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

Markham Hills Partners, LLC,
Petitioner,

v

MTT Docket No. 355797

Township of Emmett,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(5)

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

FINAL OPINION AND JUDGMENT

INTRODUCTION

On September 30, 2011, Petitioner filed a Motion for Summary Disposition under MCR 2.116(C)(10), contending that (i) Petitioner is a proper party to this appeal, (ii) the Tribunal has jurisdiction to review Petitioner's claims regarding the 2007 tax year, (iii) the Tribunal has jurisdiction to review the taxable values of the subject properties for tax years not under appeal pursuant to MCL 211.53b, (iv) Respondent violated the Supreme Court's decision in *Toll Northville Ltd v Twp of Northville*, 480 Mich 6; 743 NW2d 902 (2008), by including "public service improvements" as an addition in calculating the taxable value of the subject properties for the 2007 tax year, (v) the *Toll Northville* decision held that the inclusion of "public service improvements" as an addition in the calculation of taxable value was unconstitutional and should be treated as a "loss" pursuant to MCL 211.34d(1)(h)(i), (vi) the inclusion of "public service

improvements" in the calculation of taxable value constitutes a "qualified error" under MCL 211.53b, (vii) Respondent failed to property notify Petitioner of the 2007 assessments of the subject parcels, and (viii) the Tribunal has jurisdiction over the 2009, 2010 and 2011 tax years pursuant to TTR 313 and MCR 2.116(i)(5).

On October 13, 2011, Respondent filed its Response to Petitioner's Motion for Summary Disposition and filed a Counter-Motion for Summary Disposition under MCR 2.116(C)(5) and MCR 2.116(C)(10), contending that (i) Petitioner is not a proper party to this appeal and lacks the legal capacity to file the petition, (ii) Respondent did not include public service improvements in its taxable value calculation for 2007, and (iii) the Tribunal has no jurisdiction over the 2007 tax year.

The Tribunal finds it appropriate to deny Petitioner's motion for summary disposition under MCR 2.116(C)(10), to deny Respondent's motion for summary disposition under MCR 2.116(C)(5), and to grant Respondent's motion for summary disposition under MCR 2.116(C)(10). Although the Tribunal finds that Petitioner is a party in interest to these proceedings, the Tribunal further finds that Petitioner has both misunderstood the facts of this case and misinterpreted the applicable statute. Of primary significance is Petitioner's mistaken belief that Respondent increased the taxable values of the subject parcels in 2007 beyond the rate of inflation because of the treatment of "public service improvements" as "additions." Petitioner failed to recognize that the 2007 taxable values of the subject properties were "uncapped" or increased by amounts in excess of the rate of inflation solely because ownership of the properties transferred in 2006. For that reason and other jurisdictional requirements, the Tribunal further finds that it does not have jurisdiction over the 2007, 2009, 2010 or 2011 tax years.

PETITIONER'S ARGUMENT

A. Petitioner is a proper party to this appeal pursuant to TTR 208.

Petitioner contends that although it is not the owner of the subject property, it is a party in interest as contemplated by TTR 208, which states that "a petition commencing a property tax appeal shall be filed by an interested person or persons . . . ." Specifically, Petitioner has an interest in the appeal of ad valorem taxes imposed on the subject property because the "Agreement" it entered into with Dennis and Anne Lorenz specifically obligates Petitioner to pay all property taxes on the subject property as they become due.

B. The Tribunal has jurisdiction to review 2007.

1. Respondent's Notice of Assessment is unconstitutional on its face.

Petitioner contends that Respondent's "Notice of Assessment" violates MCL 205.5, which requires Respondent to specifically detail the proper appeal procedures of assessed and taxable values, because Respondent failed to provide the requisite information to Petitioner. Petitioner provides the "Notice of Assessment" at issue as Exhibit 3 to its Petition.[1]

2. Respondent's Assessment is unconstitutional because it failed to deliver notice to the correct address.

Petitioner contends that it did not receive any Notices of Assessment for the 2007 tax year, as the notices were sent to "Robert Lipscomb at 160 Manor Drive, Battle Creek, MI 49014," rather than to the Lorenz'. Citing several cases, including *Mullane v Cent Hanover Bank & Trust Co*, 339 US 306, 313; 70 S Ct 652 (1950), and *Jones v Flowers*, 547 US 220 (2006), Petitioner contends that its due process rights were denied as a result

[1] Exhibit 3 to Petitioner's petition includes only the Official Receipts for the payment of December, 2006 tax bills for the nine subject parcels. Petitioner did not submit any Notices of Assessment as a part of its Exhibit 3.

of Respondent's failure to provide proper notice of the 2007 assessments of the subject property.[2]

3. Respondent violated Petitioner's right to due process by failing to mail notice to the proper address.

Petitioner again contends that Respondent violated Petitioner's due process rights because it failed to mail the assessment notices to the "correct owner of the property at the correct address." (Petitioner's Brief, p. 9.)

4. Respondent failed to add the "additions" according to the proper procedures for due process and without proper notification required by State Tax Commission Bulletin No. 8 of 1996.

Petitioner contends that STC Bulletin 8 of 1996 requires Respondent to "send notice to the taxpayer giving the taxpayer an opportunity to appear at the Board of Review," and must also advise the taxpayer of its right to appeal to the Tax Tribunal. Petitioner further contends that Respondent failed to provide Petitioner with proper notice.

C. Even if 2007 was dismissed, the Tribunal still has jurisdiction to review taxable values in years not under appeal based on a "qualified error" pursuant to MCL 211.53b.

Petitioner contends that MCL 211.53b "permits Petitioner in this case to file a protest and reach back to 2007 to correct a qualified error, regardless of whether the Tribunal dismissed the 2007 claim." (Petitioner's Brief, p. 10.) Specifically citing MCL 211.53b(8)(f), Petitioner contends that Respondent treated "public service improvements" as "additions" in calculating the 2007 taxable values of the subject property contrary to the Michigan Supreme Court decision in *Toll Northville.* Because MCL 211.53b allows the Tribunal to correct a "qualified error" in the

[2] The Official Receipts for the payment of December, 2006 tax bills for the subject parcels were mailed to Robert Lipscome at the 160 Manor Drive address; the 2007 assessment notice for parcel 10-595-001-00 was mailed to Dennis J. & Anne E. Lorenz, 286 Eaton Street, Battle Creek, MI 49017.

current and prior years, and because Respondent's actions in calculating the 2007 taxable value was a "qualified error," Petitioner contends that the Tribunal has the authority to correct the 2007 and 2008 taxable values of the subject property.

D. Respondent included "additions" for public service improvements in its valuation and the Tribunal is constitutionally and statutorily required to adjust taxable values for losses.

Petitioner contends that Respondent's inclusion of "public service improvements" as additions in calculating the 2007 taxable values of the subject property was unconstitutional under *Toll Northville Ltd v Northville Township,* 480 Mich 6, 11; 743 NW2d 902 (2008). Further, because Respondent included "public service improvements" as additions, Petitioner contends that MCL 211.34d(1)(h) requires the Tribunal to adjust taxable value downward for a "loss," since "some portion of the property has been 'removed.'" (Petitioner's Brief, p. 13.)

E. The decision in *Toll Northville* constitutes a "loss" of property within the meaning of MCL 211.34(1)(h)(i).

As repeatedly stated throughout its Brief, Petitioner contends that Respondent added "public service improvements" to the assessment of the subject properties in 2007. Because the Michigan Supreme Court did not issue its decision in *Toll Northville* until 2008, Petitioner did not have the ability to "challenge the constitutionality of the 2007 public service 'additions' before the body with exclusive jurisdiction over assessment appeals" (i.e., the Tax Tribunal). (Petitioner's Brief, p. 14.) Petitioner contends that given this fact situation, the Tribunal has the authority under MCL 205.731 to change the 2007 taxable values after Petitioner timely appealed to the March 2008 Board of Review.

F. The Tribunal has statutory authority to correct the error under MCL 211.53a and 211.53b.

Petitioner contends that the Tribunal is permitted by MCL 211.53a to "correct past errors in assessments" and to "correct the unconstitutional inclusion of public service improvements in Petitioner's taxable value." (Petitioner's Brief, p. 15.) Petitioner further contends that MCL 211.53b permits the Board of Review to correct "qualified errors" both for "the tax years in question (2007 and 2008) and for one year prior, plus subsequent years.

G. This Court has jurisdiction for the years 2009, 2010, and 2011 pursuant to TTR 313 and MCR 2.116(I)(5).

Petitioner contends that the Tribunal has jurisdiction over the 2009, 2010 and 2011 tax years pursuant to TTR 313, because the rule states "the appeal for each subsequent year for which an assessment has been established is added automatically to the petition for an assessment dispute as to the valuation or exemption of property at the time of hearing." Petitioner further contends that MCR 2.116(I)(5) allows Petitioner the right to amend its pleadings to include subsequent years where its motion for summary disposition is based on MCR 2.116(C)(10).

H. The Michigan Supreme Court has already determined that *Toll Northville* applies retroactively.

1. Under the general rule adopted by the Michigan Supreme Court, unconstitutional statutes are void *ad initio.*

Citing *Old Reliable Fire Insurance Company v Schaub,* 85 Mich App 294; 271 NW2d 206 (1978), *Riley v Northland Geriatric Center,* 431 Mich 632, 643; 433 NW2d 787 (1988), and *Bolt v City of Lansing,* 238 Mich App 37; 604 NW2d 745 (1999), among others, Petitioner contends that application of the "fairness/burden" test to the facts of this

case is necessary to prevent the unfairness associated with Respondent's assessment and collection of taxes that have been declared unconstitutional.

2. Public policy considerations weigh heavily in favor of applying *Toll Northville* retroactively.

Petitioner contends that because Proposal A "was designed to cut and limit property taxes, it makes little sense to perpetuate an unconstitutional increase." (Petitioner's Brief, p. 19.) Further, because a developer cannot get final plat approval until roads and public service improvements are installed, and because developers pay these costs to the benefit of the public, public policy dictates that the developer should not be penalized where property taxes are unconstitutionally imposed on such improvements. Finally, because developers will pass on any increase in tax cost to individual homeowners upon sale of the developed parcels, purchases of these parcels will be unfairly burdened.

RESPONDENT'S ARGUMENT

A. Petitioner is not a property party to this appeal and lacks the legal capacity to file the Petition.

Respondent contends that because Petitioner does not have an ownership interest in the subject property, Petitioner is not a proper party to this appeal. Citing *Jefferson Schools v The Detroit Edison Company and the Charter Township of Frenchtown,* 154 Mich App 390; 397 NW2d 320 (1986), Respondent contends that Petitioner, like the school district in *Jefferson Schools,* is an "interested party," but is not a "party in interest," because Petitioner did not have an ownership interest in the subject property. (Respondent's Brief, p. 3.) Respondent further cites *SS & F Property, LLC v City of Pontiac,* MTT Docket 393516 (March 21, 2011), in support of its position. In that case, the petitioner was a party to a purchase agreement for the property at

issue and the Tribunal held that although the purchase agreement is a contract for the sale of an interest in the subject property, it does not give the prospective purchaser an interest in the property.

B. Respondent did not include public service improvements in its taxable value calculation.

Respondent specifically denies that the taxable values of the subject properties for 2007 were "uncapped" because "public service improvements" were treated as "additions" pursuant to MCL 211.27a(8). Instead, Respondent contends that it "uncapped" the taxable value of the subject properties in 2007 under MCL 211.27a(3), which allows the taxable value of a property to be "uncapped" in the year following the year in which a transfer of ownership of the property has occurred. Respondent has provided evidence in support of its "uncapping" of taxable value for 2007 in the form of its assessment records and the Warranty Deed conveying the subject property from T.W. Building & General Contracting, LLC to Dennis J. Lorenz and Anne E. Lorenz, dated July 10, 2006.

C. The Tribunal has no jurisdiction to review 2007.

Respondent contends that because Petitioner filed its petition with the Tribunal on July 31, 2008, because assessment notices were properly mailed to Dennis and Anne Lorenz, owners of the subject property, and because the taxable values of the subject properties were not increased beyond the rate of inflation because "public service improvements" were not treated as "additions," the 2007 tax year should be excluded from this case.

FINDINGS OF FACT

1. Petitioner, Markham Hills Partners, LLC filed its appeal with the Tribunal on July 31, 2008, appealing the taxable values and assessed values for nine parcels (parcel nos. 10-

595-001-00, 10-595-002-00, 10-595-003-00, 10-595-005-00, 10-595-006-00, 10-595-009-00, 10-595-010-00, 10-595-011-00, and 10-595-014-00) ("subject property") for the 2007 and 2008 tax years.

2. The subject parcels were among 14 parcels created from a split of parcel 10-031-021-02 (12.66 acres) in 2005. For 2006, the taxable value of parcel 10-031-021-02 was allocated to each of the 14 new parcels.

3. The taxable values for the subject parcels for the 2006 through 2008 tax years are as follows:

Parcel No.	2006	2007	2008
595-001	$708	$17,400	$17,400
595-002	$687	$17,050	$17,050
595-003	$687	$17,150	$17,150
595-005	$678	$16,900	$16,900
595-006	$678	$16,850	$16,850
595-009	$717	$17,350	$17,350
595-010	$698	$17,250	$17,250
595-011	$678	$16,950	$16,950
595-014	$678	$16,950	$16,950

4. The assessed values for the subject parcels for the 2006 through 2008 tax years are as follows:

Parcel No.	2006	2007	2008
595-001	$17,400	$17,400	$17,400
595-002	$17,050	$17,050	$17,050
595-003	$17,150	$17,150	$17,150
595-005	$16,900	$16,900	$16,900
595-006	$16,850	$16,850	$16,850
595-009	$17,350	$17,350	$17,350
595-010	$17,250	$17,250	$17,250
595-011	$16,950	$16,950	$16,950
595-014	$16,950	$16,950	$16,950

5. Respondent did not include any land improvements in its assessment of the subject parcels for the 2006, 2007 or 2008 tax years.
6. Respondent did not increase the taxable values of the subject property for the 2007 tax year because of "public use improvements."
7. Respondent "uncapped" the taxable values of the subject property for the 2007 tax year as a result of the transfer of ownership of the subject properties in 2006.
8. Petitioner, Markham Hills Partners, LLC was not the owner of the subject property for the tax years at issue.
9. The subject property was transferred by Warranty Deed dated July 10, 2006 from T.W. Building & General Contracting, LLC to Dennis J. Lorenz and Anne E. Lorenz.
10. Dennis J. Lorenz and Anne E. Lorenz entered into an Agreement with Markham Hills Partners, LLC on November 22, 2006, granting Petitioner the sole right to develop the subject property, requiring Petitioner to pay all mortgage obligations of the Lorenz' relating to the subject property, and pay all property taxes on the subject property as they become due.
11. The Notice of Assessment for the 2007 tax year for parcel 10-595-001-00 was mailed to Dennis J. & Anne E. Lorenz.
12. Petitioner appealed the assessed values and taxable values of the subject property for the 2007 and 2008 tax years to the March, 2008 Board of Review.
13. The March 2008 Board of Review denied Petitioner's appeal.
14. Petitioner did not file an appeal with the March 2007 Board of Review.
15. On June 1, 2011, Petitioner filed its "Valuation Disclosure," stating "at issue in this case is not the current appraisal of the property, but whether the Township of Emmett properly

assessed the properties when it increased the assessment of the properties by including in the valuation certain services as additions."

16. At a Prehearing Conference conducted with the parties on September 6, 2011, Petitioner's representative, Matthew S. DePerno, confirmed that the issue in this matter was not one of valuation; instead, the sole issue before the Tribunal is the calculation of the taxable value of the subject property for the years 2007 through 2011.

STANDARD OF REVIEW

Petitioner and Respondent move for summary disposition pursuant to MCR 2.116(C)(10). In *Occidental Dev LLC v Van Buren Twp*, MTT Docket No. 292745 (March 4, 2004), the Tribunal stated "[a] motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact." Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Insurance*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied. *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-63; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)). The moving party bears the initial burden of supporting his position by presenting his documentary evidence for the court to consider. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The

burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id*. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCart v J Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1992).

Respondent moves for summary disposition pursuant to MCR 2.116(C)(5). A motion for summary disposition brought under MCR 2.116(C)(5) tests whether a party has legal capacity to sue. The Tribunal hears appeals from parties in interest who have been aggrieved by a decision of a board of review. *Covert Tp v Consumers Power Co* 217 Mich App 352; 551 NW2d 464 (1996) citing *Richland Twp v State Tax Comm*, 210 Mich App 328, 335; 533 NW2d 369 (1995). A party is aggrieved by a judgment or order when it operates on the party's rights and property, or bears directly on the party's interest. *Covert Tp* at 356 citing *Midland Cogeneration Venture Ltd Partnership v Public Service Comm*, 199 Mich App 286, 304; 501 NW2d 573 (1993). An appeal can be taken only by parties who are affected by the judgment appealed from. In other words, there must be some substantial rights of the parties that would be prejudiced by the judgment. *Covert Tp* at 356 citing *Grace Petroleum Corp v Public Service Comm*, 178 Mich App 309, 312-313; 443 NW2d 790 (1989).

CONCLUSIONS OF LAW

The Tribunal has carefully considered Petitioner's Motion under MCR 2.116(C)(10) and finds that denying Petitioner's Motion is appropriate as (1) it lacks jurisdiction over the

uncapping of the subject property's 2007 taxable value, (2) it lacks jurisdiction over the subject property's taxable value for the 2009, 2010 and 2011 tax years, (3) the taxable value of the subject properties for the 2008 tax year was correctly calculated by Respondent, and (4) the taxable value of the subject properties for 2007 "uncapped" because ownership of the properties transferred in 2006. The Tribunal has also carefully considered Respondent's Motion under MCR 2.116(C)(5) and finds that denying Respondent's Motion is appropriate as Petitioner is a proper party to this appeal. Finally, the Tribunal finds that Respondent should be granted summary disposition under MCR 2.116(C)(10) because the Tribunal lacks jurisdiction over the 2007, 2009, 2010 and 2011 tax years, and because Respondent correctly calculated the taxable values of the subject property for the 2008 tax year.

The issues in this case can be summarized as follows:

1. Is Petitioner a proper party to this appeal?

   During the relevant tax years, Petitioner was contractually responsible for the payment of property taxes as the developer of the property pursuant to the Agreement Petitioner entered into with Dennis and Anne Lorenz, the owners of the subject property. Although the Lorenzes owned the property during the tax years at issue, Petitioner is still an aggrieved party as the issue of whether the taxable value was properly calculated directly affects the amount of taxes owed by Petitioner. As such, Petitioner has legal capacity to sue and Respondent's Motion under MCR 2.116(C)(5) fails.

2. Does the Tribunal have jurisdiction in this matter over any or all of the tax years at issue (2007 – 2011)?

   a. 2007.

Petitioner contends that Respondent did not provide Petitioner with a Notice of Assessment containing specific information regarding Petitioner's rights to appeal the assessments to the March Board of Review and to the Tribunal, and was not mailed to the proper address. Petitioner cited to the "Notices of Assessment" included as Exhibit 3 to its Petition in this matter. As discussed in footnotes 1 and 2, Petitioner's Exhibit 3 to its Petition consists of "official receipts" for the payment of December, 2006 taxes rather than 2007 notices of assessment. Clearly, Petitioner fails to understand the distinction between tax bills and Notices of Assessment contemplated by the statute. Petitioner correctly recognizes that MCL 205.5 requires Respondent to properly notify a property owner of its appeal rights in its Notice of Assessment. As is reflected by the Notice of Assessment included by Respondent as Exhibit 5 to its Response to Petitioner's Motion for Summary Disposition, an assessment notice for parcel 001 was clearly addressed to the Lorenzes, the owners of the subject property. Because Respondent was provided no notice of Petitioner's interest in the subject property by Petitioner or the Lorenzes and because Respondent properly mailed Notices of Assessment to the property owners, Respondent has satisfied the requirements of the statute. Petitioner's claim is without merit.

Petitioner also cites MCL 211.53b and contends that the Tribunal should retain jurisdiction over the 2007 tax year as a qualified error occurred with respect to the subject property's taxable value. However, under MCL 211.53b, Petitioner was required to protest to either the July or December Boards of Review for verification of the qualified error. Only if Petitioner received an unfavorable determination by the Board of Review may Petitioner appeal to the Tribunal under MCL 211.53b.

Finally, MCL 205.735a(6) provides that the jurisdiction of the Tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, determination, or order that the petitioner seeks to review. Here, Petitioner seemingly first became aware that the taxable value for 2007 had been uncapped by Respondent upon receipt of the December 2007 tax bill. Petitioner's counsel was aware of the taxable value uncapping issue as of January 2, 2008. However, Petitioner did not file an appeal of any kind until May 18, 2008 and did not raise the taxable value uncapping issue with Respondent until May 6, 2009. Petitioner clearly did not file an appeal of the 2007 taxable value of the subject property within 35 days of receipt of the December 2007 tax bill.

b. 2008

Because Petitioner timely appealed to the March 2008 Board of Review and also timely filed its appeal to the Tribunal, the Tribunal finds that it has jurisdiction over the taxable value of the subject properties for the 2008 tax year pursuant to MCL 205.735a.

c. 2009 – 2011

Petitioner's reliance on TTR 313 to support its contention that the Tribunal has jurisdiction over the 2009, 2010 and 2011 tax years is misplaced, given that the Tribunal's rule regarding subsequent tax years applies only to appeals filed in the Tribunal's Small Claims Division. In all valuation and taxable cases not filed as small claims matters, Petitioner must file a motion to amend the petition to include the subsequent tax year in order for the Tribunal to obtain jurisdiction over that subsequent tax year. Petitioner further contends that MCR 2.116(I)(5) allows Petitioner the right to amend its pleadings to include subsequent years where its motion for summary

disposition is based on MCR 2.116(C)(10). Petitioner's argument seemingly confuses Tribunal jurisdiction and the amending of pleadings and is without merit. MCL 205.737(5)(b) specifically provides for the inclusion of subsequent tax years only when an appeal is filed in the small claims division of the Tribunal. Thus, by statute, the Tribunal obtains jurisdiction over subsequent years in a small claims proceeding. However, there is no such statutory provision granting jurisdiction to the Tribunal in appeals outside of the small claims division. Although MCL 205.735a(9) specifically provides that a petition may be amended by leave of the Tribunal and in compliance with its rules, the Tribunal must have jurisdiction over the years at issue before it can allow an amendment of a petition. Petitioner seems to suggest that the court rule somehow supersedes the statutory requirements regarding Tribunal jurisdiction. Petitioner failed to timely file a motion to amend its original petition to include subsequent tax years, and also failed to file new petitions for those years. The Tribunal finds that it does not have jurisdiction over the 2009, 2010 and 2011 tax years.

3. Calculation of Taxable Value.

Much of Petitioner's argument is dependent upon Petitioner's contention that Respondent illegally included "public service improvements" as additions in calculating the taxable value of the subject property for 2007. Although the Tribunal has previously determined that it does not have jurisdiction over the 2007 tax year, the Tribunal has reviewed Respondent's calculation of the 2007 taxable values of the subject properties and finds that the evidence clearly establishes that Respondent "uncapped" the taxable value of the subject properties in 2007 because ownership of the properties was transferred in 2006. MCL 211.27a(3) provides that upon a transfer of ownership of property, the property's taxable value for the calendar year following

the year of the transfer is the property's state equalized valuation for the calendar year following the transfer. Thus, when the subject property was conveyed by warranty deed to the Lorenzes in 2006, an uncapping of the taxable value was required in 2007. That the increase in taxable value by an amount in excess of the inflation rate was attributable to the "uncapping " of taxable value resulting from the properties' transfer of ownership and not to treating "public service improvements" as additions is further evidenced by (1) the assessed value of each of the subject properties did not change from 2006 to 2007, and (2) the assessment records do not reflect the assessment of any land improvements for 2006 or 2007.[3] Petitioner's contentions that the taxable values of the subject properties for 2008 (a tax year for which the Tribunal has jurisdiction), or for 2007, 2009, 2010 and 2011 (tax years for which the Tribunal does not have jurisdiction) have been improperly calculated by Respondent is without merit, as the 2008 taxable values are equal to the 2007 taxable values.

4. Award of costs.

TTR 145(1) allows the Tribunal to order costs be remunerated to a prevailing party in an appeal before the Tribunal. The decision to award costs is solely within the discretion of the Tribunal judge. The Tribunal finds that, in light of the circumstances of this case, awarding costs to either party is not appropriate. Therefore,

IT IS ORDERED that Petitioner's Motion for Summary Disposition under MCR 2.116(C)(10) is DENIED.

[3] Even if the uncapping of taxable value was attributable to "public service improvements" being included as additions, the Tribunal is precluded from changing the taxable value of a property for a tax year over which it did not have jurisdiction. As such, the Tribunal could not recalculate the taxable value for the 2008 and 2009 tax years, based on the corrected 2007 taxable value, as it does not have proper jurisdiction over the uncapping claim and the year in which the uncapping purportedly occurred. If the increase in taxable value had been for the reason claimed by Petitioner, Petitioner may have been able to raise this claim to the July or December Boards of Review, under MCL 211.53b; however, there is no evidence to indicate that Petitioner protested to either the July or December Boards of Review regarding its uncapping claim. Of course, there is no evidence that the increase in taxable value was because Respondent included "public service improvements" as additions.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition under MCR 2.116(C)(5 is DENIED.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition under MCR 2.116(C)(10) is GRANTED.

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

MICHIGAN TAX TRIBUNAL

Entered: November 22, 2011 By: Steven H. Lasher