

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
WOODMERE KNOLLS, INC.	:	DECISION
to Review a Determination under	:	
Article 11 of the Tax Law with	:	
reference to a Mortgage Recorded	:	
on June 11, 1973.	:	

Applicant, Woodmere Knolls, Inc., has filed an application with the State Tax Commission pursuant to Article 11 of the Tax Law to review a determination by the Miscellaneous Tax Bureau with reference to a mortgage recorded on June 11, 1973, in the office of the Clerk of Nassau County in Liber 9177 of mortgages page 111. Upon notice to all interested parties, a formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 2 World Trade Center, New York, New York, on March 19, 1974, at 9:15 A.M. Applicant appeared by Schiffmacher, Cullen, Rochford and Farrell, Esqs., (John M. Farrell, Esq., of counsel). The Income Tax Bureau appeared by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of counsel).

ISSUE

Was a mortgage dated May 29, 1973, from applicant, Woodmere Knolls, Inc., to Reliance Federal Savings and Loan Association, a supplemental mortgage to the extent of \$1,000,000.00 to a mortgage dated June 3, 1970, between said parties pursuant to section 255 of the Tax Law?

FINDINGS OF FACT

1. Applicant, Woodmere Knolls, Inc., was the owner in fee simple of property, improved with office buildings, located at

100 Garden City Plaza and 200 Garden City Plaza in the Village of Garden City, County of Nassau, State of New York, and known respectively as section 44, Block A, Lots 1476A and 1476B, and section 44, Block A, Lots 1475A and 1475B on the Land and Tax Map of the County of Nassau, which said property is hereinafter referred to respectively as parcel 1 and parcel 2.

2. On or about June 9, 1969, a mortgage note in the amount of \$3,500,000.00 secured by a first mortgage on parcel 1, was made and executed by applicant, Woodmere Knolls, Inc., to the Reliance Federal Savings and Loan Association. The mortgage was recorded in the office of the Clerk of the County of Nassau in Liber of mortgages 8482, page 1, on June 12, 1969, and a mortgage tax thereon in the amount of \$17,500.00 was paid by applicant, Woodmere Knolls, Inc., to the Nassau County Clerk.

3. On or about June 3, 1970, a mortgage note in the amount of \$4,000,000.00, secured by a first mortgage on parcel 2, was made and executed by applicant, Woodmere Knolls, Inc. to Reliance Federal Savings and Loan Association. The mortgage was recorded in the office of the Clerk of the County of Nassau in Liber of mortgages 8628, page 227, on June 5, 1970, and a mortgage tax thereon in the amount of \$30,000.00 was paid by applicant, Woodmere Knolls, Inc., to the Nassau County Clerk.

4. Reliance Federal Savings and Loan Association only advanced \$3,000,000.00 of the \$4,000,000.00 note secured by the aforesaid first mortgage on parcel 2, and on or about January 10, 1973, a recast and modification agreement was entered into by and between applicant, Woodmere Knolls, Inc., and Reliance Federal Savings and Loan Association, acknowledging the advancing of only \$3,000,000.00 and providing for the repayment of the same by applicant, Woodmere Knolls, Inc., with

interest at 9 1/2 percent on or before December 31, 1976. This instrument was not recorded.

5. No part of the said mortgage tax of \$30,000.00 paid by the applicant, Woodmere Knolls, Inc., to the Nassau County Clerk in connection with the recording of the aforesaid first mortgage on parcel 2 was ever refunded or repaid to it, although only \$3,000,000.00 of the \$4,000,000.00 mortgage note for which the aforesaid mortgage was security was advanced.

6. Between June 9, 1969 and May 29, 1973, the principal balance of the aforesaid mortgage note and the mortgage securing the same encumbering parcel 1 was reduced by applicant, Woodmere Knolls, Inc., from \$3,500,000.00 to \$3,427,781.99.

7. There was no reduction in the principal amount of the mortgage note as recast and modified by the aforesaid recast and modification agreement dated January 10, 1973, and on May 29, 1973, the principal balance of the same and of the mortgage securing it remained at \$3,000,000.00.

8. On or about May 29, 1973, a mortgage note in the amount of \$3,572,218.01, secured by a mortgage on parcels 1 and 2 was made and executed by applicant, Woodmere Knolls, Inc., to Reliance Federal Savings and Loan Association. The mortgage was recorded in the office of the Clerk of the County of Nassau in Liber of mortgages 9177, page 111, on June 11, 1973, and a mortgage tax thereon in the amount of \$26,791.50 was paid by applicant, Woodmere Knolls, Inc., to the Nassau County Clerk, \$7,500.00 of which was paid under protest.

9. By a consolidation, extension and spreader agreement dated May 29, 1973, and recorded in the office of the Clerk of the County of Nassau in Liber of mortgages 9177, page 121, on June 11, 1973, the aforesaid three mortgages were consolidated,

each with the other, to form one first mortgage in the amount of \$10,000,000.00 encumbering both parcels 1 and 2 and extended for a term to expire on May 29, 1983.

10. On or about June 11, 1973, at the time of recording of the aforesaid mortgage encumbering both parcels 1 and 2, a statement under oath, pursuant to the provisions of section 255 of the Tax Law, of the facts on which an exemption from the mortgage tax was claimed, was submitted to the Nassau County Clerk, by applicant, Woodmere Knolls, Inc.

11. On July 16, 1973, applicant, Woodmere Knolls, Inc., filed an application for a refund of \$7,500.00 of the mortgage recording tax of \$26,791.50 paid at the time of the recording of the mortgage dated May 29, 1973, upon the grounds that \$1,000,000.00 of said mortgage constituted a supplemental mortgage to the mortgage dated June 3, 1970, pursuant to section 255 of the Tax Law.

12. On July 26, 1973, the Miscellaneous Tax Bureau denied applicant, Woodmere Knolls, Inc., application for refund of \$7,500.00 of the aforesaid mortgage recording tax.

13. On August 6, 1973, applicant, Woodmere Knolls, Inc., demanded a hearing before the State Tax Commission with reference to the denial of the aforesaid application.

CONCLUSIONS OF LAW

A. That the mortgage dated May 29, 1973, made and executed by applicant, Woodmere Knolls, Inc., to the Reliance Federal Savings and Loan Association in the sum of \$3,572,218.01, on which a mortgage tax of \$26,791.50 was paid did not constitute a supplemental mortgage to the mortgage dated June 3, 1970, made and executed by said applicant to said savings and loan association

in the sum of \$4,000,000.00 on which a mortgage tax of \$30,000.00 was paid, in accordance with the meaning and intent of section 255 of the Tax Law, since the May 29, 1973, mortgage was not recorded for the purpose of correcting or perfecting or pursuant to some provision or covenant of, or for the purpose of imposing a lien upon, property not originally covered by or not described in the June 3, 1970, mortgage and therefore, a mortgage tax was due upon the full amount of said mortgage at the time of recording in accordance with the meaning and intent of the aforesaid section and of section 253 of the Tax Law. The fact that an additional \$1,000,000.00 could have been advanced by the savings and loan association to the applicant without the payment of additional mortgage tax pursuant to the June 3, 1970, mortgage did not cause \$1,000,000.00 of the May 29, 1973, mortgage to be a nontaxable supplemental mortgage to the aforesaid June 3, 1970, mortgage.

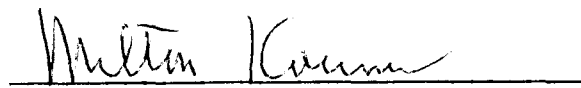
B. That the application of Woodmere Knolls, Inc., is denied.

DATED: Albany, New York
November 4, 1974

STATE TAX COMMISSION


COMMISSIONER


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