borrowed thereof, and to refunl excessive assessments, if refunds be authorized.

Section 17. Contested Assessments.

No suit or action of any kind shall be instituted or maintained for the purpose of contesting or enjoining collection of any special assessment unless within thirty (30) days after confirmation of the special assessment roll written notice is given to the City Clerk or intention to file such suit or action, stating grounds on which it is claimed such assessment is illegal, and unless such suit or action be commenced within sixty (60) days of confirmation of the roll.

Section 18. Reassessment for Benefits.

Whenever the Commission shall deem any special assessment invalid or defective for any reason whatever, or if any court of competent jurisdiction shall have adjudged such assessment to be illegal for any reason whatever, in whole or in part, the Commission shall have power to cause a new assessment to be made for the same purpose for which the former assessment was made, whether the improvement or any part thereof has been completed and whether any part of the assessment has been collected or not. All proceedings on such reassessment and for the collection thereof shall be made in the manner as provided for the original assessment. If any portion of the original assessment shall have been collected and not refunded, it shall be applied upon the reassessment and the reassessment shall to that extent be deemed satisfied. If more than the amount reassessed shall have been collected, the balance shall be refunded to the person making such payment.

Section 19. Combination of Projects.

The Commission may combine several districts into one project for the purpose of effecting a saving in the costs; provided, however, that for each district there shall be established separate funds and accounts to cover the cost of the same.

Section 20. Certain Postponements of Payments.

The Commission may provide that any person who, in the opinion of the assessor and Commission, by reason of poverty is unable to contribute toward the cost of the making of a public improvement, by special assessment, may execute to the city an instrument creating a lien for the benefit of the city on all or any

part of the real property owned by him and benefitted by any public improvement, which lien will mature and be effective from and after the execution of such instrument; shall be recorded with the Register of Deeds of Kent County, and shall not be discharged or released until the terms thereof are met in full. The Commission shall establish the procedure for making this section effective.

Section 21. Severability.

Should any section, clause or provision of this ordinance be declared by any court or competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Section 22.

All ordinance or resolutions and parts of ordinances or resolutions inconsistent with this ordinance are hereby repealed.

Section 23.

This Ordinance shall be known and may be cited as the "Special Assessment Ordinance" of the City of Kentwood, Michigan.

Section 24.

This Ordinance is determined to be an emergency Ordinance under paragraph 5.4 of the Charter of the City of Kentwood, and the effective date shall be the date of publication.

The foregoing Ordinance was offered by Commissioner Barnes, supported by Commissioner Ide.

YEAS: 6

NAYS: 0

ABSENT: 1

ORDINANCE DECLARED ADOPTED.

John Van Dyke,
City Clerk

RELEVANT PROVISIONS OF CITY CHARTER AND ORDINANCES

Section 3.1. - General powers.

The city, its officers, agents and employees shall be vested with all powers, privileges and immunities, express or implied, which cities are, or hereafter may be, granted by law. Those powers shall include, without limitation, powers which cities are permitted to provide for in their charters pursuant to Public Act No. 279 of 1909 (MCL 117.1 et seq.), as amended, as fully as though those powers were specifically identified in this Charter. The city, its agents, officers and employees shall 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.

Section 3.2. - Further identification of powers.

In addition to the powers, privileges and immunities authorized by law, and those set forth in this Charter, the city shall have power to and may, by ordinance or other lawful act, provide for:

(a) The acquisition, by purchase, condemnation, lease or otherwise, of property, whether real or personal, which may be required for or incidental to the exercise of city powers;

(b) The maintenance, management, development, operation, leasing and disposal of city property;

(c) Refunding money advanced or paid on special assessments, borrowing money for such refunding, and issuing bonds;

(d) Installing and connecting conduits for the service of municipally owned utilities;

(e) Regulating, condemning or granting franchises and of the property used by companies or persons engaged in the cemetery, health, lighting, communication, gas, heat, water, sewer and power business;

(f) Establishing, using, vacating, improving and controlling the surface of its streets and other public places, and of the space above and below them;

(g) Use, by others than the owner, of property located in streets and other public places for the operation of a public utility, upon the payment of reasonable compensation;

(h) A plan of streets within and for a distance of not more than three miles beyond the city boundaries;

(i) The use and regulation of streams, waters and watercourses;

(j) Acquiring, constructing, operating and improving storage and parking facilities, including the fixing and collection of charges for services;

(k) Establishing districts or zones to regulate the use and dimensions of land and structures;

(l) Regulating trades, occupations, activities and amusements within the city and prohibiting trades, occupations, activities and amusements as are detrimental to the health, morals or welfare of the city's inhabitants;

(m) Prescribing the terms and conditions upon which licenses may be granted, suspended or revoked; requiring payment for licenses; and requiring a bond for the faithful observance of conditions under which licenses are granted;

(n) Licensing, regulating and restricting the number and location of advertising signs, displays and billboards;

(o) Preventing injury or annoyance to the city's inhabitants from anything which is dangerous, offensive or unhealthful; preventing, abating and prosecuting nuisances and those neglecting or refusing to abate, discontinue or remove nuisances;

(p) Regulating transportation facilities;

(q) Regulating the use, occupancy, parking and location of house trailers, recreational vehicles or mobile homes as permitted by law;

(r) Requiring owners of real property to construct, repair and maintain sidewalks abutting upon such property and, if the owner fails to comply with such requirements or if the owner is unknown, constructing, repairing and maintaining such sidewalks and assessing the city's cost;

(s) Requiring an owner of property to abate nuisances after notice is given that such nuisance exists and, if the owner fails to comply with such notice or if the owner is unknown, to abate such nuisance and assess the city's cost;

(t) Regulating and maintaining trees, shrubs and other vegetation in and adjacent to public streets, parks and other public places, dead and diseased vegetation on private property and vegetation on private property overhanging streets or other public places; maintaining and removing such vegetation and assessing the city's cost; and regulating the planting of vegetation on property which interferes with public utilities, easements or rights-of-way;

(u) Requiring the platting of all subdivided land;

(v) Regulating the lighting of streets and other public places; and

(w) Owning, constructing, maintaining, repairing or operating any facility, structure, building, system, equipment, park or grounds.

State Law reference— Permissible charter provisions, MCL 117.4c et seq.

RELEVANT PROVISIONS OF CITY CHARTER AND ORDINANCES

Section 10.1. - General powers relative to special assessments.

The commission shall have the power to provide, with or without petition, for assessing and reassessing the costs, or any portion of the costs, of public improvements to a special assessment district and to determine that the whole or any part of the expense of any public improvement be defrayed by special assessment upon property especially benefitted.

The commission shall, in the exercise of its powers of financing the whole or a part of the costs of public improvements by special assessment, have authority to provide for the following, but this list shall not be exclusive:

(a) Street improvements and facilities, including constructing, grading, widening and the paving of streets, curbs and gutters, storm sewers, sanitary sewers, water mains, and constructing and maintaining sidewalks.

(b) The construction and extension of public parking facilities as a public improvement.

(c) The assessment of single lots when an expenditure is made on a single lot, parcel or premises, which the city is authorized to charge and collect as a special assessment.

(d) The assessment of the cost of construction, removal or abatement of any condition which the commission determines to be a public hazard or nuisance which is dangerous to the health, safety or welfare of the inhabitants of the city.

(e) Installing a lighting system on any street or other public place. In each case, the special assessment district for a street lighting system shall be limited to the frontage of the street or part of street upon which the system is placed.

All real property shall be liable for the cost of public improvements benefiting such property, unless specifically exempted from special assessments by law.

Section 10.2. - Detailed procedure to be fixed by ordinance.

(a) The commission shall establish by ordinance the complete special assessment procedure governing the initiation of projects, preparation of plans and cost estimates, creation of districts, making and confirming special assessment rolls, correction of errors in special assessment rolls, collection of special assessments, refunds of excess funds, additional pro rata assessments and any other matters concerning the making and financing of improvements by special assessment.

RELEVANT PROVISIONS OF CITY CHARTER AND ORDINANCES

(b) Such ordinance shall be subject to the following limitations:

(1) No final resolution determining to proceed with establishing a special assessment district shall be adopted until cost estimates have been prepared and a public hearing held on the advisability of proceeding.

(2) No special assessment roll shall be confirmed until after a meeting of the commission has been held to review the roll.

(3) Notice of hearings shall be given in the manner required by law.

RELEVANT PROVISIONS OF CITY CHARTER AND ORDINANCES

Chapter 50 - SPECIAL ASSESSMENTS[1]

Sec. 50-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Cost includes, when referring to the cost of any local public improvement, the cost of services, plans, condemnation, spreading of rolls, notices, advertising, financing, construction and legal fees and all other costs incidental to the making of such improvement, the special assessments and the financing.

Local public improvement means any public improvement which is of such a nature as to especially benefit any real property or properties within a district in the vicinity of such improvement.

(Code 2004, § 50-1; Comp. Ords. 1987, § 12.101)

Sec. 50-2. - Authority to assess.

The whole cost, or any part thereof, of any local public improvement may be defrayed by special assessment upon the lands especially benefitted by the improvement in the manner provided in this chapter.

(Code 2004, § 50-2; Comp. Ords. 1987, § 12.102)

Sec. 50-3. - Project initiation.

Proceedings for the making of local public improvements within the city may be commenced by resolution of the city commission. Such action may be requested by the filing with the city clerk of a petition signed by at least 50 percent of the owners of the property to be assessed for the improvement, requesting that the improvement be made and the cost be defrayed by special assessment upon the property benefitted, but such petition shall be advisory to the city commission only.

(Code 2004, § 50-3; Comp. Ords. 1987, § 12.103)

Sec. 50-4. - Report of city clerk.

Before the city commission shall consider the making of any local public improvement, it shall be referred by resolution to the city clerk, directing the city clerk or his designee to prepare a report which shall include necessary plans, profiles, specifications and detailed estimates of costs, an estimate of the life of the improvement, a description of the assessment districts and such other pertinent information as will permit the city commission to decide the costs, extent and necessity of the improvement proposed and what part, or proportion thereof, should be paid by special assessments upon the property especially benefitted and what part, if any, should be paid by the city at large. The city commission shall not finally determine to proceed with the making of any local public improvement until such report of the city clerk or his designee has been filed, nor until after a public hearing has been held by the city commission for the purpose of hearing objections to the making of such improvement.

(Code 2004, § 50-4; Comp. Ords. 1987, § 12.104)

Sec. 50-5. - Determination; notice of hearing.

After the city clerk or his designee has presented the report required in section 50-4 for making any local public improvement as requested in the resolution of the city commission, and the city commission has reviewed the report, a resolution may be tentatively passed, determining the necessity of the improvement, setting forth the nature thereof, prescribing what part or proportion of the cost of such improvement shall be paid by special assessment upon the property especially benefitted, a determination of benefits received by affected properties and what part, if any, shall be paid by the city at large, designating the limits of the special assessment district to be affected, designating whether it is to be assessed according to frontage or other benefits, placing the complete information on file in the office of the city clerk, where it may be found for examination, and directing the city clerk to give notice of a public hearing on the proposed improvement, at which time and place an opportunity will be given to interested persons to be heard. Such notice shall be given by one publication in a newspaper published or circulated within the city and by first class mail addressed to each owner of, or person interested in, the property to be assessed as shown by the last general tax assessment roll of the city. Such publication and mailing is to be made at least ten full days prior to the date of the hearing. The hearing required by this section may be held at any regular, adjourned or special meeting of the city commission.

(Code 2004, § 50-5; Comp. Ords. 1987, § 12.105)

State Law reference— Notice of hearings, MCL 211.741.

Sec. 50-6. - Hearing.

At the public hearing on the proposed improvement, all persons interested shall be given an opportunity to be heard, after which, the city commission may modify the scope of the local public improvement in such a manner as they shall deem to be in the best interest of the city as a whole, provided that, if the amount of work is increased or additions are made to the district, then another hearing shall be held pursuant to the notice prescribed in section 54-5. If the determination of the city commission is to proceed with the improvement, a resolution shall be passed approving the necessary profiles, plans, specifications, assessment district and detailed estimates of cost, determining the probable useful life of the improvement, and directing the treasurer to prepare a special assessment roll in accordance with the city commission's determination and report the special assessment roll to the city commission for confirmation; provided that, if, prior to the adoption of the resolution to proceed with the making of the public improvement, written objections thereto have been filed by the owners of property in the district, which, according to the city clerk's report, will be required to bear more than 50 percent of the cost thereof, or by a majority of the owners of property to be assessed, no resolution determining to proceed with the improvement shall be adopted while such objections remain, except by the affirmative vote of five members of the city commission.

(Code 2004, § 50-6; Comp. Ords. 1987, § 12.106)

Sec. 50-7. - Making special assessment roll.

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.

(Code 2004, § 50-7; Comp. Ords. 1987, § 12.107)

Sec. 50-8. - Filing assessment roll.

When the treasurer shall have completed the assessment roll, he shall file it with the city clerk for presentation to the city commission for review and certification by the city commission.

(Code 2004, § 50-8; Comp. Ords. 1987, § 12.108)

Sec. 50-9. - Meeting to review special assessment roll.

Upon receipt of the special assessment roll, the city commission by resolution shall accept such assessment roll and order it to be filed in the office of the city clerk for public examination, shall fix the time and place the city commission will meet to review such special assessment roll, and direct the city clerk to give notice of a public hearing for the purpose of affording an opportunity for interested persons to be heard. Such notice shall be given by one publication in a newspaper published or circulated within the city and by first class mail addressed to each owner of, or person interested in, property to be assessed as shown by the last general tax assessment roll of the city. Such publication and mailing is to be made at least ten full days prior to the date of such hearing. The hearing required by this section may be held at any regular, adjourned or special meeting of the city commission. At such meeting, all interested persons or parties shall present, in writing, their objections, if any, to the assessments against them. The treasurer or their designee shall be present at every meeting of the city commission at which a special assessment is to be reviewed.

(Code 2004, § 50-9; Comp. Ords. 1987, § 12.109)

Sec. 50-10. - Changes and corrections in special assessment roll.

The city commission shall meet at the time and place designated for the review of such special assessment roll, and at such meeting, or a proper adjournment thereof, shall consider all objections thereto submitted in writing. The city commission may correct such roll as to any special assessment or description of any lot or parcel of land or other errors appearing therein, or it may by resolution annul such assessment roll and direct that new proceedings be instituted. The same proceedings shall be followed in the making of the new roll as in the making of the original roll. If, after hearing all objections and making a record of such changes as the city commission deems justified, the city commission determines that it is satisfied with the special assessment roll and that assessments are in proportion to benefits received, it shall thereupon pass a resolution reciting such determinations, confirming such roll, placing it on file in the office of the clerk and directing the clerk to attach his warrant to a certified copy thereof within ten

days, therein commanding the assessor to spread, and the treasurer to collect, the various sums and amounts appearing thereon as directed by the city commission. Such 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.

(Code 2004, § 50-10; Comp. Ords. 1987, § 12.110)

Sec. 50-11. - Due date.

All 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.

(Code 2004, § 50-11; Comp. Ords. 1987, § 12.111)

Sec. 50-12. - Payments.

(a) The city commission may provide for the payment of special assessments in annual installments. Such 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.

(b) Interest shall be charged on all deferred installments at a rate equal to the project bond interest rate, plus one percentage point; or in the case that a bond is not sold for the project, then, a rate equal to one percentage point over the prime rate in effect as stated in the Wall Street Journal on the date the roll is confirmed, commencing on the due date of the first installment and payable on the due date of the first installment and payable on the due date of each subsequent installment; the full amount of all or any deferred installments, with interest accrued thereon to the date of payment thereof.

(c) If the full assessment or the first installment thereof shall be due upon confirmation, each property owner shall have 60 days from the date of confirmation to pay the full amount of such assessment or the full amount of any installments, without interest or penalty. Following the 60-day period, the assessment or first installment shall, if unpaid, be considered as delinquent and the same penalties shall be collected on such unpaid assessments or first

installments as are provided in the city Charter to be collected on delinquent general city taxes.

(d) Deferred installments shall be collected without penalty until 60 days after the due date thereof, after which time, such installments shall be considered as delinquent and such penalties on such installments shall be collected as are provided in the city Charter to be collected on delinquent general city taxes.

(e) After the city commission has confirmed the roll, the city treasurer shall notify by mail each property owner on such roll that such roll has been filed, stating the amount assessed and the terms of payment. Failure on the part of the city treasurer to give such notice or of such owner to receive such notice shall not invalidate any special assessment roll of the city or any assessment, nor excuse the payment of interest or penalties.

(Code 2004, § 50-12; Comp. Ords. 1987, § 12.112)

Sec. 50-13. - Creation of lien.

Special assessments and all interest, penalties and charges thereon from the date of confirmation of the roll shall become a personal obligation to the city from the persons to whom they are assessed, and, until paid, shall be and remain a lien upon the property assessed, of the same character and effect as the lien created by general law for county and school taxes and by the city Charter for city taxes, and the lands upon which such amounts are a lien shall be subject to sale the same as are lands upon which delinquent city taxes constitute a lien. In addition to the procedures established in section 54-12 for the collection of special assessments levied against property, the city may recover such amounts in a suit in any court of competent jurisdiction. In any such suit, the confirmed special assessment roll upon which the special assessment concerned appears shall be prima facie evidence of the existence of the special assessment, of the regularity of the proceedings in making the special assessment and of the right of the city to recover judgment therefor.

(Code 2004, § 50-13; Comp. Ords. 1987, § 12.113)

Sec. 50-14. - Additional assessments; refunds.

The city clerk or his designee shall, within 60 days after the completion of each local public improvement, compile the actual cost thereof and certify such cost to the city commission. When any special assessment roll shall prove insufficient to meet the cost of the improvement for which

it was made, the city commission may make an additional pro rata assessment; provided, however, that no property shall be assessed in excess of benefits received. The excess by which any special assessment proves larger than the actual cost of the improvement and expenses incidental thereto may be placed in the general fund of the city if such excess is less than five percent of the total amount of the assessment roll, but should the assessment prove larger than such amount by five percent or more, the entire excess shall be refunded on a pro rata basis to the owners of the property assessed. Such refund shall be made by credit against future unpaid installments to the extent such installments then exist and the balance of such refund shall be in cash. No refunds may be made which contravene the provisions of outstanding evidence of indebtedness secured, in whole or in part, by such special assessment.

(Code 2004, § 50-14; Comp. Ords. 1987, § 12.114)

Sec. 50-15. - Additional procedures.

In any case where the provisions of this chapter may prove to be insufficient to fully carry out the making of any special assessment, the city commission shall provide by ordinance any additional steps or procedures required.

(Code 2004, § 50-15; Comp. Ords. 1987, § 12.115)

Sec. 50-16. - Reassessment for benefits.

Whenever the city commission shall deem any special assessment invalid or defective for any reason whatsoever, or if any court of competent jurisdiction shall have adjudged such assessment to be illegal for any reason whatsoever, in whole or in part, the city commission shall have the power to cause a new assessment to be made for the same purpose for which the former assessment was made, whether the improvement, or any part thereof, has been completed and whether or not any part of the assessment has been collected. All proceedings on such reassessment and for the collection thereof shall be made in the manner as provided for the original assessment. If any portion of the original assessment shall have been collected and not refunded, it shall be applied upon the reassessment and the reassessment shall, to that extent, be deemed satisfied. If more than the amount reassessed shall have been collected, the balance shall be refunded to the person making such payment.

(Code 2004, § 50-16; Comp. Ords. 1987, § 12.118)

Sec. 50-17. - Combination of projects.

The city commission may combine several districts into one project for the purpose of effecting a savings in the costs; provided, however, that for each district, there shall be established separate funds and accounts to cover the cost thereof.

(Code 2004, § 50-17; Comp. Ords. 1987, § 12.119)

Sec. 50-18. - Reserved.

Editor's note— This section pertaining to postponement of payment due to impoverishment was deleted. It was derived from Comp. Ords. 1987, § 12.120 and Code 2004, § 50-18.

Sec. 50-19. - Single lot special assessments.

(a) Report to commission. When the city incurs an expense for or in respect to any single lot or parcel, which expense is chargeable against the lot or parcel pursuant to law and is not otherwise to be prorated among several lots or parcels in a special assessment district, the amount of labor and material, or any other applicable expense, with a description of the lot or parcel for which the expense was incurred, and the name of the owner, if known, shall be reported to the city commission.

(b) Determination of city commission. After reviewing the report, the city commission may determine by resolution what amount or part of such expense will be charged and the premises upon which the charge will be levied as a special assessment. By resolution, the city commission will determine the number of installments in which the assessment may be paid, determine the rate of interest to be charged, designate the premises upon which the special assessment may be levied and direct the preparation of a special assessment roll in accordance with the city commission's determination. As the city commission deems expedient, it may require that notice of the assessments be given to each owner of or party in interest in the property to be assessed whose name appears upon the last local tax assessment records, by mailing by first-class mail addressed to such owner or party at the address shown on the tax records which notice shall also advise the owner or party in interest of any hearing scheduled pursuant to subsection (d) of this section.

(c)

RELEVANT PROVISIONS OF CITY CHARTER AND ORDINANCES

Certificate of roll. When the assessment roll has been completed, it shall be filed with the city clerk who will present it to the city commission.

(d) Resolution; notice of hearing. After the special assessment roll is filed in the office of the city clerk, the city commission shall, by resolution, fix the time and place when it will review the roll, which meeting shall not be less than ten days after notice of the time and place has been mailed to the owner of or party in interest in the property to be assessed, whose name appears on the last city tax assessment records in accordance with state law.

(e) Objections to roll. Any person deeming himself aggrieved by the special assessment roll may file his objections and protest in writing with the city clerk at or prior to the time of hearing, which objections shall specify how he is aggrieved. If the objections are timely and properly filed, the objecting person's appearance in person is not required at the hearing.

(f) Review of roll. The city commission shall meet and review the special assessment roll at the time and place appointed or an adjourned date and shall consider any objections. The city commission may correct the roll as to any assessment or description of any lot or parcel of land or other errors. Any changes made in the roll shall be noted in the minutes.

(g) Confirmation of roll. After the hearing, the city commission may confirm such special assessment roll, with any corrections that were made, and the city clerk shall endorse the date of confirmation and, upon confirmation, the roll shall be final and conclusive.

(Code 2004, § 50-19; Ord. No. 5-08, § 1, 3-28-2008)

BLOOM SLUGGETT MORGAN
COUNSELORS & ATTORNEYS

Jeffrey V.H. Sluggett
Direct Dial (616) 965-9342
Direct Fax (616) 965-9352
jsluggett@bsmlawpc.com

July 18, 2014

Mr. Michael J. Damone, President
The Damone Group, LLC
850 Stephenson, Suite 200
Troy, Michigan 48083

Re: City of Kentwood / 44th/Shaffer Avenue, LLC
Ravines Neighborhood B1 Special Assessment District

Dear Mr. Damone:

As you are aware, we are general counsel to the City of Kentwood. As I believe you also know the City, several months ago, received a request from Holland Home asking that the City extend for an additional ten-year period the installment payments due on the portion of the captioned special assessment district for which Holland Home is the owner. This past Tuesday the City Commission adopted a resolution granting that request and extending until 2024 the payment schedule for Holland Home.

We spoke with you several weeks ago to determine if 44th/Shaffer Avenue, LLC ("44th/Shaffer") wished to receive a similar extension of payment terms on neighborhood B1, which is still owned, we understand, by your company. At the conclusion of our discussion we understood that 44th/Shaffer did not wish to expend any further time on the special assessment process.

Nonetheless, to provide 44th/Shaffer with additional time to analyze its options, the City Commission also adopted at last Tuesday night's meeting a copy of the enclosed resolution. The resolution extends the balloon payment on the special assessment for the B1 Neighborhood for an additional one year (see Exhibit C). Should 44th/Shaffer have any interest in extending the balloon payment out beyond the one year period, we would be glad to discuss that matter with you.

Please contact us should there be any questions.

Very truly yours,

Jeffrey V.H. Sluggett

Enclosure

2020 WL 7635510
Only the Westlaw citation
is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

VILLAGE OF SPARTA,
Plaintiff-Appellant,
v.
CLARK HILL, PLC, Gregory
Longworth, and Kenneth
Lane, Defendants-Appellees.

No. 352837
|
December 22, 2020

Kent Circuit Court, LC No. 19-001445-NM

Before: Fort Hood, P.J., and Sawyer and Servitto, JJ.

Opinion

Per Curiam.

***1** In this legal malpractice action, plaintiff appeals as of right the trial court's opinion and order granting summary disposition in favor of defendants. Plaintiff contends that defendants engaged in legal malpractice, negligent supervision, and fraud when they represented plaintiff in another lawsuit involving property taxes and advised plaintiff to settle with the property owner. Because we do not believe defendants incorrectly or inadequately advised plaintiff in that case, and because we see no avenue by which plaintiff might have been successful in that case, we affirm.

I. FACTUAL BACKGROUND

In January 2004, plaintiff entered into a Utility Road Agreement (URA) with the Grand Valley Land Property Corporation (Grand Valley) for plaintiff to make improvements related to the "Bedford Falls Development" (the development), with Grand Valley assuming responsibility for a portion of the cost. The URA anticipated that plaintiff and Grand Valley would subsequently enter into a special assessment agreement related to the remaining costs associated with the improvements.[1] Thereafter, in December 2004, plaintiff's Village Council passed Resolution No. 04-33 by unanimous vote, which referenced the URA and indicated that Grand Valley was approved "to enter into a special assessment agreement with [plaintiff] in order for [plaintiff] to be able to" begin construction on the subject property. The resolution specifically indicated that it was "a resolution approving a utility and road improvements special assessment agreement between" Grand Valley and plaintiff. The agreement further stated that the council "hereby approves of and agrees to enter into a special assessment agreement, attached hereto as 'UTILITY AND ROAD IMPROVEMENTS SPECIAL ASSESSMENT AGREEMENT' with Grand Valley ... for the payment of certain costs incurred by [plaintiff] for the improvements to 12 Mile Road as described in the Utility and Road Agreement ...."

1 The agreement specifically provided:

> Prior to [plaintiff] engineers beginning any engineering design work for the 12 Mile Road Improvements, GRAND VALLEY shall deposit with [plaintiff] $35,000 cash or an approved letter of credit approved by [plaintiff's] Attorney. Prior to [plaintiff] awarding any construction projects, but not until Grand Valley is ready to proceed with the Bedford Falls project, Grand Valley shall have entered into a special assessment agreement with [plaintiff] for the remaining $315,000, and paid the $35,000 in cash.

In January 2005, plaintiff entered into the Utility Road Improvement Special Assessment Agreement (URISAA) with Grand Valley, obligating Grand Valley to make installment payments for the additional costs associated with the public improvements that would benefit the property. The agreement provided that "[t]he special assessment levied pursuant to this Agreement may be paid in 10 equal annual installments of principal plus interest on the unpaid balance commencing on the date the Village Council confirms the special assessment roll, or such later date designated in the resolution confirming the special assessment roll."

***2** Grand Valley made installment payments pursuant to the URISAA for several years, but at some point defaulted on its obligations, resulting in the Kent County Treasurer instituting tax foreclosure proceedings in March 2010. Ultimately, in February 2011, a judgment of foreclosure was entered that extinguished all liens and encumbrances against the property "except future installments of special assessments," and delivered title of the property in fee simple to the Treasurer. In October 2011, the property was purchased in a foreclosure sale by Peterson Financial, LLC (Peterson).

Plaintiff claimed that Peterson was obligated to assume Grand Valley's special assessment obligations following the foreclosure sale, but Peterson disagreed. After Peterson refused to honor the URISAA and the special assessment, in March 2013, the Kent County Treasurer again instituted tax foreclosure proceedings. Petersen then, in November 2013, filed a complaint (the Petersen case) in the Kent County Circuit Court against plaintiff and the Kent County Treasurer seeking a declaration that the special assessment was not valid because plaintiff failed to properly confirm the special assessment roll, and therefore no special assessment actually existed that would have passed through the judgment of foreclosure to Petersen. Peterson contended, among other things, that because the special assessment was not properly levied, plaintiff had only ever had a contractual obligation with Grand Valley, and as those obligations pertained to Petersen, they were extinguished by the tax foreclosure.

Defendants represented plaintiff in the Petersen case. Defendants initially filed, on behalf of plaintiff, a response to Petersen's complaint wherein they "denied as untrue" that a special assessment had not been "properly and effectively created. However, in November 2014, defendants delivered to plaintiff a memorandum wherein defendants advised plaintiff that plaintiff was unlikely to succeed in the litigation. Defendants noted that it would be prudent for plaintiff to settle the Petersen case. Thereafter, plaintiff stipulated to the entry of a settlement order wherein Petersen would agree to pay $10,000 to plaintiff "in full satisfaction of any and all alleged delinquent, current, and future installments of the Bedford Falls Special Assessment."

Years later, in February 2019, plaintiff instituted the present action against defendants, contending that plaintiff was not apprised of exactly what defendants were consenting to in the Petersen case, and that defendants caused plaintiff to settle the case and forfeit plaintiff's rights. Plaintiff contended that defendants erroneously believed that plaintiff would lose against Petersen because defendants erroneously believed that a special assessment had not been properly established, but that all requirements and procedures to establish a special assessment had been followed. Alternatively, plaintiff contended that defendants failed to litigate affirmative defenses that would have led to plaintiff's success in the Petersen case irrespective of any defects with the special assessment. Plaintiff's complaint specifically alleged professional negligence, fraud, and negligent supervision.

In August 2019, defendants filed a motion for summary disposition pursuant to MCR 2.116(C)(10), primarily alleging that the special assessment was never properly levied in this case, and that no genuine issues of material fact existed to suggest that plaintiff ever could have been successful in the Petersen case. Defendants further contended that the numerous affirmative defenses plaintiff claimed that defendants should have litigated in the Petersen case would not have made a difference in the outcome.

***3** Ultimately, in January 2020, the trial court issued an opinion and order expressing its agreement with defendants. The trial court indicated that the procedure by which plaintiff could levy a special assessment that would have survived that tax foreclosure and impacted Petersen's rights had not been followed. No special assessment had ever actually been levied, and therefore plaintiff had no chance of success in the Petersen case. Because defendants' representation of plaintiff could not be said to have resulted in any harm or damages, the trial court concluded that each of plaintiff's claims necessarily failed. The trial court failed to address the alternative arguments raised by plaintiff concerning potential affirmative defenses to the Petersen case. This appeal followed.

II. ANALYSIS

"The trial court's ruling on a motion for summary disposition is reviewed de novo on appeal." *ZCD Transp., Inc. v. State Farm Mut. Auto. Ins. Co.*, 299 Mich. App. 336, 339; 830 N.W.2d 428 (2012). Summary disposition pursuant to MCR 2.116(C)(10) is appropriate where, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). A motion pursuant to MCR 2.116(C)(10) considers documentary evidence and "tests the *factual* sufficiency of the complaint." *Dalley v. Dykema Gossett*, 287 Mich. App. 296, 304 n. 3; 788 N.W.2d 679 (2010). In reviewing the motion, "this Court considers 'affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, in a light most favorable to the party opposing the motion.' " *Sanders v. Perfecting Church*, 303 Mich. App. 1, 4; 840 N.W.2d 401 (2013), quoting *Smith v. Globe Life Ins. Co.*, 460 Mich.

446, 454; 597 N.W.2d 28 (1999), superseded in part on other grounds by statute as stated in *Dell v. Citizens Ins. Co. of America*, 312 Mich. App. 734, 742 (2015). "[R]eview is limited to the evidence that has been presented to the circuit court at the time the motion was decided." *Innovative Adult Foster Care, Inc. v. Ragin*, 285 Mich. App. 466, 476; 776 N.W.2d 398 (2009).

At the outset, we note that plaintiff alleges legal malpractice, negligent supervision, and fraud.[2] In an action for legal malpractice, the plaintiff has the burden of establishing (1) that an attorney-client relationship existed, (2) that there was negligence in the representation of the plaintiff, (3) that the negligence was a proximate cause of an injury suffered by the plaintiff, and (4) the fact and extent of the alleged injury. *Coleman v. Gurwin*, 443 Mich. 59, 63; 503 N.W.2d 435 (1993). "Negligent supervision, like all negligence claims, requires proof of a duty, breach, causation, and damages." *Prime Rate Premium Fin. Corp. v. Larson*, 226 F. Supp. 3d 858 (E.D. Mich., 2016). "To establish a prima facie case of fraud, a plaintiff must prove that (1) the defendant made a material representation, (2) the representation was false, (3) the defendant knew that it was false when it was made, or made it recklessly, without any knowledge of its truth and as a positive assertion, (4) the defendant made the representation with the intention that the plaintiff would act on it, (5) the plaintiff acted in reliance on it, and (6) the plaintiff suffered injury because of that reliance." *Zaremba Equip., Inc. v. Harco Nat'l Ins. Co.*, 280 Mich. App. 16, 38-39; 761 N.W.2d 151 (2008).

2 Defendants raised the issue below that the no-duplication rule barred plaintiff from raising the negligent supervision and fraud claims where plaintiff was already raising the legal malpractice claim. The trial court did not address the issue, instead concluding that each individual claim failed on its merits. We agree, and because each individual claim may be disposed of on its merits, we need not address the no-duplication rule.

***4** As defendants point out in their brief, and as was implicit within the trial court's opinion, one element that is dispositive of each of plaintiff's claims is shared among them all: in order to be successful on any of the above claims, plaintiff must establish that defendants' acts or omissions were the cause of plaintiff's perceived damages. As it pertains to this case, that entails plaintiff establishing that, but for defendants' perceived fraud or negligence, plaintiff would have been successful in the Petersen case. We agree with defendants and the trial court that plaintiff cannot establish that fact. That is, specifically because plaintiff cannot establish that the special assessment was properly levied by plaintiff, plaintiff cannot establish that it would have been successful against Petersen in the underlying lawsuit.

"A special assessment is a levy upon property within a specified district." *Kadzban v. Grandville*, 442 Mich. 495, 500; 502 N.W.2d 299 (1993). "[I]t is a specific levy designed to recover the costs of improvements that confer local and peculiar benefits upon property within a defined area." *Id.* The General Law Village Act, MCL 74.25 *et seq.*, prescribes the rules by which a village such as plaintiff may levy a special assessment. Specifically, MCL 68.32 provides, in pertinent part:

> The complete special assessment procedure to be used, including the time when special assessment may be levied, the kinds of

> local public improvements for which a hearing is required on the resolution levying the special assessments; the preparing of plans and specifications; estimated costs; the preparation, hearing, and correction of the special assessment roll; the collection of special assessments; the assessment of single lots or parcels; and any other matters concerning the making of improvements by the special assessment method, shall be provided by ordinance. The ordinance shall authorize additional assessments, if the prior assessment proves insufficient to pay for the improvements or is determined to be invalid, in whole or in part ....

Plaintiff adopted such ordinances, which provide that special assessments "may be established to pay for the costs of any local village public improvement or repair." Sparta Ordinances, § 54-1.

The ordinances provide that the village first must "adopt a resolution to set up a special assessment." Sparta Ordinances, § 54-4. The village must give notice of any hearings related to the creation of the special assessment, Sparta Ordinances, §§ 54-7, 54-8; and thereafter, the village must hear any objections from property owners, Sparta Ordinances, §§ 54-5, 54-6; and develop, review, and approve plans with respect to anticipated costs, Sparta Ordinances, § 54-7. Thereafter,

> The village council, after finally determining the special assessment district, shall direct the assessor to make a special assessment roll in which shall be entered and described all the parcels of land to be assessed, with the names of the respective owners thereof, 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 assessor completes the assessment roll, he shall affix thereto his certificate stating that it was made pursuant to a resolution of the village council adopted on a specified date, and that in making the assessment roll he has, according to his best judgment, conformed in all respects to the directions contained in such resolution and the statutes of the state. [Sparta Ordinances, § 54-9.]

The Village Council must then confirm the special assessment roll following adequate notice and a hearing. Sparta Ordinances, § 54-10.[3] It is established that an assessment does not become "final and conclusive" until "[a]fter the confirmation [of] the special assessment roll and all assessments thereon." *Gaut v. Southfield*, 388 Mich. 189, 195; 200 N.W.2d 76 (1972). See also *Michigan's Adventure, Inc. v. Dalton Twp.*, 290 Mich. App. 328, 334; 802 N.W.2d 353 (2010); 16 Mich. Civ. Jur. Local Improvements and Assessments § 78 (explaining that a municipality may enforce collection of a special assessment "after the assessment roll has been confirmed and is due and payable").

3 MCL 41.726(1) also provides: "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."

***5** Notably, it should be stated that we generally presume the validity of "municipal

decisions regarding special assessments." *In re Petition of Macomb Co. Drain Comm'r*, 369 Mich. 641, 649; 120 N.W.2d 789 (1963). It should also be noted that, as it specifically pertains to this case, the proper levying of a special assessment would have attached obligations to the subject property with special characteristics that could have impacted future property owners and taxpayers, such as Petersen, unlike an ordinary lien or encumbrance.

MCL 211.78k(5)(c) provides that, when a judgment of foreclosure is entered, it extinguishes "all liens against the property, including any lien for unpaid taxes or special assessments, *except future installments of special assessment and liens* record by this state or the foreclosing governmental unit ...." (Emphasis added.) With some inapplicable exceptions, the judgment further extinguishes "all existing recorded and unrecorded interests in the property." MCL 211.78k(5)(e). These rules "reflect a legislative effort to provide finality to foreclosure judgments and to quickly return property to the tax rolls." *In re Treasurer of Wayne Co. for Foreclosure*, 478 Mich. 1, 4; 732 N.W.2d 458 (2007). In keeping with the above, the judgment of foreclosure in this case, except for the short period of time in which redemption was made possible, delivered "good and marketable fee simple title to the property" to the Kent County Treasurer, and extinguished "[a]ll liens" against the property as well as "[a]ny existing recorded and unrecorded interest in the property" other than those preserved by statute. All of this is to say that, other than the affirmative defenses plaintiff believes should have been raised in the Petersen case that will be further addressed below, the parties do not dispute that the judgment of foreclosure extinguished all liens and encumbrances that might have passed to Petersen other than encumbrances related to properly levied special assessments. That is, temporarily ignoring plaintiff's alternative arguments, plaintiff's success in the underlying litigation was dependent on the validity of the special assessment outlined in the URISAA.

The trial court concluded that a special assessment had not been created because there was no evidence that plaintiff complied with the requirements of MCL 41.726(1), as well as plaintiff's own ordinances, when it sought to levy the special assessment in this case. We agree. Plaintiff has presented no evidence that the required confirmation of the special assessment roll took place, nor was any specific hearing related to the same ever noticed or taxpayers given an opportunity to object. And, to the extent that plaintiff seeks to argue that Resolution No. 04-33 functioned as the confirmation of the special assessment roll by the Village Council, that argument is untenable.

First, as the trial court aptly noted, the argument that Resolution No. 04-33 functioned to both authorize plaintiff to engage in a special assessment agreement *and* approve the specific special assessment roll ignores the requirements prescribed by statute and plaintiff's own ordinances to levy a special assessment and confirm a special assessment roll. See MCL 41.726 (speaking to the notice requirements for filing, reviewing, and confirming or otherwise disposing of a special assessment roll); Sparta Ordinances, § 54-10 (speaking to those same requirements

and obligations on the part of the Village Council). We agree with the trial court that the statutes and ordinances contemplate multiple steps in the special assessment process, involving multiple noticed hearings and multiple opportunities for taxpayers to appear, express their thoughts, or object. Plaintiff has pointed to no law that would permit a village to curtail the required confirmation of the special assessment roll and treat authorization to engage in the preparation of a special assessment and confirmation of that specific special assessment as the same thing.[4] And, the very language contained in Resolution No. 04-33 and the URISAA conflict with plaintiff's argument that Resolution No. 04-33 was meant to operate as a confirmation of the special assessment roll.

4 We have before indicated that there is an important procedural difference between an agreement to engage in a special assessment and a subsequent confirmation of a special assessment roll. See *Damghani v. Kentwood*, unpublished per curiam opinion of the Court of Appeals, used April 16, 2019 (Docket No. 341213), p. 9, p. 9 n. 4 (noting that, in that case, an agreement between a city and a property owner in anticipation of a special assessment did not itself establish a special assessment, "rather it stated that the special assessment would be determined by the City Commission in its discretion").

***6** By its own terms, Resolution No. 04-33 was "A RESOLUTION APPROVING A UTILITY AND ROAD IMPROVEMENTS SPECIAL ASSESSMENT AGREEMENT BETWEEN GRAND VALLEY ... AND [PLAINTIFF] AND DIRECTING THE VILLAGE PRESIDENT AND CLERK TO EXECUTE SAID CONTRACT." Plaintiff has pointed to no law to say that this resolution, permitting plaintiff to contract specifically with Grand Valley, should function as a confirmation of a special assessment roll, that would then potentially bind taxpayers other than Grand Valley and future owners of the subject property to a special assessment. And, when the URISAA was thereafter executed, it explicitly referenced a confirmation of the special assessment roll that would occur *in the future*: "The special assessment levied pursuant to this Agreement may be paid in 10 equal annual installments of principal plus interest on the unpaid balance commencing on the date the Village Council confirms the special assessment roll, or such later date designated in the resolution confirming the special assessment roll." First, that the document refers to "the special assessment levied pursuant to this Agreement" indicates that plaintiff understood that the URISAA was an agreement between plaintiff and Grand Valley *to levy a special assessment*, but that its execution was not itself the action that would effectively levy that assessment. This is further evidenced by the document's references to a future confirmation of the special assessment roll, which then *would* have levied the special assessment. It is undisputed that a future confirmation never took place.

In light of the above, we cannot discern error on the trial court's part when it concluded that plaintiff never levied a special assessment that would impact the rights of future property owners and taxpayers, and that might have survived the judgment of foreclosure. Moreover, we agree with the well-reasoned opinion of the trial court, wherein it noted:

> Though precedent directs the court to presume such assessments are valid, [it] cannot justify validity of those assessments in the face of fatal procedural shortfalls.

> To do so would render the procedural requirements optional with regard to special assessments' treatment in tax foreclosure. The Court cannot selectively ignore compulsory statutory language ("shall").

As an aside, we note plaintiff's suggestion in relation to its argument that a valid special assessment existed in this case that it could have succeeded in the underlying litigation irrespective of the validity of the special assessment on the basis that both Michigan statutes and its own ordinances permit it to reassess special assessments under certain circumstances. MCL 68.32 provides that ordinances involving special assessments "shall authorize additional assessment, if the prior assessment proves insufficient to pay for the improvement or is determined to be invalid." And, indeed, plaintiff's ordinances authorize the same:

> Whenever any special assessment shall, in the opinion of the village council, 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 village council 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. [Sparta Ordinances, § 54-18.]

However, plaintiff's analysis of the issue ends here, and plaintiff does not explain how or whether it would have actually been permitted to reassess a special assessment against Petersen. A special assessment cannot be levied for improvements made years before the assessment is confirmed, *Smith v. Garden City*, 372 Mich. 189, 195; 125 N.W.2d 269 (1963), nor may a governmental authority generally levy a special assessment after rights and obligations related to the same have been extinguished in a tax foreclosure, *Keefe v. Drain Comm'r of Oakland Co.*, 306 Mich. 503, 512-514; 11 N.W.2d 220 (1943). See also *Clark v. Royal Oak*, 325 Mich. 298, 310; 38 N.W.2d 413 (1949) (explaining that a governmental entity cannot levy supplemental assessments after obtaining a property through a tax foreclosure because the foreclosure sale frees the property "not only from all prior taxes and special assessments, but also ... [from] the possibility of further assessments for benefits to the land by public improvements made prior to the [entity] acquiring title"). It should also be noted that there is no evidence that plaintiff ever attempted to impose a subsequent special assessment on the property, nor that this issue was at the center of the Petersen case. Accordingly, this argument is without merit.

***7** Plaintiff also raises a number of alternative arguments that it raised below but that the trial failed to address. In order to fully resolve the issues raised on appeal, we elect to address those arguments. We also decline to punish plaintiff "for the omission of the trial court," and therefore treat these arguments as preserved. *Dell*, 312 Mich. App. at 751 n. 40 (quotation marks and citation omitted).

Plaintiff first asserts that Peterson waived all challenges to the validity of the special assessment. The argument essentially is as follows: (1) Grand Valley initially waived any right to challenge the URISAA by

making payments pursuant to the agreement,[5] (2) following the judgment of foreclosure, Petersen was on notice of the URISAA and Grand Valley's payments pursuant to the agreement because the agreement was on file with the Kent County Register of Deeds, (3) by purchasing the property while on notice of the URISAA and Grand Valley's waiver, Petersen too can be said to have waived any challenges to the nature of the special assessment proceedings or the special assessment itself. First, and as further described below, plaintiff has conflated challenges to the applicability of the URISAA—a special assessment *agreement*—to Petersen, with challenges to the validity of the procedure employed to actually levy a special assessment. Plaintiff itself acknowledges that its argument arises out of the application of contractual principles, but then ignores the fact that whether the URISAA was a contract to which Petersen was beholden and whether a special assessment was properly levied in this case are squarely two different things. Thus, even assuming Grand Valley waived its right to challenge its contractual obligations under the URISAA, plaintiff has provided no law or logical argument to suggest that Grand Valley's contractual obligations would have survived the judgment of foreclosure and passed on to Petersen. As explained above, the contractual obligations would have been extinguished by the judgment of foreclosure, and only a valid special assessment would have vested similar obligations in future property owners following a tax foreclosure. See MCL 211.78k(5)(c). To that end, it does not comport with logic to argue that (1) Petersen waived any argument that he was not subject to the URISAA, and therefore (2) Petersen waived any argument that a special assessment was otherwise levied through actions taken by plaintiff outside of the URISAA. And, as defendants aptly points out, even again assuming Grand Valley waived its right to challenge its contractual obligations, this is not to say that Grand Valley waived any rights related to a special assessment that was never actually levied. Particularly in light of plaintiff's failure to address the effects of the tax foreclosure on any rights that might have derived from the URISAA, this argument is without merit.

5 The URISAA provides:

> 4. Consent to Special Assessment. Grand Valley consents to the special assessment and acknowledges and agrees that the real property to be assessed in the Property will receive a benefit from the Improvements equal to or greater than the assessment to be placed on the real property.

Plaintiff asserts that, by acquiescing to this provision in the URISAA and subsequently making payments pursuant to the agreement, Grand Valley necessarily expressed its understanding that the URISAA was valid, and waived any subsequent challenge to the same.

***8** Plaintiff next asserts that, irrespective of whether the special assessment in this case was properly levied, plaintiff would have been successful in the Petersen case because Petersen's complaint was barred by statutes of limitations. However, as defendants point out, Petersen filed a complaint in the underlying action seeking declaratory relief, and it is well-settled that "[l]imitations statutes do not apply to declaratory judgments." *Taxpayers Allied for Constitutional Taxation v. Wayne Co.*, 450 Mich. 119, 128; 537 N.W.2d 596 (1995) (quotation marks and citation omitted).

> "Declaratory relief is a mere procedural device by which various types of substantive claims may be vindicated. There are no statutes which provide that declaratory relief

> will be barred after a certain period of time. Limitations periods are applicable not to the form of the relief but to the claim on which the relief is based." [*Id.*, quoting *Luckenbach Steamship Co. v. United States*, 312 F.2d 545, 548 (C.A. 2, 1963).]

Plaintiff asserts that Petersen attempted to "thwart the statute of limitations by labeling its counts as 'Declaratory Relief,' but that the gravamen of the claims was based in the formation of the special assessment agreement and subject to limitations prescribed in MCL 205.735a(6), or alternatively, that Petersen's claims were tantamount to contractual challenges that were subject to limitations prescribed by MCL 600.5807(9). Plaintiff simply does not make sense of this assertion in its brief on appeal, nor do any of the cases relied upon by plaintiff for the assertion involve claims for declaratory relief. See *Adams v. Adams*, 276 Mich. App. 704, 710; 742 N.W.2d 399 (2007); *Fritz v. Monnich*, unpublished per curiam opinion of the Court of Appeals, issued May 20, 2003 (Docket No. 235562), pp. 1-2.

Moreover, MCL 205.735a involves assessment disputes brought before the Michigan Tax Tribunal generally involving the valuation of assessments or claims of exemption of property, as well as the jurisdiction of the Tax Tribunal. MCL 205.735a(1) through (6). Petersen's complaint involved none of the above, and sought a declaration in the circuit court that he was neither bound by nor subject to the URISAA, and that a special assessment was never properly levied against his property. In that same vein, the claims were clearly for declaratory relief and they were not tantamount to claims that the URISAA should be rescinded or was otherwise unenforceable such that MCL 600.5807(9) would be implicated. Suffice it to say, this argument is also without merit.

Lastly, plaintiff contends that it would have succeeded in the underlying litigation with Petersen if defendants had litigated a defense —or more appropriately, a counterclaim—of unjust enrichment. "The essential elements of an unjust enrichment claim are (1) receipt of a benefit by the defendant from the plaintiff, and (2) which benefit it is inequitable that the defendant retain." *Meisner Law Group PC v. Weston Downs Condo. Assoc.*, 321 Mich. App. 702, 721; 909 N.W.2d 890 (2017). Defendants assert, and we agree, that Petersen, while perhaps receiving a benefit as a result of purchasing the subject property via a tax foreclosure sale, benefited in manner that is precisely permitted by law. Moreover, Michigan caselaw provides that "not all enrichment is necessarily unjust in nature." *Morris Pumps v. Centerline Piping, Inc.*, 273 Mich. App. 187, 196; 729 N.W.2d 898 (2006).

> A third party is not unjustly enriched when it receives a benefit from a contract between two other parties, where the party benefited has not requested the benefit or misled the other parties .... Otherwise stated, the mere fact that a third person benefits from a contract between two other persons does not make such third person liable in quasi-contract, unjust enrichment, or restitution. Moreover, where a third person benefits from a contract entered into between two other persons, in the absence of some misleading act by the third person, the mere failure of performance by one of the contracting parties does not give rise to a right of restitution against the third person. [*Id.* (quotation marks and citation omitted).]

***9** Additionally, if it could be said that a party is unjustly enriched when they benefit from a tax foreclosure's removal of liens and encumbrances, the very purpose of properly levying special assessments would be moot. And lastly, it must be noted that plaintiff has provided no caselaw to explain how and to what extent unjust enrichment could apply under circumstances such as this. None of the cases referenced by plaintiff even remotely involve a governmental body's failure to properly levy a special assessment, nor a party taking a property following a tax foreclosure and a subsequent finding that the party benefited unjustly from the fact that the foreclosure process extinguished encumbrances and liens.

In light of all of the above, we conclude that the trial court did not err in granting defendants' motion for summary disposition. Plaintiff was required to establish that, but for defendants' malpractice, negligence, or fraud, plaintiff could have been successful in the underlying litigation with Petersen. Plaintiff has not established that it could have been successful, particularly in light of the trial court's conclusion that there were no genuine issues of material fact as to whether a special assessment was ever properly levied in this case. Lastly, plaintiff's alternative arguments largely ignore the implications of the tax foreclosure that occurred in this case, and plaintiff has failed to provide adequate authority to suggest that any one of the alternative arguments could have been successful in the Petersen case.

Affirmed.

All Citations

Not Reported in N.W. Rptr., 2020 WL 7635510

Footnotes

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CITY OF KENTWOOD

PFEIFFER WOODS DRIVE CONSTRUCTION
(Ravines)
STREET, STORM SEWER, NON-MOTORIZED TRAIL, SANITARY SEWER, AND WATERMAIN
SPECIAL ASSESSMENT DISTRICT

RESOLUTION NO. 49-04
(Resolution No. 1)

Minutes of the regular meeting of the City Commission of the City of Kentwood, Kent County, Michigan, held in the Justice Center Community Room, 4742 Walma Ave., S.E., in said City on June 15, 2004 at 7:30 P.M.

PRESENT: COMMISSIONERS: Brinks, Brown, Clanton, Coughlin, Cummings, McGookey and Mayor Root.

ABSENT: None.

The following preamble and resolution were offered by Commissioner Clanton, and supported by Commissioner Coughlin.

WHEREAS, the City of Kentwood has received a request from the effected property owners to establish a special assessment district for certain public improvements including, but not limited to, Street, Storm Sewer, Non-Motorized Trail, Sanitary Sewer Leads, and Watermain Leads in Pfeiffer Woods Drive; and

WHEREAS, City of Kentwood Ordinance No. 4-67, as amended, provides that before the City may consider making any improvement it shall refer the matter to the City Clerk directing that the Clerk prepare a report including necessary plans, specifications and a detailed estimate of costs as well as an estimate of the life e of the improvements, a description of the assessment district and such other pertinent information as the Commission requests; and

WHEREAS, the City Commission determines that some or all of the cost of such improvements should be paid by special assessment levied against the parcels of land benefited by such improvements.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The City Clerk shall prepare a report which shall include necessary plans, profiles, specifications and detailed estimates of cost, an estimate of the life of the improvement, a description of the assessment district, and such other pertinent information as will permit the City Commission to decide the cost extent and necessity for the proposed improvement and what proportion thereof should be paid by special assessment and by the City at large.

2. The foregoing report, as soon as completed, shall be filed in the office of the City Clerk.

3. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same hereby are rescinded.

YEAS: COMMISSIONERS: Brinks, Brown, Clanton, Coughlin, Cummings, McGookey and Mayor Root.

NAYS: None.

ABSENT: None.

RESOLUTION NO. 49-04 DECLARED ADOPTED.

Dan Kasunic
Kentwood City Clerk

CERTIFICATION

The foregoing resolution was certified at a regular meeting of the Kentwood City Commission held on June 15, 2004.

Dan Kasunic
Kentwood City Clerk

CITY OF KENTWOOD

PFEIFFER WOODS DRIVE CONSTRUCTION
(Ravines Special Assessment District)
STREET, STORM SEWER, NON-MOTORIZED TRAIL, SANITARY SEWER, AND WATERMAIN
SPECIAL ASSESSMENT DISTRICT

RESOLUTION NO. 66-04
(Resolution No. 2)

Minutes of a regular meeting of the City Commission of the City of Kentwood, Kent County, Michigan, held in the Justice Center Community Room, 4742 Walma Avenue, S.E., in said City, on July 20, 2004 at 7:30 P.M.

PRESENT: COMMISSIONERS: Brinks, Brown, Clanton, Coughlin, Cummings and Mayor Root.

ABSENT: Commissioner McGookey.

The following preamble and resolution were offered by Commissioner Brinks and supported by Commissioner Cummings..

WHEREAS, the City Commission of the City of Kentwood adopted Resolution No. 49-04 directing the preparation of a report regarding certain public improvements identified herein; and

WHEREAS, the report has been prepared and is on file with the City Clerk consistent with City of Kentwood Ordinance No. 4-67; and

WHEREAS, the City Commission has reviewed said report,

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The City Commission hereby tentatively determines that the public improvements described more particularly in the notice hereinafter provided for are necessary.

2. The total assessed cost of said public improvements is estimated to be $1,834,595.00 and shall be spread over the special assessment district as determined by subsequent action of the City Commission, it being the City Commission's anticipated intent that the benefiting property owner(s) shall bear the expense of the public improvements except for City-mandated oversizing.

3. The special assessment district shall consist of all parcels of land as described in the notice in Paragraph 9.

4. The estimated life of such public improvement is not less than forty (40) years.

5. The special assessment shall be spread on the basis of benefits received by properties in the district.

6. The aforesaid report shall remain on file in the office of the City Clerk, where the same shall be available for public examination.

7. The City Commission will meet on August 9, 2004 at 7:30 P.M. at the temporary Kentwood City Commission Chambers, 4742 Walam Avenue, SE, for the purpose of hearing objections to the making of said public improvements.

8. The City Clerk is hereby directed to cause notice of the hearing to be published in the GRAND RAPIDS PRESS, a newspaper of general circulation in the City of Kentwood, at least ten (10) full days before the date of such hearing, and is further directed to cause notice of such hearing to be mailed by first class mail to each owner of or person in interest in property in the special assessment district, more particularly described in the following notice, at the addresses shown on the current assessment roll of the City, at least ten (10) days prior to the date of such hearing.

9. The notice of such hearing to be published and mailed shall be in substantially the following form:

NOTICE

PFEIFFER WOODS DRIVE CONSTRUCTION
(From Shaffer Avenue to Breton Avenue)
STREET, STORM SEWER, NON-MOTORIZED TRAIL, SANITARY SEWER AND WATERMAIN

RAVINES SPECIAL ASSESSMENT DISTRICT

CITY OF KENTWOOD

TAKE NOTICE, that the City Commission of the City of Kentwood, Kent County, Michigan has tentatively determined it to be necessary to make the following described improvements in the City of Kentwood, and the City Commission has determined that the cost of said public improvements shall be assessed against each of the following described parcels of land:

IMPROVEMENT

Street, storm sewer, non-motorized trail, sanitary sewer and watermain in Pfeiffer Woods Drive.

PROPERTIES TO BE ASSESSED

Part of the NE 1/4 and part of the SE 1/4, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: BEGINNING at the NE corner of Section 22; thence S 03°35'29" E 395.00 feet along the East line of said NE 1/4; thence S 89°42'31" W 258.00 feet; thence S 03°35'29" E 120.00 feet; thence N 89°42'31" E 258.00 feet; thence S 03°35'29" E 705.38 feet along the East line of said NE 1/4; thence N 54°47'03" W 395.85 feet; thence S 89°45'47" W 308.00 feet; thence S 03°35'29" E 330.00 feet; thence N 89°45'47" E 424.00 feet along the South line of the N 1/2 of the NE 1/4 of Section 22; thence S 03°35'29" E 153.00 feet; thence N 89°45'47" E 193.00 feet; thence S 03°35'29" E 273.18 feet along the East line of said NE 1/4; thence S 86°24'31" W 40.00 feet; thence S 03°35'29" E 891.81 feet along the West line of Shaffer Avenue to the South line of said NE 1/4; thence S 03°10'02" E 1324.40 feet along the West line of Shaffer Avenue; thence S 89°54'32" W 629.94 feet along the North line of the S 1/2 of the SE 1/4 of Section 22; thence S 03°10'02" E 60.95 feet; thence S 90°00'00" W 708.24 feet; thence N 45°00'00" W 67.88 feet; thence S 90°00'00" W 530.00 feet; thence N 50°00'00" W 235.00 feet; thence S 42°36'50" W 260.00 feet; thence S 77°56'20" W 333.73 feet; thence N 03°02'05" W 1440.00 feet along the West line of the SE 1/4 of Section 22 to the center of said Section; thence N 03°29'48" W 2635.49 feet along the West line of the NE 1/4 of Section 22 to the N 1/4 corner of said Section; thence N 89°42'31" E 2633.71 feet along the North line of said NE 1/4 to the place of beginning. Subject to highway R.O.W. for Shaffer Avenue. This parcel contains 233.49 acres, including highway R.O.W.

TAKE FURTHER NOTICE, that the City Commission of the City of Kentwood has caused a report concerning said public improvements to be prepared, which report includes necessary plans, profiles, specifications and estimates of cost of such public improvement, a description of the assessment district and other pertinent information, and this report is on file in the office of the City Clerk and available for public examination.

TAKE FURTHER NOTICE, that the City Commission will meet on August 9, 2004 at 7:30 P.M. at the Justice Center Community Room, located at 4742 Walma Avenue, S.E. in said City, for the purposes of hearing objections to the making of such public improvements. Objections may be made by appearing in person at the hearing or by filing a protest in writing with the City Clerk prior to the close of the hearing.

This notice is given by order of the City of Kentwood, Kent County, Michigan.

Dan Kasunic
Kentwood City Clerk

For further information, call Jim Beke at 554-0737.

10. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same hereby are rescinded.

YEAS: COMMISSIONERS: Brinks, Brown, Clanton, Coughlin, Cummings and Mayor Root.

NAYS: None.

ABSENT: Commissioner McGookey.

RESOLUTION NO. 66-04 DECLARED ADOPTED.

Dan Kasunic
Kentwood City Clerk

CERTIFICATION

The foregoing resolution was adopted at a regular meeting of the Kentwood City Commission held on July 20, 2004.

Dan Kasunic
Kentwood City Clerk

CITY OF KENTWOOD

PFEIFFER WOODS DRIVE CONSTRUCTION
(Ravines Special Assessment District)
STREET, STORM SEWER, NON-MOTORIZED TRAIL, SANITARY SEWER, AND WATERMAIN
SPECIAL ASSESSMENT DISTRICT

RESOLUTION NO. 81-04
(Resolution No. 3)

Minutes of a regular meeting of the City Commission of the City of Kentwood, Kent County, Michigan, held in the Justice Center Community Room, 4742 Walma Avenue, S.E., in said City on August 9, 2004 at 7:30 P.M.

PRESENT: COMMISSIONERS: Brinks, Clanton, Coughlin and Mayor Root.

ABSENT: COMMISSIONERS: Brown, Cummings and McGookey.

The following preamble and resolution were offered by Commissioner Coughlin, and supported by Commissioner Clanton.

WHEREAS, the City Commission, after due and legal notice, on August 9, 2004 met and heard all interested parties regarding the proposed public improvement described as follows:

Street, Storm Sewer, Non-Motorized Trail, Streetlighting, Landscaping, Irrigation System, Sanitary Sewer, and Watermain in Pfeiffer Woods Drive.

AND WHEREAS, the City Commission deems it advisable and necessary to proceed with said public improvements;

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The City Commission hereby determines to make the public improvement described above, and to defray the costs of the same and permitted associated costs by special assessment upon the property specially benefited in proportion to the benefits to be derived.

2. The City Commission hereby approves the profiles, plans and specifications for the aforesaid public improvement, determines the estimated assessable cost of said improvement to be $1,834,595.00 and estimates the useful life thereof to be not less than forty (40) years.

3. The City Commission determines that of said total estimated assessable cost, the sum of $1,834,595.00 be paid by special assessment upon the property specially benefited and the City at large, as more particularly hereinafter described.

4. The City Commission designates the following lots and parcels of land as the property to comprise the special assessment district upon which the special assessment shall be levied:

PROPERTY TO BE ASSESSED

Part of the NE 1/4 and part of the SE 1/4, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: BEGINNING at the NE corner of Section 22; thence S 03°35'29" E 395.00 feet along the East line of said NE 1/4; thence S 89°42'31" W 258.00 feet; thence S 03°35'29" E 120.00 feet; thence N 89°42'31" E 258.00 feet; thence S 03°35'29" E 705.38 feet along the East line of said NE 1/4; thence N 54°47'03" W 395.85 feet; thence S 89°45'47" W 308.00 feet; thence S 03°35'29" E 330.00 feet; thence N 89°45'47" E 424.00 feet along the South line of the N 1/2 of the NE 1/4 of Section 22; thence S 03°35'29" E 153.00 feet; thence N 89°45'47" E 193.00 feet; thence S 03°35'29" E 273.18 feet along the East line of said NE 1/4; thence S 86°24'31" W 40.00 feet; thence S 03°35'29" E 891.81 feet along the West line of Shaffer Avenue to the South line of said NE 1/4; thence S 03°10'02" E 1324.40 feet along the West line of Shaffer Avenue; thence S 89°54'32" W 629.94 feet along the North line of the S 1/2 of the SE 1/4 of Section 22; thence S 03°10'02" E 60.95 feet; thence S 90°00'00" W 708.24 feet; thence N 45°00'00" W 67.88 feet; thence S 90°00'00" W 530.00 feet; thence N 50°00'00" W 235.00 feet; thence S 42°36'50" W 260.00 feet; thence S 77°56'20" W 333.73 feet; thence N 03°02'05" W 1440.00 feet along the West line of the SE 1/4 of Section 22 to the center of said Section; thence N 03°29'48" W 2635.49 feet along the West line of the NE 1/4 of Section 22 to the N 1/4 corner of said Section; thence N 89°42'31" E 2633.71 feet along the North line of said NE 1/4 to the place of beginning. Subject to highway R.O.W. for Shaffer Avenue. This parcel contains 233.49 acres, including highway R.O.W.

5. The City Assessor shall prepare a special assessment roll including all parcels of land within the special assessment district herein designated, and the Assessor shall assess to each such parcel of land such relative portion of the whole sum to be levied against all lands in the special assessment district as the benefit to such parcel of land bears to the total benefits to all lands in such district.

6. When the Assessor shall have completed the assessment roll, the assessor shall file the same with the City Clerk for presentation to the City Commission.

7. The City Commission further determines that in the event property is to be added to the district or in the event the assessable cost will be increased by more than ten percent, an additional public hearing will be held.

8. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same hereby are rescinded.

YEAS: COMMISSIONERS: Brinks, Clanton, Coughlin and Mayor Root.

NAYS: None.

ABSENT: COMMISSIONERS: Brown, Cummings and McGookey.

RESOLUTION NO. 81-04 DECLARED ADOPTED.

Dan Kasunic
Kentwood City Clerk

CERTIFICATION

The foregoing resolution was certified at a regular meeting of the Kentwood City Commission held on August 9, 2004.

Dan Kasunic
Kentwood City Clerk

CITY OF KENTWOOD

PFEIFFER WOODS DRIVE CONSTRUCTION
(Ravines Special Assessment District)
STREET, STORM SEWER, NON-MOTORIZED TRAIL, SANITARY SEWER, AND WATERMAIN
SPECIAL ASSESSMENT DISTRICT

RESOLUTION NO. 82-04
(Resolution No. 4)

Minutes of a regular meeting of the City Commission of the City of Kentwood, Kent County, Michigan, held in the Justice Center Community Room, 4742 Walma Avenue, S.E., in said City on August 9, 2004 at 7:30 P.M.

PRESENT: COMMISSIONERS: Brinks, Clanton, Coughlin and Mayor Root.

ABSENT: COMMISSIONERS: Brown, Cummings and McGookey.

The following preamble and resolution were offered by Commissioner Coughlin, and supported by Commissioner Clanton.

WHEREAS, the Assessor has prepared a special assessment roll for the purpose of specially assessing that portion of the cost of the public improvement more particularly hereinafter described to the properties specially benefited by said public improvement, and the same has been presented to the Commission by the City Clerk;

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Said special assessment roll shall be filed in the office of the City Clerk for public examination.

2. The City Commission and the Assessor shall meet at the Justice Center Community Room, 4742 Walma Avenue, S.E., in said City at 7:30 P.M. on September 7, 2004, for the purpose of hearing all persons interested in said special assessment roll and reviewing the same.

3. The City Clerk is directed to publish the notice of said hearing once in the GRAND RAPIDS PRESS, a newspaper of general circulation in the City of Kentwood, not less than ten (10) full days prior to the date of said hearing, and shall further cause notice of such hearing to be sent by first class mail to each owner of or person in interest in property subject to assessment as indicated by the records in the City Assessor's office, as shown on the general tax roll of the City, at least ten (10) full days before the time of said hearing, said notices to be mailed to the addresses shown on said general tax rolls of the City.

4. The notice of said hearing to be published and mailed shall be in substantially the following form:

CITY OF KENTWOOD

NOTICE OF HEARING TO REVIEW SPECIAL ASSESSMENT ROLL

PFEIFFER WOODS DRIVE CONSTRUCTION
(Ravines Special Assessment District)
STREET, STORM SEWER, NON-MOTORIZED TRAIL, SANITARY SEWER, AND WATERMAIN
SPECIAL ASSESSMENT DISTRICT

TAKE NOTICE, that a special assessment roll has been prepared for the purpose of defraying the special assessment district's share of the cost of the following described public improvements:

Street, Storm Sewer, Non-Motorized Trail, Streetlighting, Landscaping, Irrigation System, Sanitary Sewer, and Watermain in Pfeiffer Woods Drive.

The special assessment district shall consist of all properties listed below. The special assessment roll is on file for public examination with the City Clerk. Objections to the special assessment roll may be made by protesting in person at the hearing to review the special assessment roll or by filing a protest in writing with the City Clerk prior to the close of the hearing to review the special assessment roll. Such an appearance or protest at the hearing on the special assessment roll is required in order to appeal the amount of the special assessment to the state tax tribunal.

The following property located in the City of Kentwood, Kent County, Michigan:

PROPERTIES TO BE ASSESSED

Part of the NE 1/4 and part of the SE 1/4, Section 22, T6N, R11W, City of Kentwood, Kent County, Michigan, described as: BEGINNING at the NE corner of Section 22; thence S 03°35'29" E 395.00 feet along the East line of said NE 1/4; thence S 89°42'31" W 258.00 feet; thence S 03°35'29" E 120.00 feet; thence N 89°42'31" E 258.00 feet; thence S 03°35'29" E 705.38 feet along the East line of said NE 1/4; thence N 54°47'03" W 395.85 feet; thence S 89°45'47" W 308.00 feet; thence S 03°35'29" E 330.00 feet; thence N 89°45'47" E 424.00 feet along the South line of the N 1/2 of the NE 1/4 of Section 22; thence S 03°35'29" E 153.00 feet; thence N 89°45'47" E 193.00 feet; thence S 03°35'29" E 273.18 feet along the East line of said NE 1/4; thence S 86°24'31" W 40.00 feet; thence S 03°35'29" E 891.81 feet along the West line of Shaffer Avenue to the South line of said NE 1/4; thence S 03°10'02" E 1324.40 feet along the West line of Shaffer Avenue; thence S 89°54'32" W 629.94 feet along the North line of the S 1/2 of the SE 1/4 of Section 22; thence S 03°10'02" E 60.95 feet; thence S 90°00'00" W 708.24 feet; thence N 45°00'00" W 67.88 feet; thence S 90°00'00" W 530.00 feet; thence N 50°00'00" W 235.00 feet; thence S 42°36'50" W 260.00 feet; thence S 77°56'20" W 333.73 feet; thence N 03°02'05" W 1440.00 feet along the West line of the SE 1/4 of Section 22 to the center of said Section; thence N 03°29'48" W 2635.49 feet along the West line of the NE 1/4 of Section 22 to the N 1/4 corner of said Section; thence N 89°42'31" E 2633.71 feet along the North line of said NE 1/4 to the place of beginning. Subject to highway R.O.W. for Shaffer Avenue. This parcel contains 233.49 acres, including highway R.O.W.

TAKE FURTHER NOTICE THAT the City Commission and the City Assessor will meet in

the Justice Center Community Room, 4742 Walma Avenue, S.E., in said City at 7:30 P.M. on September 7, 2004, for the purpose of reviewing said special assessment roll.

TAKE NOTICE that appearance and protest at the public hearing is required in order to appeal the amount of the special assessment to the State Tax Tribunal.

TAKE NOTICE that an owner or party in interest, or his/her agent may appear in person at the hearing to protest the special assessment, or may file his/her appearance or protest by letter, on or before the close of the hearing.

TAKE NOTICE that any person objecting to the assessment roll is requested to file written objections with the City Clerk before the close of the hearing.

TAKE NOTICE that an owner or any person having an interest in the real property may file a written appeal of the special assessment with the State Tax Tribunal within thirty (30) days after the confirmation of the special assessment roll if the owner or person having an interest in the real property protested the special assessment at the hearing held for the purpose of confirming the roll.

Michigan Tax Tribunal
P.O. Box 30232
Lansing, Michigan 48909

TAKE FURTHER NOTICE that the special assessment roll as prepared has been reported to the City and is on file with the City Clerk for public examination.

This notice is given by order of the City Commission of the City of Kentwood, Kent County, Michigan.

Dan Kasunic
Kentwood City Clerk

5. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same hereby are rescinded.

YEAS: COMMISSIONERS: Brinks, Clanton, Coughlin and Mayor Root.

NAYS: None.

ABSENT: COMMISSIONERS: Brown, Cummings and McGookey.

RESOLUTION NO. 82-04 DECLARED ADOPTED.

Dan Kasunic
Kentwood City Clerk

CERTIFICATION

The foregoing resolution was certified at a regular meeting of the Kentwood City Commission held on August 9, 2004.

Dan Kasunic
Kentwood City Clerk