STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Farmington Village Co-Op
Petitioner,

v

MTT Docket No. 333372

City of Farmington Hills,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

FINAL OPINION AND JUDGMENT

The Tribunal, having given due consideration to the file in the above-captioned case, finds:

1. Administrative Law Judge Thomas A. Halick issued a Proposed Order Granting Respondent's Motion for Summary Disposition and Denying Petitioner's Motion for Summary Disposition on January 24, 2012. The Proposed Opinion and Judgment states, in pertinent part, "the parties have 20 days from date of entry of this Proposed Order to file exceptions and written arguments with the Tribunal consistent with Section 81 of the Administrative Procedures Act (MCL 24.281)."

2. Neither party has filed exceptions to the Proposed Order.

3. The Administrative Law Judge considered the briefs and evidence submitted and made specific findings of fact and conclusions of law. The Administrative Law Judge's determination is supported by the briefs and evidence and applicable statutory and case law.

4. The Tribunal adopts the Proposed Order as the Tribunal's final decision in this case. See MCL 205.726. The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the Proposed Opinion and Judgment in this Final Opinion and Judgment.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the subject property's taxable values for the tax years at issue are as indicated by this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's taxable values as finally indicated in this Final Opinion and Judgment within 20 days of the entry of this Final Opinion and Judgment, subject to the processes of equalization. See

MCL 205.755. 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 as required by this Final Opinion and Judgment within 28 days of the 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 of 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 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, 2005, at the rate of 3.66% for calendar year 2006, (ii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (iii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, (iv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, (v) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (vi) after December 31, 2010, at the rate of 1.12% for calendar year 2011, and (vii) after December 31, 2011, at the rate of 1.09% for calendar year 2012.

MICHIGAN TAX TRIBUNAL

Entered: March 19, 2012 By: Steven H. Lasher

STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
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Farmington Village Co-op,
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v

MTT Docket No. 333372

City of Farmington Hills,
Respondent.

Administrative Law Judge Presiding
Thomas A. Halick

PROPOSED ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

PROPOSED ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

On November 30, 2011, the parties filed cross motions for Summary Disposition and briefs in support. Petitioner seeks judgment under MCR 2.116(C)(9) and (10). Respondent seeks judgment under TTR 230 and MCR 2.116(C)(8).

On December 19, 2011, Petitioner filed an answer to Respondent's motion.

On December 21, 2011, Respondent filed an answer to Petitioner's motion.

Upon review of the motions, the briefs, and the case file, Respondent's motion shall be granted and Petitioner's motion shall be denied. The taxable value (TV) for each year at issue shall be as indicated herein.

Standard for Summary Disposition

A motion for summary disposition under MCR 2.116(C)(10) tests the factual support of a claim. The Tribunal must consider the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted or filed in the action to determine whether a genuine issue of any material fact exists requiring trial. *Spiek v Dep't of Transportation,* 456 Mich 331; 572 NW2d 201 (1998). When determining whether there is a genuine issue of any material fact, the admissible evidence must be viewed in the light most favorable to the non-moving party.

Heckman v Detroit Chief of Police, 267 Mich App 480; 705 NW2d 689 (2005). A court may not make findings of fact or weigh credibility when deciding the motion. *In Re Handleman*, 266 Mich App 433 (2005). If the "affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay." MCR 2.116(I)(1).
A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the claim based on the pleadings. MCR 2.116(G)(5); "All 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; 597 NW2d 817 (1999). Summary disposition is proper only where plaintiff's claims are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Id.* at 119.

Procedural History

This case was filed May 24, 2007. The original Petition alleged that the subject property was assessed in excess of 50% of its true cash value and sought a reduction in the assessed and taxable values. The complete procedural history is discussed in detail in the Tribunal's Prehearing Summary and Scheduling Order entered August 29, 2011. That order determined that Petitioner abandoned its valuation claims, which left only its claim that the property's taxable value had been unlawfully uncapped in contravention of *Colonial Square Cooperative v City of Ann Arbor*, 263 Mich App 208; 687 NW2d 618 (2004).

On September 24, 2008, the parties mailed a letter to the Michigan Tax Tribunal, signed by counsel for each party, stating in relevant part as follows:

> …the Property Tax Scheduling Order that was entered by the Michigan Tax Tribunal on April 2, 2008 provides that the parties must file their valuation disclosures/appraisals on or before September 25, 2008. **Please be advised that this case is not a valuation dispute**, but instead the primary issue in this case is whether there has been a transfer of ownership that would support the uncapping of the subject property's taxable value. As a result, **neither of the parties in this case will be submitting valuation disclosures to the Michigan Tax Tribunal**. Letter to the Michigan Tax Tribunal dated September 24, 2008. [Emphasis added.]

Facts

The material facts are not in dispute and are set forth in the respective parties' motions and briefs, and therefore, the facts shall be briefly summarized and not be restated here.

The subject property is a 253-unit nonprofit housing cooperative consisting of six different unit types of various sizes and amenities. The property was assessed as a single parcel with one tax

identification number. Petitioner received a single tax bill for the parcel. Petitioner determined how its members shared the cost of the property taxes. Respondent partially uncapped the property's taxable value based on a percentage of units that had transferred, without respect to the different true cash values of the units that transferred.

Law and Analysis

Petitioner claims that the TV of a nonprofit housing cooperative cannot be uncapped for a parcel that includes more than one unit. This is because increasing the TV of the parcel by more than the rate of inflation "affects taxpayers who never sold." *Colonial Square Cooperative v City of Ann Arbor*, 263 Mich App 208; 687 NW2d 618 (2004). Counsel argues that the assessor must assign a parcel number to determine the SEV and TV for each unit. In such case the TV of each unit would be uncapped to equal the SEV in the year after that unit "transferred ownership."

Petitioner did not cite specific legal authority for this position and this ALJ finds no support for it. Further, MCL 211.27a(6)(j) explicitly requires the partial uncapping of taxable value of a nonprofit housing cooperative following the transfer of a unit in the cooperative housing complex. It is held here that the law permits, but does not require, an assessor to assign a separate parcel number for each unit. However, the same result can be achieved by tracking transfers of units and uncapping the TV of the entire parcel in relation to the value of each unit that transferred.

Colonial Square

In *Colonial Square*, Judge O'Connell held that the statute at issue is constitutional, but that the city's application of that statute violated the constitution. Judge Donofrio concurred with the reasoning and holding, and Judge Hoekstra concurred in the result only.

In *Colonial Square*, the City of Ann Arbor uncapped the TV based upon the percentage of units that transferred during the prior tax year. In other words, if 5% of the units on a parcel transferred, then 95% of the TV of that parcel remained capped, and 5% uncapped to the level of the SEV. The Court held that this violated the constitution because the "city failed to track the individual units transferred, but rather uncapped the value of the whole parcel in proportion to the percentage of units transferred." *Id.* at 211.

The method used to establish the original assessments in *Colonial Square* is problematic because all units do not have the same market value. To the extent the units differed in value based on features (i.e., square footage, number of bedrooms, etc.) an uncapping by percentage of units transferred rather than by actual units transferred could result in overstated or understated TV calculations. For example, if five identical one-bedroom cooperative units transferred in a given year, of 100 total units, but all of the remaining units in the cooperative were larger three-bedroom units, uncapping 5% of the SEV would overstate the actual percentage of the total value

that transferred. In short, a given *percentage of units* that transferred ownership does not, in every case, represent the *percentage of value* that transferred ownership.

In our present case, Respondent's method set forth in its brief properly tracks transfers of individual units as required by *Colonial Square*.

The next infirmity identified by the Court was that "annual reevaluations of an entire parcel of property run contrary to the Constitution's plain meaning because they impose increasing obligations on the units in a cooperative that have not been transferred. . . ." Further, it was held that this "estimation approach veils which units, if any, the city actually reassessed." The Court referred to this as a "phantom reevaluation of the percentage of units transferred." *Id*.
Here, Respondent's method is not an "annual reevaluation of an entire parcel." The entire parcel is not "reevaluated" but the TV of the parcel increases in relation to the value of an individual unit that transferred. "That portion of the parcel not subject to the ownership interest conveyed" is not "reevaluated" – it remains capped – only that portion of the property that is subject to the ownership interest conveyed is "reevaluated." See, MCL 211.27a(6)(j).

The Court found no constitutional problem with the statute that defines "transfer of ownership" to occur when a unit transfers possession. Furthermore, there is no problem with the notion of a "partial uncapping" of TV, which is mandated by the statute. The Court found no inherent problem with a partial uncapping of property owned by a nonprofit housing cooperative that is occupied by multiple shareholders. Therefore, *Colonial Square* cannot be interpreted to prohibit the partial uncapping of the TV of the subject property.

The Court held that "only by happenstance would the city arrive at an evaluation that did not affect 'that portion of the property not subject to the ownership interest conveyed.'" *Id*. If a lawful uncapping could occur by "happenstance" then it follows that a lawful uncapping of a parcel with multiple units could be accomplished if the city "tracked the individual units" that transferred, and uncapped the TV in proportion to the market value of that unit.

The factual underpinnings of the trial court's decision in *Colonial Square* are not set forth in the Court of Appeals decision. The court presumed that the partial uncapping in that case increased the tax bills of shareholders who occupy units that did not transfer. The Court stated that the uncapping cannot impose "increasing obligations" on the units that have not transferred. The facts in this case indicate that the subject property's owner is a nonprofit corporation. The corporation is the "taxpayer," not the individual occupants of the units. The corporation is billed for the property taxes for the entire parcel. The shareholders (occupants of units) are not taxpayers or owners of record. The corporation's governing documents provide that the board of directors determines how to allocate all expenses, including property taxes, to the shareholders. It is within the board's authority to either allocate the taxes equally among the shareholders or to bill occupants of units that transferred for a higher portion of the tax bill.

Therefore, from this standpoint, it is irrelevant whether parcel identification numbers are assigned to each unit or whether the allocated SEV and TV for each unit is determined and set forth on a spreadsheet. In either case, the corporation, not the shareholders, would be billed for the taxes and would pay the same amount of property tax. (If separate tax identification numbers were assigned to each unit, the corporation would receive at least 253 tax bills – one for each unit). The board has authority to determine the method of sharing the taxes among the shareholders. For these reasons, this Proposed Opinion does not order Respondent to assign parcel identification numbers to each unit.

True cash value is not at issue in this case. Respondent's evidence pertaining to valuation is offered only to demonstrate the method of apportioning SEV and TV of the entire parcel to each unit on that parcel. Respondent's assessor determined the true cash value for each unit type by reference to the values established by Petitioner's bylaws. For example, in 2008 each "Loraine" type unit's "market value" was $35,920, according to Petitioner's bylaws. The sum of the 34 Loraine units was $1,221,284. The value of each Loraine unit was .110719721 (approximately 11%) of the sum of the values of the 34 Loraine units.

This percentage was applied to the 2008 TV (prior to uncapping) to determine the TV attributable to each unit, by unit type. The "spread" is the difference between the AV per unit and the TV per unit. This tells us that the increase in taxable value due to the transfer of one Loraine type unit is $2,516. See Respondent's Exhibit C "2008." Respondent determined that in 2007, two such "Loraine" units transferred, such that the total value to be included as an addition in 2008 due to the transfer of ownership is $5,033. This same calculation was performed for each unit type and the total uncapping amount was determined. Therefore, for the 13 units that transferred, the TV increased in relation to the TCV of each unit, as required by *Colonial Square*. This same calculation was performed for 2009. See Respondent's Exhibit C "2009." Respondent's method advocated in its motion is consistent with the method employed by the city of Ann Arbor in *Forest Hills Cooperative, Inc v City of Ann Arbor,* MTT Docket No. 277107.

The resulting taxable values shall be as follows:

Parcel Number: 23-28-376-001

Year	TCV*	SEV*	TV
2007			$6,477,760
2008			$6,667,180
2009			$6,973,048
2010			$6,850,860
2011			$6,357,740

*The TCV and SEV are not at issue in this appeal.

PROPOSED JUDGMENT

IT IS ORDERED that Respondent's Motion for Summary Disposition is GRANTED.

IT IS FURTHER ORDERED that judgment is granted under MCR 2.11(C)(10) and MCR 2.116(I).

IT IS FURTHER ORDERED that Petitioner's Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that the parties shall have 20 days from date of entry of this Proposed Order to file exceptions and written arguments with the Tribunal consistent with Section 81 of the Administrative Procedures Act (MCL 24.281). The exceptions and written arguments shall be limited to the matters addressed in the motion. This Proposed Order, together with any exceptions and written arguments, shall be considered by the Tribunal in arriving at a final decision in this matter pursuant to Section 26 of the Tax Tribunal Act (MCL 205.726).

MICHIGAN TAX TRIBUNAL

Entered: January 24, 2012 By: Thomas A. Halick