

community watch

MONITORING LEGAL ISSUES THAT AFFECT MICHIGAN MUNICIPALITIES

2.22.08

Municipalities Cannot Increase Taxable Value For The Installation Of Public Utility Services, But May Include The Value In The Value Of New Construction Or In The Market Value Of The Property When It Sells.

By: Stephanie Simon Morita

In *Toll Northville Ltd et al v Township of Northville*, the Michigan Supreme Court found unconstitutional the statute allowing municipalities to add to taxable value for the installation of public utility service in a public right of way, but the Court also held that it was appropriate to include into the value of a home at the time it is built or sold the value added as a result of access to utility service.

In Michigan, property taxes are based upon a property's taxable value. Generally speaking, taxable value may not be increased beyond the property's assessed value, and on a yearly basis the taxable value may not be increased by more than the rate of inflation unless there is a transfer of ownership of the property, or an addition to the property. In these situations, and respectively, the taxable value may be increased to one half the property's market value (the assessed value), or by one half the value of the addition to the property. The statute at issue in this case, MCL 211.34d(1)(b)(viii), is the statute specifically allowing for an addition to taxable value for the installation of public utility services, e.g. a water line is extended down the street so a property may have access to municipal water.

The Plaintiffs, who were residential property developers, had installed infrastructure into a subdivision as required by the municipality in order to obtain final plat approval. The municipality then increased the taxable value of the lots in the subdivision by the value attributable to the existence of the infrastructure in the right of way. The Plaintiffs appealed the taxable value increase to the Michigan Tax Tribunal, and then had the Tax Tribunal proceedings held in abeyance while a constitutional challenge to MCL 211.34d(1)(b)(viii) was surmounted in Circuit Court.

Eventually the case found its way to the Court of Appeals, where the Court upheld the Circuit Court's finding that MCL 211.34d(1)(b)(viii) was unconstitutional, and that

SECRET WARDLE NOTES:

The Supreme Court's decision provides that a municipality may not increase taxable value due to the installation of public service improvements in a public right of way. However, the Court also makes clear that including the value added to the parcel due to the existence and availability of public service utilities is acceptable, if the value is included at the time of the assessment of new construction or when the property's ownership transfers. Furthermore, the Court held that including value for the public service improvements did not amount to double taxation where the utility company was already being assessed for the improvement.

CONTINUED...

taxing the individual properties based upon the availability of public services and taxing utility lines as personal property to the utility companies was double taxation. The Supreme Court upheld the finding that MCL 211.34d(1)(b)(viii) was unconstitutional, but vacated the double taxation ruling.

The Supreme Court reasoned that the installation of public service improvements on public property or in utility easements was not a physical addition to the lot itself, and that the Court of Appeals was correct in upholding the Circuit Court's opinion that the term "additions" as found in the State of Michigan Constitution referred to improvements that became part of the real property, such as fixtures or structures, and did not refer to public service improvements in the right of way.

In reversing the part of the Court of Appeals decision as it pertained to double taxation, the Supreme Court wrote:

. . . the value of physical lines, i.e., wires, pipes, etc., as tangible personal property is distinguishable from the market value added by the availability of utility services. The distinction is important because value added from access to services is taxable to the extent that such services increase market value. Although installation of a public utility line may not be taxed as an addition in a case such as this, the value of such services will be incorporated into the value of each individual home at the time it is built or sold. *Opinion of the Supreme Court*, footnote 2.

As a result, municipalities should feel comfortable adding to taxable value for the existence of public utility service at the time the home is built or sold.

The Secrest Wardle Municipal Law Group is made up of attorneys who have extensive experience in defending litigation against governmental agencies, such as municipalities, counties, school districts, universities, and state agencies, in both the state and federal courts, and the Michigan Tax Tribunal. The members of these Practice Groups have successfully represented governmental agencies in a wide range of civil litigation matters, such as governmental immunity, property taxation, sewer liability, public roadway & sidewalks, and public buildings.

CONTACT US

Farmington Hills

30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens

94 Macomb Place, Mt. Clemens, MI 48083-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing

6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids

2025 East Beltline, S.E., Ste. 209, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

Champaign, IL

2919 Crossing Court, Ste. 11, Champaign, IL 61822-6183
Tel: 217-378-8002 Fax: 217-378-8003

www.secrestwardle.com

SECRET
SW
WARDLE

Copyright 2007 Secrest, Wardle, Lynch, Hampton,
Truex and Morley, P.C.

This newsletter is published for the purpose of providing information and does not constitute legal advice and should not be considered as such. This newsletter or any portion of this newsletter is not to be distributed or copied without the express written consent of Secrest Wardle.

CONTRIBUTORS

Municipal Practice Group Chair

William P. Hampton

Senior Editor

Steven P. Joppich

Editor

Erene Golematis

We welcome your questions and comments.

OTHER MATERIALS

If you would like to be on the distribution list for Community Watch, or for newsletters pertaining to any of our other practice groups, please contact Secrest Wardle Marketing at marketing@secrestwardle.com, or 248-539-2850.

Other newsletters include:

Benchmarks – Navigating the hazards of legal malpractice

Blueprints – Mapping legal solutions for the construction industry

Boundaries – A guide for property owners and insurers in a litigious society

Contingencies – A guide for dealing with catastrophic property loss

Fair Use – Protecting ideas in a competitive world

In the Margin – Charting legal trends affecting businesses

Industry Line – Managing the hazards of environmental toxic tort litigation

Landowners' Alert – Defense strategies for property owners and managers

No-Fault Newslines – A road map for motor vehicle insurers and owners

On the Beat – Responding to litigation affecting law enforcement

On the Job – Tracking developments in employment law

Safeguards – Helping insurers protect their clients

State of the Art – Exploring the changing face of product liability

Structures – A framework for defending architects and engineers

Vital Signs – Diagnosing the changing state of medical malpractice and nursing home liability

Update Illionois - Current trends in Illinois law