

THE FOLLOWING IS THE RULING FROM THE HONORABLE PETER E. DEEGAN  
ON FEBRUARY 2, 2007, IN CASE "DOCKET NO. 06-0600137-CH" PERTAINING TO  
WATER DISTRICT II.

1 Port Huron, Michigan

2 Friday, February 2, 2007

3  
4 (EXCERPT OF PROCEEDINGS HELD:)

5 (Court in session at 1:38 p.m.)

6  
7 THE COURT: All right, we're going to go back on  
8 the record on the case of Citizens for Responsible  
9 Improvements, et al, versus Cottrellville Township, et al.  
10 The record should reflect the parties and respective  
11 counsel are present and I do appreciate all the patience  
12 that both sides have given to the Court. I think I am in  
13 a position to share with you or give to you my opinion on  
14 this case.

15 I'm going to kind of go at it a little bit  
16 backwards and focus in on the, kind of the key  
17 determinative issues on this matter at the end or later on  
18 in the opinion. So, but due to the nature of the way the  
19 case is set up and pled I do want to respond as best I can  
20 to all of the concerns and the counts that have been  
21 brought to the Court's attention.

22 The Plaintiff claims that one parcel should not  
23 have been included because the property owners did not  
24 sign the petition, but rather a person acting with power  
25 of attorney signed on their behalf. Defendant responded

1 that the power of attorney granted to Kenneth Chartier by  
2 Earl and Lucy -- or Lucille Chartier did include the power  
3 to encumber the property. Based upon the evidence  
4 presented in this case, this Court finds that the  
5 Chartiers were properly included in signing the petitions.

6 Plaintiff further asserts that the petitions and  
7 Resolutions adopted as a result of the petitions are  
8 improper because some of the petitions were faxed rather  
9 than containing original signatures and that the Notice of  
10 Hearing contained insufficient maps and/or descriptions of  
11 property involved in the assessment district.

12 Statute governing establishing of special  
13 assessment district envisions that petitions will serve as  
14 merely first step in rather elaborate and lengthy process  
15 designed to determine need for and assess cost of public  
16 improvements according to the holding in *Rusak versus Acme*  
17 *Township*, 124 Michigan Appeals 805, which is a, a 1983  
18 holding. Municipal decisions regarding special  
19 assessments are presumed to be valid, and decisions of  
20 municipal officers regarding special assessments generally  
21 should be upheld according to the holding in *Kadzban*  
22 *versus City of Grandville*, 442 Michigan 495, which is a  
23 1993 case. This Court finds that Plaintiffs have failed  
24 to convince this Court that Cottrellville Township has  
25 acted improperly in this fashion.

1                   Count 2 of the Plaintiffs' Complaint alleges  
2 violation of the Freedom of Information Act. This count  
3 involves attempts by an individual Plaintiff to obtain  
4 copies of Chartier's power of attorney. Defendant asserts  
5 that all available copies were provided to the Plaintiff  
6 and predicated upon the evidence that this case -- that  
7 this Court heard during the course of this trial, this  
8 Court agrees with the Defendants on that matter.

9                   Under Count 3 of the Complaint, which involves a  
10 due process allegation under 42 USC 1983, Plaintiff  
11 asserts that they were denied a, a fair opportunity to  
12 challenge the assessments when the Defendants failed to  
13 provide all relevant information regarding the exclusion  
14 of SEMCO properties from the assessed district. There's  
15 no proofs presented to this Court's satisfaction that on  
16 that burden that the Plaintiff would carry and, and I  
17 disagree with their conclusion on that and they do not  
18 prevail on that count.

19                   Under Count 5 the Complaint alleges a  
20 governmental taking of property. Plaintiffs state that  
21 the special assessment is more expensive than it has to be  
22 because the Township is proposing a 12-inch pipe rather  
23 than a smaller pipe which would be sufficient. Plaintiffs  
24 assert that this extra expense passed onto the land owners  
25 is a governmental taking. Defendants take the position

1 that the 12-inch pipe is required to meet Michigan  
2 Department -- or MDEQ's standards and this Court on the  
3 evidence presented agrees that the Township had the right  
4 to use the 12-inch pipe for fire flow protection and  
5 provide for hydrant capacity and at this stage of the  
6 proceedings this does not amount to a taking and,  
7 therefore, this count fails.

8 In fact, again it's kind of interesting on how  
9 these procedures work. After you've got 50 percent in a  
10 district of owners wanting an improvement, they petition  
11 the township board to do that. But even if the petition  
12 criteria is met, it's still a political decision to be  
13 made by the board and in making that decision and granting  
14 them that relief, I suppose in one sense one could say:  
15 Be careful what you ask for. Because the township has,  
16 has an independent right on a political basis to determine  
17 what to look at, what's in their interests, and what needs  
18 to be incorporated and everybody has their own agenda. A  
19 lot of times the land owners want to get water and the  
20 township's concerned about development, the effects, and  
21 I've had cases where the petitioners were almost  
22 100 percent in favor of water, but the township did not  
23 ultimately grant it. Had litigation over it. The  
24 township could point to other financial concerns and  
25 considerations in making their decision.

1 All I'm saying, they're an independent player in  
2 this matter and they've got a right to look at it in the  
3 forms and fashions that they need to factor in under their  
4 decision. In this case here I certainly have no quarrel  
5 with what they've done, how they did it and that's not a  
6 taking. It's not a taking until such a time as actually  
7 there's an assessment and then it has its effect in that  
8 fashion and nowhere does it go to that at this point.

9 One second here to get my notes. I've got them  
10 in about three stacks here and I'm trying to keep them  
11 together.

12 Under MCL 41.723 the township board shall not  
13 proceed with improvement until there is filed with the  
14 board a petition signed by record owners of land  
15 constituting more than 50 percent of the total land area  
16 in a special assessment district. Plaintiffs in this  
17 lawsuit challenge the determination of the Township that  
18 owners of more than 50 percent of the property in the  
19 proposed water district had signed the petition on two  
20 grounds.

21 First, the Plaintiffs assert that 69.47 acres  
22 owned by SEMCO Energy falls within the district but was  
23 not included in the assessment district. Now if this  
24 acreage were to be included in the total amount of the  
25 assessment district, then 50 percent of the owner's

1 signatures would have not been obtained. Plaintiffs  
2 contend that the Township Assessor erred in not including  
3 SEMCO property in the district total.

4 Defendant cites MCL 41.723 which states that in  
5 determining the sufficiency of the petition, lands not  
6 subject to special assessment shall not be included in  
7 computing an assessment district area. It is clear from  
8 the language of the statute that a special assessment must  
9 have a direct benefit to the property assessed according  
10 to the holding in *Graham versus Kochville Township*, 236  
11 Michigan Appeals 141, which is a 1999 holding. *Blaser*  
12 *versus East Bay Township*, 242 Michigan Appeals 249, a 2000  
13 case also holds that. The Township Assessor apparently  
14 made the determination that the SEMCO parcel, which is  
15 used for underground storage of natural gas and is  
16 unbuildable or certainly not buildable for purposes of  
17 promoting what SEMCO is using the property itself for,  
18 would not benefit from the project and should not be  
19 included in the special assessment district. Plaintiffs  
20 challenge that determination as being improper.

21 Now, this Court asked Cottrellville Township  
22 Assessor Barbara Schutt when she was on the stand here, I  
23 asked her: As a Level Three Certified Assessor, are you  
24 saying if a property owner in a proposed water district  
25 already has municipal water, are they automatically exempt

1 from being part of the water district? And she answered  
2 in her experience the answer is yes and that is why she  
3 did not include Property Number 1 the Faulk 80 acres,  
4 Property Number 2 the Turner 29 acres, and Property Number  
5 3 the Yezbick 10.7 acres, and number -- Property Number 5  
6 the Triggs 1.7 acres in the assessment district. Each of  
7 these properties already had connections to a two inch or  
8 less water line drawing on municipal water mains.

9 Now, I have no quarrel that Barbara Schutt is  
10 qualified as an assessor to answer the question and give  
11 me her opinion as she did. I anticipate -- anticipated  
12 that Plaintiffs would offer a qualified expert to refute  
13 or challenge her opinion, but as Defense Counsel Seibert  
14 pointed out in his closing statement, they did not.  
15 However, as a fact-finder I am not bound by her answer and  
16 may give it whatever weight I believe it deserves.

17 I would agree with Barbara Schutt that if the  
18 Proposed Water District 2 only offered these five parcels  
19 access to residential water which, of course, they already  
20 had, that under that scenario they should not be included  
21 and then in those circumstances that would be the end if  
22 that's the only benefit that they can be considered.  
23 However, this Court does find on the evidence presented in  
24 this case that all the land owners whose property lies in  
25 the Proposed Water District Number 2 received an important

1 benefit that none of them have ever enjoyed before and  
2 this -- and that is meaningful access to a 12-inch water  
3 line capable of providing fire flow and hydrant protection  
4 to these five properties which, in this Court's opinion,  
5 requires them included in the water assessment district.

6 This Court also finds that SEMCO's 69.47 acres  
7 has direct contact with the proposed water line on the  
8 Shea Road and enjoys the same benefit of that 12-inch fire  
9 flow line, which meets the MDEQ's or Michigan State's  
10 standards and, therefore, I find that SEMCO should also  
11 have been included in that -- the Number 2 -- in the  
12 Number 2 Water Assessment like everyone else.

13 I would agree that when the actual assessment of  
14 individual property takes place, that then the  
15 Cottrellville Township Assessor may then discount the  
16 amount to be charged the land owners who already have  
17 access to residential municipal water so that the land  
18 owners are only taxed for the portion of the improvement  
19 that affects their property for tax assessment purposes.

20 In a nutshell, this Court finds that the  
21 petition -- the petitioner's considered -- excuse me, the  
22 petitions considered by Cottrellville Township Defendant  
23 did not include 50 percent or more signatures in favor of  
24 creating Water District Number 2 which should have  
25 included the five properties and SEMCO properties because

1 this Court finds that these six properties in accordance  
2 with Public Act 188 or MCL 41.721 especially benefits by  
3 the proposed improvement. This Court finds that in  
4 accordance with MCL 41.723 all of the properties received  
5 a direct benefit not limited to access to a 12-inch water  
6 line capable of providing fire flow and hydrant protection  
7 as defined by the Michigan Court of Appeals in the earlier  
8 cited *Graham versus Kochville* and *Blaser versus East Bay*  
9 *Township* cases.

10 Because this Court finds that Cottrellville  
11 Township proceeded prior to having more than 50 percent of  
12 the petitions signed by the recorded owners of the land in  
13 the Special Water District Number 2, they are required to  
14 abandon the project as it presently stands in that the  
15 Township proceeded without complying with the requirements  
16 of MCL 41.723, and that is my finding in this case.

17 MR. OPPLIGER: Thank you, your Honor.

18 MR. SEIBERT: Thank you, Judge.

19 THE COURT: Okay.

20 MR. OPPLIGER: I'll, I'll prepare an order.

21 THE COURT: I would ask that -- well, we do  
22 have -- the exhibits are all contained. So, I don't have  
23 to tell everybody to take care of their own exhibits.

24 Appreciate your patience.

25 MR. OPPLIGER: And --

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MR. SEIBERT: Thanks a lot, Judge.

MR. OPPLIGER: -- I like to make a point, Mr. Seibert was very cooperative in terms of getting exhibits together and that really saved a lot of time.

THE COURT: That was helpful and the Court notices it.

(Court in recess at 1:57 p.m.)

(END OF EXCERPT)