



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

ORLENE HAWKS  
DIRECTOR

WASHTENAW COMMONS LLC &  
NEJ-WASHTENAW, LLC, ,  
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 18-001381

CITY OF ANN ARBOR,  
Respondent.

Presiding Judge  
Steven M. Bieda

### FINAL OPINION AND JUDGMENT

#### INTRODUCTION

Petitioner, Washtenaw Commons LLC & NEJ-Washtenaw, LLC, appeals ad valorem property tax assessments levied by Respondent, City of Ann Arbor, against parcel number 09-12-02-103-021, also known as 3500 Washtenaw Avenue, Ann Arbor, for the 2018 tax years. Laura M. Hallahan, Attorney, represented Petitioner, and Kristen D. Larcom, Attorney, represented Respondent.

A hearing on this matter was held on November 21, 2019. Petitioner's sole witness was Mr. Jordan Jonna. Respondent did not present a witness.

The subject property's taxable value (TV) was not properly adjusted under MCL 211.27a.

Petitioner received notice that the subject property's TV was uncapped for tax year 2018 under MCL 211.27a.

Petitioner filed a Petition with the Tribunal on May 19, 2018, and Respondent filed an Answer on July 19, 2018. Petitioner filed a Motion for Summary Disposition on July 9, 2019, which Respondent answered on August 8, 2019. This Tribunal issued an

Order Denying the Motion on September 4, 2019. The Hearing was originally scheduled for September 10, 2019, and a Joint Motion to Adjourn the Hearing was granted resulting in a hearing date of October 17, 2019. On September 19, 2019, Petitioner filed a Motion for Reconsideration of the Motion for Summary Disposition, which was denied on September 24, 2019. The parties again filed a Joint Motion to Adjourn, which was granted and a new hearing date was set for November 21, 2019.

Based on the evidence, testimony, and case file, the Tribunal finds that the taxable value (TV) of the subject property for the 2018 tax year is as follows:

**Parcel Number:** 09-12-02-103-021

Year	TV
2018	\$3,500,000

#### PETITIONER'S CONTENTIONS

Petitioner contends that the Respondent unlawfully uncapped the commercial strip center located at 3500 through 3590 Washtenaw Avenue for the 2018 tax year following a transfer between related entities. The transaction occurred on November 20, 2018, between NEJ-Washtenaw, LLC and Washtenaw Commons, LLC.

#### PETITIONER'S ADMITTED EXHIBITS

P-1. Quit Claim Deed, along with affidavits. NEJ-Washtenaw LLC is listed as transferor, and Washtenaw Commons LLC as transferee.

P-2. Operating Agreement, NEJ-Washtenaw, LLC.

P-3. Operating Agreement, Washtenaw Commons, LLC.

#### PETITIONER'S WITNESS

Mr. Jordon Jonna testified that he works in the family real estate and management company, where he is involved in with the construction, management and

acquisition of commercial and office property. Mr. Jonna testified that he is predominantly involved in the family business, and that his father, Arkan Jonna, and brother, Scott Jonna are also involved, as well as a sister, Nistreen Shouneyia who has a minor role with the company. Mr. Jonna testified that his job involves a role in the purchasing process, with “a lot of due diligence work, financing, due diligence with management and leasing, reviewing leases and also the construction part if there is some.”<sup>1</sup> Mr. Jonna further testified that when a when he or his family purchase a property, the property is purchased and owned through an Limited Liability Company of LLC.<sup>2</sup> Mr. Jonna testified that the subject property, a multi-tenant strip center, located on Washtenaw and 23 in the City of Ann Arbor is owned by his family through an LLC. The subject property was originally acquired in 2014, when it was acquired through the formation of a joint tenancy. Mr. Jonna further testified that the property was held in a joint tenancy by Washtenaw Commons, LLC and NEJ-Washtenaw, LLC, and that both entities were controlled by him.<sup>3</sup> Mr. Jonna further testified that he is the manager of the operating agreement, and the manager of the LLC.

Mr. Jonna testified that the property was originally acquired by NEJ-Washtenaw, LLC and Washtenaw Commons, LLC as joint tenants, and that the joint acquisition was done for financing purposes. He further testified that from the time the property was acquired through the end of 2017 no other entity had an interest in the subject property.

Mr. Jonna testified that he is manager of both NEJ-Washtenaw, LLC and Washtenaw Commons, LLC, and he testified that he would describe the December

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<sup>1</sup> See Transcript, pages 15-16.

<sup>2</sup> See Transcript, page 16.

<sup>3</sup> See Transcript, page 17.

2017 transfer as being between two entities both of which he was the manager over.<sup>4</sup>

He testified that NEJ-Washtenaw had a 33 percent and “some change” interest in the property before the transfer. He further testified that Washtenaw Commons LLC had a 66 percent interest in the property before the transfer, noting that Washtenaw Commons LLC already had over a 50 percent ownership interest in the property before the transfer.

Mr. Jonna testified that the transfer between the entities was done solely for financing purposes, and that the operating agreement for NEJ-Washtenaw, LLC dated September 25, 2017 was in effect on the date the quit claim deed transferred the subject property. Mr. Jonna testified that paragraph 6.4 of the NEJ-Washtenaw agreement nominated him as manager.<sup>5</sup> Mr. Jonna further testified that under paragraph 7.2 of the amended operating agreement, which states “Except as otherwise be provided in this operating agreement the ordinary or usual decisions concerning the business and affairs of the company shall be made by the manager. The manager has the power on the behalf of the company to do all things necessary to convey, to carry out the business and affairs of the company, including, the power, A, purchase, lease of otherwise acquire any real estate properties – property; B, sell, convey, mortgage , grant a security interest in, pledge, lease, exchange or otherwise dispose or encumber any – any real or personal property.”<sup>6</sup>

Mr. Jonna also testified as to the operating agreement of NEJ-Washtenaw LLC, Petitioner’s Exhibit 2. Mr. Jonna testified that in making the decision to quit claim NEJ-

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<sup>4</sup> See Transcript, page 20.

<sup>5</sup> See Transcript, page 25.

<sup>6</sup> See Transcript, page 27.

Washtenaw's interest in the Washtenaw property to Washtenaw Commons LLC, he did not need to consult with the owners of NEJ-Washtenaw LLC because he had been given the managerial power to make that decision.<sup>7</sup> He testified that according to paragraph 7.3 in the operating agreement, subsection B states "7.3, limitations, subsection B. The sale of or all (sic) substantially all of the assets and property of the company."<sup>8</sup> He further testified that under the agreement he did not need permission from other members.

Mr. Jonna also testified that Washtenaw Commons is also governed by an operating agreement, which was admitted as Petitioner's Exhibit 3. Mr. Jonna testified that this agreement was in effect during the transfer of the subject property in December 2017, and that under paragraph 6.4, Mr. Jonna is the manager, and that under paragraph 7.1, it is a "manager-managed LLC." During testimony, Mr. Jonna was asked about the powers a manager has under the agreement, and Mr. Jonna stated, "Powers under 7.2," a paragraph in the operating agreement. Mr. Jonna testified that he had the power to convey property, and that he oversaw the acquisition of NEJ-Washtenaw's interest in the subject property, and that it was done by him as the manager of the LLC. He further testified that he had the power to make the transfer without consulting members of the Washtenaw Commons LLC when acquiring NEJ Washtenaw Commons ownership interest. Mr. Jonna testified as to limitations set forth under paragraph 7.3, which he read to the court as follows, "And significant and material purchase, receipt, lease, exchange or other acquisitions of any real estate or personal property or

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<sup>7</sup> See Transcript, page 28.

<sup>8</sup> See Transcript, pages 28-29.

businesses.” Mr. Jonna also testified that the price paid for NEJ-Washtenaw’s ownership interest in the subject property was “one dollar,” and that one dollar was not a significant and material purchase such that he needed to consult with the members of the Washtenaw Commons LLC.<sup>9</sup>

Mr. Jonna testified that if he needed to consult with the members of the Washtenaw Commons LLC he would essentially be consulting with himself.<sup>10</sup> He testified that he had control over Jonna Equities, and thus, Washtenaw Commons LLC. He also testified that he had control over Washtenaw Commons LLC as manager, and that as manager of Washtenaw Commons LLC he had the authority to direct or cause the direction of the management and policies of Washtenaw Commons LLC.

Mr. Jonna testified that he has been involved in multiple real estate transactions, and that his family owns, through LLCs about 80 properties, and that the vast majority, with the exception of 1 or 2, are owned by the family. Mr. Jonna also testified that the December 2017 sale of the subject property, where NEJ-Washtenaw LLC sold its interest to Washtenaw Commons LLC for one dollar, as not being an arms-length transaction between unrelated parties. Mr. Jonna characterized it as a transaction between related parties, and described it as passing an ownership interest between two entities he controlled for one dollar. He testified that he was in control of both NEJ-Washtenaw and Washtenaw Commons and that he retained control of Washtenaw Commons and the subject property following the December 2017 one dollar transaction

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<sup>9</sup> See Transcripts, pages 30-31.

<sup>10</sup> See Transcripts page 31.

and that there were no other documents or approval necessary to allow him to transfer the property.<sup>11</sup>

On Cross-Examination, Mr. Jonna testified that the operating agreement for NEJ-Washtenaw LLC was the only operating agreement for that entity that ever existed. Respondent had questions about Exhibit 2 pertaining to the portion of the operating agreement for NEJ-Washtenaw that was amended and restated, but that Mr. Jonna did not recall exactly what the changes were.<sup>12</sup> Upon further cross-examination, Mr. Jonna noted that the pertinent section, dealing with control, remained the same.<sup>13</sup>

#### RESPONDENT'S CONTENTIONS

Respondent contends that this is a purely legal issue on whether there was the control necessary to direct the management of the various entities involved in the transaction and that the burden of proof in on the Petitioner.

#### RESPONDENT'S ADMITTED EXHIBITS

Respondent did not submit any exhibits because the City believes this is purely a legal issue based on the facts that exist.<sup>14</sup>

#### RESPONDENT'S WITNESS(ES)

Respondent did not put forth any witnesses because the City believes that this is a purely legal issue based on the facts that exist.<sup>15</sup>

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<sup>11</sup> See Transcripts, pages 34-35.

<sup>12</sup> See Transcript, pages 36-37.

<sup>13</sup> See Transcript, pages 38-39.

<sup>14</sup> See Transcript, page 45.

<sup>15</sup> Id.

## FINDINGS OF FACT

The Tribunal's Findings of Fact concern only evidence and inferences found to be significantly relevant to the legal issues involved; the Tribunal has not addressed every piece of evidence or every inference that might lead to conflicting conclusion and has rejected evidence contrary to those findings.

1. The quit claim deed dated December 20, 2017 from NEJ-Washtenaw Commons LLC transferred ownership of the subject property from NEJ-Washtenaw Commons LLC to Washtenaw Commons LLC.
2. The consideration for the transfer of the 33.33 percent ownership interest was for one dollar.
3. For all periods relevant to this case Jordan Jonna was manager of NEJ-Washtenaw LLC.
4. The manager of NEJ-Washtenaw LLC had the power and authority to sell NEJ-Washtenaw LLC's assets without member approval on all dates relevant to this case.
5. Jordan Jonna held a 50 percent membership interest in Jonna Equities and was manager of that entity on all dates relevant to this case.
6. Jonna Equities held 66.67 percent of the membership interest in Washtenaw Commons LLC and was in control of that entity as well.

## CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the



constitutional standard that such property shall not be assessed in excess of 50% of its TCV.<sup>16</sup>

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not exceed 50 percent.<sup>17</sup>

The Michigan Legislature has defined TCV to mean:

The usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.<sup>18</sup>

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”<sup>19</sup>

The issue in this matter is whether Petitioner has proven by a preponderance of the evidence that the subject property’s TV was improperly uncapped under MCL 211.27a.

Under the General Property Tax Act, property taxes are based on the property’s TV for the tax year(s) at issue.

MCL 211.27a provides that a property’s TV is the lesser of the property’s state equalized or capped TV, and a property’s capped TV is, absent a transfer of ownership, determined mathematically by taking into consideration the prior tax year’s TV, physical

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<sup>16</sup> See MCL 211.27a.

<sup>17</sup> Const 1963, art 9, sec 3.

<sup>18</sup> MCL 211.27(1).

<sup>19</sup> *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

losses to the property, the lesser of the rate of inflation or 5%, and physical additions to the property, including omitted property (i.e., property not previously assessed).

MCL 211.27a(6) defines "transfer of ownership," in relevant part, as follows:

As used in this act, "transfer of ownership" means the conveyance of title to or a present interest in property, including the beneficial use of the property, the value of which is substantially equal to the value of the fee interest. Transfer of ownership of property includes, but is not limited to, the following:

(a) A conveyance by deed.

MCL 221.27a (7) defines exceptions, thus under subsection (7) Transfer of ownership does not include the following:

(m) A transfer of real property or other ownership interests among corporations, partnerships, limited liability companies, limited liability partnerships, or other legal entities if the entities involved are commonly controlled.

In the case at bar, the Petitioner established, through testimony and admitted exhibits, that control of NEJ-Washtenaw, LLC and Washtenaw Commons, LLC are unified in Jordan Jonna. The testimony and evidence clearly established that Mr. Jonna was the manager of NEJ-Washtenaw, LLC on the date the transfer occurred, as evidenced by the quit claim deed, as well as the NEJ-Washtenaw LLC's operating agreement. The testimony and evidence also clearly established that he had the same undiluted power to control the Washtenaw Commons LLC in his role as manager of that entity. Testimony and evidence also clearly established that he had control independent of his manager position of Washtenaw Commons LLC through his more than 50 percent ownership share in that entity. Equally compelling, the evidence established that the

transaction in question occurred between related parties for a nominal sum of one dollar. As noted by Petitioner, this is not a market or even remotely market or arms-length transaction. While the details of the transaction and the related entities were perhaps confusing to an outside observer, and the Jonna family owns a multitude of properties utilizing various LLCs that are under common control, the evidence of the two operating agreements and the consideration in the property transfer clearly indicate that this was a transfer between commonly-controlled entities within the plain language of MCL 211.27a section 7(m).

In its most recent opinion addressing the issue, the Michigan Court of Appeals adopted the following definition of commonly controlled: “The possession of the power to direct or cause the direction of the management and policies of a related entity, directly or indirectly, whether derived from a management position, official office, or corporate office held by an individual; by an ownership interest, beneficial interest, or equitable interest; or by contractual agreement or other similar arrangement.”<sup>20</sup>

The Court reasoned that “this definition is particularly appropriate because it recognizes that different percentages of control may be necessary to direct the management of different corporate entities,”<sup>21</sup> and further noted that it “focuses on the actual control of the business on the basis of its corporate structure.” Thus, pursuant to the plain language of this definition, possession of the power is sufficient to establish common control; ownership is not required.

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<sup>20</sup> TRJ & E Properties, LLC v City of Lansing, 323 Mich App 664, 672-673 (2019).

<sup>21</sup> Id. at 673.

Thus, in the fact pattern established by testimony and backed by evidence, this Tribunal finds that the underlying transaction that spurred this controversy was between commonly-controlled entities within the plain language of the uncapping exception under MCL 221.27a section 7(m), therefore, the Respondent incorrectly uncapped the subject property.

### JUDGMENT

IT IS ORDERED that the property's TV for the tax year(s) at issue shall be as set forth in the Summary of Judgment section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) at issue shall correct or cause the assessment rolls to be corrected to reflect the property's taxable values within 20 days of entry of this Final Opinion and Judgment, subject to the processes of equalization.<sup>22</sup> To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to

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<sup>22</sup> See MCL 205.755.

the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (xi) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, and (xii) after December 31, 2019, through June 30, 2020, at the rate of 6.40%.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

#### APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.<sup>23</sup> Because the final decision closes the

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<sup>23</sup> See TTR 261 and 257.

case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.<sup>24</sup> A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.<sup>25</sup> Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.<sup>26</sup>

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."<sup>27</sup> A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.<sup>28</sup> The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.<sup>29</sup>

By  \_\_\_\_\_

Entered: February 19, 2020  
smb

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<sup>24</sup> See TTR 217 and 267.

<sup>25</sup> See TTR 261 and 225.

<sup>26</sup> See TTR 261 and 257.

<sup>27</sup> See MCL 205.753 and MCR 7.204.

<sup>28</sup> See TTR 213.

<sup>29</sup> See TTR 217 and 267.