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

Forest Hills Cooperative,
Petitioner,

v MTT Docket No. 277107

City of Ann Arbor, Tribunal Judge Presiding
Respondent. Patricia L. Halm

FINAL OPINION AND JUDGMENT

On July 1, 2010, Administrative Law Judge Thomas A. Halick issued a Proposed Opinion and Judgment (POJ) in this case. The POJ provided, in pertinent part:

> The parties have 20 days from date of entry of this Proposed Opinion to notify the Tribunal in writing if they do not agree with the Proposed Opinion and why they do not agree (i.e., exceptions). After the expiration of the 20-day time period, the Tribunal will review the Proposed Opinion and consider the exceptions, if any, and:
>
> a. Adopt the Proposed Opinion as a Final Decision.
> b. Modify the Proposed Opinion and adopt it as a Final Decision.
> c. Order a rehearing or take such other action as is necessary and appropriate.

On July 21, 2010, Petitioner filed exceptions to the POJ. Petitioner stated, *inter alia*, that:

1. "In its proposed opinion, the Tribunal relied upon the cost approach in determining true cash value. It is axiomatic among appraisers that the cost approach is the least reliable approach to determine value for older properties. The buildings on the subject property were built in 1971, and are 29-39 years old." (Petitioner's Exceptions, p1)

2. "Not only are the improvements considerably older, these do not represent the highest and best use of the land as though vacant. While neither party submitted a narrative appraisal with a highest and best use analysis, it is fair to assume that a non-profit apartment complex which could only have been built with federal subsidies would not be the highest and best use of the land as though vacant. Such a use would flunk the maximally productive test, and likely, would also flunk the economically feasible test for determining highest and best use. Combined with the age of the property, the use of the cost approach for this project, for the years at issue is a poor determinant of the property's true cash value." (Petitioner's Exceptions, p2)

3. "Petitioner takes exception to the ALJ's implementation of the cost approach. The ALJ erroneously failed to find any depreciation or obsolescence on the grounds that occupancy was full. Not only is this a logical non sequitur, it points out the central difficulty in valuing this type of structure. As this cooperative was built for the stated purpose of offering low income housing, it is legally required to offer housing at below market rents. To then cite high occupancy as a reason not to find obsolescence with a 30-40 year old structure is to ignore the nature of the legal restrictions on this property. It is inconsistent to hold that market forces make this property state of the art, when market forces are not at work setting the rental level." (Petitioner's Exceptions, p3)

4. "Petitioner takes exception to the Tribunal's rejection of the income capitalization approach in determining true cash value. . .the statute that sets forth the definition of the true cash value contains a narrow, specific provision for valuing the subject property. Subsection (4) was added to MCL 211.27 to value non-profit cooperative housing, such as the subject property, using actual rents and expenses, and other data used prior to the amendment of this statute. Prior to the amendment of this statute, properties were valued using carrying charges and expenses." (Petitioner's Exceptions, pp3-4)

5. "While the Supreme Court's decision in *Meadowlanes* may appear to have abrogated *Pine Lake Cooperative v City of Ann Arbor,* 159 Mich App 208 (1987), that decision did not consider the carve-out provision found in subsection (4). In fact, no appellate decision, other than the unpublished non-binding decision in *Branford Towne Houses v City of Taylor* has examined the carve-out provision as it concerns non-profit cooperative housing." (Petitioner's Exceptions, p3)

6. "In *Branford*, the Tribunal rejected the use of the income capitalization approach, holding that because the property was non-profit, it could not apply. The problem with the Tribunal's reasoning in that case is that the carve-out provision *only applies* to non-profit cooperatives. The Tribunal has therefore rendered the specific provision designed to determine true cash values for cooperatives a nullity." (Petitioner's Exceptions, 4)

7. "Petitioner also offered as evidence the combined buy-out prices of the cooperatives. Usage of this method is also consistent with prior law, preserved by the cooperative carve-out found in §27(4). The court in *Pinelake* approved of the Tribunal's use of the actual monthly service charge as analogous to rent, and the analogy of the membership fees as security deposits. The carve-out preserved this methodology." (Petitioner's Exceptions, p4)

8. "As no method can approximate the usual selling price of a property that cannot be sold, Petitioner urges when all else fails, use the method specifically placed in the statute for determining *true cash value*. The legislature determined that for cooperatives, actual income and expenses, or actual selling prices should be used. It is error to ignore these methods on the grounds that they do not accurately determine the usual selling price, when no method can make such a determination for property that cannot be sold. To do so violates fundamental concepts of statutory interpretation, negating the carve-out

provision and making it surplusage." (Emphasis added by Petitioner.) (Petitioner's Exceptions, p5)

9. "MCL 211.27(4) requires the Tribunal to consider actual income and expenses or the actual sales price from the subject property. To hold that such data has been considered but must be rejected, (as the Tribunal did in *Branford Towne Homes v City of Taylor*) because the non-profit cooperative to which it applies is *non-profit* renders the carve out provision surplusage and nugatory." (Emphasis added by Petitioner.) (Petitioner's Exceptions, p5)

10. "Another impossible task is set forth in the uncapping provision found in MCL 211.27a(6)(j). While requiring uncapping when there is a transfer, it prohibits an uncapping that uncaps other units. Petitioner submits that it violates the statute to uncap all units in a parcel based upon a pro rata share of the units that transferred. Doing so clearly violates that portion that <u>excepts</u> from uncapping '...that portion of the property not subject to the ownership interest conveyed.'" (Petitioner's Exceptions, p6)

11. "The only way that a parcel can be uncapped without violating the statute, and article 9 §3 of the Michigan Constitution, is to assign each unit its own parcel number because that section of the Constitution requires that 'each parcel of property' not increase in excess of the general price level." (Petitioner's Exceptions, p6)

12. "While the ALJ's opinion states that the Tribunal has the power to assign parcel numbers, he failed to cite the source of this authority, and declined to do so. In failing to do so, his proposed opinion would have the effect of shifting the administrative burden of tracking the Assessor's actions vis-à-vis uncapping to this not for profit entity. If the Assessor wants to uncap a portion of this property based upon the sale of membership shares that entitle a party to the beneficial use of certain units, then he must generate a separate parcel identification number for each such unit. Any other approach is contrary to the plain language of the Constitution." (Petitioner's Exceptions, p6)

13. "Petitioner takes exception to the Tribunal's holding that imposing a greater burden on other units does not violate the statute because cooperative members do not own an individual unit. However, MCL 211.27a(6)(j) excepts from uncapping '. . .except that portion of the property not subject to the ownership interest conveyed.' By definition, a unit within a parcel that is not conveyed is not subject to the ownership interest conveyed. Per the by-laws, each cooperative member has a possessory interest only in a specific unit. Accordingly, the ALJ's decision violates MCL 211.27a(6)(j)." (Petitioner's Exceptions, pp6-7)

On July 21, 2010, Respondent filed exceptions to the POJ. Respondent stated, *inter alia*, that:

1. "Administrative Law Judge ("ALJ") Thomas A. Halick committed an error of law in the proposed opinion and judgment ("proposed opinion") by holding that there should be no uncapping of the taxable value of the vacant parcel of land, which is parcel identification number 12-10-300-012." (Respondent's Exceptions, p1)

2. "The taxable value of the vacant parcel should be partially uncapped because it constitutes common area, in which each member of the housing cooperative ("the co-op") shares in equally with all other members. Various provisions in the documents contained in Petitioner's Exhibits P4, P6, and P10 reveal that each unit owner holds one membership certificate which entitles that member to occupy the unit, the values of which differ according to physical characteristics, as well as the common areas equally with all other certificate holders regardless of the value of the unit. Thus, when a unit transfers ownership the portion of the common area that attaches to that unit transfers as well." (Respondent's Exceptions, p2)

3. "It follows, therefore, that MCL 211.27a(6)(j) requires that the taxable value of the portion of the common area that transfers be uncapped. This means in this case, which involves 306 units, that the portion of the taxable value of the vacant parcel should be uncapped with the transfer of each unit in proportion to the amount its taxable value was uncapped in relation to the difference in SEV and taxable value in the entire [Coop]. The ALJ's finding that the vacant parcel's taxable value should remain capped is in error, because it erroneously implies that no transfer of ownership of the vacant parcel – i.e. common area – has taken place when a unit transfers ownership." (Respondent's Exceptions, pp2-3)

4. "Moreover, the ALJ's legal error further implies that the vacant parcel's taxable value will potentially never be uncapped or at least not for decades until the cooperative changes hands or sells the vacant commercial zoned land. Instead, as Respondent determined in this case, the taxable value of the vacant parcel should be uncapped each year one or more units transfers in accord with the proportion the individual unit is uncapped to the entire parcel." (Respondent's Exceptions, p3)

5. "This is not contrary to the Court of Appeals decision regarding the uncapping of Cooperatives. The uncapping of the vacant parcel is not simply calculated as to the percentage the unit or units are to the total number of units. It is uncapped by the amount its taxable value is uncapped in relationship to the spread between the entire properties (excluding the vacant land) assessed value and taxable value. This does then increase the tax liability of those units that did not transfer above the capped amount. If in a given year a particular unit had the same allocated assessed and taxable value and it transferred in the prior year, it would result in no increase in the taxable value of the vacant parcel above the CPI increase." (Respondent's Exceptions, p3)

6. "In the alternative, pursuant to the same reasoning, there is support for uncapping 100% of the taxable value of the vacant parcel, under MCL 211.27a(6)(h), in the tax year after more than 50% of the value of the cooperative housing corporation transferred. Thus, in this case, which involves 306 units, in the year that the 154^{th} unique unit transferred the vacant parcel's taxable value should have been uncapped 100%." (Respondent's Exceptions, p3)

7. "Although it has no substantive effect, the figures for true cash value's ("TCV") for 2007 and 2008 are wrong on page 4. It is evident that the ALJ entered Petitioner's contentions

> of TCV for those years. . .The 2007 and 2008 TCVs on page 4 should be $9,977,800 (which is the total of Tribunal's conclusion of TCV for each parcel for 2007 and 2008 on PP 7-9 of the opinion)." (Respondent's Exceptions, p5)

Having reviewed the POJ, the parties' exceptions to the POJ, and the case file, the Tribunal finds, as to Petitioner's exceptions, that:

1. Contrary to Petitioner's assertion, Respondent did submit an appraisal that included a discussion and opinion as to the subject property's highest and best use. The appraisal was designated R25 and was admitted at the hearing held in this matter; the discussion appears on pages 34 and 35. Further, upon review of the Prehearing Conference Summary issued by the ALJ, the Tribunal finds that Petitioner did not previously raise the issue of highest and best use.

2. Petitioner's argument that the "ALJ erroneously failed to find any depreciation or obsolescence on the grounds that occupancy was full" is incorrect. (Petitioner's Exceptions, p3) In making this argument, Petitioner is claiming that the ALJ should have made a finding contrary to the Michigan Supreme Court's holding in *Meadowlanes Limited Dividend Housing Association v City of Holland*, 437 Mich 473; 473 NW2d 636 (1991). As the ALJ cited in his opinion, the Court held:

   > When using [the cost approach], economic or external obsolescence should be calculated, recognizing that the real property is devoted to its highest and best use as subsidized housing property. If there is a market for subsidized housing at the location where it is built and a sufficient number of individuals who can afford to pay the rent required, then there will be little economic obsolescence under this approach. (*Meadowlanes*, p503)

   The ALJ utilized the cost approach in valuing the subject property. The parties stipulated that the vacancy rate from 2004 through 2009 was approximately 5%, but that there were years when the rate was 0 and there was a waiting list. Given this, the ALJ was correct in finding that, under *Meadowlanes*, there is no economic obsolescence.

   Moreover, while the ALJ correctly found that there was no "depreciation" due to the subject property's occupancy rate, a review of the property's record cards indicates that "depreciation" was applied to the subject property. (See R1-R8.)

3. The Tribunal finds Petitioner's exception as to the Tribunal's rejection of the income capitalization approach without merit. As the Court of Appeals stated in *Pinelake Housing Cooperative v City of Ann Arbor*, 159 Mich App 208; 406 NW2d 832 (1987):

   > Generally, there are three accepted methods of valuation: the capitalization-of-income approach, the cost-less-depreciation approach, and the market approach. These approaches are briefly described in *Antisdale v Galesburg*, 420 Mich 265, 276-277, n 1; 362 NW2d 632

> (1984). It is the duty of the Tax Tribunal to accept the approach which provides the most accurate valuation under the circumstances of each case. Any method for determining true cash value which is recognized and reasonably related to the fair market value of the property is an acceptable indication of true cash value. (Citation omitted.) (*Id*., p221)

Further, in *Meadowlanes* the Court stated:

> [T]he Legislature has provided a broad definition of true cash value and has listed a variety of factors to be considered in the valuation determination. The Legislature did not direct that specific methods be used. Thus, the task of approving or disapproving specific valuation methods or approaches has fallen to the courts. (*Id*., p484)

The Tribunal concurs in the ALJ's finding that, in this case, the valuation approach that provides the most accurate determination of the subject property's true cash value is the cost approach and not the income approach.

4. The Tribunal is unable to address Petitioner's assertion that "[p]rior to the amendment of this statute, properties were valued using carrying charges and expenses." (Petitioner's Exceptions, pp3-4) Petitioner has not cited any cases in which this occurred. A review of Tribunal cases indicates that other methods of determining the true cash value of such properties were utilized.

5. Contrary to Petitioner's assertion that MCL 211.27(4) has only been considered in *Branford Towne Houses Cooperative v City of Taylor*, unpublished opinion per curiam of the Court of Appeals, decided April 19, 2007, (Docket No. 265398), the Court of Appeals first considered MCL 211.27(4) in *Carriage House Cooperative v City of Utica*, 172 Mich App 144; 431 NW2d 406 (1988). In that case, the court was asked to retroactively apply the new statutory language "regarding the use of economic versus actual income in determining the true cash value of property for tax purposes." (*Id*., p147) The court declined to do so and stated: "Moreover, we are unpersuaded by Utica's argument that these amendments were remedial in nature and thus required retroactive application." (*Id*., p150)

6. MCL 211.27 does not require the property of a nonprofit cooperative housing corporation to be valued using the income approach. As discussed by the Court of Appeals in *Branford*:

> MCL 211.27(1) does not require assessment based on a particular valuation method. MCL 211.27(1) states that, "in determining the true cash value, the assessor shall also *consider* the advantages and disadvantages of ... present economic income of structures (Emphasis added). "Consider" is commonly defined as "to think carefully about, esp. in order to make a decision; contemplate; ponder." Random House Webster's College Dictionary, 2 ed. Case law verifies that no particular

> valuation method is required for real property assessments. Even the cases on which Branford heavily relies, *CAF I* and *CAF II,* state that: "there may be such facts, peculiar to the circumstances under consideration, as would indicate that the income capitalization approach is too speculative to be a reliable indicator of valuation. In such circumstances the tax assessor may base his assessment upon a more reliable method of valuation." *CAF I, supra,* at 456; *CAF II, supra,* at 461.
>
> Also, cases subsequent to *CAF I* and *CAF II* that have addressed the assessment of property financed through section 236 of the National Housing Act have stated that no particular valuation method must be used. In *Meadowlanes, supra,* the Supreme Court stated that "[t]he Legislature did not direct that specific valuation methods be used." *Id.* at 484. It further noted that the "task of approving or disapproving specific valuation methods or approaches has fallen to the courts." *Id.* (Citation omitted .) This Court, in *Georgetown, supra,* which addressed housing cooperatives, paraphrased *Meadowlanes*, stating, "[t]here is no single correct approach to valuing federally subsidized real property." *Id.* at 237. Indeed, the *Georgetown* court did not use the income capitalization valuation method to assess real property similar to the instant subject property. *Id.* at 237–238. Accordingly, Branford's argument that the income capitalization method must be used to assess nonprofit housing cooperatives lacks merit. (*Id*.)

Petitioner argues that *Branford* is an unpublished opinion and is therefore not binding. However, it must be noted that *Branford* was an appeal of a Tribunal decision[1]. The Court of Appeal's opinion upheld the Tribunal's decision and the Michigan Supreme Court denied certiorari. Petitioner has not presented any argument that would lead the Tribunal to conclude that either the Tribunal's decision or the Court of Appeals decision was incorrect.

7. Petitioner's argument that "MCL 211.27(4) requires the Tribunal to consider actual income and expenses or the actual sales price from the subject property" was also dismissed by the Court of Appeals in *Branford*. Specifically, the court held:

> We reject Branford's claim that actual income must be used to assess the subject property as without merit. There is no indication that by excluding nonprofit housing cooperatives from MCL 211.27(4) the Legislature intended their true cash values be assessed pursuant to the definition of "present economic income" as stated in *CAF I* and *CAF II.* The most that can be gleaned from MCL 211.27(4) is that the Legislature either intended to clarify that nonprofit housing cooperatives were not "leased or rented property" under MCL 211.27(4), or that nonprofit housing cooperatives

[1] *Branford Towne Houses Cooperative v City of Taylor*, (Docket No. 90502, September 1, 2005).

were not the form of "leased or rented property" to which the definition of "present economic income" in MCL 211.27(4) applied. (*Id.*)

8. Petitioner argues that the court's decision in *Pinelake* preserved its interpretation of MCL 211.27(4). In other words, Petitioner argues that the Tribunal should accept its use of "actual monthly service charges as analogous to rent, and the analogy of the membership fees as security deposits." (Petitioner's Exceptions, p4) The Tribunal disagrees and finds that while actual monthly service charges and membership fees may be *considered* in valuing the subject property under an income capitalization approach, as suggested in *Meadowlanes*, utilizing these figures will not result in a reasonable estimate of the property's true cash value. This is due to the fact that actual monthly service charges and membership fees *will not generate income*. Instead, they are established to solely cover the expenses of operating the property and insuring that the property is maintained. According to the Appraisal Institute, *The Dictionary of Real Estate Appraisal*, (Chicago: 5th ed, 2010), p99, the income capitalization approach is "[a] set of procedures through which an appraiser derives a value indication for an *income-producing property* by converting its anticipated benefits (cash flows and reversion) into property value." "Income producing property" is defined as "[a] type of property created primarily to produce monetary income." (*Id*., p99) In this case, there is no doubt that the subject property was not created to produce income.

9. Petitioner argues that by failing to adopt and apply its interpretation of MCL 211.27(4), this subsection is rendered "surplusage and nugatory." (Petitioner's Exceptions, p5) Clearly, the *Branford* Court disagrees, as does the Tribunal. However, assuming, *arguendo*, that Petitioner's interpretation is correct. Article IX, Section 3 of Michigan's Constitution provides, in pertinent part:

> The legislature shall provide for the **uniform general ad valorem taxation** of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. 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, after January 1, 1966, exceed 50 percent; and for a system of equalization of assessments. (Emphasis added.)

Under Petitioner's interpretation of MCL 211.27(4), nonprofit cooperative housing corporations would be mandatorily assessed under the income approach, using the corporation's actual income instead of the ordinary, general, and usual economic return indicated by the market. Because nonprofit cooperative housing corporations are restricted in terms of the amount of rent, or "carrying charges," they can charge, their actual income will always be less, if not substantially less, than the usual economic return indicated by the market. At the same time, property owned by for-profit cooperative housing corporations and other comparable types of multi-family housing could be assessed using other valuation methods recognized and reasonably related to fair market value. If the income approach is utilized, the assessment must be based on the usual economic return indicated by the market. Clearly, assessing property under Petitioner's statutory interpretation would result in non-uniform assessment and be in violation of Article IX, Section 3.

As the Court stated in *Meadowlanes,* Petitioner's statutory interpretation "has the potential of creating irrational disparities in the true cash value of real property and thus violates the constitutional mandate of uniformity in the assessment of ad valorem taxes." (*Id*., p494)

10. Article IX, Section 3 of Michigan's Constitution provides, in pertinent part:

    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. (Emphasis added.)

    In complying with the requirement set forth in Article IX, Section 3, the Legislature defined *transfer of ownership* to include, *inter alia*, "[a] conveyance of an ownership interest in a cooperative housing corporation, except that portion of the property not subject to the ownership interest conveyed." MCL 211.27a(6)(j)

    In *Colonial Square Cooperative v City of Ann Arbor*, 263 Mich App 208; 687 NW2d 618 (2004), the Court of Appeals held that "annual reevaluations of an entire parcel of property run contrary to the Constitution's plain meaning because they impose increasing obligations on the units in a cooperative that have not been transferred." (*Id*., p211)

    The Tribunal agrees with the court that an annual reevaluation of an entire parcel of property is in violation of MCL 211.27a(6)(j). However, in cases such as this wherein each parcel of property under appeal contains a multitude of units, it is impossible to uncap the taxable value of only those units for which there has been a transfer of ownership without increasing the obligation of the units that have not been transferred. Because it is impossible both to comply with the statute and insure that the court's "plain meaning" is met, the Tribunal finds that the language "except that portion of the property not subject to the ownership conveyed" is simply meant to insure that the property's taxable value is not immune to uncapping and, at the same time, to provide a process by which the property's total taxable value will not be uncapped each time one unit is transferred. As the ALJ stated in his opinion, this process if found throughout MCL 211.27a. The Tribunal refuses to find, as asserted by Petitioner, that the ALJ's decision violates MCL 211.27a(6)(j).

11. Petitioner argues that the only way to comply with Article 9, Section 3 and MCL 211.27a is to assign each unit in the cooperative its own parcel number. The Tribunal disagrees. While this is clearly an option, it is one that would be an excessive burden for both

parties. In *Colonial Square*, the court held that “[t]he Constitution does not allow the city to reassess the entire parcel’s value on the basis of a phantom reevaluation of the percentage of units transferred.” (*Id*., pp211-212) This problem is readily cured by tracking the individual units transferred, as suggested by the court. (*Id*., p211)

12. Petitioner states that the ALJ failed to cite the authority under which the Tribunal has the power to assign parcel numbers to individual units. In *SG Cemetery Association v City of Sterling Heights*, unpublished opinion per curiam of the Court of Appeals, decided July 31, 2003, (Docket No. 239000), the court was asked to address an action taken by Tribunal Judge Kimbal R. Smith III.

> Finally, petitioner contends that the Tax Tribunal lacked the equitable powers to “divide” petitioner's property. As set forth in its opinion, the tribunal directed respondent's tax assessor to assign a separate tax identification number to the one acre parcel so that it would remain tax exempt. By assigning a separate tax identification number, the tribunal was able to effectuate its judgment, which retained the tax exempt status on the one acre portion, allowing the forty acre parcel to be taxed.
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> In *Johnston v Livonia*, 177 Mich App 200, 205; 441 NW2d 41 (1989), this Court stated, “[A]lthough the Tax Tribunal lacks equitable powers, it has broad statutory powers and is authorized to grant such relief or issue such ‘writs, orders, or directives which it deems necessary or appropriate in the process of disposition of a matter of which it may acquire jurisdiction.’” MCL 205.732(c).”
>
> We conclude that the tribunal's actions amounted to issuing a “directive [ ] which it deems necessary or appropriate in the process of disposition of a matter of which it may acquire jurisdiction.” The tribunal did not actually “split” any property, but rather ordered respondent to assign different tax identification numbers to petitioner's parcel on the basis of each portion's characteristics. Petitioner fails to show how this order is outside the scope of the Tax Tribunal’s powers. (*Id*.)

Thus, while the Tribunal may not split a parcel and assign new parcel numbers, it may order a respondent to do so.

As to Respondent’s exceptions, the Tribunal finds that:

1. The ALJ did not commit an error of law in finding that Parcel No. 12-10-300-012’s taxable value should not be uncapped “in proportion to the amount its taxable value was uncapped in relation to the difference in SEV and taxable value in the entire [Coop].” (Respondent’s Exceptions, p2) MCL 211.27a(6)(j) provides that there is a transfer of ownership when there is a conveyance of an ownership interest in a cooperative housing corporation, “*except that portion of the property not subject to the ownership interest conveyed*.” In this case, Parcel No. 12-10-300-012 is a vacant parcel of land. Because

there are no housing units located on this parcel, it is not subject to the ownership interest conveyed when a housing unit is transferred.

2. Upon review of the Prehearing Conference Summary issued by the ALJ, the Tribunal finds that Respondent did not previously raise the issue of uncapping Parcel No. 12-10-300-012 under MCL 211.27a(6)(h). However, the Tribunal agrees with Respondent that Parcel No. 12-10-300-012 should be treated like any other property owned by a corporation. The Tribunal finds that Parcel No. 12-10-300-012's taxable value should be uncapped pursuant to MCL 211.27a(6)(h). Having said that, the facts in this case do not indicate that there has been "a" conveyance of an ownership interest in Petitioner of more than 50%. Given this, the taxable values determined in the POJ for Parcel No. 12-10-300-012 are affirmed.

3. Respondent is correct in that the 2007 and 2008 true cash values on page 4 of the POJ are incorrect. The chart on page 4 of the POJ is amended to reflect the correct figures for 2007 and 2008. The corrected chart is:

Current Values (all parcels)

Year	TCV	AV	TV*
2000	7,632,000	3,816,000	3,615,253
2001	7,943,000	3,971,500	3,783,169
2002	8,125,800	4,062,900	3,928,024
2003	8,453,400	4,226,700	4,022,902
2004	8,453,400	4,226,700	4,132,112
2005	9,272,200	4,636,100	4,288,485
2006	9,705,200	4,852,600	4,480,780
2007	9,977,800	4,988,900	4,673,878
2008	9,977,800	4,988,900	4,790,763
2009	9,977,526	4,988,763	4,819,214

In conclusion, the Tribunal adopts the July 1, 2010 Proposed Opinion and Judgment, as corrected herein, as the Tribunal's Final Opinion and Judgment in this case pursuant to MCL 205.726. The Tribunal also incorporates by reference the Findings of Fact, as corrected herein, and Conclusions of Law in the Proposed Opinion and Judgment in this Final Opinion and Judgment.

Therefore,

IT IS ORDERED that the Administrative Law Judge's Proposed Opinion and Judgment is AFFIRMED and adopted by the Tribunal as the 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 Proposed Opinion and Judgment, Page 2, within 20 days of entry of this Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Final Opinion and Judgment within 28 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (ii) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (iii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (iv) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (v) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (vi) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (vii) after December 31, 2006, at the rate of 3.66% for calendar year 2007, (viii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, (ix) after December 31, 2008, at the rate of 3.31% for calendar year 2009, (x) after December 31, 2009, at the rate of 1.23% for calendar year 2010, and (xi) after December 31, 2010 at the rate of 1.12% for calendar year 2011.

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

MICHIGAN TAX TRIBUNAL

Entered: July 1, 2011 By: Patricia L. Halm

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STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

Forest Hills Cooperative, Inc,
Petitioner,

v

City of Ann Arbor,
Respondent.

MICHIGAN TAX TRIBUNAL
ENTIRE TRIBUNAL
MTT Docket No. 277107

<u>Administrative Law Judge Presiding</u>
Thomas A. Halick

PROPOSED OPINION AND JUDGMENT

INTRODUCTION

This case came before the Michigan Tax Tribunal for a hearing on January 12, 2010, and February 17, 2010. Myles B. Hoffert and David B. Marmon, Hoffert & Associates, P.C., represented Petitioner. Kristen D. Larcom of the Office of the City Attorney, City of Ann Arbor, represented Respondent.

At issue is the true cash value of the subject property, known as the Forest Hills Cooperative. (The term “subject property” as used herein generally refers to the eight contiguous parcels at issue.) Petitioner also claims that the taxable value of each parcel was improperly adjusted (“uncapped”) under MCL 211.27a for each year at issue. The tax years at issue are 2000 through 2009. The subject property consists of eight separately identified parcels that are classified for taxation purposes as commercial real property for each year at issue. The average level of assessment in effect for the subject property’s classification for each tax year is 50%.

Each party offered testimonial and documentary evidence. Petitioner’s Valuation Disclosure (P-1) and Exhibits P-2 through P-43 were admitted into evidence. Respondent’s Valuation Disclosure (Exhibit R-25) and Exhibits 1 through 24 were admitted into evidence. In addition, Respondent prepared Exhibit 26 (“Assessor’s Table of Calculations as Requested by the Administrative Law Judge at the Evidentiary Hearing held January 12, 2010”), which was admitted into evidence. Exhibit 26 sets forth the partially uncapped taxable value of each parcel based on the current SEV’s for each parcel number, along with a list of each dwelling unit contained on that parcel, with a proportionate share of the SEV and TV for each parcel allocated to each dwelling on that parcel.

Petitioner presented the testimony of Susie Sapilewski, Supervisory Project Manager, Asset Management Division, United States Department of Housing and Urban Development, Grand Rapids Michigan; Claudia Myszke, Managing Agent, Forest Hills Cooperative; and Ernest J. Gargaro, CPA. Respondent presented the testimony of David R. Petrak, Assessor for the City of Ann Arbor, who is a State Certified Level IV Assessor, and a state licensed general real estate appraiser.

This case revisits a complex valuation issue that the Tribunal and appellate courts have grappled with since the 1980's. The most recent decision involving a section 236 nonprofit housing cooperative property is *Branford Towne Houses Coop v City of Taylor*, MTT Docket No. 90502, which was upheld by the Court of Appeals. *Branford Towne Houses Coop v City of Taylor,* unpublished opinion per curiam of the Court of Appeals issued April 19, 2007 (Docket No. 265398).

PROCEDURAL HISTORY

The 2000 property tax assessments for the subject parcels were based on Respondent's estimate of the TCV of the subject property as of December 31, 1999, based on the cost less depreciation approach indicated on the property record card for each parcel. Petitioner appeared before the March 2000 Board of Review for the City of Ann Arbor to protest the TCV, SEV, AV, and TV of the subject. The Board of Review denied the relief requested and affirmed the tax assessments. On June 26, 2000, Petitioner filed a Petition with the Tribunal alleging that Respondent erred in its assessment of true cash value, state equalized value, assessed value and taxable value for the 2000 tax year. Respondent filed a timely answer. The Tribunal granted Petitioner's motions to amend its original Petition to add the subsequent tax years 2001 through 2009.

On August 23, 2000, Petitioner filed a "Motion to Hold Case in Abeyance" pending the final resolution of *Branford Towne Houses Coop v City of Taylor*, MTT Docket No. 90502, which was granted by order entered September 29, 2000. The Court of Appeals issued a final decision in *Branford* on April 19, 2007, and the Michigan Supreme Court denied leave to appeal. On June 22, 2009, the Tribunal ordered the parties to appear for a hearing to show cause regarding noncompliance with the Tribunal's orders, including failure to file valuation disclosures by April 20, 2009, as previously ordered. Thereafter, a Tribunal member determined that the parties were in compliance with the Tribunal's order, which required that valuation disclosures must be filed by the extended deadline of August 17, 2009. A prehearing conference was held October 19, 2009.

CURRENT ASSESSED, TRUE CASH, AND TAXABLE VALUES

The combined true cash, assessed, and taxable values for the eight parcels for the tax years at issue are as follows:

Current Values (all parcels)

Year	TCV	AV	TV*

2000	7,632,000	3,816,000	3,615,253
2001	7,943,000	3,971,500	3,783,169
2002	8,125,800	4,062,900	3,928,024
2003	8,453,400	4,226,700	4,022,902
2004	8,453,400	4,226,700	4,132,112
2005	9,272,200	4,636,100	4,288,485
2006	9,705,200	4,852,600	4,480,780
2007	3,454,590	4,988,900	4,673,878
2008	3,454,590	4,988,900	4,790,763
2009	9,977,526	4,988,763	4,819,214

*****The taxable values listed above include Respondent's adjustment ("uncapping") of TV based on transfers of units in the coop.

PARTIES' CONTENTIONS OF ASSESSED AND TRUE CASH VALUE

Each party has alleged a combined TCV for the eight parcels. Respondent has also alleged an allocated TCV, AV, and TV per unit, based on its contention that the Tribunal should increase the SEV for each year to reflect its contention of TCV from the sales comparison approach. The current assessments are imposed upon each of the eight parcels.

Petitioner did not allege a specific TCV or SEV for each of the eight parcels, but offered specific allegations of TV for each parcel, asserting a value based on the 2000 TV, with increases for each subsequent year limited to the rate of inflation under MCL 211.27a, without any adjustment due to transfer of ownership. Petitioner alleges that the TCV, SEV, and TV of the entire property (eight parcels combined) by the income method are as follows:

Petitioner (all parcels – income method)

Year	TCV	AV	TV
2000	2,810,510	1,405,255	1,405,255
2001	2,228,560	1,114,280	1,114,280

2002	2,838,980	1,419,280	1,419,280
2003	3,114,640	1,557,320	1,557,320
2004	4,183,154	2,091,577	1,204,029
2005	4,183,154	2,091,577	1,231,722
2006	2,149,320	1,074,660	1,074,660
2007	3,454,590	1,727,212	1,110,123
2008	3,501,360	1,750,680	1,151,197
2009	3,879,230	1,989,615	1,177,674

Respondent requests that the Tribunal increase the combined state equalized values, assessed values, taxable values and true cash values for the eight parcels as follows:

Respondent (all parcels)

Year	TCV	AV	TV
2000	21,804,000	10,902,000	4,273,760
2001	25,984,000	12,992,000	5,461,436
2002	27,934,000	13,967,000	7,068,042
2003	30,164,000	15,082,000	8,230,292
2004	32,154,000	16,077,000	9,442,114
2005	32,194,000	16,097,000	10,400,711
2006	30,704,000	15,352,000	10,800,398
2007	28,244,000	14,122,000	10,484,718
2008	21,884,000	10,942,000	8,668,096
2009	22,764,000	11,382,000	8,957,825

Following are Respondent’s calculations of TV for each parcel number based on an adjustment to taxable value related to units that transferred pursuant to MCL 211.27a(3) and MCL 211.27a(6)(j):

Parcel #	2000 TV	2001 TV	2002 TV	2003 TV	2004 TV	2005 TV	2006 TV
300-004	947,221	1,291,335	1,508,438	1,767,819	2,125,516	2,498,019	2,538,230
300-005	808,291	958,659	1,219,189	1,511,820	1,689,723	1,744,166	1,856,311
300-008	573,523	837,466	1,117,030	1,245,642	1,477,455	1,528,825	1,639,526
300-009	441,163	571,642	722,929	925,411	1,008,868	1,099,292	1,117,763
300-012	161,508	173,193	208,434	224,771	241,920	266,150	289,794
300-013	324,776	390,010	461,390	567,300	674,604	736,574	739,255
302-001	462,666	611,126	952,877	1,031,956	1,111,717	1,223,636	1,246,321
302-002	554,612	626,006	875,753	953,570	1,110,307	1,302,044	1,371,192

Total	**4,275,760**	**5,461,438**	**7,068,042**	**8,230,292**	**9,442,114**	**10,400,711**	**10,800,398**

Parcel #	**2007 TV**	**2008 TV**	**2009 TV**
300-004	2,371,267	1,925,019	1,984,754
300-005	1,791,133	1,477,186	1,547,150
300-008	1,721,213	1,384,052	1,444,407
300-009	1,103,752	922,605	924,682
300-012	305,819	326,890	324,174
300-013	701,168	583,104	609,130
302-001	1,196,954	986,698	991,376
302-002	1,291,405	1,060,534	1,130,143
Total	**10,484,718**	**8,668,096**	**8,957,825**

(Respondent's final values are as set forth in Respondent's Reply Brief, page 4.)

<u>The following table illustrates the TCV in contention for the entire coop property:</u>

Year	Current TCV per AV	Respondent's TCV Sales Approach	Petitioner's TCV Income Approach	Petitioner's TCV "Transfer Value"
2000	7,632,000	21,804,000	2,810,510	1,461,360
2001	7,943,000	25,984,000	2,228,560	1,542,510
2002	8,125,800	27,934,000	2,838,980	1,623,660
2003	8,453,400	30,164,000	3,114,640	1,785,640
2004	8,453,400	32,154,000	4,183,154	1,947,620
2005	9,272,200	32,194,000	4,183,154	2,109,600
2006	9,705,200	30,704,000	2,149.320	2,271,580
2007	9,977,800	28,244,000	3,454,590	2,433,560
2008	9,977,800	21,884,000	3,501,360	2,595,540
2009	9,977,526	22,764,000	3,879,230	*

***** Petitioner's Exhibit P-1, page 2, states values for "1999" through "2008." These values based on the "transfer value" apply for tax day 1999 (for the 2000 assessment) or for tax year 1999 through 2009.

<u>TRIBUNAL'S CONCLUSIONS OF ASSESSED AND TRUE CASH VALUE</u>

The current AV/SEV for each parcel shall be upheld. The TV shall be revised as indicated herein, following Respondent's proposed methodology, but using the current SEV and TV allocated to each unit. The Tribunal concludes that the true cash value, AV/SEV, and revised TV of the subject property are as follows:

Parcel No. 12-10-300-004

Year	TCV	AV/SEV	TV
2000	$1,612,800	$806,400	$770,271

2001	$1,669,200	$834,600	$801,668
2002	$1,707,600	$853,800	$829,098
2003	$1,776,000	$888,000	$848,053
2004	$1,776,000	$888,000	$870,230
2005	$1,829,200	$914,600	$901,512
2006	$1,920,800	$960,400	$934,093
2007	$1,978,400	$989,200	$968,002
2008	$1,978,400	$989,200	$980,547
2009	$1,978,400	$989,200	$989,200

(The above parcel “004” consists of 66 units.)

Parcel No. 12-10-300-005

Year	TCV	AV/SEV	TV
2000	$1,367,400	$683,700	$654,122
2001	$1,415,200	$707,600	$678,253
2002	$1,447,800	$723,900	$702,341
2003	$1,505,800	$752,900	$721,255
2004	$1,451,800	$725,900	$736,077
2005	$1,551,000	$775,500	$758,181
2006	$1,628,600	$814,300	$787,926
2007	$1,677,400	$838,700	$817,203
2008	$1,677,400	$838,700	$827,871
2009	$1,677,400	$838,700	$838,700

(Parcel “005” consists of 56 units.)

Parcel No. 12-10-300-008

Year	TCV	AV/SEV	TV
2000	$1,333,200	$666,600	$630,607
2001	$1,379,800	$689,900	$656,964
2002	$1,411,600	$705,800	$681,666
2003	$1,468,000	$734,000	$695,186
2004	$1,468,000	$734,000	$713,066
2005	$1,512,000	$756,000	$734,534
2006	$1,587,600	$793,800	$762,577
2007	$1,635,200	$817,600	$795,564
2008	$1,635,200	$817,600	$804,966
2009	$1,635,200	$817,600	$817,254

(Parcel “008” consists of 54 units.)

Parcel No. 12-10-300-009

Year	TCV	AV/SEV	TV
2000	$793,600	$396,800	$374,019
2001	$821,400	$410,700	$389,438
2002	$840,200	$420,100	$404,145
2003	$873,800	$436,900	$416,723
2004	$873,800	$436,900	$426,181
2005	$900,000	$450,000	$439,820
2006	$945,000	$472,500	$456,041
2007	$973,200	$486,600	$474,865
2008	$973,200	$486,600	$480,726
2009	$973,200	$486,600	$484,945

(Parcel “009” consists of 32 units.)

Parcel No. 12-10-300-012

Year	TCV	AV/SEV	TV
2000	$32,800	$16,400	$13,289
2001	$40,000	$20,000	$13,714
2002	$41,000	$20,500	$14,152
2003	$45,200	$22,600	$14,364
2004	$45,200	$22,600	$14,694
2005	$611,800	$305,900	$15,031
2006	$611,800	$305,900	$15,527
2007	$611,800	$305,900	$16,101
2008	$611,800	$305,900	$16,471
2009	$611,800	$305,900	$17,195

(Parcel “012” is vacant.)

Parcel No. 12-10-300-013

Year	TCV	AV/SEV	TV
2000	$605,800	$302,900	$280,610
2001	$627,000	$313,500	$292,813
2002	$641,400	$320,700	$302,664
2003	$661,000	$330,500	$311,570
2004	$667,000	$333,500	$319,643
2005	$687,000	$343,500	$330,361
2006	$721,400	$360,700	$341,762
2007	$743,000	$371,500	$354,985
2008	$743,000	$371,500	$359,642
2009	$743,000	$371,500	$367,594

(Parcel “013” consists of 24 units.)

Parcel No. 12-10-302-001

Year	TCV	AV/SEV	TV
2000	$888,000	$444,000	$419,210
2001	$919,000	$459,500	$437,275
2002	$940,200	$470,100	$456,813
2003	$977,800	$488,900	$465,292
2004	$977,800	$488,900	$475,938
2005	$1,007,200	$503,600	$491,837
2006	$1,057,400	$528,700	$509,642
2007	$1,089,200	$544,600	$529,753
2008	$1,089,200	$544,600	$536,884
2009	$1,089,200	$544,600	$544,472

(Parcel “001” consists of 36 units.)

Parcel No. 12-10-302-002

Year	TCV	AV/SEV	TV
2000	$998,400	$499,200	$448,766
2001	$1,071,400	$535,700	$467,357
2002	$1,096,000	$548,000	$495,611
2003	$1,139,800	$569,900	$508,300
2004	$1,139,800	$569,900	$527,482
2005	$1,174,000	$587,000	$552,397
2006	$1,232,600	$616,300	$576,478
2007	$1,269,600	$634,800	$598,189
2008	$1,269,600	$634,800	$608,054
2009	$1,269,600	$634,800	$618,859

(Parcel “002” consists of 38 units.)

<u>PETITIONER’S EVIDENCE AND EXPERT TESTIMONY</u>

Petitioner’s main contention is that the true cash value of the subject “nonprofit housing cooperative” must be determined under MCL 211.27(4) by the income method using actual “rents” rather than “present economic income” or market rents. Petitioner’s legal arguments are the same as those that the Tribunal rejected in *Branford*, *infra*. Petitioner’s Exhibit 4 is a “Valuation by Income Approach” that includes “total rental revenue” less expenses to determine net operating income for each year at issue by the direct capitalization of income approach. The calculation for the 2000 tax year includes “Total Rental Revenue” of $1,475,112, which corresponds to “potential carrying charges” on the Forest Hills Cooperative Statement of Income, Year Ended December 31, 1999. Petitioner claims its approach is mandated by the following statutory definition:

> (4) As used in subsection (1), “present economic income” means for leased or rented property the ordinary, general, and usual economic return realized from the lease or rental of property negotiated under current, contemporary conditions between parties equally knowledgeable and familiar with real estate values. The actual income generated by the lease or rental of property is not the controlling indicator of its true cash value in all cases. This subsection does not apply to property subject to a lease entered into before January 1, 1984 for which the terms of the lease governing the rental rate or tax liability have not been renegotiated after December 31, 1983. This subsection does not apply to a nonprofit housing cooperative subject to regulatory agreements between the state or federal government entered into before January 1, 1984. As used in this subsection, “nonprofit cooperative housing corporation” means a nonprofit cooperative housing corporation that is engaged in providing housing services to its stockholders and members and that does not pay dividends or interest upon stock or membership investment but that does distribute all earnings to its stockholders or members. MCL 211.27(4).

Petitioner’s direct capitalization of income approach resulted in a TCV of $2,810,510 in 2000, peaking at $4,183,154 in 2003, and settling at $3,879, 230 in 2009. See P-1, tab 2. Exhibit P-1 includes a stabilized income statement for each year, estimated expenses, a calculation of net income, and application of a capitalization rate, with an indicated value by the income approach.

In addition to the above-described income approach, Petitioner’s witness, Ernest J. Gargaro, testified that the value of the subject can be determined by the total “transfer value” that is dictated by the relevant contracts, which indicate a TCV for the years at issue ranging from $1,380,210 (2000) and increasing each year to $2,595,540 (2009).

Petitioner also claims that the taxable values of each parcel were unlawfully uncapped, and may not increase by more than the rate of inflation.

RESPONDENT'S EVIDENCE, APPRAISAL AND EXPERT TESTIMONY

Respondent's case was presented through the testimony of David R. Petrak, who prepared an appraisal report for the subject. Mr. Petrak determined that the subject's highest and best use ("HBU") if vacant would be to hold for future development of multiple residential units for the portion zoned "R4A" ("Multiple Family Dwelling District") and for commercial development of the parcel that is zoned "C1" (Local Business District). Respondent's appraisal report (R-1) states that the appraiser "does not assume that the residential portion of the property would sell as one large property" but that "individual shares or units would continue to be sold on the open market." R-1, p 12. Respondent's appraisal further states, "This appraisal therefore has valued the individual units and summed that value to arrive at a value for the residential portion of the property. It is assumed that the vacant piece of commercial property would be sold as one piece of property to a single buyer." The appraiser utilized the sales comparison approach, and considered sales of "market rate cooperatives" and made adjustments for differences, including the cost to convert the subject to a market rate cooperative (estimated at $100,000). The appraisal states that the subject is a limited equity cooperative, "which is a self-imposed restriction." The indicated values for each year at issue for the residential portion is indicated at page 44 of the appraisal, with values ranging from $20,980,000 in 2000, peaking at $31,370,000 in 2005, and declining to $21,940,000 in 2009.

The commercial parcel was determined to have a TCV of $824,000 for all years at issue. This was based on sales of 10 properties that closed in 2000 through 2005.

Respondent considered the income approach and determined it was not applicable because the subject is an owner-occupied property and is not of a type that would be purchased by an investor based on its income-earning capacity. R-1, p 46.

Respondent considered but did not rely upon the cost approach, primarily due to the age of the subject.

Respondent's sales comparison method considered sales of 10 vacant parcels set forth at page 44 of its appraisal report. R 25. Respondent selected sales of physically similar "market rate cooperative" units. Respondent's comps are not subject to the same restrictions on marketability as the subject. The adjusted sales prices are set forth in pages 81 through 125 of Respondent's appraisal. R 25.

FINDINGS OF FACT

This section is a "concise, separate, statement of facts" within the meaning of MCL 205.751; and, unless stated otherwise, the matters stated or summarized are "findings of fact" within the meaning of 1969 PA 306, MCL 24.285. Paragraphs 1-15 are from the "Joint Stipulation of Facts" that the parties submitted to the Tribunal on the day of the hearing.

1. The subject property is located within the City of Ann Arbor and Washtenaw County, Michigan.

2. The subject property consists of eight parcels of land, which constitute a total of 30.78 acres.

3. The property identification numbers of the subject property are: 09-12-10-300-004, 09-12-10-300-005, 09-12-10-300-008, 09-12-10-300-009, 09-12-10-300-012, 09-12-10-300-013, 09-12-10-302-001, 09-12-10-302-002.

4. The tax years involved for the subject property are 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, and 2009.

5. The subject property is a residential housing complex consisting of forty-one (41) buildings, built in 1970-1971. Thirty-nine (39) of the buildings are residential buildings. One (1) building has an office and meeting rooms, and (1) building is a service and maintenance building.

6. There are a total of 306 individual residential units. Thirty (30) units have one bedroom and one bath. One hundred eighty-two (182) units have two bedrooms and one bath. Ninety-four (94) units have three bedrooms and one bath.

7. Petitioner is a Michigan non-profit corporation.

8. Petitioner owns and operates the subject property.

9. Petitioner's Articles of Incorporation state that it was formed as "a non-profit corporation upon a cooperative plan under the provisions of Sections 98 through 109, and 117 through 132-A, Act No. 327 of the Public Acts of 1931, as amended."

10. Petitioner's Articles of Incorporation further state that its purpose is "[to] provide [housing] on a cooperative basis, in the manner and for the purposes provided in Section 236 of Title II of the National Housing Act, as amended."

11. According to the document entitled "Introduction-The Cooperative Housing Corporation, "[t]he most important part of the cooperative is the individual member."

12. Petitioner obtained mortgage financing to acquire and construct the subject property through a federally subsidized housing program known as "Section 236" of the National Housing Act of 1959, as amended.

13. Five mortgages were secured, each securing a separate portion of the subject property.

14. Each mortgage has a 40 year term, each ending in 2012, as follows:

Date of Mortgage	Amount	Interest Rate	Due Date
April 26, 1971	$1,272,000	7-1/2%	February 1, 2012
June 1, 1971	$1,484,000	7-1/2%	February 1, 2012
December 1, 1971	$1,144,800	7%	May 1, 2012
July 26, 1971	$1,187,000	7%	May 1, 2012
July 1, 1971	$1,399,000	7%	May 1, 2012

15. To obtain this financing, Petitioner was required to enter into regulatory agreements with HUD. Petitioner's Exhibit P-7 is an unsigned copy of the regulatory agreement that was in effect for the subject property at all times relevant to this proceeding. Petitioner's witness, Susie Sapilewski, testified that the standard regulatory agreement drafted by HUD has been in use for many years and that HUD does not agree to changes in the regulatory agreement. The testimony allows for a finding that this agreement was entered into contemporaneously with the above identified mortgages. See Transcript, 17-18.

16. Stipulated Fact 14 (above) is partially contradicted by testimony of Claudia Myzske, that the mortgage (dated June 1, 1971) related to “section 2” of the coop was paid off pursuant to the original amortization schedule in October 2008 and that the mortgage (dated April 26, 1971) related to “section I” was paid off pursuant to the original amortization schedule in September 2009. Petitioner’s financial statements for year ended 12/31/2006 indicate that the total mortgage interest subsidy from the federal government for 2006 was $287,186; and further indicate that the maturity date for the mortgage note for section I was October, 2009, the maturity date for the mortgage note for section II was September 2008. The maturity date for the mortgage note for section III is May, 2012, for section IV it is May, 2010, and for section V it is February, 2012. P-26, page 391.

17. Petitioner’s Exhibit 12 includes the original mortgages for Sections I, II, III, IV, and V, each of which state that they come to final maturity in the year 2012; however, other evidence and testimony establishes that the mortgages for Sections I and II are as set forth in Finding of Fact 16 above.

18. Forest Hills Nonprofit Housing Corporation owns the fee simple estate in the subject property, subject to the mortgages. P-4, “Information Bulletin,” page 16, paragraph 10, provides that “Inasmuch as this is a cooperative community, title to the property will be held by the corporation and not by the individuals who are members of the corporation.”

19. The shareholders or members of Forest Hills Nonprofit Housing Corporation are residents of the units in the cooperative housing project.

20. Claudia Myszke is Petitioner's Managing Agent who is responsible for overseeing the operations of the subject property. Ms. Myszke reports to the five-member board of directors of the coop. She has been employed by the coop for 35 years. She was a member (resident) of the coop from 1972 to 1984.

21. A person who desires to become a shareholder (member) of the coop must have household income below 80% of the area median income, have a credit score of 630, pass a criminal background check, provide proof of citizenship, and provide a reference from a prior landlord. This establishes that units in the subject do not trade in the same market as "market-rate" coop units or coops that have converted to condominiums. There is a different pool of "buyers" for units in the subject property than for similar, but unrestricted, residential properties.

22. Under rules established by Petitioner's Board of Directors a member who wishes to sell his or her share must provide 60 days notice to the coop that they intend to "move-out." See testimony of Ms. Myzske, TR 42. The coop has a right of first refusal to acquire the member's share. Ms. Sapilewski testified that in some cases, the coop purchases a member's share, and then the coop "sells the unit." TR 20. This supports a finding that there is a market for "units" in a cooperative that is similar to the market for residential units of similar utility and desirability. (However, it has not been established that a typical person in the market to acquire a share in a coop would also be in the market for a "market rate" coop unit or a physically similar housing unit in a condominium development.)

23. Directly across the road from the subject is the maintenance facility for the City of Ann Arbor and land that was sometimes used as the "city dump" and later used as a

recycling center during the years at issue. For years 2000 through 2005 the property across the road was a landfill, then in either 2006 or 2007 it was used as a "maintenance facility," which creates noise, light pollution, and traffic influence, which negatively influences the coop. Respondent's sales comparison method appraisal did not adjust the comps for the location in relation to these influences.

24. Ms. Myzske testified that the subject property is subject to a "flexible subsidy" mortgage, which is a second mortgage subsidized by the federal government for purposes of providing funds for repairs to the subject property, in the amount of $3.2 million. This mortgage carries with it the requirement that the coop continue to operate as "affordable housing" subject to a "use agreement" that contains restrictions like those set forth in the Regulatory Agreement (P-7). TR 18.

25. Ms. Myszke stated that the vacancy rate from 2004 through 2009 has been approximately 5%, but there were years when the vacancy rate was zero and at times there was a waiting list to move in to the coop. She could not testify to specific occupancy rates for 2000 through 2003.

26. Respondent's Exhibit 10 is a letter dated November 16, 2007, from Claudia Myszke to the Mayor of Ann Arbor, John Heiftje, indicating that Petitioner was then "in the process of prepaying our existing mortgage which is insured under section 236 of the National Housing Act" and that "unlike other cooperatives, the Board of Directors of Forest Hills Cooperative has voted to remain affordable," which will remain in effect for the next thirty (30) years. The letter included a "150 Day Notification of Mortgage Pay Off" dated November 15, 2007 that states that Petitioner was in the process of "refinancing our mortgage." The prepayment was

scheduled to occur on or after April 15, 2008. However, Ms. Myszke testified that none of the mortgages were “prepaid” (paid prior to maturity), although two of the mortgages had matured and were fully paid pursuant to their terms as indicated in Finding of Fact 16.

27. Ms. Myszke testified that the board of directors made the “difficult” decision to “remain affordable” rather than to convert to an unregulated coop. If the board had decided not to “remain affordable” members would have been able to sell their units and make a profit. To convert to a “market rate coop” would require approval of the board of directors and a vote of the membership. TR 73. The board of directors consists of five members, the majority of whom are members of the corporation. P-6 (Bylaws).

28. Ms. Myszke testified that the flexible subsidy loan is outstanding. Sections III, IV, and V are subject to mortgages and the regulatory agreement and sections I and II are subject to a “use agreement” that imposes the same restrictions as the regulatory agreement. For tax years 2000 through 2007, the entire property was still subject to the original mortgages and the regulatory agreement. TR 58.

29. Petitioner’s witness, Ernest J. Gargaro, CPA, is an employee of the law firm of Hoffert and Associates, P.C. He is a registered certified public accountant, but he is not licensed to practice public accounting. Mr. Gargaro was qualified as an expert in accounting and testified regarding the financial information and calculations in Petitioner’s “Valuation Disclosure.” He is not a real estate appraiser and he was not qualified as an expert in the field of valuation of real property or business valuation.

30. Mr. Gargaro explained the calculations set forth on Petitioner’s Exhibit 2, page 16, “Fiscal Year Ended 12/31/1999,” relating to “Valuation by Income Approach” and similar calculations for each year at issue.

31. Mr. Gargaro explained the calculations set forth on Petitioner’s Exhibit 1, page 16 - 76, “Fiscal Year Ended 12/31/1999,”relating to “Valuation by Transfer Value” and similar calculations for each year at issue.

32. Mr. Gargaro testified that “he didn’t see where frankly the income approach applied.” TR 119. He stated that he used the statutory “carve-out approach” and did the mathematical computations set forth in P-2, which purports to be an income approach to value using monthly carrying charges as gross potential income.

33. Mr. Gargaro stated that the capitalization rates used in Petitioner’s “income approach” were taken from a “sheet of paper in the office” that included listings of capitalization rates for similar properties. He did not testify as to what type of properties the capitalization rates were intended to apply.

34. There is no evidence that Petitioner derived an overall capitalization rate from sales of income-producing properties.

35. There is no evidence that Petitioner developed an overall capitalization rate using the band of investment method.

36. Mr. Gargaro testified that in his opinion the subject property’s taxable values should not have increased by more than the “Headlee” percentage.

37. Mr. Gargaro stated that he did not appraise the subject property.

38. Ms. Myszke testified that a coop property in Ann Arbor known as Colonial Square “went market rate.” Colonial Square is a “section 221(d)(3)” property.

39. Petitioner's witness, Susie Sapilewski, testified that the difference between a "section 236 property" and a "section 221(d)(3)" property is that the 236 property has a 1% subsidized mortgage and the 221(d)(3) property has a 3% subsidized mortgage.

40. David R. Petrak was the chief appraiser for the City Ann Arbor from May 1997 until the fall of 2002 when he became the Assessor for the City Ann Arbor. He is a state certified level IV assessor and a state licensed general appraiser who has performed appraisals of residential, multi-family, retail, shopping plazas, grocery stores, hotels, office buildings, light industrial, research and development, assisted living facilities, and entertainment centers.

41. In Mr. Petrak's opinion, the regulatory agreement and the subsidized mortgages have little or minimal impact on the value of the subject property, in part because this is a "self-imposed restriction" and that the negative impact related to the regulatory agreements is $100,000, which is the estimated cost to convert the subject property to a market rate coop, which is based upon Mr. Petrak's discussions with persons who assist with the conversion of regulated coops to "market-rate" coops. Mr. Petrak's opinion in this regard is not adopted as a Finding of Fact. The $100,000 deduction does not adequately measure the impact upon value of the inability to sell a coop unit in the open market.

42. The evidence does not support Mr. Petrak's opinion that the regulatory agreements or use agreements have little or minimal impact upon the fair market value of the subject property.

43. Sales of entire nonprofit housing cooperative properties are very rare, and generally only occur when the coop is under duress or is failing.

44. The subject property is not an income-producing property and is not of the type that would be purchased for investment purposes.

45. Mr. Petrak credibly testified that Petitioner's alleged values per unit based on the income approach and the transfer value bear no relation to the unit's true cash value.

46. Petitioner's Exhibit 10 ("P-10") is an "Occupancy Agreement." Article 1 describes the "Monthly Housing Charges and Initial Payment under Occupancy Agreement."

47. P-10 indicates that upon execution of the Occupancy Agreement, the member has paid a Subscription Price of $100, and initial payment (not set forth in P 10), and also agrees to pay "Monthly Housing Charges."

48. P-10, Article 7, provides that, "The corporation shall . . . pay or provide for the payment of all taxes or assessments levied against the project." The shareholder pays a "Monthly Housing Charge" that is "one-twelfth of the Member's proportionate (annual) share of the sum required by the corporation, as estimated by its Board of Directors to meet its annual expenses." Occupancy Agreement Article 1. (Petitioner's Exhibit 8). The annual expenses included in the Monthly Housing Charge include the amount of all taxes levied against the project. The board of directors determines the member's proportionate share of total property taxes levied against the project.

49. Carrying charges (also referred to as Monthly Housing Charges) are based on an annual budget determined by the board of directors. Member-shareholders are billed monthly based on their respective unit size. P-25, page 390. The carrying charges billed to each shareholder include a portion of the cooperative's property taxes. According to Petitioner's evidence, its board of directors allocates property taxes

levied against the corporation to each shareholder. Also see P-10, page 120, 121 [“Occupancy Agreement” Article 1, paragraph (c)].

50. Petitioner’s Exhibit 4 (P-4) is an Information Bulletin. Paragraph 11 is entitled “Schedule of Subscription Prices and Initial Payments and Monthly Housing Charges for Each Type Dwelling Unit (Charges Shown Are Estimates Based on Full Occupancy and Are Subject to Change.)”

51. Petitioner’s evidence, P-4, “Information Bulletin,” page 16, paragraph 11, identifies a one-bedroom unit as “J”; a 2 bedroom unit as “B”; and a three bedroom unit as “E” and includes the following:

Dwelling Unit Designation	Value Allocated to Unit By Sponsorship	Proportionate Factor of Unit Valuation to Total Valuation
J – 1 BR	$17,755.00	2.73%
B – 2 BR	$21,250.00	3.27%
E – 3 BR	$22,200.00	3.42%

52. P-4 indicates that the “Total Valuation” of the subject coop was $6,486,950 at the time that the exhibit was created. P-4 also sets forth the estimated mortgage amount, estimated cost, and FHA estimated replacement cost for each of the five mortgages. Each of these estimated amounts totals $6,486,000.

53. Based on Findings of Fact 51 and 52, a one bedroom unit’s (“J”) value is .2737% of the total value ($17,755 / $6,486,950 = .002737).

54. Based on Findings of Fact 51 and 52, a two bedroom unit’s value is .32758% of the total value ($21,250 / $6,486,950 = .0032758).

55. Based on Findings of Fact 51 and 52, a three bedroom unit's value is .34222% of the total value ($22,200 / $6,486,950 = .0034222). (These are not the Tribunal's findings of TCV of a unit.)

56. Respondent adopted the above ratios as a method of allocating the 1999 taxable values for each parcel to each unit within that parcel. See R-24.

57. The ratios and estimated values set forth above provide a reasonable basis for allocating the stated equalized and taxable values of each parcel to each unit on that parcel.

58. P-40 is a "move-in, move-out" log for years 1999 through 2009, which indicates the units that transferred to a new shareholder for each year at issue.

59. R-24 consists of a table for each of the 7 improved parcels with living units. Each table sets forth each unit by number (i.e., "1-B, 2-B, 3-E…") and by type (i.e., 1 bedroom, 2 bedroom, or 3 bedroom), along with the factor indicated for each unit from P-4.

60. Parcel number 09-12-10-300-013 includes 24 units with a total 1999 TV for that parcel number of $273,398. R-24.

61. Respondent's assessor allocated the total TV to each 2-bedroom unit as follows: $273,398 / 78.6 = 3,478 x 3.27 = $11,374 (rounded).

62. The same result above can be alternatively demonstrated as follows: .327 / 7.86 = .041603 x $273,398 = $11,374 (rounded).

63. The 1999 TV's set forth for each unit in R-24 were allocated using the proportionate factor of unit valuation to total valuation set forth in P-4.

64. There were no "additions or losses" to any parcel or any unit for each year at issue.

65. The proper TV for 2000 for each unit must be calculated using the allocated 1999 TV multiplied by the rate of inflation, unless that unit "transferred ownership" in 1999, in which case, the 2000 TV equals the 2000 SEV.

66. Respondent's Exhibit 26 includes the current SEVs for each parcel number and allocates the current SEVs to each unit by the same method indicated above.

67. The monthly charges include coverage under a plan of occupancy life insurance that provides payment-free housing for a period of up to one year for the family of a member of the cooperative upon death of the family breadwinner. P-4, paragraph 11.

68. A member's overall housing costs are influenced by the benefit of federal income tax deductions allowed to members of cooperative housing corporations under IRC section 216, which allows deduction from their gross income their proportionate share of real estate taxes and mortgage interest paid by the cooperative. P-4 paragraph 11. P- 4 provides that "At the end of each year the Cooperative will advise each member of his proportionate share of the total amounts paid by the corporation for mortgage interest and real estate taxes."

69. P-4 provides that "If after taking occupancy you wish to move from the project, you may sell your interest, giving the Cooperative the first option to purchase your membership and Occupancy Agreement in accordance with the terms of the By Laws. If the Cooperative fails to exercise its option, you may sell your membership and right of occupancy to a purchaser approved by the Cooperative." P-4, paragraph 16.

70. The cooperative may not prepay a federally subsidized mortgage without permission of the Commissioner of HUD.

71. Under the Regulatory Agreement, upon violation of any provision of the mortgage or the Regulatory Agreement, the Commissioner of HUD may "[t]ake possession of the mortgaged property, bring any action necessary to enforce any rights of the Mortgagor of the project, and any rights of the Commissioner, arising by reason of the Agreement, and operate the project in accordance with the terms of this Agreement…." P-7, page 109. This same provision was in effect under a "use agreement" entered into in conjunction with the flexible equity loan.

72. Petitioner could not convert to a market rate coop during the years at issue without approval from HUD under the terms of the mortgages, regulatory agreement and use agreement. TR 34:17-35:4.

73. The cooperative has been assigned eight individual tax identification numbers.

74. Seven of the parcels are improved and are zoned R4A Multiple Residential Dwelling District.

75. One of the eight parcels ("012") is a vacant lot that is zoned "C1 local business District."

76. Petitioner's Exhibit 24, page 337 ("Notes to The Financial Statements Year Ended December 31, 2004") states that "The cooperative entered into a contract with the Department of Housing and Urban Development (HUD) which provided the cooperative $2,919,769 in the form of a low interest loan in order to do major structural repairs and replacements. The loan balance along with accrued interest at 1% per annum, not compounded, will be due on the maturity date of the mortgage

notes." Testimony indicated that the loan amount was $3.2 million. Although the precise amount of the loan is not clear from the evidence, it is found that Petitioner obtained a "flexible subsidy" loan of approximately $3,000,000, which required Petitioner to enter into a use agreement which requires that the property continue to operate as "affordable housing" for a period of 30 years.

77. For Year Ended 12/31/2005, Petitioner paid $337,716 as "payment on mortgage note" with principal payment on notes payable of $816.

78. For Year Ended 12/31/2008, based on Petitioner's Statement of Revenues, total revenues included an "interest reduction subsidy" of $201,739**.** P-28, page 434. (If this amount were included in net operating income (NOI), it would increase Petitioner's NOI in its "income approach," which for 2008 would increase to $650,596. Applying its tax loaded OAR of 11.28% to this adjusted NOI, the indicated 2008 TCV increases from $3,979,230 to $5,767,695.)

79. According to Petitioner's "Statement of Income" for each year at issue "Real Estate Taxes" for the years ending 12/31/2000 through 12/31/2009 are as follows:

2000	$170,294
2001	$177,059
2002	$186,023
2003	$182,010
2004	$199,963
2005	$199,984
2006	$204,883
2007	$213,646

2008	$223,295[2]
2009	Not in evidence

80. Parcel No. "012" is a vacant lot zoned "C-1 Local Business" consisting of 113,691 square feet.

81. Respondent's valuation disclosure includes information regarding 10 sales of commercial vacant parcels, with various zoning designations, none of which are stated to be "C-1 Local Business." Three of these comps are located in Ann Arbor, and two of the Ann Arbor comps "only allow a maximum floor area to lot area of 30%."

82. Respondent's vacant comp 1 is located approximately 39 miles from the subject; comp 3 is approximately 65 miles from the subject, comp 6 is approximately 58 miles from the subject, comp 7 is approximately 34 miles from the subject, comp 8 is approximately 6 miles from the subject, comp 9 is approximately 57 miles from the subject, and comp 10 is approximately 62 miles from the subject.

83. All of the vacant land comps are significantly larger than the subject, ranging from 253,519 square feet to 1,283,278 square feet, and the unadjusted sales prices ranged from $557,400 (comp 5 located in Ann Arbor) to $10,100,000 (comp 9 located in Auburn Hills).

84. Respondent's opinion of value for the vacant parcel "012" is based on the average (mean) price per square foot of the 10 comps without making adjustments to the sales prices for differences.

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[2] The 2008 Statement of Revenues, Expenses and Surplus, identifies this entry as "Real estate and other taxes" whereas the prior years' entries are identified as property taxes only (not "other taxes").

85. Respondent estimated the TCV of the subject property for tax years 2000 through 2009 using the cost less depreciation approach. The property record cards for each parcel for tax years 2000 through 2008 are in evidence. R-1 through R-8. The record cards indicate that the assessor applied costs from the State Assessors Manual for "Row House or Town House" with a quality classification of "D, siding, Average." The physical depreciation for tax years 2000 through 2008 applied to the various buildings at issue ranges from 60% good to 49% good, with zero functional or economic obsolescence estimated for any year at issue.

CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that property shall not be assessed in excess of 50% of its true cash value, as equalized, and that increases in the taxable value are limited by statutorily determined general price increases, adjusted for additions and losses. Michigan Constitution of 1963, Article IX, Sec. 3.

As used in the General Property Tax Act, "true cash value" means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale. MCL 211.27(1).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735(1). "The petitioner has the burden of establishing the true cash value of the property...." MCL 205.737(3); MCL 211.27(1); *Meadowlands Limited Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 483-484; 473 NW2d 363 (1991). "This burden encompasses two separate 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." *Jones and Laughlin Steel Corp v City of Warren*, 193 Mich App 348; 483 NW2d 416 (1992), citing: *Kar v Hogan*, 399 Mich 529, 539-540; 251 NW2d 77 (1976); *Holy Spirit Ass'n for the Unification of World Christianity v Dept of Treasury*, 131 Mich App 743, 752; 347 NW2d 707 (1984). "True cash value" is synonymous with "fair market value." *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

The Michigan Supreme Court, in *Meadowlanes, supra*, held that the goal of the assessment process is to determine "the usual selling price for a given piece of property." In determining a property's true cash value or fair market value, Michigan courts and the Tribunal recognize the three traditional valuation approaches as reliable evidence of value. See *Antisdale v Galesburg*, 420 Mich 265; 362 NW2d 632 (1984).

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. *Meadowlanes*, at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968); *Antisdale*, at 276. The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale*, at 277.

Under MCL 205.737(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314

NW2d 479 (1981). The Tribunal may not automatically accept a respondent's assessment but must make its own finding of fact and arrive at a legally supportable true cash value. *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979). The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 377 NW2d 908 (1985). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. *Meadowlanes,* at 485-486; *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980); *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982).

Several of the cases cited herein involve federally regulated properties, including "section 236 cooperatives" like the subject. The cases presume that the concept of "market value" applies to such properties, notwithstanding the fact that they cannot be sold on the open market in the same manner as a similar residential property. Based on existing precedent, this assumption is adopted for purposes of this opinion, although some of the limitations of applying "market value" or "value in exchange" shall be discussed. Market value must be distinguished from "value in use," which is not the measure of the "usual selling price" under MCL 211.27.

The case of *Pinelake Housing Cooperative v City of Ann Arbor*, 159 Mich App 208; 406 NW2d 832 (1987), has been cited in these proceedings. Although factually on point, the continued value of *Pinelake* is severely diminished by the Supreme Court's 1991 decision in *Meadowlanes.* *Pinelake* upheld the use of an income approach using restricted "rents" and a "market" overall capitalization rate that would be applied to a freely transferable, income-producing property. Although *Pinelake* uses the term “rents,” members of a nonprofit cooperative housing corporation do not pay “rent” to a landlord who seeks to earn a profit, but they pay monthly housing charges to the nonprofit corporation of which they are shareholders. The *Pinelake* approach considers the negative influences upon value related to restricted rents, but fails to consider the contribution to value of the subsidized mortgage and other positive value influences related to membership in a section 236 cooperative. The holding in *Pinelake* rests in part on the erroneous premise that the interest subsidy was an intangible asset that could not be valued for property tax purposes. This view was rejected by the Supreme Court in *Meadowlanes*. (“Forest Hills Housing Cooperative” was a named Petitioner in *Pinelake*.) *Pinelake* applied to years 1981-1984.

A significant, post-*Meadowlanes* case involving a coop property is *Georgetown Place Cooperative v City of Taylor*, 226 Mich App 33; 572 NW2d 232 (1998). That case involved a nonprofit housing cooperative subsidized and regulated by HUD under section 221(d)(3), which was subsidized by a 3% (effective rate) mortgage over a 40 year term. Petitioner is a section 236 coop, with an effective subsidized mortgage rate of 1%. The benefit of the mortgage subsidy in our present case is greater than the mortgage subsidy in *Georgetown*.

In *Georgetown*, it was determined that a 30% discount must be applied to the value indicated by the sales comparison approach to adjust for the lack of marketability due to the HUD restrictions. That 30% discount was based on expert testimony in that case, which was supported by studies of the lack of marketability of the stock of closely held corporations. The studies were submitted to the Tribunal in that case. (There is no such evidence or expert testimony in this case.) The 30% discount was held to apply to the tax years at issue in that case, 1984 through 1994, based on market conditions at that time. The MTT adopted a sales comparison approach that considered sales of “federally subsidized apartment complexes” but the opinion does not describe what type of mortgage subsidy or other subsidies applied to the comps. The adjusted prices indicated a price per unit of $19,000 as of 1983. The Tribunal applied the 30% discount to the value of the property indicated by the sales approach. The Tribunal’s opinion does not explain how the contributory value of the subsidized mortgage is accounted for, other than the holding that sales of subsidized apartment complexes were determined to be relevant. There is no evidence in that case as to whether the sales of apartment complexes involved subsidized mortgages that influenced the sale prices. It is clear, however, that the 30% discount was applied to “reflect the lack of marketability” of the entire property. The Tribunal agreed with both parties in that case that the income approach is not an accurate assessment of TCV due to the nature of the property as a nonprofit cooperative.

A few points are clear from *Georgetown*: (1) A cooperative property does not have a TCV of zero due to the restrictions upon marketability, (2) the mortgage interest subsidy is a benefit that contributes value to the property, (3) the restrictions on marketability negatively influence value, and (4) both the positive and negative influences must be considered in the valuation process. In that case, the income approach was rejected, with the implication that the income approach should not be applied to a coop property. The sales approach was found to be most accurate, but only if sales of subsidized apartment properties were used and a 30% discount applied. The

Tribunal rejected Petitioner's sales approach, which considered sales of "primarily conventional apartment complexes."

Income Approach

The law disfavors the application of the income approach to this non-income producing rental property. *Georgetown Place Cooperative v City of Taylor*, 226 Mich App 33; 572 NW 2d 232 (1998); *Branford Towne Houses Coop v City of Taylor*, MTT Docket No. 90502; *Northwood Apartments v City of Royal Oak*, 98 Mich App 721; 296 NW2d 639 (1980); *Eversdyk* v *City of Wyoming*, 10 MTT 664 (1999), MTT Docket No. 195925. "The capitalization-of-income method has been described as the most appropriate method for evaluating the TCV of *income-producing* property."' *First City Corp v Lansing*, 153 Mich App 106; 395 NW2d 26 (1986) [Italics added]. In this case the income approach is considered, but given no weight. The Tribunal has ruled that the income approach is flawed as applied to a section 236 coop. *Branford Towne Houses Coop v City of Taylor*, MTT Docket No. 90502.

The facts in this case establish that during the years at issue, the subject property was subject to restrictions upon use and marketability, which shall continue for approximately 30 years into the future. There is no evidence that a likely purchaser of a share in the subject cooperative would be motivated by the prospect of future gain on the sale of the unit in the open market after restrictions expire. Even assuming that a purchaser considers the potential reversion value, there is no evidence in this case to support a method of discounting that reversion to present value. It would appear that such an analysis would only be feasible with a relatively short holding period (where the horizon to liquidity is reasonably foreseeable for purposes of estimating the reversion value and discount rate.) During the years at issue, there was a reasonable probability that the restrictions would not be eliminated, even if the original mortgages were paid off pursuant to the original amortization schedules. Also, the flexible subsidy loan ensured that restrictions would remain in place. As of November 16, 2007, the evidence establishes that the coop had voted to "remain affordable" for a period of 30 years. Finding of Fact 94. Therefore, it cannot be concluded that the subject could be viewed as an investment property during any of the tax years at issue. The capitalization of income method has no direct applicability.

Meadowlanes held that the income approach should be used along with the other recognized approaches to value. However, that case involved a subsidized apartment project of a type that an investor would acquire for its income earning potential, whereas the subject is not an investment property. *Meadowlanes* does not mandate use of the income approach for a regulated nonprofit housing cooperative.

In *Branford*, the Tribunal applied the sales comparison approach, which was supported by testimony in that case that. In the absence of evidence of sales of "regulated cooperative housing projects," sales of physically similar housing projects in the subject's market area are relevant to indicate the market prices that the subject cooperative would be faced with in the event the cooperative decided to seek an equally desirable substitute property. Therefore, it is appropriate to consider sales of physically similar dwelling units as comparable sales, notwithstanding that the comps are not subject to restrictions like the subject. The fact that a shareholder cannot sell his or her unit on the open market does not mean that sales prices of unrestricted dwelling units of similar utility and desirability are not relevant when estimating the "true cash value" of the subject under MCL 211.27(1) for property tax purposes. In other words, the fact that the units cannot be transferred in the same manner as similar, but unrestricted, real property does not mean that an opinion of value of the subject units cannot be arrived at using the sales comparison approach. Respondent's Assessor testified that the sales comparison appraisal approach remains valid even if it is determined that the subject units cannot be converted to a market rate coop. *Branford* did not rule that the market approach is only relevant if the property could be converted to a "market rate" coop.

However, a proper application of the sales approach requires that the prices of the comps must be adjusted for all relevant differences that influence the market value. It has been held in *Branford* that the restrictions upon marketability of the subject units are a negative value influence. The "market rate" coops that Respondent used as comps have a superior feature in that they can be freely traded on the open market, whereas the subject units cannot be traded in a similar fashion. This implicates the very concept of "market value" which includes the concept of "value in exchange." "Exchange value" is defined as follows:

> In economics, the attribution of value to goods or services based on how much can be obtained for them in exchange for other goods and services. Market value as an appraisal concept is a type of exchange value. Appraisal Institute, *The Dictionary of Real Estate Appraisal*, (Chicago: 4th Edition, 2002).

The market value of property is measured in terms of dollars exchanged for that property. When a comparable property ("comp") is identified as a reasonable substitute for the subject from the standpoint of a market participant, the dollars exchanged for that similar property (the "price") is accepted as an indicator of the price that would likely be exchanged for the subject, and hence, the price of the comp serves as an indicator of value for the subject (value being measured in terms of dollars exchanged). This presumes that dollars would be exchanged for the subject in an amount driven by market forces. In this case, a unit in the subject property could not have been sold to the highest bidder on the relevant tax days in the same manner as Respondent's comps were sold. Appraisal of "fair market value" involves a "hypothetical" sale of the subject on the valuation date, but in this case, the "hypothetical" involves an assumption contrary to fact; that is, that the subject property could have been exposed to the market and sold on tax day for a market price. The case law in this area recognizes that the subject coop units could not be exchanged for cash in the open market, but the law still requires a determination of the "usual selling price" that could be "obtained for the property in a private sale." MCL 211.27(1). On the one hand, the law presumes that a property could be sold on tax day, but case law has also recognized that a "restriction on marketability" must be considered as a negative value influence factor. See, *Georgetown*, *Branford*. There are two apparent "restrictions upon marketability" relevant to the subject property. First, the member may only transfer a unit by giving 60 days notice to the coop board. Second, the "price" that the member will receive is restricted by formula to an amount that does not represent fair market value (i.e., its "transfer value").

The testimony established that sales of entire coop properties almost never occur, and that if so, it is because the property is failing as a coop, and must be converted to another use. Therefore, sales of such "failing coops" would tend to not be a reliable indicator of value for an economically viable coop. The evidence also establishes that the "individual units" cannot be transferred for dollars to the highest bidder in an open, functioning market. The market is limited to persons with qualifying (low) incomes and good credit ratings, and the price is artificially limited to the "transfer value" based on a non-market oriented formula.

The Court of Appeals upheld the Tribunal's decision in *Branford* rejecting Petitioner's argument that MCL 211.27(1) and (4) requires the income method using actual "rents." Under MCL 211.27(1), the assessor is required to "consider" the influence of various factors upon true cash value, including "present economic income of structures," which is defined in MCL 211.27(4). As applied to "leased or rented property" the term "present economic income" means the "ordinary, general, and usual economic return realized from the lease or rental of property negotiated under current, contemporary conditions between parties equally knowledgeable and familiar with real estate values." In appraisal terms, this means "market income" rather than "actual income" received from a "leased or rented property." "Market income" means the rents that are typically charged for similar, competitive properties. The actual rents charged by a particular landlord for a particular property may be at market, above-market or below-market. The income approach generally requires the use of market rents, although in many cases, the actual rents are proven to be consistent with the market.

Starting with section 27(1), it is clear that when determining the "true cash value" or "usual selling price" of property, the assessor "shall consider" the "present economic income," which is defined in subsection (4) as the income that the subject property would be expected to earn by comparison to income of similar income-producing properties. The definition in subsection (4) provides guidance to the assessor that "actual income generated by the lease is not the controlling indicator of its true cash value in all cases." The actual income may be proven to be consistent with the market at large and used in an income approach appraisal, but that actual income must not be adopted as "controlling."

MCL 211.27(1) states that the assessor shall consider "present economic income of *land* if the land is being farmed or otherwise put to income producing use. . . ." The statute also refers to "present economic income of *structures*, including farm structures." With regard to land, the legislature specified that "present economic income" is only relevant where the land is *put to income-producing use*. It is generally recognized that the income method applies only to property of a type that would be purchased by an investor for its income-producing potential. Furthermore, subsection 27(4) plainly defines "present economic income" in the context of "leased or rented property." There is nothing in the language of MCL 211.27 that indicates that the income approach is appropriate when determining the true cash value of property that would not be purchased by an investor for its income-producing capacity. Although in a complex valuation problem such as this case, it may be appropriate to consider an income approach by analogy, along with the market approach, and the cost approach, the income approach is not mandated by the statute as Petitioner argues. See *Meadowlanes, supra*.

Petitioner argues that the statute must be interpreted in light of extrinsic factors such as legislative history in relation to case law. Petitioner refers to MCL 211.27(4), which provides that subsection (4) does not apply to a "nonprofit cooperative housing corporation subject to regulatory agreements between the state or federal government entered into before January 1, 1984." Petitioner argues that this "statutory carve-out" means that the assessor is *required by law* to determine TCV by the income approach using "actual rents." The Court of Appeals rejected this argument in *Branford*, and that opinion is found to be persuasive.

Literally, the exception in MCL 211.27(4) states that the definition and provisions in subsection (4) do not apply to a qualifying cooperative. This would mean that section 27(1) would still apply, but that the term “present economic income” in section 27(1) would not be subject to the same definition that is expressly limited to 27(4).

In determining which approach is most reliable in appraising property, the first principle is to select the method that a potential purchaser would most likely rely upon to determine a price that he or she would pay for the subject property. This requires a determination of the property’s highest and best use. The prehearing summary and scheduling order entered on October 21, 2010, indicates that the highest and best use was not disputed. Both Petitioner’s and Respondent’s prehearing statements assert that the highest and best use is “residential.” It is concluded that the property’s highest and best use is its current use.

The valuation method chosen must reflect the behavior and motivations of buyers in that market. “Income-producing real estate is typically purchased as an investment, and from an investor’s point of view earning power is the critical element affecting property value.” Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 12th ed, 2001), p 471. The income method in its various forms “consider anticipated future benefits and estimate their present value.” *Id*. The income method should be applied to simulate investor motivations. *Id*., 473. There is no evidence that the subject property or any unit in the subject property would be acquired by an investor for its income-producing capacity. It is concluded that the income approach to value is not directly applicable to the subject property.

To the extent that it is appropriate to attempt to apply an income approach, the approach is applied by analogy to income-producing properties. See, *Pinelake Housing Cooperative v City of Ann Arbor*, 159 Mich App 208; 406 NW2d 832 (1987). As discussed above, the court held that the income approach could be used for a section 236 coop, but that actual income and expenses must be used. The continuing efficacy of *Pinelake* is called into question by the Supreme Court's ruling in *Meadowlanes*, which requires consideration of all recognized valuation approaches, under various assumptions. Specifically, the positive and negative influences upon value must be considered (not merely the "restricted rents"). Therefore, if "actual income and expenses" must be used, all sources of revenue must be included in gross potential income, including the annual mortgage interest subsidy payments that HUD pays to the mortgagee on behalf of Petitioner. These considerations would comply with *Meadowlanes'* mandate that the Tribunal must consider all valuing influencing factors, both positive and negative, including the value of a mortgage interest subsidy. Neither party has presented sufficient facts to allow the Tribunal to apply such an approach here, nor has it been established that other factors would not be relevant (such as the deductibility of mortgage interest for federal income tax purposes).

Sales Comparison Approach

There is a market for units in a cooperative. A market is a set of arrangements in which many buyers and sellers are brought together through the price mechanism. "Market" can be defined as:

> A gathering of people for the buying and selling of things; by extension, the people gathered for this purpose. See also real estate market. Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 12th ed, 2001), p 19.

The “market” (the “gathering of people”) for units in a regulated coop differs significantly from the market for similar units in a “market rate coop.” First, the income restrictions limit the pool of potential purchasers to persons with income at or below 80% of the area median income. The pool of buyers is further limited by the fact that not only must the buyer have a moderate or low-income, they must have a relatively “good” credit score of 630 or better. Therefore, under the above definition, there is a “set of arrangements” in which many buyers and sellers are brought together, but the number of participants in this market is much more limited than the market for similar condominiums or “market rate coops.” Persons who qualify to acquire a share in a restricted coop likely would not qualify for conventional financing to purchase a “market rate coop” unit, and persons who would qualify to purchase a market rate coop unit would likely not meet the income requirements for a restricted coop member. The participants in the restricted coop market are “buyers and sellers” in the sense that a share of the coop is sold, and with it comes the right to occupy a unit. There is a market for units in a coop. However, a unit in a coop (or a share) does not trade based on a negotiated price between the buyer and seller. That is, there are no sales where restricted coop properties are exchanged in an open market for dollars. Therefore, the appraiser and assessor must look to transactions that are similar to a restricted coop sale. Respondent suggests that this would be a sale of an unrestricted coop unit. However, an adjustment would be needed for all relevant differences in amenities, as well as for the illiquidity (lack of marketability) of the restricted coop. Neither party has offered any evidence in this case as to how to adjust for illiquidity. Respondent’s adjustment of $100,000 for the estimated cost to convert the subject to a “market rate coop” is not supported by the facts and is not persuasive.

The consideration that a person pays to acquire the right to occupy a unit, referred to as the "transfer value," bears no relation to the "fair market value" of the property rights acquired. The seller is not free to market the unit for the highest price that the market will bear, and the buyer is prohibited from paying an amount greater than the "transfer value" provided for in the regulatory agreement. Therefore, there is a market for units in a coop, but the price paid to acquire a unit is not equal to "fair market value."

The buyer of a coop share receives the right to occupy a good quality dwelling unit, and effectively assumes a portion of a favorable mortgage with a federally subsidized effective interest rate of 1%. The buyer receives many benefits of private home ownership, such as federal income tax deductions for mortgage interest. *It is fair to say that the buyer receives more than he or she bargains for, by virtue of the benefits conferred by the federal section 236 program.* Units in a cooperative are part of a real estate market in that rights to the units are exchanged for money. However, the actual consideration paid (transfer value) bears no relation to the "fair market value" of each unit. This requires rejection of Petitioner's theory that TCV should equal the "transfer value."

The next question is whether a unit in a non-profit housing cooperative has a "fair market value" as that term has been defined under Michigan law. Under Michigan's ad valorem property tax system, property is required by the constitution and by statute to be assessed at a proportion of "true cash value" which has been defined as "fair market value." MCL 211.27(1).

> (1) As used in this act, "true cash value" means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being

> the price that could be obtained for the property at private sale…. MCL 211.27(1).

The above definition requires the assessor, and this Tribunal, to determine the "usual selling price" which is further stated to be the "price that could be obtained for the property at private sale." Applying this definition to the current facts presents significant challenges. The definition refers to the "price that could be obtained," which is taken to mean the price that could be obtained if the property were to be sold on tax day. The language is silent regarding how to treat property such as the subject that does not trade in a typical real estate market. Clearly, the inquiry applies to a hypothetical sale on tax day. In other words, what would the subject property be reasonably expected to sell for on tax day, under all the circumstances requisite to a fair sale.

Generally, the "fair market value" of property is determined with reference to the market in which that property trades. As discussed above, in the case of a regulated coop, the pool of potential buyers is quite different than the pool of buyers for physically similar, unrestricted dwellings, in that a person interested in acquiring a unit in the subject likely lacks the means to acquire a physically similar unit in an unregulated coop or a condominium complex. Based on the evidence in this case, it is likely that the typical coop shareholder has a choice between renting an apartment, buying a potentially lower quality dwelling, or occupying another type of subsidized housing. This discussion relates to the issue of choosing comparable properties in the sales comparison approach. In other words, reliable comps must be "competitive" with the subject. The question is whether a potential buyer would consider buying the comp as a reasonable substitute for the subject. There comes a point where the comp is so dissimilar that its price bears no relation to the subject, and it is not reasonable to attempt to adjust the sale price for differences. The sales approach attempts to adjust prices actually paid in the market for competitive properties, based on the market's reaction to differences in key amenities that influence value. "Specific markets are defined on the basis of various attributes" including "property type, location…typical tenant characteristics… [and] other attributes recognized by those participating in the exchange of real property." Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 12th ed, 2001), p 19.

If the subject's market is limited to units in *regulated* cooperatives, then there is no direct market evidence in this case, and it is likely there is no direct market evidence to be found. There is no identifiable cash price paid as consideration to acquire a regulated coop unit. The transfer value is not indicative of fair market value. Neither party has offered a method of identifying "terms equivalent to cash" for which regulated units trade. See, Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 12th ed, 2001), p 22 [definition of market value]. The consideration that changes hands upon transfer of a share of the coop ("transfer value") is not the total "value in exchange" for the rights transferred. Therefore, other regulated coop units cannot be used as comps for any specific coop unit because there is no identifiable value in exchange related to coop units. Essentially, part of the "value" exchanged is a gift from the federal government in the form of a good quality dwelling unit subsidized by a 1% mortgage interest rate. The value exchanged between both the seller (the coop members collectively) and the buyer (the new shareholder-occupant) is influenced by the section 236 program, and must be quantified in terms of cash, in order to determine a price related to the transfer of a unit in a coop. Neither party attempted such an analysis.

Respondent chose comps that are similar in terms of physical attributes, and determined that sales of "market rate" cooperative units and coops that have converted to condominiums in the City of Ann Arbor "lend comparison to the subject property to determine a value." R-25, p 37. However, it has not been demonstrated that these comps are sufficiently similar in terms of the market that they trade in. Respondent attempted to adjust for this difference by subtracting $100,000 from the estimated value determined for the entire coop property, under the premise that the difference between a regulated and a non-regulated coop can be measured by the cost to convert the subject from a regulated to a non-regulated coop. This approach assumes that the subject could be so converted. The evidence indicates that the property was subject to regulatory and use agreements related to the outstanding mortgages and "flexible subsidy" loans that prohibited conversion during all years at issue and for a period approximately 30 years hence. Although there is evidence that Petitioner's board of directors voted in 2007 to "remain affordable" (restricted), this does not prove that Petitioner could have converted to a market rate coop at will (without approval from HUD). The fact is that the subject was restricted at all times relevant to this case, and shall remain so beyond the foreseeable future. Although Respondent's assessor testified that his analysis is still valid even if the subject cannot be converted, this undermines the strength of Respondent's opinion of value.

Respondent's approach that focuses upon the value of individual units, using sales of physically similar units (albeit unregulated units), is generally reasonable and is consistent with the Tribunal's decision in *Branford*, which favored the sales comparison method. However, in order to produce a persuasive and reasonable opinion of value, the sales approach must adjust for all relevant differences between the subject and the market rate coop. Perhaps the most significant difference, and the most difficult to quantify, is the difference related to the illiquidity (restrictions on marketability) of a regulated, *vis a vis* a market rate coop. In other words, a person who acquires a share in the coop with the accompanying rights to occupy a unit holds a valuable asset; however, that asset cannot be presently converted to (exchanged for) cash at a market price. The possibility that the share can be converted to cash in the future is speculative and the probability that restrictions on marketability might be extinguished varies from one coop to another, but in all cases is speculative. There is no evidence in this case that any shareholder of the subject coop purchased his or her share with an eye upon a future gain on the sale of the share. Rather, the facts support a conclusion that this coop was at all times subject to the regulatory and use agreements and that those restrictions shall remain in effect for many years.

In *Branford*, the Court of Appeals cited *Meadowlanes Limited Dividend Housing Association v City of Holland*, 437 Mich 473; 473 NW2d 636 (1991), for the general proposition that the three traditional approaches to value apply to a federally subsidized housing project. While the principles of *Meadowlanes* apply to this case in regard to the section 236 mortgage interest subsidy, it must be noted that the property in *Meadowlanes* was of a type that could be purchased by an investor and was not a nonprofit cooperative. The owner received the benefit of the subsidized mortgage and “section 8” rental subsidies, and in return the owner agreed to restrict rents to affordable levels for low-income tenants, and was limited to a 6% return on equity. In *Meadowlanes*, the property owner earned income from the rental of the apartment units. The property in *Meadowlanes* is not directly comparable to the subject, and the ruling in that case regarding application of the income approach does not apply here. As discussed above, assuming that an income approach has any value in determining the fair market value of a restricted coop, *Meadowlanes* mandates that positive value influences, such as the mortgage interest subsidy must be included in the analysis.

Although cases have rejected or questioned the validity of the cost approach, *Meadowlanes* indicated that the cost approach is applicable to subsidized properties, but must consider economic or external obsolescence, which “should be calculated, recognizing that the real property is devoted to its highest and best use as subsidized housing property.” *Id,* 502, 503. The court further held that “If there is a market for subsidized housing at the location where it is built and a sufficient number of individuals who can afford to pay the rent required, then there will be little economic obsolescence under this approach.” Therefore, as applied to the present case, where the vacancy rate has varied between 0% and 5% for the years at issue, this suggests that the cost approach could be used with no economic obsolescence applied.

The *Meadowlanes* court further held that the cost approach should be applied to the subject as both “subsidized apartments” and as “private apartments,” but provided no guidance as to how to distinguish a “subsidized” apartment from a “private” apartment in the cost approach. To the extent that the subsidized apartment might be of a higher quality of construction than would be expected for a private apartment, it would be appropriate to estimate the reproduction cost of the subject at its actual quality level, and also the replacement cost of a reasonably suitable substitute property of average quality. The difference in cost would measure functional obsolescence from superadequacy. In this case, the property record cards (Exhibits R-1 through 9) set forth the cost less depreciation approach that the assessor relied upon in determining the TCV upon which the assessed values are based. The assessor determined that the appropriate costs should be taken from the State Assessor's Manual, using the costs for an "Average Class D Row House / Townhouse." See, State Assessor's Manual, CAL 180.

http://www.michigan.gov/documents/Vol2-15Cal166-181R_120973_7.pdf

Petitioner has not directly challenged Respondent's application of the cost approach, other than to claim that the law mandates the income approach using "actual rents" or actual monthly carrying charges for "gross potential income." Petitioner has not alleged any specific error in Respondent's application of the cost approach. A review of the record cards finds no error in Respondent's application of the cost approach, which comports with the State Assessor's Manual. The assessor is required by law to use the State Assessor's Manual as a guide in preparing assessments. MCL 211.10e.

In this case, Petitioner's income approach using actual "carrying charges" instead of gross potential rent in a direct capitalization of income approach does not produce a credible opinion of value. The "transfer value" approach is less persuasive and does not result in a reasonable estimate of market value by any measure ever applied by the Tribunal or any appellate court. The income approach using actual carrying charges fails to account for the positive value influence of the subsidized mortgage. For Year Ended 12/31/2008, based on Petitioner's Statement of Revenues, total revenues included an "interest reduction subsidy" of $201,739. P-28, page 434. (If this amount were included, it would increase Petitioner's net operating income (NOI) in its "income approach" for 2008 to $650,596, and applying Petitioner's tax loaded OAR of 11.28% to this adjusted NOI, the indicated 2008 TCV increases from $3,879,230 to $5,767,695.) However, even with this additional item of income accounted for, it cannot be concluded that this method produces an accurate estimate of TCV. For purposes of comparison, assuming each of the 306 units are identical, Petitioner's income approach indicates a TCV per unit of $12,677, and with the mortgage interest subsidy included, the value is $18,848 per unit. The evidence is insufficiently persuasive to support adoption of Petitioner's overall capitalization rate.

Respondent's sales approach indicates that generally similar, "market rate" coop units sold for adjusted prices of $54,350 (one bedroom), $68,317 (two bedroom), and $88,933 (three bedroom), for an average of approximately $70,000 per unit for 2008. The 2008 cost approach results in a total value of $9,977,800, which for comparison purposes is $32,600 per unit. These widely divergent contentions (transfer value, "restricted" income approach, cost approach, and sales approach) illustrate the complexity of the valuation problem in this case. It is determined that neither extremes ($70,000 per unit by the cost approach or $12,677 by the "transfer value") are persuasive. It is interesting to note that if the 30% discount applied in *Branford* were applied here, it would result in an average value per unit of $49,000 (rounded). (However, it has not been demonstrated that such an approach is warranted in this case.)

Petitioner's own documentary evidence, P-4, "Information Bulletin," page 16, paragraph 11, assigns the following values to the units based on the number of bedrooms:

Dwelling Unit Designation	Value Allocated to Unit By Sponsorship	Proportionate Factor of Unit Valuation to Total Valuation
J – 1 BR	$17,755.00	2.73%
B – 2 BR	$21,250.00	3.27%
E – 3 BR	$22,200.00	3.42%

P-4 indicates that the "Total Valuation" of the subject coop was $6,486,950 at the time that the exhibit was created. P-4 also sets forth the estimated mortgage amount, estimated cost, and FHA estimated replacement cost for each of the five mortgages. Each of these estimated amounts totals $6,486,000. Although the exact date that these values were established is not in evidence, the values are based on the original mortgage loan amounts at the inception of the project, which was constructed in 1970 and 1971. Petitioner's contention that the subject's value during the years at issue was in the range of $2 to $4 million is simply not credible.

Respondent's sales comparison approach has greater potential for determining a reasonable "true cash value" consistent with MCL 211.27(1). However, the Tribunal has recognized that an adjustment to the sales prices for physically similar, but unrestricted, property is necessary to account for the limitations upon marketability. In this case, it is concluded that it is inappropriate to apply a "30% discount" as was applied in *Branford*, which was based on prior case law where evidence and testimony existed to support such an adjustment. Without an evidentiary foundation to support such an adjustment in this case, there is no basis to use the 30% discount, which runs a great risk of producing an arbitrary result. This case involves different tax years than prior cases where that discount was applied.

Furthermore, Respondent's sales approach is not persuasive because sufficient facts regarding the relative amenities of the various comps are not in evidence. Based on this record, the evidence is not sufficiently persuasive to conclude that all relevant differences have been appropriately adjusted for. Specifically, the $100,000 adjustment ($327 per unit) for the limitation on marketability is not convincing.

In this case, the most completely developed approach to value is the cost approach as set forth on the property record cards. While it is possible that functional or economic obsolescence should be estimated, there is insufficient evidence in this case to allow for an independent estimate of depreciation from these sources.

The Michigan Supreme Court has held that the cost approach is appropriate "where the property is singular in character and is never sold, or sold once in a decade." *Cleveland Cliffs Iron Co v Township of Republic*, 196 Mich 189; 163 NW 90 (1917).

A federal court, in applying Michigan law, held that "…the Michigan Courts have long endorsed the use of an adjusted reproduction cost formula in the assessment of properties which have an inadequate or distorted market." *Helmsley v City of Detroit*, 380 F2d 169 (1967).

In this case the market for nonprofit housing cooperatives is both "inadequate" and "distorted." There is no evidence of sales prices of entire coop properties. Individual coop units are not exchanged in the open market for a negotiated cash price. Although there is a market for individual coop units, as discussed above, that market is most definitely distorted by the influence of restrictions, mortgage interest subsidies, and other benefits related to coop membership.

Parcel "012" – Vacant Commercial Parcel. Respondent's sales comparison method appraisal of the vacant parcel is not persuasive or credible. There are insufficient facts in evidence regarding the features of each comp that influenced the sales prices. Without information regarding the significant elements that influence value, it is not possible to arrive at a sound opinion of value by the sale comparison approach, because adjustments to the sale price for such differences cannot be made. For the amenities that are known, Respondent offered no adjustments. It has not been established that the differences in location require no adjustment. It is generally contrary to recognized appraisal practice to merely adopt the unadjusted mean price per square foot.

> Use of a simple arithmetic average of the value indications is not acceptable appraisal practice. Averaging a small group of numbers produces a meaningless measure of central tendency, which may or may not reflect the market place. The accepted procedure is to review each sale and judge its comparability to the property being appraised. The final value is based on all the information available to the appraiser. George F. Bloom, MAI and Henry S. Harrison, MAI, *Appraising the Single Family Residence* (Chicago: American Institute of Real Estate Appraisers, 1978), p 147.

Respondent's assessor indicated that he excluded or placed less weight on the two Ann Arbor comps due to the limitations of maximum floor to lot area ratio. The remaining Ann Arbor property (comp 2) sold in 2005 for $8.72 per square foot. The Ann Arbor comps were not given less weight because the simple average of the 10 comps of $7.25 per square foot was used. Based on the evidence in the record, it cannot be concluded that the subject is truly more similar to the comps that sold in the range of $7.00 to $9.00 per square foot. Furthermore, the dates of the sales range from 2000 through 2005, but no adjustment is made for changes in market conditions. The evidence does not support a conclusion that the subject property's TCV was $824,000 for the years at issue. In analyzing the available comps, the Tribunal is unable to arrive at an independent opinion of value due to lack of sufficient facts regarding the various factors that influence value, and there is insufficient basis to estimate adjustments for known differences.

Petitioner did not offer proofs specific to the vacant parcel, but considered it along with the entire coop property. Petitioner did not offer evidence that could be used in arriving at an independent opinion of value for parcel “012.” Therefore, the current assessed values for the vacant parcel “012” shall be affirmed.

Transfer of Ownership and Adjustments to Taxable Value under MCL 211.27a

“The tribunal shall determine a property's taxable value pursuant to section 27a of the general property tax act.” MCL 205.737(1).

Taxable Value – Vacant Parcel “012” – It is concluded that the taxable values for parcel “012” shall remain capped. The 1999 TV shall be carried forward for 2000, with an increase limited to the rate of inflation (1.9%) and the rate of increase for each year thereafter shall be limited to the rate of inflation as provided by law. This parcel did not transfer ownership in whole or in part in 1999 or any year thereafter, and there is no basis for adjusting its TV under MCL 211.27a(3) and MCL 211.27(a)(6)(j), which must be applied consistently with *Colonial Square Cooperative v Ann Arbor*, 263 Mich App 208; 687 NW2d 618 (2004). That case holds that the TV of a coop must be uncapped in relation to the transfer of an “ownership interest” (share) in a nonprofit housing cooperative, and that the uncapping must not apply to that portion of the property “not subject to the ownership interest conveyed.” As applied to this case, the vacant parcel is a portion of the property not subject to the ownership interest conveyed. There are no living units located on the vacant parcel, and therefore, a transfer of a unit not located on that parcel had no effect upon any "portion of the property" (vacant parcel).

In *Colonial Square*, the Court of Appeals focused on the transfer of individual units in relation to the transfer of a share in the coop, and implied that the uncapping of the entire parcel must relate only to the value of the individual unit. The assessor may not estimate a percentage of the entire property based on the percentage of units that changed hands and uncap the TV proportionately.

The direct statutory rationale for not uncapping the vacant parcel is that the ownership of that parcel did not transfer within the meaning of MCL 211.27a(6). There was no conveyance by deed of that parcel or any portion of that parcel, no change in beneficial use, or change in title to that parcel. There was no transfer of a share related to a unit located on that parcel.

In *Colonial Square Cooperative v Ann Arbor*, 263 Mich App 208 (2004), the Court of Appeals invalidated the city's method of partially uncapping taxable value as a result of transfers of units in a nonprofit cooperative housing project. The General Property Tax Act requires an adjustment to the taxable value of property when that property transfers ownership. MCL 211.27a(3) provides:

> Upon 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. MCL 211.27a(3).

This adjustment is referred to as an "uncapping" of the taxable value because the constitutional limitation or cap upon increases in taxable value is lost ("uncapped") when the property is transferred, as defined by law. When a transfer of ownership occurs, the property's taxable value is set at a level equal to the state equalized value in the year after the transfer, which is required to be 50% of its true cash value. In certain instances where there is a transfer of only a portion of the ownership interest in property there is a "partial uncapping" of taxable value. For example, the definition of transfer of ownership expressly includes: "A transfer of property held as a tenancy in common, except that portion of the property not subject to the ownership interest conveyed." MCL 211.27a(6)(i). The statute provides that in such cases, only a portion of the property transfers ownership, and therefore, only a portion of the taxable value is adjusted or uncapped under MCL 211.27a(3). Notice that if any portion of the taxable value of property held by tenants in common is transferred, it will necessitate an increase in the taxable value of that property by more than the rate of inflation (assuming the SEV is greater than the "capped" TV). This means that the tenant in common who did not transfer his interest in the property will nevertheless bear the burden of the partial uncapping.

The statute includes a similar provision for transfers of interests in nonprofit housing cooperatives. "Transfer of ownership" expressly includes: "A conveyance of an ownership interest in a cooperative housing corporation, except that portion of the property not subject to the ownership interest conveyed." MCL 211.27a(6)(j).

In some cases, a cooperative housing corporation owns a "property" that is a single parcel with one tax parcel identification number. In our present case, Petitioner owns one cooperative housing project that consists of eight parcels with their own tax parcel identification numbers. It must be concluded that the term “property” in MCL 211.27a(6)(j) applies to each of the eight parcels in this case. The uncapping of the taxable value of each parcel must be based on transfers of units located on that parcel.

The State Tax Commission has provided guidance to assessors and taxpayers regarding partially uncapping the TV of a housing cooperative property. Transfer of Ownership and Taxable Value Uncapping Guidelines, March 31, 2001. That publication explains that “. . . only a portion of the property’s taxable value is set at (a corresponding portion of) the property’s state equalized value; the remainder of the property’s taxable value remains subject to capped value limitations.” *Id*., 29.

Under the STC guidelines, when a unit in a cooperative transferred ownership, a portion of the property’s TV was uncapped. The portion of TV that remains capped is determined by multiplying the current year capped value (as if there was no transfer) by the percent of the property that was not transferred. That portion is the capped portion.

The uncapped portion is the percent of the property that transferred multiplied by the current year SEV. The sum of those amounts (the capped portion + the uncapped portion) is the new, partially uncapped TV. The following examples assume that the coop consists of one parcel with one tax parcel identification number:

Assume 50% of the units in a coop transferred in 2001:

	.5 x 2002 SEV 100,000 = 50,000
+	.5 x 2002 capped value 60,000 = 30,000
	2002 TV 80,000

Assume 10% of the units transferred in 2001:

.10 x 2002 SEV
\+ <u>.9 x 2002 capped value</u>
partially uncapped TV

In *Colonial Square*, the court invalidated the above method on constitutional grounds. The court noted that MCL 211.27a(6)(j) "expanded the definition [of transfer of ownership] to include the conveyance of a cooperative housing unit." The court held that the city could not lawfully uncap the "value of the whole parcel in proportion to the percentage of units transferred." The court held that the city "failed to track the individual units transferred" and reasoned that this constituted "annual reevaluations of an entire parcel" that improperly "impose increasing obligations on the units in a cooperative that have not been transferred." Although the court required each unit to be "tracked," it did not require that separate parcel identification numbers be assigned to each unit in the cooperative.

Although the court characterized the partial uncapping as a "reevaluation of the entire parcel," only a relatively small portion of the parcel's TV was "reevaluated." Nevertheless, the court found that this method impermissibly increases obligations on the units that have not transferred. The occupants of the individual units are not assessed or billed taxes, but rather the coop as an entity is the taxpayer. In *Colonial Square*, the coop received one tax bill with one taxable value. In our present case, the coop is the taxpayer and is billed for the eight parcels. The coop's board of directors allocates the taxes among the shareholders. Each member effectively shares a portion of the coop's TV and pays a portion of the taxes based on that TV, as determined by the board.

The Michigan Constitution (1963 Const, art 9 sec 3) provides that the legislature shall provide that the taxable value of "<u>each parcel of property</u> . . . shall not increase each year by more than the increase in. . . the general price level. . . until ownership of the <u>parcel</u> of property is transferred.” (Emphasis added).

The constitutional cap on TV applies on a parcel by parcel basis. If a parcel has multiple owners, the constitution guarantees to the owners that the taxable value of the parcel shall not increase by more than the rate of inflation, until there is a transfer of ownership as defined by law. The constitutional language expressly requires an increase in TV of a parcel when that parcel transfers ownership. The legislature has defined a transfer of property to include the transfer of a unit in a cooperative, which results in a partial uncapping of the TV of the cooperative. If a coop is taxed as a single parcel, partially uncapping the TV in relation to the <u>value</u> of the units transferred would not run afoul of these provisions, even if the increase in the TV has the indirect effect of imposing a greater tax burden on shareholders whose units have not transferred. In such case, the TV cap would not be violated. The challenge is to reasonably estimate the value of the units that transferred as a means of determining the portion of TV that is to be uncapped.

In order to comply with *Colonial Square*, the assessor must “track individual units” and must not uncap the taxable value in proportion to the percentage of units transferred. Furthermore, the method of tracking units that transfer must not veil “which units, if any, the city actually reassessed.” The Court of Appeals held that the Constitution requires the assessor to track transfers of each unit and that TV must only uncap in relation to units that actually transferred.

One method that would comply with *Colonial Square* would be to assign a separate parcel number to each unit in a coop, along with its own SEV and TV. This would comply because the capped TV of each parcel would be preserved as long as the unit does not transfer ownership.

When a unit transferred ownership, its TV would be adjusted to equal the SEV (based on that unit's TCV). This would be similar to the manner in which condominiums are assessed, except that the cooperative corporation would remain the taxpayer, rather than the occupant of the unit.

It must be pointed out that an individual member of a coop does not own a "parcel of property" and the member does not have a taxable value in his or her individual capacity. The constitution protects the taxable value of each *parcel* that is owned by the nonprofit corporation. If an ownership interest in the corporation transfers, the TV of the corporation's property *shall be* increased by more than the increase in the general price level (assuming the SEV indicates such an increase). The ownership interest conveyed is a share of the coop. Upon conveyance of a share, there is a transfer of ownership, "except for that portion of the property not subject to the ownership interest conveyed." Therefore, a "transfer of ownership" only includes that portion of the property that *is* subject to the ownership interest conveyed. The Court of Appeals concluded "that portion of the property" that is subject to the ownership interest conveyed is a <u>coop unit</u>. It follows that the TV of the entire coop parcel may only increase by an amount that reflects the difference between the capped value (TV) attributable to the unit that transferred and the SEV attributable to that unit in the year after the transfer.

Colonial Square cannot be interpreted in a manner that would invalidate any partial uncapping of the TV of a coop parcel that includes more than one unit. Again, the court did <u>not</u> hold that individual parcel identification numbers must be applied to each unit.

The court held that the city's method amounted to "annual reevaluations of an entire parcel of property" which impermissibly increased "obligations on the units in a cooperative that have not been transferred." *Id*., 211. Although the court invalidated the city's methodology in that case, the court's opinion cannot be interpreted to disallow all partial uncapping of the TV of a coop with a single parcel number merely because it would increase the obligations on shareholders whose units did not transfer. If this is the infirmity to be avoided, the TV of the entire parcel may never increase by more than the CPI because a share of the parcel's TV applies to each unit. If so interpreted, <u>the court's ruling would require the assessor to determine SEV and TV for each individual unit, which would require assigning a parcel identification number to each of the subject's 306 units.</u> Even then, the tax bill would be sent to the nonprofit housing corporation, which is the taxpayer, and not the individual members. The coop board would still determine how to allocate the property taxes among the members.

The Occupancy Agreement (Forest Hills), Article 7, provides that "The corporation shall … pay or provide for the payment of all taxes or assessments levied against the project." The shareholder pays a "Monthly Housing Charge" that is "one-twelfth of the Member's proportionate (annual) share of the sum required by the corporation, as estimated by its Board of Directors to meet its annual expenses." Occupancy Agreement, Article 1. (Petitioner's Exhibit 8). The annual expenses include "the amount of all taxes and assessments levied against the project…."

The taxes are levied against the entire coop property, and the agreement does not contemplate that individual units are to be valued separately and subject to tax as units. The coop is a nonprofit corporation that owns the entire property (its various parcels), and the coop entity is the taxpayer. The board of directors determines how much of the total tax bill each member pays as part of the monthly "carrying charges" as determined by the Occupancy Agreement. Therefore, by partially uncapping the TV of a coop, the taxing unit has not imposed increased burdens on units that have not transferred. The board could allocate the taxes in a manner that preserves the benefit of the capped value for units that have not transferred and could allocate the increased tax burden only to those units that transferred ownership.

The Tribunal has authority to order Respondent to assign separate parcel numbers for each unit for the years 2000 through 2009. If so ordered, the 1999 TV for each existing parcel would be allocated to each unit on that parcel by the method set forth in Respondent's Exhibit 26, consistent with Findings of Facts 51 through 68. In such case, the nonprofit cooperative housing corporation would remain the property owner and the taxpayer that would receive the tax bills. The difference would be that rather than receiving eight tax bills for the current parcels the coop would receive 306 tax bills for each unit (and perhaps a bill for the vacant parcel and other parcels that could be created.) The coop board would still control how the taxes would be divided among the shareholders. The board would determine whether new coop members pay higher property taxes than long term members.

However, assigning separate parcel numbers to units is not required to comply with *Colonial Square*. Respondent has not advocated such an approach, and there is no indication that Petitioner desires to receive 306 (or more) tax bills. In *Colonial Square*, the entire coop property had a single tax parcel identification number. The TV of the entire parcel was increased based on the percentage of units in the coop that transferred, without regard to the value of the units transferred. Under the method adopted in this case, the increase in TV of a parcel is limited in direct relation to an estimate of the value of the units that transfer. Therefore, if one unit on parcel 013 transfers, the TV of the parcel would be increased only by the difference between that unit's allocated SEV and allocated TV in the following year. The effect upon the tax liability of the coop is the same whether this increase is attributed to a unit that has been assigned a separate parcel number or if the unit does not have a separate parcel number. It increases the total tax liability of the coop in either event.

Even if separate parcel numbers are assigned to each unit, the tax burden would be increased to the corporation and not to any individual shareholder. The owner of each coop unit would still be the corporation, which would receive the tax bill and determine how to allocate the taxes among its members. As long as the increase in the TV of a parcel is limited to the value attributable to transfers of individual units, there is no violation of *Colonial Square*. As described above, the coop is not bound to increase the shareholders' proportionate share of the coop's property taxes in either case. The coop board determines how to allocate the taxes to the shareholders, in accordance with its governing documents.

As prescribed herein, Respondent would track the value of each unit as if it had a separate parcel number. Petitioner is on notice of how the transfers of each unit were tracked and how the SEV and TV were determined. For future years, an assessment change notice for each parcel number would be mailed to the corporation, and would indicate whether there was a transfer of ownership. The public tax records for each parcel include the property transfer affidavits filed by Petitioner each year, which includes a list of units on that parcel that transferred ownership. The tax records also include a worksheet similar to R-26 that sets forth the SEV and TV of the relevant parcel attributable to each unit.

The current SEV for each of the seven improved parcels shall be allocated to each unit as set forth on Respondent's Exhibit 26. For example, R-26 includes values for parcel number "013" and indicates that the current SEV for that parcel for the year 2000 is $302,900. The records indicate that in 1999, two of the 24 units transferred ownership (units 16-B and 19-B). Using the factors set forth in the findings of fact (paragraphs 50 through 55), the allocated 1999 TV of each unit is $11,375. (The total 1999 TV of parcel 013 was $273,398. The value of each two bedroom unit is .041603 of the total value of the parcel: .041603 x $273,398 = $11,374.17.) For 2000, the allocated SEV of each of the two units that transferred is $12,601 (.041603 x $302,900). The "capped value" for each two-bedroom unit for 2000 was $11,591. Therefore, for each unit that transferred the allocated uncapped TV is $12,601 (which is $1,101 higher than the TV would have been had there been no uncapping). Because this is a partial uncapping of a single parcel, the sum of allocated TV's (both capped and uncapped) equal the partially uncapped TV for parcel 013 for the year 2000. This same methodology shall be applied for all years at issue, as indicated on Exhibit R-26.

In this case, the method of allocating the values to each unit is based on the "proportionate factor of unit valuation" set forth in Petitioner's Exhibit 4 ("Information Bulletin"). This is found to reasonably relate to the value of each unit and is not an arbitrary method of estimating the percentage of units that transferred that is prohibited by *Colonial Square*. The ruling in this case does not eliminate other methods of determining the TCV of each individual unit by recognized assessment methods.

JUDGMENT

IT IS ORDERED that the true cash values, assessments and taxable values for the subject property for the tax years at issue shall be those specified in the "Tribunal's Conclusions of Assessment and True Cash Value" portion of this Proposed Opinion and Judgment.

MICHIGAN TAX TRIBUNAL

Entered: July 1, 2010 By: Thomas A. Halick

This Proposed Opinion and Judgment ("Proposed Opinion") was prepared by the State Office of Administrative Hearings and Rules. The parties have 20 days from date of entry of this Proposed Opinion to notify the Tribunal in writing if they do not agree with the Proposed Opinion and why they do not agree (i.e., exceptions). After the expiration of the 20-day time period, the Tribunal will review the Proposed Opinion and consider the exceptions, if any, and:

a. Adopt the Proposed Opinion as a Final Decision.
b. Modify the Proposed Opinion and adopt it as a Final Decision.
c. Order a rehearing or take such other action as is necessary and appropriate.

The exceptions are limited to the evidence submitted prior to or at the hearing and any matter addressed in the Proposed Opinion. There is no fee for the filing of exceptions. A copy of a party's written exceptions must be sent to the opposing party.