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

MEGA Investments IV LLC and
MEGA Investments III LLC
Petitioners,

v

MTT Docket Nos. 355103 and 355106

Lincoln Township,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER GRANTING SUMMARY DISPOSITION
IN FAVOR OF RESPONDENT UNDER MCR 2.116(I)(1)

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioners, MEGA Investments III, LLC and MEGA Investments IV, LLC, appeal ad valorem property tax assessments levied by Respondent, Lincoln Township, against Parcel Nos. 11-12-3216-0032-00-3, 11-12-3216-0033-00-0, and 11-12-3216-0036-00-9, for the 2008, 2009, 2010, 2011, and 2012[1] tax years, and Parcel Nos. 11-12-8791-0031-00-3and 11-12-8791-0050-00-8 for the 2008 and 2009 tax years, and Parcel No. 11-12-3216-0012-00-2 for the 2008 tax year only.

The parties agreed that valuation disclosures were not required in this matter, as the issues relate to the Tribunal's authority to reduce taxable values pursuant to *Michigan Properties, LLC v Meridian Twp*, 491 Mich 518; 817 NW2d

[1] Petitioners' Prehearing Statement indicated that a Motion to Amend to add 2013 would be filed by July 31, 2013. A Motion to Amend was filed on July 22, 2013; however, this Motion was not considered, and a Notice of No Action was entered on August 14, 2013. Petitioners failed to take steps to comply with the Notice of No Action within the required time period, and therefore Petitioners' Motion was never properly pending before the Tribunal.

548 (2012). The parties agreed to submit a Joint Stipulation of Facts and respective briefs on the issues of law. Both parties submitted their respective briefs on September 20, 2013.[2]

Based on the evidence, stipulated facts, legal briefs, and the case file, the Tribunal finds that (i) there were no improper "additions" to the taxable value of the parcels due to platting or public-service improvements, and (ii) the taxable values of the subject parcels were properly "uncapped" equal to the state equalized values ("SEVs") in the year following a transfer of ownership. As such, summary disposition shall be granted in favor of Respondent, and the taxable values established by Respondent and confirmed by the March Board of Review shall be affirmed as follows:

Parcel No.	Year	TV
11-12-3216-0012-00-2	2008	$71,275

Parcel No.	Year	TV
11-12-3216-0032-00-3	2008	$30,000
11-12-3216-0032-00-3	2009	$30,000
11-12-3216-0032-00-3	2010	$22,500
11-12-3216-0032-00-3	2011	$22,882
11-12-3216-0032-00-3	2012	$20,000

[2] Petitioners submitted a 25-page Brief. Pursuant to MCR 2.119(A)(2), a brief may not exceed 20 pages. Further, the Tribunal's July 9, 2013 Scheduling Order limited briefs to 20 pages. Nevertheless, Petitioner's Brief was considered by the Tribunal in its entirety.

Parcel No.	Year	TV
11-12-3216-0033-00-0	2008	$40,000
11-12-3216-0033-00-0	2009	$40,000
11-12-3216-0033-00-0	2010	$25,000
11-12-3216-0033-00-0	2011	$23,500
11-12-3216-0033-00-0	2012	$21,500

Parcel No.	Year	TV
11-12-3216-0036-00-9	2008	$32,500
11-12-3216-0036-00-9	2009	$32,500
11-12-3216-0036-00-9	2010	$30,000
11-12-3216-0036-00-9	2011	$26,500
11-12-3216-0036-00-9	2012	$26,500

Parcel No.	Year	TV
11-12-8791-0031-00-3	2008	$19,625
11-12-8791-0031-00-3	2009	$19,625

Parcel No.	Year	TV
11-12-8791-0050-00-8	2008	$19,625
11-12-8791-0050-00-8	2009	$19,625

PETITIONERS' CONTENTIONS

Petitioners' legal arguments rely on *Toll Northville, LTD v Northville Twp*, 480 Mich 6; 743 NW2d 902 (2008) ("*Toll I*"), and its subsequent dispositions at the Tribunal, the consolidated decision in *MJC/Lotus Group v Brownstown Twp*, 293 Mich App 1; 809 NW2d 605 (2011) ("*Toll II*"), and the Michigan Supreme Court's decision in *Michigan Properties, LLC v Meridian Twp*, 491 Mich 518; 817 NW2d 548 (2012). Petitioners argue that the status of the law after these decisions is clear and may be summarized as:

1. MCL 211.34d(1)(b)(*viii*) is unconstitutional.
2. MCL 211.34d(1)(b)(*viii*) cannot be used to sabotage the meaning and intent [of] MCL 211[.34]d(1)(c)(i).
3. To the extent public-service improvements increase the true cash value ("TCV") of land, the tax revenue attributable to that increase in value is to be realized when the lots are transferred to non-developer owners.
4. The *Toll* decision is not to be applied retroactively.
5. The Tax Tribunal does have the authority to reduce an unconstitutional previous increase in TV for the purposes of adjusting a TV that was timely challenged in a subsequent year.
6. The collateral estoppel and law of the case theories of *Leahy v Orion Twp*, 269 Mich App 527 (2006) do not apply to the *Toll* type of cases.
7. The Michigan Supreme Court has recognized an affirmative duty to correct a previous erroneous determination of TV.

Petitioner contends that it is "obvious" that the selling price of the sold lots within the subdivisions included the increase in true cash value attributable to the fact that the parent parcel had been platted, as well as to the existence of the public-infrastructure improvements installed in each of the subdivisions. According to Petitioner, it is also "obvious" that the assessed and taxable values of the unsold lots, which were based on the sale price of the sold lots, also included increases in value due to platting and public-infrastructure improvements. Petitioner argues that the assessed and taxable values of the unsold lots containing this prohibited increase due to platting and public-infrastructure improvements

results in a tax burden that will be borne by the developer until these lots are sold, which is not what was intended by Proposal A and the General Property Tax Act ("GPTA") as interpreted by *Toll I* and *Toll II*. Petitioner asserts that the Tribunal has the affirmative duty to remove the increase in taxable value of the parcels attributable to the platting and installation of public-infrastructure improvements.

In response to Respondent's argument that this appeal does not involve *Toll*, but involves the uncapping of taxable value, and Respondent's reliance on the Small Claims Final Opinion and Judgment in *Running Waters, Inc v City of Watervliet*, MTT Docket No. 339379 (November 24, 2010), Petitioner contends that *Running Waters* is not precedential and cannot be relied upon. Petitioner further states that even if *Running Waters* was of any precedential value, the subsequent case law involving *Toll* would overrule *Running Waters*.

Lastly, Petitioner argues that the provisions of the GPTA concerning additions are specific in nature and control over the general rule regarding uncapping found in MCL 211.27a(3). Petitioner contends that the law established in the *Toll* cases is clear, and the term "additions" does not include public-infrastructure improvements or the increase in value attributable to the platting of the parent parcel. Petitioner states that Respondent's position of focusing on MCL 211.27a(3) creates an unreasonable result in contravention of the principles of statutory construction. Petitioner asserts that, under Respondent's position, "[t]he Developer who . . . purchases, plats, installs infrastructure all within the same tax years continues to bear the tax burden of the increased TCV of the subdivided lots until such time as the lots are sold to third parties . . ." which Petitioner states totally ignores the law established by *Toll*. Petitioner contends that Respondent's position does not construe the GPTA as a whole and does not give precedence to

the specific provisions regarding additions. Petitioner concludes by stating:

> [T]he more appropriate way to assess and establish the TV of the Petitioner's property would have been to assess the property in the uncap year without regard to the fact that the Petitioner had platted the property and installed public service infrastructure improvements in the year of the transfer. In this way, the specific rules of MCL [211.]34d are effectuated as well as the general rule of MCL [211.]27a(3). (Petitioners' Brief, pp. 24, 25)

RESPONDENT'S CONTENTIONS

Respondent contends that the taxable value of the subject parcels uncapped due to a transfer of ownership in the previous year and not as the result of any additions. As a result, Respondent states that Petitioner's reliance on *Toll* is misplaced. Respondent states that, within the same calendar year, the parcels were acquired and platted, the public-service improvements were installed, and Petitioner offered lots for sale on the open market. Respondent states that the SEVs of the lots were established "due to the market value of the other sold vacant lots . . . . The SEVs were not determined on the basis of 'additions' to the property." (Respondent's Brief, p. 3) Respondent contends that virtually identical facts were present in *Running Waters*, with the Tribunal finding that the taxable values were determined based on the uncapping of the parcels, not the addition of public services. Respondent again contends that the new SEVs of the subject parcels were established based on market value sales of other vacant lots in the subdivisions, and these assessments should be affirmed for the same reasons as *Running Waters*.

STATEMENT OF FACTS

The parties submitted a Joint Statement of Stipulated Facts on August 22, 2013, which is incorporated herein. The following is a summary of the most relevant facts:

1. Mega Investments III, LLC is appealing four parcels located within the Hidden Pines Subdivision.
2. Mega Investments III, LLC acquired the four parcels in Hidden Pines Subdivision from three separate sellers, all closing on March 14, 2003.
3. During 2003, Respondent approved the preliminary plat for Hidden Pines, and the plat was recorded on October 31, 2003.
4. Mega Investments III, LLC commenced construction of the infrastructure for the Hidden Pines Subdivision on or about June 2003.
5. Construction of the infrastructure for the Hidden Pines Subdivision was completed on or about October 2003.
6. Construction of the Hidden Pines Subdivision infrastructure included utility services (gas, electric, telephone, and cable TV), municipal water, municipal sewer, public roadway, and sidewalks.
7. Prior to December 31, 2003, Mega Investments III, LLC sold and closed on 11 lots within the Hidden Pines Subdivision.
8. For 2004, Respondent uncapped the taxable values of all lots within the Hidden Pines Subdivision, with the SEVs being 50% of the true cash values and the taxable value being set equal to these SEVs.
9. Respondent's assessment of the unsold lots for calendar year 2004 included increases in TCV based upon comparable sales of similar subdivision lots

(which included public infrastructure improvements) within the Hidden Pines Subdivision and other subdivisions located within the Township.

10. Mega Investments IV, LLC is appealing two parcels located within the Woodcreek #2 Subdivision.
11. Mega Investments IV, LLC acquired the two parcels in Woodcreek #2 Subdivision in a single transaction closing on March 31, 2004.
12. During 2004, Respondent approved the preliminary plat for Woodcreek #2, and the plat was recorded on October 11, 2004.
13. Mega Investments IV, LLC commenced construction of the infrastructure for the Woodcreek #2 Subdivision on or about May 2004.
14. Construction of the infrastructure for the Woodcreek #2 Subdivision was completed on or about September 2004.
15. Construction of the Woodcreek #2 Subdivision infrastructure included utility services (gas, electric, telephone, and cable TV), municipal water, municipal sewer, public roadway, and sidewalks.
16. Prior to December 31, 2004, Mega Investments IV, LLC sold and closed on 13 lots within the Woodcreek #2 Subdivision.
17. For 2005, Respondent uncapped the taxable values of all lots within the Woodcreek #2 Subdivision, with the SEV being 50% of the true cash value and the taxable value being set equal to this SEV.
18. Respondent's assessment of the unsold lots for calendar year 2005 included increases in TCV based upon comparable sales of similar subdivision lots (which included public infrastructure improvements) within the Woodcreek #2 Subdivision and other subdivisions located within the Township.

19. Mega III Investments, LLC and Mega IV Investments, LLC appeared before the 2008 March Board of Review objecting to the SEV and taxable values of the parcels under appeal in the Hidden Pines and Woodcreek #2 Subdivisions based upon increases in value attributable to the platting of the property in contravention of MCL 211.34d(1)(c)(i) and increases in value attributable to public infrastructure improvements in contravention of the Michigan Supreme Court's decision in *Toll I,* which held MCL 211.34d(1)(b)(viii) to be unconstitutional.

CONCLUSIONS OF LAW

The parties in this appeal are not disputing the true cash values of any of the subject parcels based on any of the three traditional approaches to value. Instead, the parties are in disagreement as to whether the taxable values of the subject parcels were increased due to the platting of the parent parcels, and more importantly, whether the taxable values were increased based on the addition of public-service improvements or merely "uncapped" based on a transfer of ownership in the previous tax year. Related to these issues is whether the Tribunal has the authority to correct the taxable values for the years at issue in this appeal if it is found that the taxable values were erroneously increased in a prior year not under appeal.

With regard to the issues of the platting of the parent parcels and adding of public-service improvements and any impact on taxable value, MCL 211.34d(1)(c)(i) provides that "additions do not include increased value attributable to . . . [p]latting, splits, or combinations of property." This subsection clearly prohibits any increases in taxable value due to the platting of the parent

parcels that occurred in 2003 (Hidden Pines) and 2004 (Woodcreek #2). The issue regarding increases in taxable value due to public-service improvements has been clarified by the Supreme Court's decision in *Toll I,* which held that MCL 211.34d(1)(b)(viii) was unconstitutional:

> We agree with the analysis and the decision of the Court of Appeals, which declared MCL 211.34d(1)(b)(*viii*) unconstitutional. The Court of Appeals correctly concluded that the mere installation of public-service improvements on public property or on utility easements does not constitute a taxable "addition"--as that term was understood when the public adopted Proposal A--in this instance, involving infrastructure improvements made to land destined to become a residential subdivision. *Id* at 13,14.

Both the Court of Appeals' and Supreme Court's decisions in *Toll I* make it clear that the installation of public service improvements is not a taxable value addition.

Lastly, with respect to the Tribunal's authority to correct a previously erroneous taxable value for the current tax years under appeal, the Michigan Supreme Court has held that the Tax Tribunal has the same powers of correction as a March Board of Review and is authorized to determine a property's taxable value in accordance with MCL 211.27a, stating:

> In *Toll Northville,* we hold that the Tax Tribunal does have the authority to reduce an unconstitutional previous increase in taxable value for purposes of adjusting a taxable value that was timely challenged in a subsequent year. The Tax Tribunal Act sets forth the Tax Tribunal's jurisdiction. Once its jurisdiction is properly invoked, the Tax Tribunal possesses the same powers and duties assigned to a March board of review under the GPTA, including the duty to adjust erroneous taxable values to bring the current tax rolls into compliance with the GPTA. *Michigan Properties, LLC, supra,* at 545-546.

In summary, because MCL 211.34d(1)(c)(i) prohibits a *taxable value* addition for the platting of a parcel and installation of public-service improvements is prohibited from being a *taxable value* addition under *Toll I*, the Tribunal has the authority, under *Michigan Properties*, to adjust the taxable values, beginning with the 2008 tax year under appeal, if the taxable values in 2004 or 2005 were based on unconstitutional taxable value additions.

The issue that must be decided in the present case is whether Respondent has actually increased the taxable values of the subject parcels in 2004 and 2005 based on "additions" relating to platting or public-service improvements. If the answer to this question is yes, then the Tribunal would have the authority to correct the taxable values for the years under appeal, pursuant to *Michigan Properties.* Petitioner argues that MCL 211.34d(1)(c)(i), which relates to *taxable value additions* related to platting, and the *Toll* decisions, which relate to *taxable value additions* for public-service improvements, were "disregarded" by Respondent in setting the SEVs and taxable values of the parcels. Specifically, Petitioner has stated that "the AVs and TVs of the unsold lots contain the prohibited increase attributable to platting and the installation of public service infrastructure improvements . . . ." (Petitioner's Brief, p. 24) The Tribunal finds that there were no taxable value "additions" under MCL 211.34d(1)(c)(i) or MCL 211.34d(1)(b)(viii) during the 2004 and 2005 tax years. Rather, the taxable values of the subject parcels were determined to be equal to the state equalized value in the year following a transfer of ownership, as mandated and required by MCL 211.27a(3), which states "[u]pon a transfer of ownership of property after 1994, 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." Petitioner does not dispute that a transfer of ownership occurred and does not contend that the uncapping is improper. Petitioner's argument is that the true cash value of the subject parcels was based on the sale of other lots in the respective subdivisions, which Petitioner asserts is "obvious" to have included public-service improvements. There has been no evidence presented to the Tribunal regarding the assessment history or actual land value sales used by Respondent to set the true cash value of the subject parcels, and it is therefore not "obvious" that the true cash value included an amount attributable to public-service improvements. Even assuming that Petitioner could prove that the true cash value included the value of public-service improvements, appeals of the true cash and assessed values established in 2004 and 2005 are not properly pending before the Tribunal. Petitioner first protested to the 2008 March Board of Review and has indicated that such protest was based on an error in the taxable values. While the Supreme Court has held that the Tribunal has the authority to adjust erroneous taxable values to bring the current tax rolls into compliance with the GPTA, this decision did not relate to any adjustment to true cash or SEVs. The true cash and SEVs are set by the assessor for each tax year, based on the market value of the property as of December 31 of the immediately preceding year. The Tribunal finds that it does not have the authority under *Michigan Properties* to adjust alleged erroneous true cash and SEVs based on public-service improvements that may have been added in a prior tax year not properly under appeal before the Tribunal.

The Tribunal finds, based upon the Statement of Fact and the Conclusions of Law set forth herein, that the taxable value of the subject parcels was not increased based on erroneous "additions" but rather, was uncapped equal to the state equalized value in the year following a transfer of ownership, pursuant to MCL

211.27a(3). As such, the Tribunal finds that it does not have a duty under *Michigan Properties* to correct the taxable value of the subject properties beginning with 2008. The Tribunal further finds that Petitioner is not appealing the valuation of the subject properties for any of the tax years at issue, as the petitions filed only relate to a dispute over taxable value, and Petitioner has further indicated that no valuation disclosures are necessary or will be provided as the issue under appeal is related to the taxable values only. Having resolved all legal issues pending in this appeal, there remains nothing left that must be decided at a hearing in this matter. Accordingly, the Tribunal finds that summary disposition in favor of Respondent is appropriate, pursuant to MCR 2.116(I)(1), which states that "[i]f the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay."

JUDGMENT

IT IS ORDERED that summary disposition is GRANTED in favor of Respondent pursuant to MCR 2.116(I)(1).

IT IS FURTHER ORDERED that the properties' taxable values for the tax years at issue are AFFIRMED as set forth in the Introduction section of this Final Opinion and Judgment.

This Final Opinion and Judgment resolves the last pending claim and closes the case.

By: Steven H. Lasher

Entered: Oct 14, 2013