

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Nixon Road Holding Company LLC,
Petitioner,

v

MTT Docket No. 336287

Delta Charter Township,
Respondent.

Tribunal Judge Presiding
Marcus L. Abood

ORDER GRANTING PETITIONER'S MOTION TO AMEND

ORDER DENYING RESPONDENT'S MOTION FOR PARTIAL SUMMARY DISPOSITION

ORDER DENYING RESPONDENT'S MOTION TO FILE SUPPLEMENTAL AUTHORITY

FINAL OPINION AND JUDGMENT

Introduction

Petitioner, Nixon Road Holding Company LLC, appeals the taxable value levied by Respondent, Delta Charter Township, against the real property owned by Petitioner for the 2007, 2008, 2009 and 2010 tax years. Patrick D. Hanes, attorney, appeared on behalf of Petitioner. David M. Revore, attorney, appeared on behalf of Respondent. Witnesses appeared on behalf of both parties. They include: Ronald Clark for Nixon Road Holding Company LLC, and Ted Droste, assessor, for Respondent.

The proceedings were brought before this Tribunal on November 3, 2010, to resolve the real property dispute.

At issue before the Tribunal is the determination of the taxable value of Petitioner's real property. The value on the assessment roll, Petitioner's contentions, and the Tribunal's final determination is as follows:

2007	Respondent	Petitioner	Tribunal's
Parcel No.	TV	TV	TV
23-040-081-500-100	\$12,444	\$5,676	\$12,444

23-040-081-500-110	\$12,444	\$5,676	\$12,444
23-040-081-500-120	\$12,444	\$5,676	\$12,444
23-040-081-500-130	\$12,444	\$5,676	\$12,444
23-040-081-500-140	\$12,775	\$5,676	\$12,775
23-040-081-500-190	\$12,444	\$5,676	\$12,444
23-040-081-500-200	\$12,444	\$5,676	\$12,444
23-040-081-500-210	\$12,444	\$5,676	\$12,444
23-040-081-500-230	\$13,900	\$5,676	\$13,900
23-040-081-500-240	\$13,900	\$5,676	\$13,900
23-040-081-500-250	\$13,900	\$5,676	\$13,900
23-040-081-500-260	\$13,900	\$5,676	\$13,900
23-040-081-500-270	\$14,725	\$5,676	\$14,725
23-040-081-500-300	\$15,140	\$5,676	\$15,140
23-040-081-500-330	\$12,692	\$5,676	\$12,692
23-040-081-500-360	\$13,999	\$5,676	\$13,999
23-040-081-500-420	\$13,999	\$5,676	\$13,999
23-040-081-500-430	\$13,999	\$5,676	\$13,999
23-040-081-500-440	\$13,999	\$5,676	\$13,999
23-040-081-500-450	\$13,999	\$5,676	\$13,999
23-040-081-500-460	\$13,999	\$5,676	\$13,999
23-040-081-500-550	\$14,725	\$5,676	\$14,725
23-040-081-500-560	\$14,206	\$5,676	\$14,206
23-040-081-500-570	\$13,999	\$5,676	\$13,999
23-040-081-500-630	\$15,103	\$5,676	\$15,103
23-040-081-500-640	\$14,103	\$5,676	\$14,103
23-040-081-500-650	\$13,999	\$5,676	\$13,999
23-040-081-500-660	\$13,999	\$5,676	\$13,999
23-040-081-500-670	\$13,999	\$5,676	\$13,999
23-040-081-500-680	\$13,999	\$5,676	\$13,999
23-040-081-500-690	\$13,999	\$5,676	\$13,999
23-040-081-500-700	\$13,999	\$5,676	\$13,999
23-040-081-500-710	\$13,999	\$5,676	\$13,999
23-040-081-500-720	\$15,969	\$5,676	\$15,969
23-040-081-500-730	\$13,999	\$5,676	\$13,999
23-040-081-500-740	\$20,117	\$5,676	\$20,117
23-040-081-500-750	\$16,488	\$5,676	\$16,488
23-040-081-500-770	\$16,799	\$5,676	\$16,799
23-040-081-500-790	\$16,799	\$5,676	\$16,799
23-040-081-500-800	\$16,799	\$5,676	\$16,799
23-040-081-500-810	\$16,799	\$5,676	\$16,799
23-040-081-500-830	\$17,317	\$5,676	\$17,317
23-040-081-500-840	\$17,732	\$5,676	\$17,732
23-040-081-500-850	\$17,421	\$5,676	\$17,421
23-040-081-500-860	\$16,799	\$5,676	\$16,799
23-040-081-500-870	\$16,766	\$5,676	\$16,766
23-040-081-500-900	\$16,799	\$5,676	\$16,799
23-040-081-500-910	\$16,799	\$5,676	\$16,799

23-040-081-500-920	\$16,799	\$5,676	\$16,799
23-040-081-500-930	\$16,799	\$5,676	\$16,799
23-040-081-500-940	\$16,799	\$5,676	\$16,799
23-040-081-500-950	\$16,799	\$5,676	\$16,799
23-040-081-501-040	\$15,555	\$5,676	\$15,555
23-040-081-501-050	\$15,555	\$5,676	\$15,555

2008	Respondent	Petitioner	Tribunal's
Parcel No.	TV	TV	TV
23-040-081-500-140	\$13,048	\$5,806	\$13,048
23-040-081-500-190	\$12,730	\$5,806	\$12,730
23-040-081-500-200	\$12,730	\$5,806	\$12,730
23-040-081-500-210	\$12,730	\$5,806	\$12,730
23-040-081-500-230	\$14,320	\$5,806	\$14,320
23-040-081-500-240	\$14,320	\$5,806	\$14,320
23-040-081-500-250	\$14,320	\$5,806	\$14,320
23-040-081-500-260	\$14,320	\$5,806	\$14,320
23-040-081-500-270	\$15,063	\$5,806	\$15,063
23-040-081-500-300	\$15,488	\$5,806	\$15,488
23-040-081-500-330	\$13,260	\$5,806	\$13,260
23-040-081-500-360	\$14,320	\$5,806	\$14,320
23-040-081-500-420	\$14,320	\$5,806	\$14,320
23-040-081-500-430	\$14,320	\$5,806	\$14,320
23-040-081-500-440	\$14,320	\$5,806	\$14,320
23-040-081-500-450	\$14,320	\$5,806	\$14,320
23-040-081-500-460	\$14,320	\$5,806	\$14,320
23-040-081-500-550	\$15,063	\$5,806	\$15,063
23-040-081-500-560	\$14,532	\$5,806	\$14,532
23-040-081-500-570	\$14,320	\$5,806	\$14,320
23-040-081-500-630	\$15,450	\$5,806	\$15,450
23-040-081-500-640	\$14,427	\$5,806	\$14,427
23-040-081-500-650	\$14,320	\$5,806	\$14,320
23-040-081-500-660	\$14,320	\$5,806	\$14,320
23-040-081-500-670	\$14,320	\$5,806	\$14,320
23-040-081-500-680	\$14,320	\$5,806	\$14,320
23-040-081-500-690	\$14,320	\$5,806	\$14,320
23-040-081-500-700	\$14,320	\$5,806	\$14,320
23-040-081-500-710	\$14,320	\$5,806	\$14,320
23-040-081-500-720	\$16,336	\$5,806	\$16,336
23-040-081-500-730	\$14,320	\$5,806	\$14,320
23-040-081-500-740	\$20,579	\$5,806	\$20,579
23-040-081-500-770	\$17,185	\$5,806	\$17,185
23-040-081-500-790	\$17,185	\$5,806	\$17,185
23-040-081-500-800	\$17,185	\$5,806	\$17,185
23-040-081-500-810	\$17,185	\$5,806	\$17,185
23-040-081-500-830	\$17,715	\$5,806	\$17,715

23-040-081-500-840	\$18,139	\$5,806	\$18,139
23-040-081-500-850	\$17,821	\$5,806	\$17,821
23-040-081-500-860	\$17,185	\$5,806	\$17,185
23-040-081-500-870	\$17,185	\$5,806	\$17,185
23-040-081-500-900	\$17,185	\$5,806	\$17,185
23-040-081-500-910	\$17,185	\$5,806	\$17,185
23-040-081-500-920	\$17,185	\$5,806	\$17,185
23-040-081-500-940	\$17,185	\$5,806	\$17,185
23-040-081-500-950	\$17,185	\$5,806	\$17,185
23-040-081-501-050	\$15,912	\$5,806	\$15,912
23-040-081-501-090	\$10,114	\$4,087	\$10,114
23-040-081-501-100	\$10,114	\$4,087	\$10,114
23-040-081-501-110	\$10,114	\$4,087	\$10,114
23-040-081-501-120	\$10,114	\$4,087	\$10,114
23-040-081-501-130	\$10,114	\$4,087	\$10,114
23-040-081-501-140	\$10,114	\$4,087	\$10,114
23-040-081-501-150	\$10,114	\$4,087	\$10,114
23-040-081-501-160	\$10,114	\$4,087	\$10,114
23-040-081-501-170	\$10,114	\$4,087	\$10,114
23-040-081-501-180	\$10,114	\$4,087	\$10,114
23-040-081-501-190	\$10,114	\$4,087	\$10,114
23-040-081-501-200	\$10,114	\$4,087	\$10,114
23-040-081-501-210	\$10,114	\$4,087	\$10,114

2009	Respondent	Petitioner	Tribunal's
Parcel No.	TV	TV	TV
23-040-081-500-140	\$13,622	\$6,061	\$13,622
23-040-081-500-190	\$13,290	\$6,061	\$13,290
23-040-081-500-230	\$14,950	\$6,061	\$14,950
23-040-081-500-240	\$14,950	\$6,061	\$14,950
23-040-081-500-250	\$14,950	\$6,061	\$14,950
23-040-081-500-260	\$14,950	\$6,061	\$14,950
23-040-081-500-270	\$15,725	\$6,061	\$15,725
23-040-081-500-300	\$16,169	\$6,061	\$16,169
23-040-081-500-330	\$13,843	\$6,061	\$13,843
23-040-081-500-360	\$14,950	\$6,061	\$14,950
23-040-081-500-430	\$14,950	\$6,061	\$14,950
23-040-081-500-440	\$14,950	\$6,061	\$14,950
23-040-081-500-450	\$14,950	\$6,061	\$14,950
23-040-081-500-460	\$14,950	\$6,061	\$14,950
23-040-081-500-550	\$15,725	\$6,061	\$15,725
23-040-081-500-560	\$15,171	\$6,061	\$15,171
23-040-081-500-570	\$14,950	\$6,061	\$14,950
23-040-081-500-630	\$16,129	\$6,061	\$16,129
23-040-081-500-640	\$15,061	\$6,061	\$15,061
23-040-081-500-650	\$14,950	\$6,061	\$14,950

23-040-081-500-660	\$14,950	\$6,061	\$14,950
23-040-081-500-670	\$14,950	\$6,061	\$14,950
23-040-081-500-680	\$14,950	\$6,061	\$14,950
23-040-081-500-690	\$14,950	\$6,061	\$14,950
23-040-081-500-700	\$14,950	\$6,061	\$14,950
23-040-081-500-710	\$14,950	\$6,061	\$14,950
23-040-081-500-720	\$17,054	\$6,061	\$17,054
23-040-081-500-730	\$14,950	\$6,061	\$14,950
23-040-081-500-740	\$21,484	\$6,061	\$21,484
23-040-081-500-770	\$17,941	\$6,061	\$17,941
23-040-081-500-790	\$17,941	\$6,061	\$17,941
23-040-081-500-800	\$17,941	\$6,061	\$17,941
23-040-081-500-810	\$17,941	\$6,061	\$17,941
23-040-081-500-830	\$18,494	\$6,061	\$18,494
23-040-081-500-840	\$18,937	\$6,061	\$18,937
23-040-081-500-850	\$18,605	\$6,061	\$18,605
23-040-081-500-860	\$17,941	\$6,061	\$17,941
23-040-081-500-870	\$17,941	\$6,061	\$17,941
23-040-081-500-900	\$17,941	\$6,061	\$17,941
23-040-081-500-910	\$17,941	\$6,061	\$17,941
23-040-081-500-920	\$17,941	\$6,061	\$17,941
23-040-081-500-940	\$17,941	\$6,061	\$17,941
23-040-081-500-950	\$17,941	\$6,061	\$17,941
23-040-081-501-050	\$16,612	\$6,061	\$16,612
23-040-081-501-090	\$10,559	\$4,267	\$10,559
23-040-081-501-110	\$10,559	\$4,267	\$10,559
23-040-081-501-120	\$10,559	\$4,267	\$10,559
23-040-081-501-130	\$10,559	\$4,267	\$10,559
23-040-081-501-140	\$10,559	\$4,267	\$10,559
23-040-081-501-160	\$10,559	\$4,267	\$10,559
23-040-081-501-170	\$10,559	\$4,267	\$10,559
23-040-081-501-180	\$10,559	\$4,267	\$10,559
23-040-081-501-190	\$10,559	\$4,267	\$10,559
23-040-081-501-200	\$10,559	\$4,267	\$10,559
23-040-081-501-210	\$10,559	\$4,237	\$10,559

2010	Respondent	Petitioner	Tribunal's
Parcel No.	TV	TV	TV
23-040-081-500-140	\$13,581	\$6,043	\$13,581
23-040-081-500-190	\$13,250	\$6,043	\$13,250
23-040-081-500-250	\$14,905	\$6,043	\$14,905
23-040-081-500-260	\$14,905	\$6,043	\$14,905
23-040-081-500-270	\$15,677	\$6,043	\$15,677
23-040-081-500-300	\$16,120	\$6,043	\$16,120
23-040-081-500-330	\$13,801	\$6,043	\$13,801
23-040-081-500-360	\$14,905	\$6,043	\$14,905

23-040-081-500-430	\$14,905	\$6,043	\$14,905
23-040-081-500-440	\$14,905	\$6,043	\$14,905
23-040-081-500-450	\$14,905	\$6,043	\$14,905
23-040-081-500-460	\$14,905	\$6,043	\$14,905
23-040-081-500-550	\$15,677	\$6,043	\$15,677
23-040-081-500-560	\$15,125	\$6,043	\$15,125
23-040-081-500-570	\$14,905	\$6,043	\$14,905
23-040-081-500-630	\$16,080	\$6,043	\$16,080
23-040-081-500-640	\$15,015	\$6,043	\$15,015
23-040-081-500-650	\$14,905	\$6,043	\$14,905
23-040-081-500-660	\$14,905	\$6,043	\$14,905
23-040-081-500-670	\$14,905	\$6,043	\$14,905
23-040-081-500-680	\$14,905	\$6,043	\$14,905
23-040-081-500-690	\$14,905	\$6,043	\$14,905
23-040-081-500-700	\$14,905	\$6,043	\$14,905
23-040-081-500-710	\$14,905	\$6,043	\$14,905
23-040-081-500-720	\$17,002	\$6,043	\$17,002
23-040-081-500-730	\$14,905	\$6,043	\$14,905
23-040-081-500-740	\$21,419	\$6,043	\$21,419
23-040-081-500-770	\$17,887	\$6,043	\$17,887
23-040-081-500-790	\$17,887	\$6,043	\$17,887
23-040-081-500-800	\$17,887	\$6,043	\$17,887
23-040-081-500-810	\$17,887	\$6,043	\$17,887
23-040-081-500-830	\$18,438	\$6,043	\$18,438
23-040-081-500-840	\$18,880	\$6,043	\$18,880
23-040-081-500-850	\$18,549	\$6,043	\$18,549
23-040-081-500-860	\$17,887	\$6,043	\$17,887
23-040-081-500-870	\$17,887	\$6,043	\$17,887
23-040-081-500-900	\$17,887	\$6,043	\$17,887
23-040-081-500-910	\$17,887	\$6,043	\$17,887
23-040-081-500-920	\$17,887	\$6,043	\$17,887
23-040-081-500-940	\$17,887	\$6,043	\$17,887
23-040-081-500-950	\$17,887	\$6,043	\$17,887
23-040-081-501-050	\$16,662	\$6,043	\$16,662
23-040-081-501-090	\$10,527	\$4,254	\$10,527
23-040-081-501-110	\$10,527	\$4,254	\$10,527
23-040-081-501-120	\$10,527	\$4,254	\$10,527
23-040-081-501-160	\$10,527	\$4,254	\$10,527
23-040-081-501-170	\$10,527	\$4,254	\$10,527
23-040-081-501-180	\$10,527	\$4,254	\$10,527
23-040-081-501-190	\$10,527	\$4,254	\$10,527
23-040-081-501-200	\$10,527	\$4,254	\$10,527
23-040-081-501-210	\$10,527	\$4,254	\$10,527

Background and Introduction

At issue for the tax years is the taxable value for vacant lots located in Delta Township, Eaton County. The subject parcel of land is located in the northeast $\frac{1}{4}$ of Section 18. Specifically, the subject property is located within the southwest corner of Saginaw Highway (M-43) and Nixon Road. Petitioner purchased the subject parcels from Grand Ledge Investment Group, LLC in June, 2004. Subsequently, the property was subdivided in 2005. Some of the lots have sold prior to the 2007 initial appeal and prior to the current 2010 hearing, thus decreasing the number of parcels appealed for subsequent years. The property is zoned residential.

Petitioner's initial appeal was received by the Tribunal on May 31, 2007, and Petitioner filed motions to amend to include subsequent tax years and Orders were entered on February 5, 2009, for the 2008 tax year and January 6, 2010, for the 2009 tax year. Further, Petitioner filed a Motion on May 28, 2010, requesting that the Tribunal permit it to amend its petition to include the properties' true cash and taxable values for the 2010 tax year, and that Motion is being granted by this Final Opinion and Judgment as it is timely under MCL 205.737 and 205.735a.

Petitioner's Arguments

Petitioner argues that the matter involves issues relating to the taxable value and a dispute relative to the value of the sites which have received the benefit or an addition of certain infrastructure improvements that are not appropriate "additions" as identified by Michigan law. Petitioner states, "Respondent appears to be relying, misguidedly, on MCL 211.34d(1)(b)(vii), by including the installation of public service improvements as 'additions' in its assessment of the subject property's taxable value for not only 2007 but for previous years, all of which assessments were improper and not in conformity with Michigan law and void as a matter of law."

Petitioner argues the installation of public service improvements should be considered part of the mandatory process of platting or splitting land, and, in keeping with MCL 211.34d(1)(c), excluded from assessment as “additions” all as determined by the Michigan Court of Appeals.

Petitioner contends that MCL 211.34d(1)(b)(vii) has been held to be unconstitutional “as it purports to increase the taxable value of property because of the installation of public service improvements on the real property.” *Toll Northville, Ltd v Northville Twp*, 272 Mich App 352 (2006).

Petitioner further argues the extent to which Respondent relied on this unconstitutional statutory provision to increase the assessment on the subject property, solely on the basis of public service improvements, violated the “cap” on annual increases in taxable value imposed by Const 1963, Article 9, Section 3 and is therefore null and void of force or effect.

Petitioner’s only witness was Ronald Clark, development manager, to clarify the actual parcel identification numbers for the parcels that Petitioner owned and appealed. Mr. Clark described his background, involvement and development in real estate. Mr. Clark was involved in the sales transactions of the subject parcels in June, 2004. His testimonial was based on elements of the subject’s sale transaction; Petitioner asserts the sale transaction was arm’s length in nature. However, Mr. Clark admitted that the parties to the transaction entered into a consent judgment “that was entered into by the parties that transitioned the whole pattern of development into what we were doing.” TR p 48. In other words, the sales transaction of the subject parent parcel involved zoning issues.

Respondent’s Argument

Respondent contends that the assessments do not include infrastructure. The subdivided

parcels were properly assessed. *Toll* does not apply in this case. Moreover, the subject property became “uncapped” in the subsequent year after the purchase date. Public service improvements are a moot point relative to the uncapping event. In other words, public service improvements were not included in the uncapped assessments for the subject property. Respondent’s witness, Mr. Droste, testified “So that’s the logic that applies through all of these parcels, is a value and assessment based on market sales, and determined each year based on sales within the prior two-year period.” TR p 67. Mr. Droste goes on to differentiate taxable value from assessed value.

Taxable value is different because it’s a mathematical calculation. Taxable values are determined by simply looking at the previous year taxable value, removing any losses, and what I mean by that is if something burned down or was physically removed from a property, times the consumer price index as published by the Michigan State Tax Commission, and then adding in any new additions for a new construction on top of that.
TR p 68

Respondent asserts that all of the assessed values and taxable values were equal in 2005 because of the uncapping event – the transfer of the subject property in 2004.

On cross-examination, Respondent questioned Mr. Clark about lot sales in the subject development. “What you’re testifying to, then, is that these lots that sold that coordinate with these Deeds sold for, the two that you just stated, \$39,000, and possibly more? *Answer*: “Yes, there were some of them that were priced higher.” TR p 45. Various lots were sold at market prices; these subsequent market sales were greater than their actual taxable values.

Tribunal’s Findings of Fact

The subject property is located within Delta Township and Eaton County. More specifically, the subject property is located south of Saginaw Highway and west of Nixon Road.

Petitioner purchased the subject property on June 23, 2004 for \$1,065,000.00 from Grand Ledge Investment Group, LLC (Liber 1838, Page 1188). The subject parent parcel was

referenced as Parcel # 23-040-018-200-002-00 and contained 71.63 acres more or less. On the same date Petitioner purchased a second parcel of land containing 34.37 acres for \$600,000 from Grand Ledge Investment Group LLC (Liber 1838, Page 1184). A third transaction occurred on December 9, 2005. A parcel of land containing +/- 3.57 acres was purchased for \$366,800 from Nixon Road Holding Company II, LLC to Nixon Road Holding Company, LLC. This parcel of land is identified as Parcel # 23-040-018-200-006-00. Subsequently, the subject property was subdivided in 2004 and 2005. Public service improvements were added in 2004 and 2005; noted items included sanitary sewer, storm sewer, water main, and road system. Phase I was developed with 107 lots; Phase II was developed with 14 lots.

Neither party presented evidence in the form of valuation disclosures. However, property assessment cards were presented as exhibits by each party. Each party specifically denoted those lots for each year under appeal.

The Tribunal does not have jurisdiction over the 2005 and 2006 tax years because Petitioner did not file an appeal until 2007. The retroactive application of reducing taxable value for the inclusion of infrastructure for years not under appeal for the Tribunal is not within the scope of this Tribunal. MCL 205.735(3) states:

The jurisdiction of the tribunal in an assessment dispute is invoked by a party in interest, as petitioner, filing a written petition on or before June 30 of the tax year involved.

Conclusions of Law

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value. The Michigan Legislature has defined true cash value to mean the usual selling price at the place where the property to which the term is applied is at the time of the assessment, being the price which could be obtained for

the property at private sale, and not forced or auction sale. See MCL 211.27(1). The Michigan Supreme Court in *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450 (1974), has also held that true cash value is synonymous with fair market value.

In that regard, the Tribunal is charged in such cases with finding a property's true cash value to determine the property's lawful assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767 (1981). The determination of the lawful assessment will, in turn, facilitate the calculation of the property's taxable value as provided by MCL 211.27a. A petitioner does, however, have the burden of establishing the property's true cash value. See MCL 205.737(3) and *Kern v Pontiac Twp*, 93 Mich App 612 (1974).

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law...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%....; and for a system of equalization of assessments. For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value. Const 1963 Art IX, Sec 3.

The burden of proof in a tax matter encompasses two concepts: “(1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party.” *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at pages 404-409. The Tribunal has a duty to make its own independent determination of true cash value only when the plaintiff has met its burden of going forward with the evidence. *Id.* at 410. In this instance, Petitioner has not provided any valuation disclosures that show the subject property was improperly assessed. Petitioner relies on the

argument of taxable values in light of the *Toll* decision. Yet, Petitioner argues “that the amounts that we had in each of our Petitions properly reflect the value of the property.” TR p 27. Taxable value and true cash value are not synonymous terms; Petitioner’s “calculations” reflect a true cash value without a supported valuation methodology. No evidence or testimony was given to distinguish public service improvements from the actual assessments. Petitioner did not isolate the alleged additions from the assessments. Moreover, no evidence was provided showing that the taxable value increased above the consumer price index (CPI) for the land value. The Tribunal does not clearly understand Petitioner’s direction regarding the value of the individual lots versus the value of the parent parcels.

Aside from Petitioner’s argument that public service improvements were improperly included in the subject property’s assessment, Petitioner has submitted no evidence to support his contentions of true cash value. Petitioner testified that he arrived at his contention of true cash value by taking the initial purchase price of the parent parcel and dividing it by the number of child parcels resulting from the split of the parent parcels. Petitioner’s approach to calculating the subject property’s true cash value, however, is not an accepted method of calculating true cash value. Merely taking the purchase price of a parcel and dividing it by the number of parcels is unpersuasive to the argument of taxable value. Moreover, this simple mathematical equation does not acknowledge the relationship of assessed value, state equalized value and taxable value. In other words, taxable value is not an isolated assessment methodology at the point of an uncapping event. Further, taxable value is more of a function of the date of the last transfer than it is market value because of the taxable value cap. A property’s taxable value is capped at either the property’s current state equalized value or the following formula. See MCL 211.27a(2). When taxable value is not capped by the current state equalized value, it is calculated by taking

the immediately preceding year's taxable value and subtracting any losses. MCL 211.27a(2)(a). This figure is then multiplied by the lesser of 1.05 or the inflation rate. *Id.* All additions are added to the resulting figure. *Id.* Therefore, taxable value is not indicative of market value or true cash value as the cap may distort any relation to true cash value. Petitioner sets forth taxable value contentions without any correlation to assessment principles. Lastly, Petitioner's belief that a value contention can be raised outside of the assistance of a valuation disclosure is unpersuasive.

Again, Petitioner does not raise any distinctions between assessed value and state equalized value from taxable value. Respondent's defense that the uncapping event made the additions a moot point was not refuted by Petitioner. Further, Petitioner contends that public service improvements were included in the taxable values of the parcels. The simple mathematic calculation of dividing the overall purchase price of the land by the eventual number of lots to arrive at a price per lot does not support Petitioner's taxable value contention. There is a distinction between true cash value and taxable value that Petitioner does not clarify.

Respondent states the assessments became "uncapped" subsequent to the year of purchase. The property assessments became uncapped based on the purchase of the subject property and not based on the inclusion of public service improvements. Petitioner has not shown that the addition of public service improvements was calculated over the uncapping event of the subject property. The initial purchase date of the subject property was in June, 2004. The addition of public service improvements were made in 2004 and 2005. There is no evidence that the assessments were solely based on the additions. In other words, Petitioner did not show that the taxable value included an amount for public service improvements. A casual identification of key events does not strengthen Petitioner's argument.

Next, Petitioner has relied on Respondent's Answers to the initial Petition to substantiate its allegations. Specifically, Respondent's Answers to the Amended Petitions inadvertently admit the installation of public service infrastructure improvements as additions. The assessor, Mr. Droste, drafted the Answers on behalf of Respondent Delta Township. Mr. Droste admits he is not an attorney. These Answers were not drafted by legal counsel. Petitioner places reliance upon Respondent's drafted answers. However, a perceived error in a pleading does not remotely come close to making a case for over-assessment or an increase in the taxable value based upon additions for public service improvements. Respondent has defended the assessments on the rolls at 1) the initial petition, 2) the Prehearing General Call, and 3) the actual hearing. There is no other evidence to show Respondent meant to include public service improvements in the assessment of the subject property. Respondent's intentions of defending the assessments have been made clear throughout the tax appeal process.

On cross examination, Petitioner questioned Mr. Droste regarding the format and make-up of the assessment cards. Mr. Droste admitted that descriptive characteristics are included on the front page of the property record card. Such items include: water, sewer, electric, road, curb, gutter, etc. Petitioner asked "So you have inputted those additions to the property into your form, right?" Mr. Droste responded "No, those aren't additions, that's described in the parcel." TR p 79. Property characteristics or features may be a reference to the assessments for a particular property. However, highlighting a formatting feature on a property record card does not singularly prove additions were improperly added. Petitioner's general question does not specify any dated property record card. There is no reference to a particular year relative to a purchase date or transfer of ownership. Petitioner failed to apply this line of questioning to the relevant years for the subject property. The year in which the property became uncapped and the

year in which the property had additions is not clearly delineated by Petitioner.

Petitioner has not set forth any evidence in support of the taxable value contentions outside of a valuation disclosure. “So what we are asking the Tribunal to do is to find that the amounts that we had in each of our Petitions, properly reflect the value of the property.” TR p 27. This statement contradicts Petitioner’s closing statement “We’re looking at what the taxable value of these lots are.” TR p 103. Again, Petitioner has referenced the assessments (SEV, AV, and TV) interchangeably as though they lead to the same conclusion of over-assessment. Petitioner’s sole evidence was the purchase price divided by the number of lots. This allocation of sales price to each lot is not a presumptive value. Further, this site value allocation does not automatically result in the 50% calculation to arrive at a taxable value. This methodology does not follow any recognized appraisal standards or practices.

Petitioner misunderstands the Tribunal’s purpose and function. Petitioner states, “This is not your run-of-the-mill case, obviously. I’m sure that a great deal of your time is spent deciding which appraiser to listen to, and to come up with values based on that. TR p 103. In fact, the Tribunal’s charge is to provide all citizens with the opportunity to resolve state and local tax disputes at a fair and impartial hearing and to receive a timely written, quality decision that is based on the evidence submitted and the law. The Tribunal weighs the evidence provided by both parties. In this instance, Petitioner has provided very little to prove its case for over-assessment relative to taxable value.

The Tribunal finds that Petitioner was not able to show that the properties were over-assessed for the tax years at issue. As such, and in light of the above, the Tribunal finds that Petitioner has failed to meet its burden of going forward with competent evidence on the issue of taxable value. Petitioner has not demonstrated an increase in taxable value that violates the *Toll*

decision. Respondent has provided credible documentary evidence and testimony to support the subject property's assessment for the tax years at issue and as such, the Tribunal finds that the assessment is fair and reasonable.

Respondent's Motion for Partial Summary Disposition

Respondent's Motion for Partial Summary Disposition is based on improperly added and deleted parcels for the years 2008, 2009, and 2010 under appeal by Petitioner. This motion was filed on October 22, 2010. A motion for partial summary disposition brought under MCR 2.116(C)(4) and (C)(5) tests whether the complaint is beyond the scope of the court's jurisdiction. *Service Employees Int'l Union, Local 466M v City of Saginaw*, 263 Mich App 656, 663-64 (2004). A court may grant summary disposition under MCR 2.116(C)(4) and (C)(5) if the pleadings demonstrate that a party is entitled to judgment as a matter of law or if the affidavits and other proofs show that there was no genuine issue of material fact. *Id.* at 660. The Tribunal has considered Respondent's Motion for Partial Summary Disposition and Petitioner's response thereto under the criteria for MCR 2.116(C)(4), and (C)(5), and the denial of this Motion is warranted based on the pleadings and other documentary evidence filed with the Tribunal. Generally, the Tribunal acquires jurisdiction to hear a case pursuant to MCL 205.745a(a), which states that a taxpayer has 35 days to appeal an assessment at the Tribunal. Petitioner's response to the motion includes Board of Review Notices for all parcels under appeal for 2007, 2008, 2009, and 2010. The various parcels under appeal were identified in Petitioner's Amended Petitions. Petitioner has properly appealed the relevant parcels at the board of review. The Tribunal has original and exclusive jurisdiction over "[a] proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under property tax

laws.” MCL 205.731. The Tribunal, having given due consideration to the motion, finds that Respondent has not shown good cause to grant its motion.

Respondent’s Motion to File Supplemental Authority

Respondent’s Motion to File Supplemental Authority was filed on November 15, 2010. Respondent sets forth an unpublished Court of Appeals decision relative to the instant case. The Tribunal, having given due consideration to the motion, finds that Respondent has not shown good cause to grant its motion. The weight and relevance of an unpublished opinion is minimal. The Tribunal has the full capability to research and analyze case law in its deliberations.

Judgment

IT IS ORDERED that Petitioner’s Motion to Amend is GRANTED.

IT IS FURTHER ORDERED that Respondent’s Motion for Partial Summary Disposition is DENIED.

IT IS FURTHER ORDERED that Respondent’s Motion to File Supplemental Authority is DENIED.

IT IS FURTHER ORDERED that the assessments at issue are AFFIRMED.

IT IS FURTHER ORDERED that the property’s taxable values for the tax years at issue shall be as set forth in the *Introduction* section of 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 true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the 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 Order within 28 days of the entry of this Order. 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 the Tribunal's order. As provided in 1994 PA 254, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest rate of the 94-day discount treasury bill rate for the first Monday in each month plus 1%. As provided in 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after January 1, 1996 at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 2006 at the rate of 5.42% for calendar year 2007, (ii) after December 31, 2007 at the rate of 5.81% for calendar year 2008, (iii) after December 31, 2008, at the rate of 3.31% for calendar year 2009, (iv) after December 31, 2009, at the rate of 1.23% for calendar year 2010, and (v) after December 31, 2010, at the rate of 1.12% for calendar year 2011.

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

MICHIGAN TAX TRIBUNAL

Entered: March 21, 2011

By: Marcus L. Abood