

Attorneys at Law

James R. Brown
John M. DeVries
Michael C. Haines
John T. Sperla
David R. Fernstrum
James K. White
Timothy J. Tornga⁵
Fredric N. Goldberg
John H. Gretzinger
Richard M. Wilson, Jr.
Douglas A. Donnell⁵

Daniel R. Kubiak
Scott E. Dwyer
William A. Horn⁷
Mark A. Van Allsburg
Neil L. Kimball
George V. Saylor, III
Elizabeth K. Bransdorfer
John C. Arndts
James F. Scales
Ross A. Leisman
Neil P. Jansen

Andrea D. Crumback
Daniel J. Parmeter, Jr.
Mark E. Nettleton³
Nathaniel R. Wolf
Jennifer A. Puplava
Benjamin A. Zainea
Ronald M. Redick
David S. Lefere
Kimberly M. Large²
Nikole L. Canute⁴
Daniel J. Broxup

Joshua D. Beard
Sarah C. Alden
John C. Stuive

Of Counsel

Daniel D. Hesslin
Steven L. Dykema
Daniel J. Kozera, Jr.
Philip M. Idema
David N. Keyser

Larry J. Gardner
Leonard M. Hoffius¹
Claude L. Vander Ploeg
Ronald J. Clark
Bruce C. Gockerman
Stephen J. Mulder
Scott S. Brinkmeyer
Scott D. Broekstra⁶

Also Admitted In

¹Colorado
²Delaware
³Illinois
⁴New York
⁵Ohio
⁶Texas
⁷Wisconsin

May 2015

TOWNSHIP SPECIAL ASSESSMENT PROCEDURE FOR PUBLIC IMPROVEMENTS (ACT 188 OF THE PUBLIC ACTS OF MICHIGAN OF 1954, AS AMENDED, UP TO AND INCLUDING ACT 561 OF THE PUBLIC ACTS OF 2014)

For improvements to storm, sanitary or existing combined sewer systems; water systems; public or private roads; sound attenuation and mitigation structures; elevated structures for foot travel over roads; bicycle paths; lighting systems and sidewalks; collection and disposal of garbage; public parks; planting, maintenance and removal of trees; erosion control structures or dikes; the construction, improvement and maintenance of a lake, pond, river, stream, lagoon or other body of water, including dredging and dams and other structures which retain water for recreational purposes; and eradication or control of aquatic weeds and plants.

PRELIMINARY STEPS

1. The Township Board may proceed of its own initiative to carry out an improvement under the Act, provide for payment of the improvement by the issuance of bonds or use of a revolving fund, and determine that all or part of the cost shall be defrayed by special assessments, unless, at or before the hearing discussed in Paragraph 9 below, written objections are filed with the Board by record owners of land constituting more than (a) 20% of the total land in the proposed special assessment district, or (b) 20% of the frontage, depending upon the type of improvement.
2. A Township Board may require the filing of a petition before proceeding with an improvement under the Act, or, if written objections are filed in accordance with paragraph 1, the Township Board may not proceed with the improvement until a petition is filed with the Board which is signed by the record owners of land constituting more than (a) 50% of the total land area in the special assessment district as finally established by the Township Board, or (b) 50% of the frontage, depending upon the type of improvement.
3. Upon receipt of petition or upon determination of Township Board if a petition is not required, the Township Board, if it elects to proceed, adopts a resolution to authorize the preparation of plans and cost estimate on a fixed or periodic basis, as appropriate. If the improvement is such that a periodic redetermination of costs, e.g., for operation and

TOWNSHIP SPECIAL ASSESSMENT PROCEDURE

May 2015

Page 2

maintenance expenses, will be necessary without a change in the special assessment district boundaries, the estimate of costs shall include any projected incremental increases.

4. Upon receipt of the plans and cost estimate, the Township Board shall order them filed with the Township Clerk.

RESOLUTION NO. 1

5. Township Board adopts resolution declaring its intention to make improvement and tentatively designating the special assessment district against which the cost is to be assessed.
6. Township Board sets time and place of public hearing to hear objections to (a) the petition, if one is required, (b) the proposed improvement, and (c) the proposed special assessment district.
7. Notice of the public hearing must be given as provided in Paragraph 8. The notice shall state that the plans and estimates are on file with the Township Clerk for public examination, and must contain a description of the proposed special assessment district. If periodic redeterminations of cost will be necessary without a change in the special assessment district, the notice shall state that such redetermination may be made without further notice to record owners or parties in interest, provided that an additional hearing will be required if an actual incremental cost increase exceeds the estimated increase by 10% or more. For projects commenced by Township Board initiative and without petitions, the notice must inform each property owner of record of the right to file written objections. (See Paragraphs 1 and 2)
8. Notice of a public hearing must be given as follows:
 - a. Notice by publication twice in a newspaper circulating in Township, with the first publication to be at least ten days prior to the date of hearing.
 - b. Notice by first-class mail at least ten days prior to date of hearing to each record owner of or party in interest in property to be assessed in special assessment district at the address shown on latest Township tax assessment records.
 - c. If a railroad company has filed in writing with the Secretary of State, the name and post office address of the person upon whom notice may be served, then such notice shall be given to such person personally or by mail within five days after first publication of notice. An affidavit of the service shall be filed by the Township Board with the proof of publication of the notice.
 - d. If a published notice includes a list of the permanent parcel numbers of the properties to be assessed, then the published notice must also include either a map or a written description of the proposed special assessment district.

TOWNSHIP SPECIAL ASSESSMENT PROCEDURE

May 2015

Page 3

9. Public hearing is held to hear objections to (a) the petition, if a petition is required, (b) the proposed improvement and (c) the proposed special assessment district. After the public hearing, the Township Board may revise, correct, amend, or change the plans, estimate of cost or special assessment district.

(NOTE: If the Township Board intends to add property to special assessment district or increase the original cost estimate in excess of 10% of the original estimate of cost, a second hearing must be afforded to all property owners after notice as specified in Paragraph 8 above. Where a petition is required, and the addition of property to the special assessment district renders the initial petition insufficient, a supplemental petition must be filed.)

RESOLUTION NO. 2

10. Township Board passes resolution to (a) make the proposed improvement, (b) approve plans and cost estimate as originally presented or as revised, corrected, amended or changed, (c) determine the sufficiency of the petition where a petition is required, (d) determine the special assessment district, including the term of its existence, and (e) direct the Supervisor to prepare a special assessment roll. If the nature of the improvement is such that a periodic redetermination of cost will be necessary without a change in the special assessment district boundaries, this must be stated in the Resolution and the dates on which such redetermination shall be made must be set forth.

(NOTE: Once the sufficiency of the petition is determined by resolution, it may only be challenged by a lawsuit filed in a court of competent jurisdiction within thirty (30) days after the date of the resolution.)

(NOTE: The special assessment roll shall describe all the parcels of land to be assessed, the name of the record owner of each parcel, and the total amount to be assessed against each parcel, which amount, by law, shall be the relative portion of the whole sum to be assessed in the entire 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.)

(NOTE: An ad valorem special assessment must be levied on the taxable value of the property assessed. In the event a levy on taxable value is invalidated by court order, then the ad valorem special assessment must be levied on the property's state equalized value.)

RESOLUTION NO. 3

11. Supervisor reports certified special assessment roll to Township Board and files roll in office of Township Clerk.

(NOTE: Special Assessment Resolutions Nos. 2 and 3 may be adopted at the same meeting after the first public hearing is completed if the proposed special assessment roll has been prepared at that time.)

TOWNSHIP SPECIAL ASSESSMENT PROCEDURE

May 2015

Page 4

12. Township Board sets time and place of public hearing to hear objections to special assessment roll.
13. Notice of the public hearing must be given as provided in Paragraph 8 above. The notice must also advise each record owner or party in interest that appearance and protest at the public hearing to confirm the special assessment roll (Paragraph 14) is required in order to appeal the amount of the special assessment to the State Tax Tribunal. The notice must inform the owner or party in interest that they, or their agent, may appear in person at the hearing on the confirmation of the special assessment roll to protest the special assessment, or may file an appearance or protest in writing before the end of the public hearing on the confirmation of the roll.

RESOLUTION NO. 4

14. Township Board holds public hearing on special assessment roll. Objections to the roll must be made at the hearing, or filed in writing before the close of the hearing or within such further time as the Township Board may grant. For purposes of determining the eligibility of owners or parties in interest to appeal the amount of special assessment to the Michigan Tax Tribunal, the Township Board must make a record of all parties who appear to protest at this hearing. If a hearing is terminated or adjourned before all parties are provided an opportunity to be heard, a party whose appearance was recorded is considered to have protested the special assessment in person. Township Board may confirm special assessment roll (see Paragraph 15 below) or may refer it back to Supervisor for revision (repeat Paragraphs 10-14), or may annul it and direct a new roll to be made (repeat Paragraphs 10-14).
15. Township Board adopts resolution confirming special assessment roll. Resolution sets number of annual installments, including the rate of interest on unpaid installments which (a) if bonds are not issued, shall not exceed 8 % per annum, and (b) if bonds are issued, shall not exceed 1% above the average rate of interest borne by the bonds.

(NOTE: Once the special assessment roll is confirmed by resolution, the roll and all assessments thereon shall be final and conclusive unless challenged by a lawsuit filed in the Michigan Tax Tribunal within thirty (30) days after the date of the resolution.)

16. Township Clerk endorses date of confirmation upon the special assessment roll.
17. Township Clerk executes warrant directing Township Treasurer to collect special assessments.

NOTICE OF SPECIAL ASSESSMENT

18. Following confirmation of the special assessment roll, the Township shall immediately (within seven (7) days) send a written notice of the special assessment to the property owner or person responsible for payment of the ad valorem taxes. This notice shall include the date of confirmation and a statement that the owner or any person having an interest in

TOWNSHIP SPECIAL ASSESSMENT PROCEDURE

May 2015

Page 5

the real property may file a written appeal of the special assessment with the Michigan Tax Tribunal within 30 days after the date of confirmation of the special assessment roll if the special assessment was protested at the hearing held for the purpose of confirmation the roll.

BOND RESOLUTION

19. If bonds are to be issued to pay for the cost of the improvements, the Township Board adopts a bond resolution authorizing Township Board to borrow money and issue bonds in anticipation of the collection of the special assessments. Bonds are secured by pledge of collections of special assessments and, optionally, by pledge of Township full faith and credit.

TOWNSHIP IMPROVEMENT REVOLVING FUND

20. As an alternative to the issuance of bonds, a Township Board may pay for the cost of improvements from a specially-created fund known as the "Township Improvement Revolving Fund," which the Township Board establishes by resolution. The Township may make annual transfers to the Revolving Fund from the General Fund in amounts not exceeding two mills of the Township Taxable Value for real and personal property until the fund equals not more than five mills of Township Taxable Value. Amounts from the Revolving Fund may be expended to pay costs of an improvement made under this Act after the special assessment roll has been confirmed. Upon collection, the special assessments and the interest thereon are deposited into the Revolving Fund. Interest earnings on the Revolving Fund are allowed to accumulate in the Revolving Fund. The Township Board has the option at any time to transfer funds from the Revolving Fund to the General Fund.

CONTRACT WITH COUNTY OR UTILITY AUTHORITY AND DRAIN ASSESSMENTS

21. If a Township is proceeding under Act 188 to levy special assessments to defray a Township assessment or contractual obligation for public improvements with the County either directly or through its Department of Public Works, the designed County Agency or a Drainage District (pursuant to the County Public Improvement Act of 1939, Act 342, P.A. 1939, as amended; the County Department of Public Works Act, Act 185, P.A. 1957, as amended; or the Drain Code of 1956, Act 40, P.A. 1956, as amended) or with a joint sewer and water authority (pursuant to Act 233, P.A. 1955, as amended), the petition and public hearing requirements discussed in Paragraphs 1, 2, 6, 7, 8, and 9 shall not apply.

(NOTE: If the Township intends to levy special assessments against property owners to pay an amount apportioned to the Township under the Drain Code, the Township Board must give notice to property owners in the proposed special assessment district and hold a public hearing before filing a Chapter 20 or Chapter 21 petition.)

RESTRICTIONS ON IMPROVEMENTS TO PUBLIC ROADS OR BODIES OF WATER

22. a. A road under the jurisdiction of either the Michigan Department of Transportation (MDOT) or a County Road Commission may not be improved without the written approval of MDOT or the Board of County Road Commissioners, which approval may be made subject to one or more of the following requirements:
- (1) All engineering with respect to the improvement be performed by MDOT or the County Road Commission.
 - (2) All construction including the awarding of contracts for construction be pursuant to the specifications of MDOT or the County Road Commission.
 - (3) The cost of the engineering and supervision be paid to MDOT or the County Road Commission from the funds of the special assessment district.
- b. Lake, pond, river, stream, lagoon or other bodies of water under the jurisdiction of a County Drain Commissioner shall not be improved without the written approval of the County Drain Commissioner.

RESTRICTION ON USE OF INTEREST EARNED ON SPECIAL ASSESSMENT FUNDS

23. Interest earned from the investment of special assessment collections or bond proceeds or interest or penalties charged and collected on unpaid special assessments shall only be used: (a) to pay for the improvement for which the special assessment is assessed; (b) to pay principal and interest on bonds that are issued for the improvement; or (c) to repay the principal and interest on an advance from the Township that is used for the improvement for which the special assessment is assessed.

Respectfully submitted,

MIKA, MEYERS, BECKETT & JONES PLC

By: James K. White

Business Address:

900 Monroe Avenue N.W.

Grand Rapids, MI 49503

Telephone: (616) 632-8000

Facsimile: (616) 632-8002

E-mail: jwhite@mmbjlaw.com