



Court of Appeals Interprets "Common Area" Under Michigan's Condominium Act

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In a recent published opinion, the Michigan Court of Appeals held that a condominium project developer's convertible property (property that the developer retained the right to convert, contract, or otherwise develop for a six year period) could not be separately valued and assessed for taxation purposes.

In *Paris Meadows, LLC v City of Kentwood*, __ Mich App __ ; __ NW2d __; 2010 WL No. 286978 (January 12, 2010), Paris Meadows's developer sued the City of Kentwood when the City sent him a notice of assessment regarding the development's "convertible area." Paris Meadows's Master Deed defined this "convertible area" as part of the "general common elements" of the condominium project. Further, Paris Meadows's developer reserved the right to contract or expand this land by an amendment or series of amendments to the Master deed within six years. Paris Meadows argued that the "convertible area" was not subject to separate taxation under Michigan's Condominium Act (MCA), MCL 559.231, because it consisted solely of the general common element area of the condominium project. The Tax Tribunal granted the City's motion for summary disposition and upheld the assessment. It explained that because the Master Deed provided Paris Meadows with the right to contract, convert, or expand the condominium project for six years after

the Master Deed was filed, the disputed property was not a "true" common element until the six year period ran out.

The Court of Appeals characterized the central issue as whether the City could separately value and assess the convertible property for taxation purposes where the condominium project developer retained the right to convert, contract, or otherwise develop the convertible property for six years. Answering this question in the negative, the Court recognized that the Tax Tribunal implemented its own definition of "common element" rather than applying the MCA's definition of that term. The Court of Appeals declared that the Tax Tribunal's conclusion

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that a "common element" could only include land over which all co-owners had equal control was "clearly contrary to the plain language of the MCA." The Court emphasized that under the MCA's definitions, "every part of a project that is not part of a unit is a 'common element.'" Furthermore, "[a]lthough a developer may retain rights to withdraw or develop land within the project, until it records an amended master deed the land remains part of the project and, under MCL 559.231, no part of the project is taxed separately from the units." For these reasons, the City could only tax the convertible property via the individual condominium units.
