

STATE OF MICHIGAN  
DEPARTMENT OF LABOR AND ECONOMIC GROWTH  
MICHIGAN TAX TRIBUNAL

Heatherwoods Development, Inc. II  
Petitioner,

v

MTT Docket No. 306110  
Consolidated w/ 314241

Township of Chesterfield,  
Respondent.

Tribunal Judge Presiding  
Sherry A. Lee

**OPINION AND JUDGMENT**

**INTRODUCTION**

A hearing on the real property assessment matter in the above-captioned case was held before the Michigan Tax Tribunal on May 9, 2006 in its Lansing, Michigan offices. Petitioner, Heatherwoods Development, Inc. II, was represented by attorney Gary E. Gendernalik. Respondent, Township of Chesterfield, was represented by attorney Lawrence W. Dloski. Petitioner is appealing the taxable values for 2004 and 2005, contending that Respondent should not have uncapped the taxable value of the subject parcels as the conveyances at issue were in fact not transfers of ownership and, further, that the infrastructure improvements on parcel 400-008 were improperly classified as new construction for the tax year 2005. Respondent contends that the 2003 transaction involving the subject parcels is a transfer of ownership for purposes of MCL 211.27a because there was not an exemption to the provisions of the statute. Further, the infrastructure improvements constituted new construction for parcel 400-008, which were valued by the township assessor and added to the assessment and taxable value for 2005.

## SUMMARY OF CASE

The subject property consists of three parcels of residential real property located in Chesterfield Township, Michigan. The property is vacant and unplatted. On February 20, 2002, Heatherwoods Development, Inc., a Michigan corporation consisting of four shareholders, transferred all the property at issue to a new entity known as Heatherwoods Development, Inc. II that was owned by the same four individual shareholders. Each owned a 25% interest. Petitioner contends that the transfer of property did not constitute a “transfer of ownership” for purposes of MCL 211.27a because the entities were “commonly controlled,” therefore, Respondent cannot uncapping the taxable value of the subject parcels because the conveyances meet the exception set forth at MCL 211.27a(7)(l). The statutory provision found at MCL 211.27a(6)(h) is also applicable as there was not a transfer of more than 50% ownership interest in the corporation. Also, Petitioner asserts that the infrastructure improvements on parcel 400-008 cannot be classified as new construction in light of the fact that the plat had not been approved by all governmental agencies and no lots could be sold or built upon until the final plat was approved. Respondent contends that the 2003 conveyances involving the subject property are transfers of ownership for purposes of MCL 211.27a because Petitioner did transfer more than 50% ownership interest in the entities which transfer constitutes a transfer of ownership for purposes of uncapping the taxable value of the subject properties. Respondent further contends the transfers cannot fall under the “common control” exemption of MCL 211.27a(7)(l) because the transfer of ownership among the legal entities did not involve entities which were commonly controlled. Therefore, there was not an exemption to the uncapping provisions of the statute. Also, the storm sewers, sanitary sewers, driveways, street lighting, sidewalks, paving, etc., constituted new construction for parcel 400-008, which was valued by the township assessor and

added to the assessment and taxable value for 2005. The Tribunal finds that the entities involved, the Trust and the limited liability company of which the Trust is a member, cannot be considered entities under common control. The Tribunal concludes the conveyances of property occurring in 2003 were transfers of ownership and, in accordance with MCL 211.27a(3), the subject property's taxable value must be uncapped in 2004, the year following the transfer.

### **FINDINGS OF FACT**

The property in contention consists of three parcels of vacant and unplatted residential real property located in Chesterfield Township, Michigan. The parcels are described as parcel identification number 015-009-010-400-007 ("400-007") consisting of 10 acres, parcel identification number 015-009-010-400-008 ("400-008") consisting of 50.8 acres and parcel identification number 015-009-011-300-001 ("300-001") consisting of 40 acres. The taxable value for parcel 400-007 was \$97,551 for 2004 and 2005. The taxable value for parcel 400-008 was \$305,724 for 2004 and \$921,755 for 2005. The taxable value for parcel 300-001 was \$253,935 for 2004 and \$259,775 for 2005. During the year 2004, Petitioner did make certain improvements on parcel 400-008, which included road improvements and some underground construction. The final plat had not been approved and homes could not be built on the proposed platted area.

### **PETITIONER'S CONTENTIONS AND EVIDENCE**

In February, 2003, Heatherwoods Development, Inc. was a Michigan Corporation that had four shareholders, to wit; Vincent DiLorenzo, Angela Tinervia, Anthony Grillo and Benedetto Sorrentino. In February, 2003, Heatherwoods Development, Inc. II, a new entity with a similar name, was formed and was owned by the same four individuals. In February, 2003, Heatherwoods Development, Inc. transferred all the property at issue from that company to

Heatherwoods Development, Inc. II. Therefore, each of the members is a “controlling” member by statutory definition and a transfer of ownership did not occur as that term is defined by MCL 211.27(a)(6). Further, Heatherwoods Development, Inc. II was owned equally by four individuals. Each owned a 25% interest in Heatherwoods Development, Inc. II. There was not a transfer of more than a 50% ownership interest in the corporation. Since there was not such a transfer, then the uncapping was illegal. Accordingly, Respondent should not have uncapped the taxable value of either of the subject parcels for the tax years at issue. Also, in conjunction with parcel 400-008, the increase of the assessment in the year 2005, based on the assertion of new construction was erroneous given the fact that the plat had not been finalized and none of the infrastructure could be used by anyone and there were no new buildings on the property in question and no individual lots had been sold. Petitioner had installed some infrastructure such as sewers and roads and was in the platting process, but the final plat had not been approved in the year 2004. Petitioner contends the taxable value for parcel 400-007 should be \$35,948.22 for 2004 and \$36,775.03 for 2005, the taxable value for parcel 400-008 should be \$6,264.85 for 2004 and \$6,408.94 for 2005 and the taxable value for parcel 300-001 should be \$35,459.23 for 2004 and \$36,274.79 for 2005.

#### **RESPONDENT’S CONTENTIONS AND EVIDENCE**

Based on the various deeds, a transfer occurred as a result of more than 51% of the interest in an entity being transferred and/or the transfer was not among entities which were commonly controlled. The first transfer that justified the uncapping of the subject property was the transfer from D&T, owned equally by DiLorenzo and Tinervia, to Heatherwoods Development, Inc., owned equally by DiLorenzo, Tinervia, Sorrentino and Grillo. In that transaction, D&T transferred more than 50% of its interest to Heatherwoods Development, Inc. In order to avoid

being considered a transfer of ownership, DiLorenzo and Tinervia would have to have maintained at least a 51% interest in Heatherwoods Development, Inc. The second transaction, which occurred on February 20, 2003 and resulted in a transfer of ownership, was the stock transfer regarding Heatherwoods Development, Inc. II, wherein DiLorenzo and Tinervia each transferred their 25% interest to Sorrentino and Grillo, the net result being that Sorrentino and Grillo each owned 50% of the corporation. There is no question that a transfer of ownership occurred which justified the uncapping of the subject property. Further, the installation of storm sewers, water mains, sanitary sewers, streets, street lighting, pavement, roadways, driveways, etc., is new construction that qualifies as additions for the 2005 tax year regarding parcel 400-008.

### **CONCLUSIONS OF LAW**

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value, as equalized, and that beginning in 1995 the taxable value is limited by statutorily determined general price increases, adjusted for additions and losses.

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law...The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not...exceed 50%...; and for a system of equalization of assessments. For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value. Const 1963, Art IX, Sec 3.

MCL 211.27a provides, in pertinent part:

Sec. 27a...(3) 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.

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(6) As used in this act, "transfer of ownership" means the conveyance of title to or a present interest in property, including the beneficial use of the property, the value of which is substantially equal to the value of the fee interest. *Transfer of ownership of property includes, but is not limited to:*

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(a) A conveyance by deed.

(c) A conveyance to a trust after December 31, 1994, except if the settlor or the settlor's spouse, or both, conveys the property to the trust and the sole present beneficiary or beneficiaries are the settlor or the settlor's spouse, or both.

(d) A conveyance by distribution from a trust, except if the distributee is the sole present beneficiary or the spouse of the sole present beneficiary, or both.

(e) A change in the sole present beneficiary or beneficiaries of a trust, except a change that adds or substitutes the spouse of the sole present beneficiary.

(h) A conveyance of an ownership interest in a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity if the ownership interest conveyed is more than 50% of the corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity. Unless notification is provided under subsection (10), the corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity shall notify the assessing officer on a form provided by the state tax commission not more than 45 days after a conveyance of an ownership interest that constitutes a transfer of ownership under this subdivision.

(7) Transfer of ownership does not include the following:

(1) A transfer of real property or other ownership interests among corporations, partnerships, limited liability companies, limited liability partnerships, or other legal entities if the entities involved are commonly controlled. Upon request by the state tax commission, a corporation, partnership, limited liability company, limited liability partnership, or other legal entity shall furnish proof within 45 days that a transfer meets the requirements of this subdivision. A corporation, partnership, limited liability company, limited liability partnership, or other legal entity that fails to comply with a request by the state tax commission under this subdivision is subject to a fine of \$200.00.

Because MCL 211.27a(7) sets forth exceptions to the general definition, unless a ¶ (6) conveyance is excluded under ¶ (7), it is considered a transfer of ownership.

### **Issues and Applicable Law**

In the matter before the Tribunal, the issues to be resolved by the Tribunal are (i) whether Heatherwoods Development, Inc. acquired the subject parcels in February, 2003, (ii) whether, under MCL 211.27a(7)(l), D&T Construction Company, Heatherwoods Development, Inc. and Heatherwoods Development, Inc. II are commonly controlled, (iii) whether D&T Construction Company transferred more than 50% of its interest in the subject parcels to Heatherwoods Development, Inc. and what impact did the transfer of stock in Heatherwoods Development, Inc. II have on the subject property, and (iv) whether the installation of infrastructure improvements prior to final plat approval qualifies as additions under MCL 211.34d.

Under the facts of this case, multiple transactions involving the sale of real property and a transfer of stock shares within the owner corporation occurred in February, 2003. There were five transactions involving the subject property:

1. A quit claim deed dated February 20, 2003 from D&T Construction Co. to Heatherwoods Development, Inc. as to parcel 400-007. (Exh P3).
2. A quit claim deed dated February 20, 2003 from D&T Construction Co. to Heatherwoods Development, Inc. as to parcels 400-008 and 300-001. (Exh P5).
3. A quit claim deed dated February 20, 2003 from Heatherwoods Development, Inc. to Heatherwoods Development, Inc. II as to parcel 400-007. (Exh P4).
4. A quit claim deed dated February 20, 2003 from Heatherwoods Development, Inc. to Heatherwoods Development, Inc. II as to parcels 400-008 and 300-001. (Exh P7).
5. The transfer of stock from DiLorenzo and Tinervia to Benedetto and Grillo on February 20, 2003, whereupon each owned 50% of the corporation's (Heatherwoods Development, Inc. II) stock. (Exh P9, p7).

The parcels in question were initially acquired by D&T Construction and then transferred to Heatherwoods Development, Inc. and ultimately to Heatherwoods Development, Inc. II on February 20, 2003. D&T Construction is a co-partnership owned equally by Vincent DiLorenzo and his sister Angela Tinervia. Heatherwoods Development, Inc. was owned in equal 25% shares by Vincent DiLorenzo, Angela Tinervia, Benedetto Sorrentino and Angelo Grillo. Initially, Heatherwoods Development, Inc. II was also owned equally as such. However, on February 20, 2003, Vincent DiLorenzo and Angela Tinervia transferred their stock ownership in Heatherwoods Development, Inc. II equally to Benedetto Sorrentino and Angelo Grillo.

The transactions that triggered the uncapping of the subject property were the first two, as previously discussed, from D&T to Heatherwoods Development, Inc. The law states that a transfer of ownership includes a conveyance by deed. Since the conveyance is by quit claim deed, the transfer was of whatever title the grantor possessed at the time of the transfer. When it transferred title to Heatherwoods Development, Inc. on February 20, 2003, D&T transferred 100% of its interest in the subject parcels and it no longer held title to the subject property. However, at the hearing, Petitioner attempted to establish that the subject property was owned by D&T and was initially transferred to Heatherwoods Development, Inc. in 1996. Mr. Sorrentino consistently testified under direct and cross-examination that the four individuals (DiLorenzo, Tinervia, Sorrentino and Grillo) owned Heatherwoods Development, Inc. back in 1996 and that D&T transferred the property to Heatherwoods Development, Inc. at that time after he and Mr. Grillo bought in. Petitioner's Exhibits 1 and 2 were submitted and are somewhat supportive of Mr. Sorrentino's testimony. Exhibit P1 is a correspondence dated October 23, 1995 signed by Vincent DiLorenzo and Angelo Grillo regarding the purchase agreement for parcel 400-007



between D&T and ICON Building Company at 50% to each entity. Moreover, Exhibit P21 indicates that Angelo Grillo and Benedetto Sorrentino are the shareholders and directors of ICON. Exhibit P2 is a correspondence dated April 26, 1996 signed by Vincent DiLorenzo and Angelo Grillo regarding the closing and purchase of parcel 400-007 by D&T and Angelo & Bene, Inc. as co-owners at 50% each until the incorporation of Heatherwoods Development, Inc. However, documentary evidence in the form of deeds as to whether Heatherwoods Development, Inc. owned the subject property in 1996 was not submitted to the Tribunal. Mr. Sorrentino further testified that it was not until 2003 that they discovered the proper paperwork had not been processed to transfer the land from D&T into Heatherwoods Development, Inc. back in 1996 when the company was formed. (T 15-16). Respondent's counsel objected to Petitioner's testimony regarding the 1996 ownership interest of the property based on the best evidence rule, as the original deed or a duplicate must be introduced into evidence to establish the transfer. Respondent's Closing Brief (RCB), p 11. However, the testimony of Petitioner's representative (Mr. Sorrentino) clearly indicated that the deed did not exist so it is impossible to produce a document that did not exist. Petitioner's Reply Brief (PRB), p 1. The fact that there may have been some administrative mistakes in making sure that the proper paperwork was in order does not preclude Heatherwoods Development, Inc. from being the actual owner of the properties as of 1996. Petitioner's Closing Brief (PCB), p 3. Petitioner's Exhibit 2 demonstrates that as of 1996, it was the parties' intent to have the parcels in Heatherwoods Development, Inc. and temporary measures were put in place to transfer the property until incorporation of Heatherwoods Development, Inc. PCB, p 7.

Accepting *arguendo* that the subject property was transferred from D&T to Heatherwoods Development, Inc. sometime in 1996 when the company was formed, by statute the taxable value would have been uncapped for 1997, the year following the transfer of ownership, provided no statutory exception or exemption applied. Mr. Sorrentino testified that no one ever contended after 1996 that D&T had anything to do with the property and there was no contention by anyone that Heatherwoods Development, Inc. did not own the three parcels. (T 18). Yet the Tribunal finds that the buyer, Heatherwoods Development, Inc., failed to notify the assessing office of the transfer as required by statute. Ordinarily, once aware of such circumstances, the assessor must immediately uncap the taxable value of the property for the year following the transfer of ownership, i.e., 1997, and the assessor must also then recalculate the taxable values of subsequent years using the uncapped taxable value as a base. Ultimately, the property owner will be billed for taxes based on the uncapped and recalculated taxable values. Additional taxes, penalties and interest must be levied for all years affected. The interest and penalties originate from the date the tax would have been originally levied if the property's taxable value had been uncapped at the proper time in 1997. Notwithstanding, Petitioner argued that administrative mistakes had occurred in making sure the proper paperwork was in order and this was only brought to light in February, 2003. Petitioner's witness, Gary Wood, CPA, a controller of the company, testified that the quit claim deed(s) in February, 2003 from D&T to Heatherwoods Development, Inc. was to correct an administrative oversight. PCB, p 7. At the closing in February, 2003, it became evident for the first time that no one could find the documents conveying the property to Heatherwoods Development, Inc. and the four partners were in agreement that all of the land belonged to Heatherwoods Development, Inc. so the Quit Claim Deeds from D&T were executed to facilitate that gap in the chain of title. PRB, p 2. Although

Petitioner's argument here is one of form over substance, as there would have been no uncapping in 2004 if the instruments had been processed to transfer the land from D&T to Heatherwoods Development, Inc. back in 1996, Petitioner chose the form and timing of the transfers. As such, the Tribunal concludes the subject property's taxable values should have been uncapped in 2004, as required by MCL 211.27a, provided no statutory exception or exemption applies.

Petitioner claimed that the transfers that occurred were between controlled individuals and/or entities and therefore exempt such that uncapping would not occur. The Michigan State Tax Commission is the administrative agency generally charged with the responsibility of administering the State's property tax laws. The State Tax Commission has directed that Michigan Revenue Administrative Bulletin 1989-48 is to be used in determining whether entities are commonly controlled. In accordance with this bulletin, entities under common control shall include any person as defined in MCL 208.6(1) including "an individual, firm, bank, financial institution, limited partnership, copartnership, partnership, joint venture, association, corporation, receiver, estate, trust, or any other group or combination acting as a unit." This bulletin details three categories of common control: parent-subsidiary group, brother-sister group and combined parent-subsidiary and brother-sister group of trades or businesses. For each category, connection through a controlling interest or an effective interest in each entity must exist. In pertinent part, for corporations a controlling interest means at least 80% of the total value of the shares of all stock and effective control is greater than 50% of the total value of the shares of all stock. For partnerships, a controlling interest means 80% of the profits or capital, and effective control is more than 50% of the profits or capital. Further, in the opinion of the State Tax Commission, circumstances where property or an ownership interest is conveyed from one entity to another

entity and both entities are owned by the same individual(s) with the same percentage of ownership constitute a common control situation. In this case, the subject property was initially acquired by D&T Construction and then transferred to Heatherwoods Development, Inc. on February 20, 2003. D&T Construction is a co-partnership owned by Vincent DiLorenzo and his sister Angela Tinervia, each having a 50% interest in the company. Heatherwoods Development, Inc. was owned in equal 25% shares by Vincent DiLorenzo, Angela Tinervia, Benedetto Sorrentino and Angelo Grillo. Initially, D&T had total control over the subject property at all relevant times. D&T held title, present interest and beneficial use of the subject property. When D&T transferred title to Heatherwoods Development, Inc., its partners, DiLorenzo and Tinervia, continued to have a present interest in the subject property by virtue of their control over Heatherwoods Development, Inc. However, that present interest was changed in substance given that DiLorenzo's and Tinervia's control in Heatherwoods Development, Inc. is 50% or 25% each, as opposed to 100% or 50% each, based on their shareholder interest in the titleholder entity. Rather, although title has transferred to a different entity, actual control over the property has changed based on the controlling interests in the entity. Therefore, entities D&T and Heatherwoods Development, Inc. do not qualify as entities under common control for the reason that their ownership interests were not identical before and after the transfer.

The parcels in question were ultimately transferred by Heatherwoods Development, Inc. to Heatherwoods Development, Inc. II on February 20, 2003. Heatherwoods Development, Inc. was owned in equal 25% shares by Vincent DiLorenzo, Angela Tinervia, Benedetto Sorrentino and Angelo Grillo. Initially, Heatherwoods Development, Inc. II was also owned equally as such. To this end, property or an ownership interest is conveyed from one entity to another entity and both

entities are owned by the same individual(s) with the same percentage of ownership, which constitutes a common control situation. Heatherwoods Development, Inc. II held title, present interest, and beneficial use of the subject property. However, also on February 20, 2003, Vincent DiLorenzo and Angela Tinervia transferred their stock ownership in Heatherwoods Development, Inc. II equally to Benedetto Sorrentino and Angelo Grillo. Therefore, at the end of the day, Heatherwoods Development, Inc. II is not owned by the same individual(s) with the same percentage of ownership. Simultaneously, title has transferred to a different entity and actual control over the property has changed based on the controlling interests in the entity, which does not constitute a common control situation.

Initially, D&T held title, present interest and beneficial use of the subject property. Present interest has nothing to do with title but rather denotes control over the property. D&T had total control over the subject property at all relevant times. The substance of the February 20, 2003 conveyances to Heatherwoods Development, Inc. was 100% of the real property ownership interest of D&T, as partners DiLorenzo and Tinervia, together, held a 100% interest in the entity that held title to the property. The law states that a transfer of ownership occurs when more than 50% of the ownership interest of a legal entity changes. The Tribunal finds as the substance of the conveyances was 100% of the real property ownership interest of D&T, the statutory exception under MCL 211.27a(7)(h) does not apply to the facts in this case.

For tax year 2005, the assessor determined a value for certain infrastructure improvements to be new construction in the amount of \$609,000 for parcel 400-008. Although Petitioner does not dispute the assessor's value determination, Petitioner asserts that the infrastructure improvements

cannot be classified as new construction in light of the fact that the plat had not been approved, thus, no lots could be sold or built upon. Moreover, as public services, the infrastructure improvements could not be used because the final plat had not been approved. Further, the underground infrastructure is not equipment to a building and it is not furnishings within a building as noted under MCL 211.34d. Petitioner claimed that Proposal A does not allow the taxable value of any parcel to increase above the “closed cap” regardless of any large increase in true market value until the property is transferred. PCB, p 15. However, a review of the aspects of Proposal A belies Petitioner’s claim. Although PA 415 and Proposal A made significant changes to the property tax system, the basic system of assessing and equalization remain the same. Assessments for all properties must still be at 50% of true cash value and properties of similar value within a township must still have similar assessments. The assessor, then, must determine the true cash value through proper valuation methodology. Highest and best use is a concept fundamental to the determination of true cash value. *Rose Bldg Co v Independence Twp*, 436 Mich 620, 633; 462 NW2d 325 (1990). Analysis of the highest and best use of the land as though vacant and of the property **as improved** is essential in the valuation process. Mr. Wood testified that the bank would not have loaned the construction monies to Heatherwoods for Phase I of the subdivision development if it did not own the three parcels. PCB, p 7. Petitioner had installed some infrastructure such as sewers and roads and was in the platting process. (Exh P20). Based upon the testimony and evidence presented at the hearing, the Tribunal finds it feasible that the highest and best use of the site was subdivision development as intended for residential use. Petitioner had installed storm sewers, sanitary sewers, driveways, street lighting, sidewalks, paving, etc. Mr. Fisher testified that, notwithstanding final plat approval, infrastructure improvements for the proposed subdivision, identified as roads, storm and sanitary

sewers and water supply, were in place and caused him to add \$1,218,000 in true cash value to the property. (T 72). The Notice for Assessment for 2005 for parcel 400-008 indicated that the change for the assessment occurred for “new construction.” (Exh P11). For determination of assessed and state equalized values, the State Tax Commission instructs that “new” includes: building or other improvement put on the description; new additions and improvements; further completion of new construction; increased land value or improved economic conditions; platted land; or a description on the roll for the first time or returned from exempt status. Also, changes to individual assessments to establish uniformity and meet the 50% requirement are made as “adjustments.” Typically, when there is an increase in value because of added true cash value due to physical improvements to the site, the capped value “additions” are affected. When assessing taxable value pursuant to MCL 211.27a(2)(a), the “additions” the assessor may take into account are qualified by the language of MCL 211.34d, which provides in pertinent part:

Sec. 34d...(1)(b) For taxes levied after 1994, “additions” means, except as provided in subsection (c), all of the following:

(iii) New construction. As used in this subparagraph, “new construction” means property not in existence on the immediately preceding tax day and not replacement construction. New construction includes the physical addition of equipment or furnishings, subject to the provisions set forth in section 27(2)(a) to (o).

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(viii) Public services. As used in this subparagraph, “public services” means water service, sewer service, a primary access road, natural gas service, electrical service, telephone service, sidewalks, or street lighting. For purposes of determining the taxable value of real property under section 27a, the value of public services is the amount of the increase in true cash value of the property attributable to the available public services multiplied by 0.50 and shall be added in the calendar year following the calendar year when those public services are initially available.

Sec. 34d...(1)(c) For taxes levied after 1994, additions do not include increased value attributable to any of the following:

(i) Platting, splits or combinations of property.

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Therefore, in accordance with the State Tax Commission instruction and statute, the increase in value caused by the installation of improvements to the land is not dependent upon their usage or final approval of the plat. It is clear that the improvements installed by Petitioner are improvements to the land pursuant to statute that constitute “new” true cash value for purposes of assessment and equalization and “additions” for purposes of taxable value determination. Mr. Fisher testified that an assessed value of \$609,000 was added as both new and additions. (T 71).

The Tribunal finds the assessed value as equalized is calculated as follows:

$\$305,724$  (2004 AV) -  $\$0$  (losses) +  $\$45,539$  (adjustments) +  $\$609,000$  (new) =  $\$960,263$  (2005 AV), and the capped value is calculated as follows:

$\$305,724$  (2004 TV) -  $\$0$  (losses) x 1.023 (inflation rate) +  $\$609,000$  (additions) =  $\$921,755$  (2005 CV). The 2005 taxable value is  $\$921,755$ , the lesser of the 2005 capped value or 2005 assessed value as equalized. The assessor must consider the true cash value of parcel 400-008 in setting the assessed value and state equalized value. The capped value was then calculated and the 2005 taxable value then based on the capped value. The Tribunal finds without merit Petitioner’s contention that the increase in the assessment for new construction for the tax year 2005 was erroneous given that the plat had not been finalized and none of the infrastructure could be used. Moreover, Petitioner avers, by statutory definition, the platting process does not increase the value of the property and is not considered an addition to the value of the land. PRB, p 3. Thus, Petitioner implied that Respondent impermissibly accounted for the increase in value attributable to platting when it determined the 2005 taxable value of parcel 400-008. However, the Tribunal disputes the accuracy of this position. Although the Tribunal agrees that “additions” for purposes of taxable value determination do not include increased value attributable to platting of property, we clarify that for determination of assessed and state equalized values added value resulting



from the platting process does increase the true cash value of property. For properties experiencing value increases related to platted land, a tangible difference in the value of the land before and after the platting process is indicated. The true cash value of the land indicated by Exhibit R6 was \$611,448 for 2004 and the value of the land indicated by Exhibit R9 was \$702,526 for 2005. As shown in the previous calculations by the Tribunal, the true cash value difference of \$91,078 or an assessed value of \$45,539 is a plus adjustment for determination of 2005 assessed and state equalized values resulting from the platting process, but is not included as an addition for taxable value determination. Therefore, the Tribunal finds no basis to support an allegation that the increase in the taxable value in 2005 for parcel 400-008 was related to the platting process. As to Petitioner's argument that the public services could not be used until final plat approval, the Tribunal notes that the statutory language specifies that public services need only be "available," not be in "use." The credible evidence indicated that even though the final plat was not approved until 2005, their construction, up to \$1,218,000, was completed in 2004. The Tribunal concludes from this fact that the availability of the public services required to serve the proposed residential subdivision development in order to obtain requisite plat approval was reasonably present and accessible. Therefore, the value of the public services shall be added in 2005, the calendar year following the calendar year when those public services were initially available, for purposes of determining the taxable value of real property under section 27a.

The property transfers are, therefore, transfers of ownership as no statutory exception or exemption applies and the Tribunal concludes, in accordance with MCL 211.27a(3), the subject property's taxable value must be uncapped in 2004, the year following the transfer. The Tribunal also concludes that Respondent properly accounted for the increase in value attributable to new

improvements or available public services to parcel 400-008 and not to platting when the true cash value and taxable value was determined for 2005.

The Tribunal further concludes for tax years 2004 and 2005 that the true cash values and revised assessments of the subject property are as follows:

The original taxable values on the roll and the revised taxable values for the subject property are:

<b>Property Tax Code</b>	<b>Year</b>	<b>Original Taxable Value</b>	<b>Revised Taxable Value</b>
015-009-010-400-007	2004	\$97,551	\$97,551
015-009-010-400-008	2004	\$305,724	\$305,724
015-009-011-300-001	2004	\$253,935	\$253,935

<b>Property Tax Code</b>	<b>Year</b>	<b>Original Taxable Value</b>	<b>Revised Taxable Value</b>
015-009-010-400-007	2005	\$97,551	\$97,551
015-009-010-400-008	2005	\$921,755	\$921,755
015-009-011-300-001	2005	\$259,775	\$259,775

## JUDGMENT

IT IS ORDERED that the subject property's taxable values shall be revised for the tax years at issue as provided in the "Conclusions of Law" section of this Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Order within 20 days of the entry of this Order. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. 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 Order. As provided in 1994 PA 254 and 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest shall accrue at an interest rate set monthly at a per annum rate based on the auction rate of 91-day discount treasury bill rate for the first Monday in each month, plus 1%. After January 1, 1996, interest shall accrue at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for the calendar year 1998, (iv) after December 31, 1998, at a rate of 6.01% for the calendar year 1999, (v) after December 31, 1999, at a rate of 5.49% for the calendar year 2000, (vi) after December 31, 2000, at a rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at a rate of 5.56% for calendar year 2002,

(viii) after December 31, 2002, at a rate of 2.78% for calendar year 2003, (ix) after December 31, 2003, at a rate of 2.16% for 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar year 2005 and, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006.

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

MICHIGAN TAX TRIBUNAL

Entered: September 1, 2006

By: Sherry A. Lee, Tribunal Judge