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

Bay View Association,
Petitioner,

v MTT Docket No. 409481

Township of Bear Creek,
Respondent,

and

Michigan Department of Treasury,
Intervening Respondent.

Tribunal Judge Presiding
Paul V. McCord

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING SUMMARY DISPOSTION IN FAVOR OF RESPONDENT UNDER MCR 2.116(I)(2)

ORDER DENYING PETITIONER'S MOTION FOR LEAVE TO FILE REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION

John D. Staran (P35649), for Petitioner.
Andrea D. Crumback (P47237), for Respondent.
Matthew B. Hodges (P72193), for Intervening Respondent.

I. INTRODUCTION

This case is before the Tribunal on Petitioner's Motion for Summary Disposition brought under MCR 2.116(C)(10). Here we are asked to decide whether the method utilized by Respondent for calculating the taxable value of the subject parcel, which is organized under the Summer Resort and Assembly Associations Act, MCL 455.51, et seq, is correct and lawful; we hold that it is. Accordingly, we find that Petitioner's Motion must be denied and Respondent is entitled to summary disposition under MCR 2.116(I)(2).

II. BACKGROUND

A. Procedural History

This case was filed on July 29, 2010. 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. Petitioner eventually abandoned its valuation claims, which left only its claim that the property's taxable value had been unlawfully computed.

Petitioner filed a Motion for Summary Disposition under MRC 2.116(C)(10) on March 15, 2013, but was defected for the filing fee. The filing fee defect was never cured. This matter then went to prehearing on March 20, 2013 and was scheduled for a May 13, 2013 hearing date certain. Respondent filed its response to Petitioner's Motion on April 5, 2013, and Intervening Respondent filed its response on April 8, 2013.

On April 24, 2013, Petitioner filed a Motion for leave to file a reply brief with respect to its Motion for Summary Disposition and the subsequent responses by opposing counsel.

On a conference call with the parties on May 3, 2013, the parties represented that the only issue remaining in the case was essentially the legal issue concerning the proper method of computation of the subject property's taxable value (TV) contained in Petitioner's Motion for Summary Disposition. We waived the filing fee defect and held oral argument on Petitioner's Motion on May 13, 2013.

B. Factual Summary[1]

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

The subject property is a seasonal resort community organized as an association under the Summer Resort and Assembly Associations Act, MCL

[1] The "facts" presented in this Order are stated solely for purposes of deciding the motion and are not findings of fact for this case. See MCL 205.751; MCL 24.285; *Jackhill Oil Co v Powell Production, Inc*, 210 Mich App 114, 117; 532 NW2d 866 (1995) (stating that a court may not make findings of fact when deciding a summary disposition motion).

455.51, et seq. The property consists of approximately 337 acres of land. Located on Petitioner's land are 444 cottages/summer homes, private businesses (2 inns and a bed and breakfast), and common structures owned by Petitioner. There is also undeveloped wood land located on the subject as well as lakeshore (Lake Michigan) all in the Petoskey area. Petitioner does not own the 447 individual structures comprising the cottages and private businesses. Instead, the individual association members hold their cottages/structures pursuant to a lease granted by the association.

Irrespective of the legal ownership of the individual structures, the property is assessed as a single parcel with one tax identification number pursuant to Petitioner's election under MCL 455.66. Petitioner receives a single tax bill for the parcel. Pursuant to MCL 455.67, Petitioner is then responsible for assessing and collecting a "fair and just proportion of the taxes" from the individual lessees.

III. DISCUSSION

A. Standard of Review

Petitioner moves for summary disposition pursuant to MCR 2.116(C)(10). Summary disposition is intended to expedite litigation and avoid unnecessary and expensive hearings of phantom factual issues where no genuine issue of material fact exists. "A genuine issue of material fact exists when the record, drawing all reasonable inferences in favor of the nonmoving party, leaves open an issue upon which reasonable minds could differ." *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). We will render a decision on a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, depositions, admissions, and any other acceptable materials show, in the light most favorable to the nonmoving party, that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law. MCR 2.116(G)(5); *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999). But such materials "shall only be considered to the extent that [they] would be admissible as evidence . . . ." MCR 2.116(G)(6); *Veenstra v Washtenaw Country Club*, 466 Mich 155, 163; 645 NW2d 643 (2002).

Respondent is seeking summary disposition under MCR 2.116(I)(2). 2.116(I)(2) states that "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party."

B. Parties' Arguments

Petitioner refers to its suggested valuation approach as the "sum of the individual cards method." Petitioner acknowledges that if the Tribunal were to find in its favor, it would require reconstruction of the tax roll in order to determine what the proper taxable value should be. Petitioner states that Respondent is mandated by MCL 211.24 to use a separate property record card to account for every individual cottage and ownership interest. Petitioner asserts that at a minimum, MCL 211.24 and 211.8(d) requires Respondent to separately track and establish taxable values for each cottage, recognizing that these cottages are buildings on leased land, with the land itself being owned by Petitioner. Petitioner argues that Respondent's computation of the property's TV is inaccurate resulting in an unlawful assessment that is excessive. Essentially, Petitioner asserts that the taxable value as computed for assessment purposes for all of the 447 structures totals more in the aggregate than the "sum of its parts," i.e., had Respondent computed the taxable value of each building separately and then simply added them together.

Petitioner also argues that under Respondent's method, any benefit of market loss is not realized to Petitioner. Petitioner believes that if the taxable value is "uncapped" for each cottage or structure that transfers ownership, bumping the tax value of the entire parcel upwards, then the decline in value also has to be reflected in the overall taxable value when the market values are falling. According to Petitioner, breaking the subject property down into individual parcels, taxed on an individual basis, is a more equitable and fair method of computation, as the increase or decrease in taxable value (including SEV limitation) would be borne by the individual lessee who experienced it.

Respondent counters, arguing that Petitioner elected single parcel treatment and has never revoked it therefore its MCL 211.24 argument must fail. Respondent further points out that even under MCL 211.24, it is appropriate to assess this property as one parcel. Respondent's methodology for determining the value of the single parcel is to take the prior year's taxable value, subtract the losses, multiply the resulting value by the CPI and add the value of all additions. In order to "track" losses, additions, and transfers of ownership of the leased cottages and buildings, Respondent developed an internal procedure that assigned a "tracking assessed" and "tracking taxable" value to each leased building. Respondent states that the method it employed is consistent with that outline by the

1997 Department of Treasury letter. Respondent acknowledges that this method of computation naturally results in a difference between SEV and TV, and as a result of this large difference TV will continue to increase with the CPI while SEV may decrease based on the market. Respondent further contends that Petitioner cannot accuse it of unlawfully uncapping the value of individual cottages, as Respondent can only assign one taxable value to the entire parcel pursuant to Petitioner's election under the Summer Resort and Assembly Associations Act. This means that Respondent can only proportionally uncap the single parcel under the parameters set forth by Proposal A. Respondent asserts that its method of computation is consistent with *Colonial Square Cooperative v Ann Arbor*, 263 Mich App 208; 687 NW2d 618 (2004) and with MCL 211.27a(2) and MCL 211.27a(6)(g).

Additionally, Intervening Respondent argues that Respondent has utilized the proper method of keeping the land value portion capped until sufficient transfers have occurred that would uncap the entire value. It further states that Petitioner's longstanding ownership has provided a capped taxable value substantially lower that the state equalized value, and Petitioner benefits from this significantly lower taxable value. Intervening Respondent states that the affidavit of the assessor indicates that while land value was allocated to each cottage for record keeping purposes, it was tracked separately from the buildings and the land has never uncapped. Intervening Respondent argues that Petitioner's assertion that separate record cards are mandated by law is in direct conflict with MCL 455.66, which requires that the subject property be treated as one parcel. Intervening Respondent also states that there are three circumstances where the taxable value of the subject property could go down: (i) there is a physical loss to the property; (ii) the state equalized value drops below the taxable value, thereby pulling the taxable value down; and (iii) the CPI for a particular tax year is negative.

C. Analysis

Petitioner is not entitled to summary disposition in its favor under MCR 2.116(C)(10) . In order to prevail under (C)(10), there must be no genuine issue of material fact and the moving party must be entitled to judgment as a matter of law. While there is no genuine issue of material fact, application of the relevant statutory and case law with respect to the taxable value of the subject property supports a determination that Respondent's method of assessment was correct.

Accordingly, it is Respondent who is entitled to summary disposition in its favor under MCR 2.116(I)(2).

Petitioner requested to be taxed as a single parcel, under MCL 455.66, which states:

> [A]ll of the cottages and buildings owned by its lessees, situate upon the lands of the association, and not exempt from taxation as hereinbefore provided, be assessed to the association as a part of its real estate, the same as if owned by it, then and thereafter all such real estate and cottages, and buildings thereon, shall be assessed to such association as real estate and taxes paid thereon, by the association the same as if in fact the owner thereof, and no lease had been made.

As a result, all real estate and cottages on the subject property are taxed to Petitioner under one parcel number (including the cottages and other structures owned by the lessees). The Act does not specify a particular methodology that must be employed when assessing all cottages and buildings to Petitioner. Petitioner alleges that MCL 211.24 mandates Respondent to use a separate property record card to account for every individual cottage and ownership interest located on the subject property. The specific statutory language in MCL 211.24 states:

> (b) The assessor shall estimate, according to his or her best information and judgment, the true cash value and assessed value of *every parcel* of real property and set the assessed value down opposite the parcel.
>
> (c) The assessor shall calculate the tentative taxable value of *every parcel* of real property and set that value down opposite the parcel. (Emphasis added).

Petitioner elected to have all buildings and cottages taxed to Petitioner under one single parcel number and Respondent properly complied with MCL 211.24(b) and (c) by estimating the assessed value of that single parcel and calculating the taxable value of that single parcel. There is nothing in MCL 211.24 that requires Respondent to assign a separate parcel number or prepare a separate property record card for the individual cottages. If Respondent had attempted to assign

separate parcel numbers/record cards to the individual cottages, this would be in direct conflict with the manner under which Petitioner has elected to be taxed under MCL 455.66. Further, there is no merit to Petitioner's argument under MCL 211.8(d), which states:

> . . . For taxes levied after December 31, 2002, buildings and improvements located upon leased real property . . . shall be assessed as real property under section 2 to the owner of the buildings or improvements in the local tax collecting unit in which the buildings or improvements are located *if the value of the buildings or improvements is not otherwise included in the assessment of the real property.* (Emphasis added).

Here, the cottages are otherwise included in the assessment of the real property of Petitioner (again, as requested by Petitioner), and are therefore not required to be assessed to the separate owners of the cottages. Respondent has not violated MCL 211.27a, MCL 211.24, or MCL 211.8(d) in determining the taxable value of the subject property for the 2010 – 2012 tax years under appeal.

Petitioner questions the method Respondent has used to "track" the separate taxable values of the individual cottages and how it is that these values relate to the overall taxable value assigned to the subject property. Simply stated, Respondent "tracks" the individual assessed and taxable values for the cottages for purposes of uncapping the taxable value of an individual cottage once there is a transfer of ownership. This method is also used to "track" any additions or losses that may have occurred. There is no established case law on how to set the taxable value on resort property under the Summer Resort and Assembly Associations Act. Both parties, however, apply by way of analogy case law with respect to cooperative housing corporations. In *Colonial Square*, *supra*, the Court of Appeals analyzed the city's method of proportional uncapping with respect to a cooperative housing complex. The city's method was to uncap the taxable value based on the percentage of units that had transferred in the prior tax year. The Court of Appeals held that the city's method "failed to track the individual units transferred" and the city cannot uncap the "value of the whole parcel in proportion to the percentage of units transferred." *Id* at 211.

Petitioner argues that Respondent's methodology creates similar issues because of the result that cottages that have not transferred are subject to an

increased overall obligation. However, it is Petitioner that is responsible for determining the actual tax obligation of each individual cottage owner. As stated by Respondent in its counter-argument, "[i]t is within Petitioner's authority to either allocate the taxes equally among its members or to bill members who own transferred cottages for a higher portion of the tax bill." (Respondent's Brief, p 18). The Tribunal further finds that Respondent's method is not the same as the prohibited method being applied in *Colonial Square*. In the present case, Respondent did not uncap the taxable value of any of the individually transferred cottages on the percentage basis that was specifically precluded in *Colonial Square*. Respondent's method is to apply a proportional uncapping based on each individual cottage that transferred in the previous year. This method is distinguishable from the prohibited percentage uncapping that was done in *Colonial Square*.

Respondent cites the Tribunal's decision in *Farmington Hills Co-Op v City of Farmington Hills*, Docket No. 333372, (March 19, 2012). In *Farmington Hills Co-Op*, the petitioner made similar arguments as in the present case; that the assessor must assign a parcel number to determine the SEV and TV of each individual unit and that any increase beyond the CPI affects those taxpayers whose units had not sold. The Tribunal held in *Farmington Hills Co-Op* that the assessor's method properly tracked the transfers of individual units, as is required by the Court of Appeals holding in *Colonial Square*. We find that Respondent's method is in compliance with the requirements of *Colonial Square*, as Respondent "tracks" each individual cottage and uncaps the taxable value accordingly when determining the overall taxable value of the subject property.

We further find that Respondent's computational method for the taxable value of the subject property was well laid out in its arguments and is supported by the exhibits and affidavits. Petitioner has failed to establish any error in Respondent's methodology and has failed to adequately demonstrate an alternate approach to calculating taxable value. There is no statutory provision, case law, or other authority that would support Petitioner's "sum of the individual cards method." Accordingly, we find that Petitioner is not entitled to summary disposition in its favor, but Respondent should be awarded summary disposition under MCR 2.116(I)(2).

Lastly, with respect to Petitioner's Motion to file a reply brief following the response to its Motion for Summary Disposition, we find that the Motion should be

denied. Any reply that Petitioner wished the Tribunal to consider should have been addressed in its arguments presented at the hearing. Further, there was some discussion at the start of the hearing regarding Petitioner's failure to comply with the Tribunal's January 4, 2013 Order granting the Motions to Compel by both Respondent and Intervening Respondent. The Order required Petitioner to submit the requested information within 14 days of the Order. Petitioner has apparently never complied with this Order, although the Tribunal has never been previously advised of this failure to comply. We find that the present Order disposes of the remaining outstanding legal issues and closes this case. As such, it is unnecessary to hold Petitioner in default for failure to respond to discovery requests.

To reflect the foregoing,

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

IT IS FURTHER ORDERED that Summary Disposition is GRANTED in favor of Respondent pursuant to MCR 2.116(I)(2).

IT IS FURTHER ORDERED that Petitioner's Motion for Leave to File Reply Brief in Support of Motion for Summary Disposition is DENIED.

This Order resolves all pending claims in this matter and closes the case.

MICHIGAN TAX TRIBUNAL

By: Paul V. McCord

Entered: June 26, 2013