Michigan Court Decisions Involving Housing Cooperatives

Colonial Square Co-op. v. City of Ann Arbor, 687 N.W.2d 618 (Mich. App., 2004).

Procedural History: City appealed as of right from order of the Circuit Court, Washtenaw County, Melinda Morris, J., granting summary disposition to taxpayers and declaring provision of statute void as unconstitutional.
History: The Michigan state constitution prohibits cities and other governmental entities from increasing a single parcel's taxable value by more than a certain percentage each year if the property does not change hands. Const. 1963, art. 9, '' 3. Plaintiffs are housing cooperatives that ostensibly own only one parcel of property shared by many members, yet experience a turnover of members involving several units a year. The Legislature defined these exchanges as transfers that allow reevaluation at the time of the exchange. The city adopted this definition as a means to reevaluate annually the cooperatives' entire parcel proportionate to the amount of turnover. Plaintiffs challenge the validity of the definition as contrary to the Michigan Constitution.

West Headnotes/Reasoning:

*Statute providing that transfer of ownership includes conveyance of ownership interest in cooperative housing corporation, except that portion of property not subject to ownership interest conveyed, did not violate constitutional section prohibiting reevaluation until ownership of property is transferred as defined by law; since phrase "defined by law" committed definition of qualifying transfer to legislature, legislature did not violate constitutional section when it expanded definition to include conveyance of cooperative housing unit. M.C.L.A. Const. Art. 9, '' 3; M.C.L.A. '' 211.27a(6)(j).

*City's application of statute providing that transfer of ownership includes conveyance of ownership interest in cooperative housing corporation violated constitutional section prohibiting reevaluation until ownership of property is transferred as defined by law; city failed to track individual units transferred, but rather uncapped value of whole parcel in proportion to percentage of units transferred, which city could not do, and annual reevaluations of entire parcel of property ran contrary to constitution's plain meaning since they imposed increasing obligations on units in cooperative that had not been transferred. M.C.L.A. Const. Art. 9, '' 3; M.C.L.A. '' 211.27a(6)(j).

The Court of Appeals affirmed in part and reversed in part, holding:1.) statute providing that transfer of ownership includes conveyance of ownership interest in cooperative housing corporation did not violate constitutional section prohibiting reevaluation until ownership of property is transferred as defined by law, but
2.) city's application of statute violated constitutional section.

Inter Co-op. Council v. Tax Tribunal Dept. of Treasury, 668 N.W.2d 181 (Mich. App., 2003).

Procedural History: Taxpayer sought review of Tax Tribunal denial of its claim for a homestead exemption for houses providing low-cost housing to university students.

History: Petitioner owns seventeen houses in the city of Ann Arbor. According to a sample membership contract that petitioner offered into evidence, petitioner provides low-cost housing to university students who purchase a defined number of cooperative member shares and pay a one-time **183 nonrefundable membership fee. The membership contract states that petitioner is *221 a "non-profit cooperative membership corporation," subject to "the Consumer Cooperative Act." In February 1994, petitioner filed affidavits with respondent for each of the seventeen houses, claiming entitlement to a homestead exemption as a nonprofit cooperative housing corporation pursuant to M.C.L. '' 211.7dd(a) of the General Property Tax Act (GPTA), M.C.L. '' 211.1 *et seq.* A hearing referee for respondent looked to the definition of "cooperative housing corporation" in the Internal Revenue Code (IRC), 26 USC 216(b)(1), and recommended that the claim be denied on the ground that petitioner failed to meet the federal definition of "cooperative housing corporation" for purposes of the GPTA. Petitioner appealed to the Small Claims Division of the tribunal, which denied the claim on the same ground.

West Headnotes/Reasoning:

*Although tax laws are construed against the government, tax-exemption statutes are strictly construed in favor of the taxing unit; but even so, they are to be interpreted according to ordinary rules of statutory construction.
*Taxpayer did not qualify as "cooperative housing corporation" for purposes of the homestead exemption under General Property Tax Act (GPTA); as cooperative housing corporation was not defined in the GPTA, the Tax Tribunal properly looked to the federal definition, and taxpayer did not meet the federal requirements as the space accommodations for the majority of the housing members were not separate and independent units with their own sleeping, cooking, and sanitation facilities. 26 U.S.C.A. '' 216(b)(1); M.C.L.A. '' 211.7cc(1), 211.7dd(a).
The Court of Appeals affirmed, holding that taxpayer did not qualify as cooperative housing corporation for purposes of the homestead exemption.

Gildersleeve v. River House Co-op.2001 WL 755913 (Not Reported in N.W.2d) (Mich. App., 2001).

Procedural History: After several cross-complaints and motions for summary disposition, the parties stipulated to the dismissal of plaintiffs= last two complaints: that defendants violated the Collection Practices Act by posting a delinquency notice in the lobby of River House's apartment building, and that defendants breached their contractual duty to refrain from unreasonable, arbitrary and/or capricious fee assessments against plaintiffs and other residents similarly situated. This appeal followed.

History: Plaintiffs became the owners of an apartment in River House, a residential cooperative. As owners of this unit, plaintiffs were bound by the terms of their Occupancy Agreement. Plaintiffs never lived in River House, but instead chose to sublet their apartment. However, the board of directors of River House refused to grant plaintiffs permission to continue subletting the unit.

West Headnotes/Reasoning:
*Error requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence.

The court held that because the parties stipulated to the circuit court's dismissal of plaintiffs' claims, they had waived appellate review regarding those claims. Accordingly, the appeal was dismissed.

Lovett v. Hanover Grove Consumer Housing Co-op., 2000 WL 33418384 (Not Reported in N.W.2d) (Mich. App., 2000).

Procedural History: Plaintiff appeals as of right the circuit court's order granting defendant summary disposition on the basis that plaintiff's negligence claim was barred by a release, MCR 2.116(C)(7).

History: Defendant is a non-profit corporation and housing cooperative established to provide low- and moderate-income housing. Plaintiff's complaint alleged that as a result of defendant's negligence, she slipped and fell on ice and snow on the common walkway area outside the unit she occupied in defendant's cooperative housing complex and sustained serious injuries. Plaintiff argues that the circuit court erred by granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) because the release was "an unconscionable, adhesion contract drafted from a superior bargaining position and foisted upon the vulnerable plaintiff by duress and coercion," and that the release is invalid as against public policy.

West Headnotes/Reasoning:

*It is not contrary to this state's public policy for a party to contract against liability for damages caused by its own ordinary negligence.

*The validity of a contract of release turns on the intent of the parties, and to be valid, a release must be fairly and knowingly made.

*A release is invalid if (1) the releasor was dazed, in shock, or under the influence of drugs, (2) the nature of the instrument was misrepresented, (3) there was other fraudulent or overreaching conduct, or (4) the releasor was acting under duress.

*One who signs a contract cannot seek to invalidate it on the basis that he or she did not read it or thought that its terms were different, absent a showing of fraud or mutual mistake, and a failure to read a contract provides ground for rescission only where the failure was not induced by carelessness alone, but instead by some stratagem, trick or artifice by the party seeking to enforce the contract.

The Court of Appeals held that the plaintiff=s claim that she Awas handed nearly fifty to sixty pages of documents [by defendant], was told to sign on each signature line, was told that she could not have an attorney review the documents, and was told that she had to sign the papers immediately in the defendant's offices or lose the possibility of any housing," did not merit a finding of invalid release, and summary disposition was affirmed.

Little v. Village Square Consumer Housing Co-op., 1998 WL 1997597 (Not Reported in N.W.2d) (Mich. App.,1998).

Procedural History: Plaintiff appeals as of right the trial court=s grant of defendant's motion for summary disposition.

History: Plaintiff brought this personal injury negligence action, as she tripped over the root of a tree located immediately outside her condominium unit, which root was protruding through the surface of the soil. The root was found to be an Aopen and obvious@ danger.

West Headnotes/Reasoning:

*The defense of open and obvious danger relates to a duty to warn, but it will not exonerate a defendant from liability for failure to maintain and repair premises under its control and in its possession.

*This legal principle, however, applies only when there is some defect in the premises which, despite its open and obvious character, represents an unreasonable danger.

The Court of Appeals found that protruding roots were in the nature of trees, and therefore not an unreasonable danger. Because of that, there was no "defect" which the defendant was contractually obligated to maintain or repair. If the roots had been protruding through the sidewalks or walkways, or were otherwise unavoidable for persons exercising due care, plaintiff would have had a better claim. As it was, the court affirmed the lower courts ruling for summary disposition.

Georgetown Place Co-op. v. City of Taylor, 572 N.W.2d 232 (Mich. App.,1997).

Procedural History: Petitioner, a federally subsidized housing cooperative, appealed as of right from a judgment of the Tax Tribunal establishing the assessed value of petitioner's property for the tax years 1984 through 1994.

History: The cooperative was constructed during 1965 and 1966 pursuant to the provisions of '' 221(d)(3) of the National Housing Act, 12 USC 17151(d)(3), a program that subsidizes low- and moderate-income housing by providing below-market interest rate financing and mortgage insurance. In a Tax Tribunal appraisal of its property, the tribunal found that petitioner failed to carry its burden of proof with respect to establishing the true cash value of the property. The tribunal was instead persuaded by respondents' market approach, which was based on the sales of federally subsidized housing in the same geographic area as petitioner's cooperative.

West Headnotes/Reasoning:

*Absent fraud, Court of Appeal's review of Tax Tribunal decision is limited to determining whether Tribunal made error of law or adopted wrong legal principle.

*In valuing real property, for tax purposes, taxpayer bears burden of proof with respect to true cash value of property. MCLA ' 205.737(3).

*"True cash value," for real estate tax valuation purposes, is synonymous with fair market value and is commonly determined by three different approaches, (1) cost less depreciation, (2) sales comparison, and (3) capitalization of income. M.C.L.A. '' 211.27(1).

*The method used for valuing real property, for estate tax purposes, was flawed; it contained a mortgage component, with result that otherwise identical parcels would have different valuations depending upon interest rates of their mortgages, in contravention of principle of equality in tax treatment. M.C.L.A. '' 211.27(1).

*Tax Tribunal did not err in utilizing studies concerning estimation of discounts for lack of marketability and minority interest, used in valuing interests in closely held businesses, for guidance in determining appropriate discount to be applied in valuing for real estate tax purposes cooperative apartment buildings

having restrictions on transferability of apartments in force until end of mortgage period. M.C.L.A. '' 211.27(1).
*Use of an 80% discount, in a valuation of buildings containing federally subsidized cooperative apartments, to reflect restrictions on marketability of apartments during mortgage period, would produce a "remarkably low" value, and be contrary to Congressional intent, as it would operate as another subsidy to apartments. National Housing Act, '' 221(d)(3), as amended, 12 U.S.C.A. '' 1715l(d)(3); M.C.L.A. '' 211.27(1).
*To ensure that petitioner is afforded due process, hearings in Tax Tribunal are conducted in accordance with Administrative Procedures Act. M.C.L.A. '''' 24.271 et seq., 205.726.

*Tax Tribunal could allow city and county to amend appraisal at hearing on real estate tax valuation question; amendments were probative of true cash value of property, and taxpayer had opportunity to cross examine witness presenting evidence. M.C.L.A. '''' 24.271 et seq., 24.272(3, 4), 24.275, 205.726.

The Court of Appeals held that: (1) taxpayer's method of assessing valuation, which contained a mortgage component, was flawed; (2) Tax Tribunal did not err by assessing valuation of properties, which could not be disposed of at market prices during term of mortgage, by reference to principles used in valuing interests in closely held businesses; (3) Tribunal could allow late amendment of appraisal; and (4) Tribunal could allow submission of articles and surveys in support of valuation approach after hearing was concluded.

Kramer Homes Co-op., Inc. v. City of Center Line1996 WL 33357878 (Not Reported in N.W.2d) (Mich. App.,1996).

Procedural History: Plaintiff cooperative appealed as of right from the trial court's order dismissing its claims that defendant's system of payment for refuse collection violated equal protection and constituted an illegal tax.

History: Defendant implemented a "user fee" system to pay for the collection of refuse. At the same time, defendant imposed a maintenance fee upon each dwelling, even if it opted out of the user fee system. The revenue from the maintenance fee was earmarked for cleanup of closed landfills, which had formerly been used by all residents of the City of Center Line, including plaintiff. Plaintiff elected to opt out of defendant's user fee system. However, pursuant to the maintenance fee, each unit was required to pay $1 per month, which totaled $6,000 per year for the cooperative. Plaintiff contended that the imposition of the maintenance fee constitutes a violation of equal protection and an illegal tax. The trial court dismissed, finding no issue of material fact.

West Headnotes/Reasoning:

*The court applied the rational basis test to the legislation, under which an ordinance carries a strong presumption of validity and the burden is on the party challenging the ordinance to show that it violates equal protection.

*Unrefuted testimony established that all residences in Center Line were charged $1 for cleanup costs, so no violation of equal protection occurred.

*State and local governments cannot impose taxes under the guise of a regulatory fee, but in order for a fee to be deemed a tax, there must be no reasonable relationship between the fee and the expense of the service provided.

*A regulatory fee will be construed as an illegal tax only where the revenue generated by the regulation exceeds the cost of the regulation, and the legislative enactment will be presumed valid, so the burden is on the plaintiff to overcome that presumption.

*Defendant presented evidence that the revenues collected from the maintenance fee were not in excess of the costs associated with the closed landfills, and the plaintiff did not controvert that evidence. Thus, plaintiff failed to overcome the ordinance's presumption of validity.

The Court of Appeals affirmed the trial court=s grant of defendant=s motion for summary disposition.

Smith v. Lancaster Village Co-op. 1995 WL 871167 (Not Reported in F.Supp.) (E.D. Mich., 1995).

Procedural History: Plaintiffs= complaint to the Department of Housing and Urban Development was dismissed for lack of reasonable cause.

History: Plaintiffs were an interracial couple living in defendant housing cooperative, which was run by, and mostly inhabited by, African Americans. Plaintiffs alleged that defendant discriminated against them because they are an interracial family by refusing to correct problems of racial harassment; these problems consisted of their neighbors continually threatening them with physical abuse, constantly harassing Ms. Smith, and hurling epithets at their son, including one incident in which a neighbor's child called their child a "white sucker". Plaintiffs did not claim that they complained to management about this specific incident, but stated that their complaints to management were met only by threats of eviction. After their first action was dismissed, plaintiffs brought this complaint under the Civil Rights Act of 1866, the Fair Housing Act of 1968, and Michigan common law.

West Headnotes/Reasoning:

*The court found that all of plaintiffs complaints were barred by the statutes of limitations in 42 U.S.C. 3613(a)(1)(A) and MCL 600.5805(8).

Defendants motion for summary disposition was thereby granted.

Meadowlanes Ltd. Dividend Housing Ass'n v. City of Holland, 473 N.W.2d 636 (Mich.,1991).

Procedural History: City appealed from decision of Tax Tribunal granting owner's petition for reduction of federally subsidized low-income housing project. The Court of Appeals, 156 Mich.App. 238, 401 N.W.2d 620, reversed and remanded with instructions to consider value of mortgage subsidy in calculating true cash value for property tax purposes. Following remand, the Court of Appeals 176 Mich.App. 536, 440 N.W.2d 71, affirmed Tax Tribunal's supplementary judgment, and the property owner appealed.

History: Plaintiff-appellant filed a petition with the Michigan Tax Tribunal, challenging the City of Holland's assessment of the value of its housing complex for the tax years 1981 through 1983. Following an evidentiary hearing, the Michigan Tax Tribunal issued its opinion and judgment which determined that the true cash value of the property was $800,000 for 1981, $1,000,000 for 1982, and $1,100,000 for 1983. In reaching its decision, the tribunal approved the valuation approach utilized by Meadowlanes' appraiser, Laurence Allen, and adopted his final estimates of true cash value for the years at issue. Allen described

his valuation approach as a variant of the traditional income approach using a "mortgage/equity" component formula. The city appealed the Tax Tribunal's decision raising four issues. The Court of Appeals rejected the city's first three arguments, but reversed on the fourth, and remanded the case to the tribunal for reconsideration and directed it to take into account the value, if any, of plaintiff-appellant=s 5.35 percent mortgage interest subsidy (paid by HUD due to Meadowlanes= creation and operation under ' 236 of the National Housing Act). On remand, the Tax Tribunal issued a supplementary judgment which once again adopted Meadowlanes' appraiser's mortgage/equity component method, but recomputed the value of the mortgage component to include, rather than exclude, the value of the ' 236 interest subsidy. The Court of Appeals affirmed the tribunal's supplementary judgment on remand, and appeal was taken to the Supreme Court of Michigan, with the issue being whether, in computing the true cash value of real property, the Michigan Tax Tribunal may take into account the value, if any, of a federal government mortgage subsidy.

West Headnotes/Reasoning:

*Fact that valuation approach derived value for *ad valorem* tax purposes that failed to parallel likely valuation estimate derived for other purposes such as a sales price, financing, insurance, calculating net worth in a financial statement or federal income tax purposes was evidence that valuation approach was flawed.

*Tax tribunal improperly adopted portion of property owner's appraiser's approach which valued mortgage when it used appraiser's mortgage equity component approach in determining true cash value of property; approach made invalid assumptions allowing it in large part to value the underlying mortgage paper rather than the real property, creating potential for irrational disparities in true cash value of real property in violation of constitutional mandate of uniformity in assessment of *ad valorem* taxes.

*Tax Tribunal may consider interest subsidy payments made on behalf of the owner-mortgagor of federally subsidized low-income housing project in the valuation process, as those payments affect the usual selling price of the property; although mortgage interest subsidy is intangible and not taxable in and of itself, it is a value-influencing factor which should be reflected in the assessment process.

*Mortgage-interest subsidy payments made on behalf of owner-mortgagor of federally subsidized low-income housing project affects the value of the real property by reducing property's total operating costs and adding value by increasing amount of debt that property can carry, thus making possible lower rents and allowing property owner to take advantage of highly leveraged rate of return on equity investment, in addition to tax shelter benefits.

*Interest reduction payments made by the Department of Housing and Urban Development on behalf of an owner of federally subsidized low-income housing project are taxable to the owner's income and deductible as an interest expense for federal income tax purposes, and thus are properly considered in determining true cash value of property.

The Michigan Supreme Court held that although it was proper for Tax Tribunal to take into account the value, if any, of a federal government mortgage subsidy, the Tribunal and Court of Appeals erred by determining the true cash value of the subject real property under flawed appraisal method. Hence, the Court reversed and remanded to the Tax Tribunal for redetermination of the true cash value.

Colonial Townhouses Co-op. v. City of Lansing431 N.W.2d 237 (Mich. App.,1988).

Procedural History: Owners of a federally subsidized multi-unit housing development appealed from a decision of the Tax Tribunal regarding true cash value for purposes of *ad valorem* property tax.

History: Petitioners challenged the valuation of their property for the tax years 1984, 1985, and 1986. Construction and financing of their housing development was accomplished pursuant to a federal program operating under the authority of ' 221 of the National Housing Act, and because of a substantial federal subsidy, their mortgage indebtedness was incurred at below-market interest rates ranging from 3 to 3 1/2 percent. The Tax Tribunal determined the value of the realty with reference to a methodology described as a variant of the market approach. In its calculation, the Tax Tribunal determined the value of the mortgage component by finding the cash equivalents of the remaining payments owed on the mortgages and the value of the equity component by multiplying the number of housing units by the transfer value of each unit (fixed by regulation). The valuations of these two components along with the balance of cash reserve accounts were added together to arrive at the final determination of true cash value.

West Headnotes/Reasoning:

*Proper determination of true cash value of mortgage component of evaluation of property on which federally subsidized housing has been built must be premised on the market interest rate prevailing at the time of valuation.

*If property is restricted by regulations or posts as a condition of a federal subsidy, the valuation must reflect a diminution to the extent that the restriction impairs the value.

*Any value attributable to interest subsidy or other creative financing afforded by the federal government must be excluded from valuation of property.

*It was proper for Tax Tribunal to recognize that valuation of property should be increased to reflect any added value to the property owners from the cash reserve accounts which had been maintained with respect to the property.

*In valuing cash reserve accounts held by property owners with respect to their property, it was error to include the cash balances on a dollar for dollar basis where the cash reserve accounts were highly regulated by the federal government, which had subsidized the construction on the project.

The Court of Appeals held that: (1) determination of true cash value of the mortgage component of the valuation had to be premised on market interest rates prevailing at the time of valuation; (2) valuation had to reflect a diminution to the extent that restrictions imposed as a result of the federal subsidy impaired the value of the property; (3) any value attributable to interest subsidy or other creative financing afforded by the federal government had to be excluded from valuation; (4) cash reserve accounts which the property owners were required to maintain by federal regulation were properly considered in valuing the property; but (5) those accounts could not be valued on a dollar for dollar basis in view of the highly regulated and restricted nature of the accounts.

Carriage House Co-op. v. City of Utica , 431 N.W.2d 406 (Mich. App.,1988).

Procedural History: Plaintiff co-op appealed real estate tax assessments imposed by the city for the tax years 1980, 1981, and 1982.

History: Co-op in question was built pursuant to ' 221(d)(3) of the National Housing Act, and because of

federal interest subsidies, the two mortgages on the property carry a below-market interest rate of 3%. Members receive deductions on their federal income tax for their share of the property's mortgage interest payments, property taxes, and depreciation. A hearing on this matter was held before a Tax Tribunal hearing officer in January and February, 1983, and in an opinion dated February 13, 1985, the hearing officer adopted an income approach to valuation. The Tax Tribunal accepted the hearing officer's factual findings but rejected her conclusions. In an opinion dated January 16, 1986, the Tax Tribunal adopted petitioner's "cooperative sales" market approach. The City of Utica then appealed.

West Headnotes/Reasoning:

*Amendments to statute which defines "true cash value," pertaining to assessment of real property for taxation purposes, were inapplicable to assessments for years 1980, 1981, and 1982 of nonprofit, federally subsidized cooperative, as amendments did not go into effect until after tax years in question, amendments were not remedial in nature and thus did not require retroactive application, and legislative intent was that amendments should not apply to property when subject to lease entered into prior to January 1, 1984 for which terms of lease governing rental rate or tax liability had not been renegotiated after December 31, 1983, and to nonprofit housing cooperative when subject to regulatory agreements between state or federal government entered into prior to January 1, 1984. M.C.L.A. '' 211.27(1, 4); M.C.L.A. Const. Art. 9, '' 3.

*Three methods of valuation which are acceptable to Tax Tribunal and courts are cost-less-depreciation approach, capitalization-of-income approach, and market approach, but other valid variations of each method are not precluded. M.C.L.A. '' 211.27(1, 4); M.C.L.A. Const. Art. 9, '' 3.

*Market approach was acceptable, perhaps favorable, method of valuation of property of nonprofit, federally subsidized cooperative which provided housing for low and moderate income families. National Housing Act, '' 221(d)(3), as amended, 12 U.S.C.A. '' 1715/ (d)(3).

The Court of Appeals affirmed the Tax Tribunal's determination, holding that: (1) the Tax Tribunal did not err by failing to retroactively apply amendments to a statute which defined "true cash value," and (2) the Tax Tribunal did not commit an error of law or adopt a wrong principle by relying upon cooperative's "cooperative sales" approach.

Pinelake Housing Co-op. v. City of Ann Arbor, 406 N.W.2d 832 (Mich. App.,1987).

Procedural History: Owners of two federally subsidized, low-income housing projects (Pinelake and Forest Hills) sought judicial review of property tax assessments made by the Tax Tribunal.

History: Petitioner-appellant=s appraiser presented two approaches to valuation, a Acooperative approach@ and a ACongress hills approach.@ Respondent=s appraiser presented a cost approach and three different income approaches. The Tax Tribunal hearing officer rejected petitioner=s approaches and adopted the third variation on an income approach presented by respondent=s appraiser. The co-ops appealed, claiming that the Tax Tribunal committed an error of law or adopted a wrong principle by accepting respondent's method of valuation, and by rejecting their own approaches.

West Headnotes/Reasoning:

*Any method for determining true cash value of property which is recognized and reasonably related to the fair market value of the property is acceptable indicia of true cash value, for purposes of constitutional provision which requires uniform system of real property taxation based on assessment of true cash value. M.C.L.A. '' 211.27; M.C.L.A. Const. Art. 9, '' 3.

*Regardless of valuation method employed in determining property tax assessment, value determination must represent amount for which subject property would sell; the valuation must be based on current market conditions, and if property is burdened by some restriction, the impaired value of the property cannot be ignored in valuing the property. M.C.L.A. '' 211.27; M.C.L.A. Const. Art. 9, '' 3.

*When considering subsidized housing, the subsidy itself may not be considered as part of the real property and the subsidy value may not be included as part of the property value, for purposes of determining property tax assessment. M.C.L.A. '' 211.27; M.C.L.A. Const. Art. 9, '' 3.

*The Tax Tribunal did not err as matter of law by adopting method of appraisal which analogized federally subsidized, low-income housing projects owned by nonprofit cooperatives to income-producing properties and by employing income approach in determining property tax assessment; there was substantial evidence that membership fees for the projects were in essence nothing more than large security deposits, and memberships were not transferred to third parties by members but were merely reclaimed by cooperatives when residents left. M.C.L.A. '' 211.27; M.C.L.A. Const. Art. 9, '' 3; National Housing Act, '' 236, as amended, 12 U.S.C.A. '' 1715z-1.

*The Tax Tribunal erred by accepting conclusions of true cash value, for property tax assessment purposes, for federally subsidized, low-income housing projects owned by nonprofit cooperatives, which did not use actual income and actual expenses as part of the valuation approach.

*Use of approximately six percent total capitalization rate in determining true cash value was absurdly low and erroneous as matter of law; six percent capitalization rate was totally at odds with uncontroverted premise that subject properties lacked ability to transfer any substantial benefit of ownership.

*Appraisals, upon which the Tax Tribunal relied in making property tax assessments for federally subsidized, low-income housing projects owned by nonprofit cooperatives, were internally inconsistent on their face and unreliable as matter of law. M.C.L.A. '' 211.27; M.C.L.A. Const. Art. 9, '' 3; National Housing Act, '' 236, as amended, 12 U.S.C.A. '' 1715z-1.

*Interest subsidy on federally subsidized, low-income housing projects owned by nonprofit cooperatives was intangible asset and not proper subject to be taxed under the state's property tax laws. M.C.L.A. '' 211.27; M.C.L.A. Const. Art. 9, '' 3; National Housing Act, '' 236, as amended, 12 U.S.C.A. '' 1715z-1.

*The reviewing court could not hold that the Tax Tribunal committed error of law by not accepting appraisals, for property tax assessment purposes, offered by owners of federally subsidized, low-income housing projects; other methods which were not presented on review might better reflect the true cash value of the subject properties.

The Court of Appeals held that: (1) federal restriction on rental income had to be considered in determining property tax assessment; (2) the Tax Tribunal did not err as matter of law by adopting method of appraisal which analogized the subject properties to income-producing properties and by employing income

approach; (3) the Tax Tribunal committed error of law by accepting conclusions of true cash value for the projects which were based on valuation approach that did not use actual income or actual expenses; and (4) interest subsidy on the projects was intangible asset and not proper subject to be taxed under the state's property tax laws.

Penokie v. Colonial Townhouses Co-op., Inc. 366 N.W.2d 31 (Mich. App.,1985).

Procedural History: Defendant appealed by leave granted on September 22, 1983, from an order of the circuit court dated December 3, 1982, rendering judgment in favor of plaintiff.

History: Plaintiff, a shareholder-member of defendant co-op, paid $627.25 over a period of approximately one year towards the purchase of a "membership certificate", also referred to as the "value-of-occupancy agreement". He later paid $100 for the privilege of signing a "subscription agreement", which brought the total membership fee to $727.25. Plaintiff also signed an "occupancy agreement" whereby he agreed to pay monthly "carrying charges" of $150 to cover his proportional share of the cooperative's operating expenses. After plaintiff moved out, defendant determined that various charges exceeded $727.25 and refused to tender the membership fee to plaintiff. On appeal to circuit court, the district court was reversed, and it was held that the $100 paid for the subscription agreement was exempt from the LTRA, but that the $627.25 was subject to the LTRA.

West Headnotes/Reasoning:

*Because of ambiguity as to whether a unit in a cooperative meets the definition of a Arental unit,@ and because a member of a cooperative could be defined as both a landlord and a tenant, the Landlord-Tenant Relationship Act does not apply to cooperative housing associations. M.C.L.A. '' 554.601 et seq.

The Court of Appeals affirmed in part and reversed in part, holding that the LTRA does not apply to cooperative housing associations.

Highland Co-op. v. City of Lansing 492 F.Supp. 1372 (D.C. Mich., 1980).

Procedural History: Plaintiffs, four cooperative housing associations and forty-two individual residents, filed suit seeking a preliminary injunction restraining further federal, state and local agency action in the proposed Edgewood Corridor Project which would create a four-lane boulevard bisecting their neighborhood.

History: The plaintiffs requested that a full scale Environmental Impact Statement (EIS) be prepared and if the results of the EIS were such that the benefits of the project do not outweigh the detrimental environmental harm, and if less-damaging alternatives were available, that the Court issue a permanent injunction against defendants. The defendants filed various motions to dismiss or, in the alternative, for summary judgment on the grounds that the Project is not a major federal action significantly affecting the human environment, and thus does not require the filing of an EIS under Section 102(2)(C) of the National Environmental Policy Act of 1969.

West Headnotes/Reasoning:

*Even though city withdrew its request for further federal aid in construction of highway, construction of highway was a "major federal action" requiring compliance with federal environment statutes where project had originally been approved for federal funding, had been reviewed by the Federal Highway Administration

and determined to be major action, the Federal Highway Administration had authorized $120,000 in federal aid for title searches and appraisals some of which had been spent, city continued to remain eligible for federal aid, and further plans continued to be submitted to the Federal Highway Administration. National Environmental Policy Act of 1969.

*Evidence in action seeking preliminary injunction restraining highway construction project until a full-scale environmental impact statement is prepared raised substantial environmental issues demonstrating that highway construction could significantly affect quality of human environment.

*Plaintiffs seeking to enjoin highway construction project until full-scale environmental impact statement is filed need not prove that project will have a significant effect but need only allege facts, which if true, demonstrate project could significantly affect quality of the human environment.

*Once substantial environmental issues concerning proposed project are raised, court should proceed to weigh evidence to determine whether agency reasonably concluded that particular project would have no effects which would significantly degrade our environmental quality, and, if court concludes that no environmental factor would be significantly degraded, determination not to file impact statement should be upheld, but, if court finds that project may cause significant degradation of some human environmental factor, even though other factors are affected beneficially or not at all, court should require filing of impact statement. National Environmental Policy Act of 1969

*Proper standard to be used in reviewing agency decision not to require an environmental impact statement is whether agency's action was reasonable.

*Evidence established that determination that environmental impact statement was not required for highway project was not reasonable.

*Purely economic issues, by themselves, are not within the zone of interest to be protected by National Environmental Policy Act but, where economic interests are interrelated with environmental effects, all effects on human environment should be considered in an environmental impact statement.

*Plaintiffs seeking preliminary injunction restraining highway construction until environmental impact statement was filed established substantial likelihood of success on merits, and that irreparable injury would result unless injunction was issued.

*Record established that issuance of preliminary injunction restraining construction of highway until environmental impact statement was prepared would not cause substantial harm to others.

*While delay in construction project will almost invariably result in increase in eventual costs, those costs alone cannot be said to be "substantial harm."

*Record in suit seeking preliminary injunction restraining construction of highway until environmental impact statement was filed established that public interest would be best served by issuance of preliminary injunction.

*Where highway construction project was envisioned as single project and implementation of any part of it would have potential environmental impact on whole area, court, which issued preliminary injunction, would not limit injunction to one segment of project.

*Where defendants did not show that they would suffer more than negligible harm as result of delaying highway construction project while environmental impact statement is prepared and there was strong public

interest served by granting preliminary injunction, court would not require a bond for the preliminary injunction.

The District Court held that: (1) project was major federal action requiring compliance with federal environmental laws even though city had withdrawn request for federal aid; (2) agency did not act reasonably in determining that environmental impact statement was not required; and (3) preliminary injunction would issue without bond.

Northville Area Non-Profit Housing Corp. v. City of Walled Lake 204 N.W.2d 274 (Mich. App. 1972).

Procedural History: Plaintiff appealed as of right from the trial court's decision ruling an amendment to a zoning ordinance to be invalid.

History: Plaintiff was a non-profit housing cooperative incorporated for the purpose of acting as sponsor of a multiple housing project designed for low-and moderate-income families, and was the land contract vendee of approximately 31.8 acres of land located in the defendant City of Walled Lake. This parcel, according to the classification set forth in the zoning amendment under attack, was RM--1, a classification which permitted multiple-family residential (low-rise) construction. Plaintiff would be unable to make use of the premises for such multiple-type dwellings in accordance with the site plans submitted to the defendant city absent the validity of the zoning ordinance amendment in question. The Circuit Court entered judgment that the amendment was invalid and the property owner appealed.

West Headnotes/Reasoning:

*One who claims that zoning ordinance is invalid has burden of proving the invalidity by preponderance of the evidence.

*Evidence did not support trial court's finding that city clerk had failed to publish the notice of hearing before city council at which amendment to zoning ordinance was adopted.

*Where city did not establish by preponderance of evidence that amendment to zoning ordinance which reclassified 31.8 acres from one-family residential to multiple-family residential low-rise was not properly enacted because city clerk failed to publish notice before hearing, presumption existed that the enactment met the statutory requirements and that the ordinance was valid.

*City which sought to establish invalidity of amendment to zoning ordinance stood in no better position than similarly situated private litigant; city had obligation in seeking to rebut presumption of validity to establish by preponderance of the evidence that it was in fact invalid because its adoption failed to comply with procedural requirements of the statute.

*It would be contrary to public policy to permit city to strike its apparently properly adopted zoning ordinance amendment on claim that city clerk failed to perform duty to publish public notice of hearing at time ordinance was adopted four years prior to the city's attempted declaration of invalidity.

*In orderly process of handling real estate transactions when they are affected by provisions of zoning ordinances and amendments, it is essential that the members of the general public and the people buying or selling real estate must be able to rely on the validity of the zoning ordinance and zoning map issued in accordance with such zoning ordinance.

The Court of Appeals held that it would be contrary to public policy to permit the city to strike its apparently

properly-adopted zoning ordinance amendment on a claim that the city clerk failed to perform a duty to publish public notice of hearing at the time the ordinance was adopted, four years prior to the city's attempted declaration of invalidity.

Lexington Townhouses Co-op v. City of Warren, 189 N.W. 2d 138 (Mich. App. 1971).

Procedural History: The Circuit Court granted defendants' motions for summary judgment and accelerated judgment and plaintiffs appealed.

History: This was a consolidation of actions in mandamus brought by consumer housing cooperatives against municipalities involving tax exemptions claimed by the cooperatives under the State Housing Development Authority Act. Several incentives were provided by the legislature for the construction of low and moderate income nonprofit housing, including a property tax exemption with service fee payments in lieu thereof. The circuit court granted the defendants' motions for summary judgment.

West Headnotes/Reasoning:

*Under statute exempting from all taxes of state or political subdivision all nonprofit housing corporations or consumer housing cooperatives which are financed with federally-aided mortgages or by state housing development authority and which serve low income or moderate income persons, it was not necessary that application for exemption for tax year 1968 be made before December 31, 1967 since, although taxable status and valuation were fixed as of tax day, the tax roll was not final until after last meeting of the board of review.

*That consumer housing cooperatives had gone to board of review and appealed to state tax commission did not estop them from suing in mandamus to obtain tax exemption and did not bind cooperatives under election of remedies theory.

*State Housing Development Authority Act's title stating the Act is to provide tax exemption and section providing that projects of nonprofit housing corporations or consumer housing cooperatives financed by federally-aided mortgages or loans from the authority to serve low income or moderate income persons "shall be exempt" from all taxes of state or political subdivisions create tax exemption; language is mandatory, not permissive, and act grants no legislative discretion to municipal governing bodies which have only ministerial duty of fact finding within clearly stated limits.

The Court of Appeals held that the State Housing Development Authority Act's title stating that the Act=s purpose is to provide tax exemption, and the section providing that projects of nonprofit housing corporations or consumer housing cooperatives financed by federally-aided mortgages or loans from the authority to serve low income or moderate incomes persons 'shall be exempt' from all taxes of state or political subdivisions create tax exemption; language is mandatory, not permissive, and the Act grants no legislative discretion to municipal governing bodies which have only ministerial duty of fact finding within clearly stated limits.

Colonial Townhouse Co-op, Inc. v. City of Lansing, 181 N.W.2d 2 (Mich. App. 1970).

Procedural History: This was a proceeding on a petition for an original writ of mandamus to compel defendant city to adopt a resolution which would afford housing project a tax exemption with respect to the property involved. The Circuit Court granted summary judgment for the defendant city officials and the project owner appealed.

History: Plaintiffs' original complaint sought a writ of mandamus to compel the defendant city to adopt a

resolution, which plaintiffs say is mandated by MCLA 125.1415, that would afford plaintiffs a tax exemption on the property involved. During the pendency of the action, the taxes fell due, and plaintiffs paid them under protest. Thereafter, plaintiffs' complaint was amended to seek recovery of the taxes paid under protest. Defendants moved for summary judgment which was granted. On appeal, the main issue was whether the provisions of the statute referenced above granted certain housing projects mandatory exemptions from all taxes, or whether these provisions left the matter discretionary for the municipality.

West Headnotes/Reasoning:
*Under statute providing for tax exemption for housing project of nonprofit housing corporation when the governing body of municipality in which housing project is located passes a resolution, housing project, admittedly otherwise qualified, was not entitled to tax exemption in absence of resolution by the city council to that effect.

*Statute granting to council of municipality in which nonprofit housing corporation is located the discretion as to whether to grant a tax exemption by passing resolution to that effect does not grant arbitrary authority to municipality

The Court of Appeals affirmed, holding that under statute providing for tax exemption for housing project of nonprofit housing corporation when the governing body of municipality in which housing project is located passes a resolution, housing project, admittedly qualified otherwise, was not entitled to tax exemption in absence of resolution by the city council to that effect, and statute granting discretionary authority to council did not constitute a grant of arbitrary authority to municipality.

Second Mich. Co-op. Housing Ass'n v. First Mich. Co-op. Housing Ass'n, 107 N.W.2d 905 (Mich. 1961).

Procedural History: In an accounting proceeding, the Circuit Court entered a supplemental decree and order denying motion to vacate decree and for rehearing. Plaintiff appealed.

History: For the purposes of the appeal, the court felt that the following facts were sufficient: that First and Second Michigan Cooperative Housing Associations were two nonprofit corporations formed to obtain financial assistance under the National Housing Act, and that a Mr. Fred B. Collier, who was active in the affairs of both corporations, commingled their funds and failed to keep adequate books of record. Funds held in trust for members of Second Michigan were deposited to the credit of the First Michigan. Checks were drawn without noting which corporation benefitted. The books were basically 'in a chaotic condition,' according to an auditor. Supplemental decree was rendered in favor of First Michigan in the amount of approximately $30,000, following which substituted counsel moved to vacate the decree, and for a rehearing, upon two grounds: error in the disposition of a certain check in the amount of $58,000, and newly-discovered evidence. The Anewly-discovered evidence@ consisted of pre-trial statements made by two witnesses which were contradictory to the witnesses= positions at trial. The appeal here is from the supplemental decree entered and the order denying the motion.

West Headnotes/Reasoning:

*Evidence supported disposition of check in accounting between two cooperative housing associations.

*Evidence which could have been discovered and produced at trial through use of reasonable diligence was not such newly discovered evidence as would be basis for rehearing in trial court.

The Supreme Court held that the evidence supported disposition of a check, and affirmed.

Collier v. First Michigan Co-op. Housing Ass'n, 274 F.2d 467 (C.A. 6 1960).

Procedural History (no other facts mentioned): This was originally an action for accounting and equitable relief. Defendants filed a cross-bill of complaint. The case was removed from the state court to the federal district court. The United States District Court for the Eastern District of Michigan granted motion to dismiss the amended cross-bill of complaint, and the cross-plaintiffs appealed. The Court of Appeals held that where cross-bill of complaint and its various amendments were prolix and muddled, and separate claims of the several cross-plaintiffs against the several defendants were jumbled in the single cross-bill, and it was difficult to ascertain just what the cross-plaintiffs' claims were and they varied with each amendment, and part of the cross-bill attempted to assert claims existing in favor of the original plaintiff, the amended cross-bill of complaint violated the Federal Rule of Civil Procedure providing that a pleading shall contain a short and plain statement of the claim showing that the pleader is entitled to relief.

West Headnotes/Reasoning:

*Where cross-bill of complaint and its various amendments were prolix and muddled, and separate claims of the several cross-plaintiffs against the several defendants were jumbled in the single cross-bill, and it was difficult to ascertain just what the cross-plaintiffs' claims were and they varied with each amendment and part of the cross-bill attempted to assert claims existing in favor of the original plaintiff, the amended cross-bill of complaint violated the Federal Rule of Civil Procedure providing that a pleading shall contain a short and plain statement of the claim showing that the pleader is entitled to relief.

The Sixth Circuit Court of Appeals found that the District Court committed no error in dismissing the crossbill, as amended, and the judgment was affirmed.

Second Mich. Co-op. Housing Ass'n v. Wabeek State Bank of Detroit, 67 N.W.2d 199 (Mich. 1954).

Procedural History: This was an *assumpsit* action on a complaint which alleged that defendant bank negligently honored checks signed by individuals who had allegedly not been authorized to draw against plaintiff's account. The Circuit Court found that an accounting was necessary to grant complete relief, and the plaintiff appealed.

History: Plaintiff, Second Michigan Cooperative Housing Association, was incorporated as a Michigan nonprofit corporation, and on the same day of incorporation opened a commercial account by depositing monies with defendant, Wabeek State Bank of Detroit. Plaintiff in *assumpsit* sought damages, alleging that the defendant was negligent in honoring and cashing checks of individuals not authorized to draw checks against said account. Defendant petitioned the court under Michigan Court Rule 40 for production of books and papers and an extension of time to file an answer, and this petition was granted. Plaintiff then filed an affidavit to nonpossession of documents setting forth the fact that the documents Aare now in the possession and custody of Elmer A. Eberle, CPA, who claims a lien on all books, papers and documents in his possession, for unpaid fees for services rendered, and who refuses to surrender same to plaintiff.@ Defendant then filed a motion to transfer the cause to the equity side of the court with a supporting affidavit by one of its attorneys and, over objections of plaintiff, this motion was granted. Plaintiff appealed, claiming that the suit involved only a money judgment and that any credits due to the defendant, as claimed by it, could be produced and established at a jury trial by a subpoena *duces tecum*.

West Headnotes/Reasoning:

*Plaintiff's operations were closely connected with the operation of another corporation previously organized by some of plaintiff's officers, and the funds of both corporations were commingled by plaintiff in its account in defendant bank. It will be necessary to have an accounting under the direction of this court to determine the true ownership of plaintiff's deposits for the recovery of which this suit is brought, in order to grant complete relief.

*Plaintiff, prior to the commencement of this suit, filed a petition in the Federal Bankruptcy Court at Detroit, Michigan, in which it alleged that AFred B. and Samuel B. Collier served as trustees of your petitioner corporation prior to and since its incorporation, with full powers to disburse the funds of your petitioner@. That said officers signed all of the checks drawn on plaintiff's account for the recovery of which this suit is brought. In said petition plaintiff alleged that said officers had paid more than $100,000 from its account in defendant bank upon the balance due on a land contract, for which it asks the court to give it credit, and to direct the conveyance of such property to it. In order to completely dispose of the issues involved in this suit, it will be necessary to have a complete accounting between plaintiff and defendant to determine whether plaintiff's officers had authority to pay out the various sums which it seeks to recover from defendant, and, if so, to give defendant proper credit therefore.

*In order to grant complete relief, it will be necessary to bring before the court additional parties to which plaintiff paid money from its said bank account, and to have an accounting therefore, to determine whether or not such payments, for which it seeks to charge the defendant, were actually used for the operation of its business and in payment of its obligations.

*That plaintiff has affirmed the authority of its officers to sign checks by claiming credit therefore in the bankruptcy court for some of the payments from its bank account, which forms the basis of this suit, and the question of whether it is thereby estopped from maintaining this suit should properly be brought before the equity side of this court.

*The judgment which plaintiff seeks on the law side of this court involves a complete accounting between the parties hereto, and such additional parties as may be necessary to be added in order to afford complete relief, and such matters cannot be adequately disposed of in an action at law, and should properly be heard on the equity side of the court.

The Supreme Court held, in *assumpsit* action upon complaint which alleged that defendant bank negligently honored checks signed by individuals who had allegedly not been authorized to draw against plaintiff's account, wherein trial court found that accounting was necessary to grant complete relief, that the trial court correctly transferred cause to equity side of court, and affirmed.