STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Mahavir and Viajanthi Oza,

Petitioners,

v

MTT Docket No. 373102

Township of West Bloomfield,

Respondent.

Tribunal Judge Presiding
Paul V. McCord

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FINAL OPINION AND JUDGMENT

Myles B. Hoffert (P15031) and Gregory M. Elliot (P55695), for Petitioners
Derk W. Beckerleg (P33628), for Respondent

I. INTRODUCTION

We traverse the hills and lakes of Oakland County to resolve this valuation dispute between Petitioners, Mahavir and Viajanthi Oza, and Respondent, the Township of West Bloomfield. In 2009, Petitioners timely filed this case challenging the true cash value Respondent assigned to their home as exceeding the applicable constitutional and statutory limits. Petitioners claim that for 2009, their home was worth $1.7 million, whereas Respondent claims that the true cash value of the property was $2,731,900. Following timely motions to amend, tax years 2010 and 2011 are also placed at issue in this case. See MCL 205.735(4). The motion to amend to add the 2012 tax year will be granted by separate order, and the assessment will be severed from this case and assigned a new docket number.

After a one-day evidentiary hearing on September 11, 2012, in Lansing Michigan, we now must determine the true cash value of the Subject for each of the tax years at issue. Because the Subject is situated on Walnut Lake, with the presence of both regulated forest and wetlands, and the large residence situated thereon, the Subject presents a complicated valuation question requiring us to decide the following two questions: (1) whether the government restrictions placed on Subject decreases the property's utility and affects its fair market value; we hold that they do; and (2) what the "usual selling price" of the Subject is as of the tax years 2009, 2010, and 2011. For the reasoning set forth below, we conclude that the TCV of the Subject for tax years 2009, 2010, and 2011 is $2,279,650, $2,338,260, and $2,370,500, respectively.

II. JUDGMENT

For each of the tax years at issue, we hold that the true cash value of Petitioners' property, together with its state equalized (SEV), and taxable (TV) values, are as follows:

Parcel No. 18-24-276-006

Year	TCV	SEV	TV
2009	$2,279,650	$1,139,825	$1,139,825
2010	$2,338,260	$1,169,130	$1,136,405
2011	$2,370,500	$1,185,250	$1,155,724

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After hearing and observing the witnesses who testified at the evidentiary hearing, allowing for the Tribunal to assess credibility, and having further considered the exhibits submitted by the parties, the arguments presented by counsel, and applying the governing legal principles, the Tribunal makes the

following independent findings of fact and conclusions of law[1] set forth below in memorandum form. See MCL 205.751(1) ("A decision and opinion of the tribunal . . . shall be in writing or stated in the record, and shall include a concise statement of facts and conclusions of law, stated separately . . ."); see also MCL 24.285.

IV. FINDINGS OF FACT

This section is a "concise, separate, statement of facts" within the meaning of MCL 205.751, and, unless stated otherwise, the matters stated or summarized are "findings of fact" within the meaning of MCL 24.285. The findings of fact are set forth in narrative form based on the Tribunal's conclusion that it is the most expeditious manner of proceeding where there are few disputes about facts and the main focus of the controversy is the valuation of the Subject for each of the tax years at issue.

1. The Subject Property

The Subject Property is located at 2025 Lone Pine Road, in West Bloomfield, Michigan. The subject parcel is an irregular, pork chop-shaped lot that fronts Walnut Lake and, as a whole, covers an area of 4.895 acres. A substantial percentage of the Subject land is covered by regulated woodland and wetland areas, leaving a usable area of 0.44 acres. In addition, the Subject includes littoral lands,[2] as a portion of the Subject lot extends out into Walnut Lake, and a portion of Walnut Lake extends into the Subject parcel, forming an inlet or canal and terminating in a small lagoon. There are also easements and public rights-of-

[1] To the extent that a finding of fact is more properly a conclusion of law, and to the extent that a conclusion of law is more properly a finding of fact, it should be so construed.

[2] See, e.g., *Thies v Howland*, 424 Mich 282, 287-288; 380 NW2d 463 (1985) (generally speaking, land which includes or is bounded by a natural watercourse is defined as "riparian." Although strictly speaking, land which includes or abuts a river is "riparian," while land which includes or abuts a lake is "littoral." However, the term "riparian" is often used to describe both types of land and will be so used in this opinion.) *Id*. at 288, n 2.

way[3] lying over the Subject. The back of the parcel is heavily wooded and provides a limited view of Walnut Lake.

The front of the Subject lot is improved with a luxurious 8,638 square foot, two-story brick single-family residence facing Lone Pine Road. The residence is laid out in an open V plan and contains five bedrooms, four full baths (with ceramic tile and tub alcoves (one with a "Jacuzzi" tub)) and two half baths. The first floor features 10-foot ceilings and is comprised of a living room, dining room, kitchen with dining area, library, and family room. The residence has some marble and hardwood floors, the library graced with built-in cabinets, and the kitchen is typical of luxury homes in the area with granite countertops. Tr at 176-177. The residence also boasts two fireplaces, a three-stop elevator, and a large, sweeping double-circular staircase leading to the second floor. The second floor contains the bedrooms, three baths, a sitting room and a bonus room above the attached four-car garage. Tr at 177; P-2 at 12, 17-18. The house sits on a basement of approximately 4,023 square feet, minimally finished with vinyl flooring, painted walls and is considered a recreation room. This basement area is a "walk-out." The construction of the residence was completed sometime in 2008.

2. Encumbrances

The parties agree that the Subject property is encumbered by regulated wetlands, woodlands, and a roadway easement. Of the total 4.894 acres that comprise the Subject lot, only about 10% or 0.44 acres is usable, and the rest is covered by regulated woodlands, wetlands, littorals, easements, and rights of way. Tr at 13, see also Ex P-1 at 5 and P-2. Parcels containing woodland systems are protected and regulated to varying degrees under the Township's ordinances, according to the testimony of Respondent's Environmental Manager, Mr. John

[3] Land dedicated to the public as a highway, are by law, subject only to the use of the public as such. The underlying land, the fee, remains that of owner of the adjacent property of which it is a part, subject to the public easement. See, e.g., *Kalkaska v Shell Oil Co*, 157 Mich App 233; 403 NW2d 474 (1986).

Roda. Tr at 74. Wetland areas are likewise regulated under a separate wetlands ordinance. Tr at 77. Neither party presented direct evidence of the specific wetlands determination for the subject property, although Respondent's assessment records reflect that such a determination was made. The parties disagree, however, on the precise delineation of the wetland and woodland areas and the effect that these areas have on the value of the Subject. Petitioners' valuation expert, Mr. Howard Babcock, SRA,[4] testified that he relied on a lot survey of the subject dated October 6, 2010, and prepared by Kem-Tec & Associates, professional surveyors/engineers, in order to determine the size of the subject lot together with the wetlands, woodlands and other encumbrances on the subject property. Mr. Roda testified that he was familiar with the subject property and believed that the Kem-Tec survey accurately depicted the wetland and woodland areas. Tr at 78.

Petitioners assign **v**alue only to the "usable," or developable, portion of the subject property, an area of approximately 0.44 acres. (P-1 at 5; P-2; Tr at 24.) Mr. Brian Sears,[5] Respondent's valuation expert, recognized that the Subject carried a wetlands determination, but testified that the assessing department concluded that no adjustment to the value of the Subject was warranted for this feature. Tr at 145-146. Respondent's Environmental Manager testified that under the applicable ordinances, the owner of a regulated parcel is permitted to build within the woodland areas of the parcel. Tr at 75. Under this circumstance, the permitted area includes the building envelope and 10 feet around the structure. Tr at 75. Any work occurring outside of this area, such as the removal of trees, would require approval by the Township's woodland review board and the issuance of a

[4] Mr. Babcock is a certified general licensed real estate appraiser and has been appraising lake front homes in the Oakland county area for about 20-25 years.
[5] Mr. Sears is a Michigan Advanced Assessor and is Respondent's chief appraiser, having been employed by the Township since 1990.

woodland permit.[6] Tr at 75. Because Respondent's assessing office determined that the presence of woodlands and wetland at the Subject did not require an adjustment to the value of the property, Mr. Sears did not make a specific determination as to the size of either the wetlands and woodlands areas located on the Subject.

The Subject sits as a corner lot, lying where Inkster Road curves west and becomes Lone Pine Road, both public road rights-of-way. The Subject is accessed from a driveway that lies on Lone Pine Road. The apron of the drive lies on the neighbor's land to the west, pursuant to a recorded easement.[7] P-2. Mr. Sears determined that the assessable area of the Subject is 3.18 acres. Using the GIS polygon measuring tool, Mr. Sears testified that he revised the gross acreage of the Subject as per the legal description[8] to 3.18 acres to exclude those portions of the Subject that extend out into Walnut Lake and that lie in the road right-of-way of Loan Pine and Inkster roads.[9] Tr at 137. Petitioners' expert made no specific adjustments in his valuation for the public road right-of-way and neither party made adjustments for the easements lying on the Subject or lands of the neighbor.

3. *Market*

Oakland County, long considered just a suburban adjunct of Detroit, is now the center of a giant, spread-out, and mostly affluent urban area. It is only minutes on the Lodge or Chrysler Freeways from inner-city Detroit. North of Eight Mile Road, the terrain changes from Detroit's worn-out, abandoned neighborhoods to

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[6] The Township of West Bloomfield granted Petitioners a permit to build a boardwalk on the subject property through the woodland areas to help facilitate their access to the lake. Petitioners never built the permitted boardwalk and the permit has since expired.

[7] A portion of the driveway to 2035 Lone Pine Road (Petitioners' neighbor to the immediate west) lies on Petitioners' land pursuant to the same recorded easement. P-2

[8] Mr. Sears testified that the metes and bounds description of the Subject placed the gross land area at 4.56 acres. Tr at 137.

[9] For the first tax year at issue, 2009, Respondent determined that the Subject contained 2.96 acres of land. This original determination of the size of the subject was acknowledged by Mr. Sears to be in error and the correct size of the Subject for 2009 should be 3.18 acres. Tr at 144.

giant office buildings, shopping malls, and expensive houses on large lots. Education levels are high, and crime rates are low. Set among farm fields half a century ago, West Bloomfield Township is now one of metro Detroit's wealthiest communities amid a vast suburban expanse. During the relevant tax years, the home values, including home prices in the $1 million to $2 million market segment, were in a state of oversupply and values were falling. The year-over-year decline in value from 2009 to 2010 was 0.833% per mo. From 2010 to 2011, the relative decline in home values within the Subject's market was 0.666% per month.

4. Assessment

The Subject Property is identified on Respondent's assessment roll by Parcel No. 18-24-276-006. The indicated true cash value of the Subject by method of mass appraisal together with the state equalized value (SEV), assessed value (AV), and taxable value (TV), as confirmed by the Board of Review for the Township of West Bloomfield, as of each of the tax years at issue are as follows:

Year	TCV	SEV	AV	TV
2009	$2,731,900	$1,365,950	$1,365,950	$1,333,710
2010	$2,555,760	$1,277,880	$1,277,880	$1,277,880
2011	$2,397,500	$1,198,750	$1,198,750	$1,198,750

For the tax years at issue, the Subject was classified, for ad valorem tax purposes, as "residential" real property. As discussed in more detail below, Respondent's assessment of the Subject was developed through the means of a modified cost less depreciation approach to value using as a guide the *Michigan Assessor's Manual* published by the State Tax Commission.

5. Value Evidence

a. Sales Comparison Approach

Both parties determined a value for the Subject based on the sales comparison approach. Petitioners' expert rendered opinions of value for tax years 2006 through 2010, although only tax years 2009, 2010, and 2011 are at issue. Specifically, for the tax years relevant to this case, Mr. Babcock opined that the market value of the Subject Property was $1,700,000 for the 2009 tax year and $1,600,000 for the 2010 tax year. Mr. Babcock did not, however, render an opinion of value as to the 2011 tax year.

Mr. Babcock identified three comparable sales occurring in 2008 relative to his value conclusion for the 2009 tax year. These three sales carried unadjusted sale prices ranging from $1,500,000 to $2,985,500. The sizes of Mr. Babcock's comparables are smaller than the Subject, ranging from 5,354 to 5,440 per square foot. Mr. Babcock determined the gross living area of the Subject to be 8,638 square feet, after examining the architect's drawings and verifying some of the measurements in the field. Tr at 15. Mr. Babcock's comparables sold between February 2008 and August 2008. After identifying and applying various adjustments, Mr. Babcock determined adjusted prices ranging from $1,326,500 to $2,183,000. Mr. Babcock gave equal weight to all three of his sales and concluded that the Subject would likely sell in the middle of that range.

Mr. Babcock utilized three comparable sales which received gross adjustments ranging from 31 to 37 percent. For the 2010 tax year, three comparables were also provided and contained gross adjustments ranging from 20 to 36 percent. He adjusted each of the properties downward for date of sale as each comparable sold prior to the relevant valuation date. Mr. Babcock also made a downward adjustment of $100,000 to each comparable for obstructed lake access and obstructed lake view. He testified that this downward adjustment was

"appraiser's opinion." Tr at 47. He explained that the obstructed view was based upon the fact that the lake cannot be clearly seen from the house due to the amount of trees. The obstructed access was based upon the fact that the Subject contains wetlands and accessing the lake may be difficult. However, Mr. Babcock also testified that the installation of a boardwalk may reduce the need for the downward adjustment. Tr at 49. Each comparable was also adjusted for features such as acreage, square footage, and number of bathrooms.

Respondent's expert submitted three lake front comparables for each tax year at issue, having concluded that lake front footage was an important feature of the Subject. Mr. Sears found comparable properties on comparable lakes. Tr at 116. For the 2009 tax year, the adjusted sales prices ranged from $2,272,750 to $3,849,515. Mr. Sears indicated that he considered Sale 1 to be the most similar as it had the lowest gross adjustments and was the newest built comparable for the 2009 tax year. For 2010, Mr. Sears again identified three comparable sales with unadjusted sale prices ranging from $1,900,000 to $3,750,000. After adjustments, the adjusted sales prices of Respondent's three comparables for the 2010 tax year ranged from $2,332,530 to $3,562,015. Sale 1 sold in 2008 and was used for the 2009 tax year as well. Mr. Sears testified that he adjusted Sale 1 for the date of sale but considered Sale 2 to be the most reliable indicator of value for the 2010 tax year, resulting in a value conclusion of $2,590,195. Tr at 123. Similarly, for the 2011 tax year, Mr. Sears again identified three sales and testified that the most similar comparable in that set, based on gross adjustments, was Sale 3. R-1 at 19.

b. Cost-less-depreciation

Respondent also offered a modified cost-less-depreciation analysis prescribed by the State Tax Commission and as contained in its assessment records of the Subject in support of its conclusions of value for each of the tax years at issue. Petitioners' expert testified that while he considered the cost approach, he

did not develop the approach because he did not believe that the market would pay the likely higher amount indicated by the cost approach. For the 2009 tax year, Respondent determined a true cash value of $2,731,900. Mr. Sears testified that the valuation, as reflected on the property record card of the Subject, breaks value computations into three parts: (1) land value, (2) land improvements, and (3) building value.

c. Lot value

For the 2009 tax year, Respondent determined that the assessable area of the Subject lot was 2.96 acres and concluded that the lot was worth $900,000. For tax years 2010 and 2011, Respondent's record cards indicate a lot size of 3.18 total acres and that the value of the Subject lot fell to $630,000. Respondent's expert testified that the size of the Subject lot was concluded to be 4.56 acres from the legal description; then, by using GIS (Geographic Information System) to measure and exclude the portion of the lot in the road right-of-way and that portion of the lot extending into Walnut Lake, he arrived at 3.18 acres. Mr. Sears also testified that the land value was derived through land sales. Tr at 106. In his sales comparison approach, Petitioners' expert testified that he developed his conclusion as to the size of the Subject lot using a survey dated October 6, 2010, prepared by Kem-Tec & Associates, professional surveyors/engineers. Petitioners' expert concluded that the subject lot covers 4.8 acres but that only 0.44 acres are usable. Tr at 13, see also Ex P-2.

d. Residence

Respondent concluded that the residence contains 9,259 square feet of gross living area. Respondent developed its estimate of the Subject's gross living area using a computer software program called Apex – software that is used to sketch properties and calculate square footage. Mr. Sears testified that the apparent difference between the parties regarding the size of the Subject residence stems

from the Petitioners' failure to take into account approximately 1,418.9 square feet of living area over the garage. Tr at 126.

For the 2009 tax year, the cost new estimate of $1,652,034 was derived after application of the county multiplier of 1.29 in 2009 and 99 percent good in 2009, and derived depreciated costs for the residence of $1,650,364. After application of the economic conditions factor of 1.10 for 2009, the indicated market value of the structure, absent the lot, was $1,831,904. Similarly, for the 2010 tax year, a value of $1,739,527 was derived after application of the county multiplier of 1.35, and with the residence being only approximately two years old, carried an estimate of depreciation of 98 percent good. This resulted in a depreciated cost of the residence of $1,719,437. After application of the economic conditions factor of 1.12 for 2010, the indicated market value of the structure, absent the lot, was $1,925,769. Finally, for the 2011 tax year, the cost new of $1,807,163 was calculated after application of the county multiplier of 1.39. The depreciated value was determined to be $1,767,498 due to the residence being valued at 97 percent good and the economic condition factor applied 1.00. Mr. Sears further opined during his testimony that the Subject was of recent construction, and as such, the cost approach was relevant and that it may be the most relevant in determining the value of new construction. Tr at 105.

V. CONCLUSIONS OF LAW

1. Determination of Value

The Tribunal's analysis begins with the by now well-established principle that a "property's assessed valuation on the tax rolls carries no presumption of validity." *President Inn Props LLC v Grand Rapids*, 291 Mich App 625, 640; 806 NW2d 342 (2011). Notwithstanding the fact that real property tax assessments in Michigan carry no presumption of correctness, Petitioners bear the burden of proving more than just the fact that the assessment is erroneous, they must

establish what the true cash value of their property is. MCL 205.737(3); *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998). Where, as here, Petitioners produced sufficient evidence to meet their burden of coming forward with evidence, we must turn to a consideration of the evidence offered by both parties, sifting through the testimony and the reports and applying our judgment to conclude this matter based on a fair preponderance of the evidence. MCL 205.735a(2); see also *President Inn, supra* at 631; *Great Lakes Div of Nat'l Steel, supra* at 389, 410.

In the main, the value of property is a question of fact. See *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 638; 462 NW2d 325 (1990). There are three general methodologies for determining market value (income, cost and sales) and we consider all three in arriving at our final conclusion. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353; 483 NW2d 416 (1992). Only the latter two methods were applied in this case.[10] Given both the fact intensive and technical nature of value questions, we often look to the opinions of expert witnesses in deciding valuation cases. We have wide discretion when it comes to accepting valuation testimony and appraisal evidence. See *President Inn Props, supra* at 639. Sometimes, it will help us decide a case; other times, it will not. We weigh the parties' testimony in light of his or her qualifications, knowledge of the Subject and relevant market, and with proper regard to all other credible evidence in the record. *President Inn Props*, 291 Mich App at 640. Along this line, the Tribunal is under no obligation to accept the valuation figures or the approach to valuation advanced by either party. *President Inn, supra* at 639, citing *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985). Instead, in weighing the parties' valuation evidence, we may

[10] Because the Subject is an owner-occupied single-family home and does not generate any income, neither party used the income approach in valuing Petitioners' property. We agree that an income approach is not applicable in this case.

accept or reject a party's valuation theory in total, place greater or lesser emphasis on a particular method or methods of valuation, or we may pick and choose the portions we choose to adopt. *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 485-486; 473 NW2d 636 (1991). Nor are we required to quantify every possible factor affecting value. See *Southfield Western, Inc v Southfield*, 146 Mich App 585, 590; 382 NW2d 187 (1985). Regardless of the valuation approach we employ, the final value determination must represent the usual price at which the subject property would sell. *Meadowlanes, supra* at 485-486.

2. Governmental Restrictions – Wetland and Woodland Zoning

In this case, neither party's valuation evidence adequately addressed the value impact of the applicable zoning restrictions placed on Petitioners' use of their land. Restrictive environmental zoning aims preserve woodland and wetland eco-systems by placing specific limitations on the use of the encumbered land. In this regard, this type of government restriction on the use of property is similar to property encumbered by a conservation easement.[11] Restrictive zoning, like conservation easements and other encumbrances, typically indicates a negative influence factor should be applied to reflect a decrease in value based on encumbrances, restrictive covenants, or obstructions that limit the use of land. See, e.g, *Twin Rivers Development v Twp of Macomb*, unpublished opinion per curiam of the Court of Appeals, issued October 20, 2011 (Docket No. 298804) (upholding the Tribunal's finding that the significant amount of wetlands had a negative value effect on the subject property. See also *Schwam v Cedar Grove Twp*, 9 NJ Tax

[11] A "conservation easement" is defined as:
... an interest in land that provides limitation on the use of land or a body of water or requires or prohibits certain acts on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will, or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition. MCL 324.2140(a).

406, 412 (Tax Ct 1987) ("governmental restrictions may affect the value of real property for property tax purposes"); *Matter of Suffolk Co*, 109 AD2d 155; 491 NYS2d 371 (1985) (holding that an additional negative adjustment should be made for wetlands. "[T]he existence of protected wetlands ultimately make residential development more difficult and less rewarding than would be the case if the entire parcel were uplands.") *Id.* at 160. The more difficult problem, as in this case, is determining the extent to which such encumbrances affect the value of the Subject.

In quantifying value impact of the various encumbrances present on the Subject, a "before" and "after" appraisal analysis is the recognized method to be applied in valuing property encumbered by a conservation easement.[12] *Indian Garden Group v Resort Twp*, 8 MTTR 488 (Docket No. 157543, February 17, 1995) (binding on this Tribunal by designation as precedential under MCL 205.765); cited with approval in *Inn at Watervale, Inc v Blaine Twp*, unpublished opinion per curiam of the Court of Appeals, issued May 20, 2010, (Docket No. 289869). This method of valuation has been applied in other similar contexts such as to measure the value effect of restrictive covenants, see *Deerfield Village Community Ass'n v West Bloomfield Twp*, 25 Mich App 138; 181 NW2d 62 (1970); *Lochmoor Club v Grosse Pointe Woods*, 10 Mich App 394, 398; 159 NW2d 756 (1968), and in special assessment cases to measure the merits of proportionality, see, e.g., *Dixon Rd Group v City of Novi*, 426 Mich 390; 398-401; 395 NW2d 211 (1986).[13] The value diminishment caused by governmental

[12] For federal income tax purposes, federal courts often apply the "before and after" approach to determine the fair market values of conservation easements. See, e.g., *Hilborn v Commissioner*, 85 TC 677 (1985). See also Treas Reg § 1.170A-14(h)(3)(i), which provides that for federal income tax purposes, the value of the easement is its fair market value based upon the "comparable sales" appraisal process. However, the regulation also provides that where comparable sales are not available (and generally they are not) then the value of the easement is the difference in the value of the land with and without the easement. Detailed provisions regarding the "before and after" method of valuation are contained in Reg § 1.170A-14(h)(3)(ii).

[13] Although the appraisal method referred to in *Indian Garden, supra* and *Dixon Road, supra*, is termed a "before and after" methodology it has been more accurately described as a so-called "with" and "without" appraisal. See *Ahearn v Bloomfield Charter Twp*, 235 Mich App 486, 496; 597 NW2d 858 (1999), as the relevant comparison is

restrictions is not an exemption but is to be determined on a case-by-case and year-by-year basis *according to the applicable and available market evidences.*[14] *Indian Garden,* 8 MTTR, at 491 (emphasis added).

Here, neither party offered an analysis of the Subject property in conformance with the method announced in *Indian Garden* and approved by the Court of Appeals in *Inn at Watervale, supra*. Instead, Petitioner's expert, Mr. Babcock, treats the Subject parcel as being only 0.44 acres – the size of its usable area – and compares it to similarly sized parcels, which is tantamount to saying that the remaining acreage of the Subject is exempt; it is not. *Id*. While we agree with Petitioners that the Subject has extraordinary impediments placed on their use that, based on a fair preponderance of the evidence presented, indicate that a negative influence factor should be applied, Petitioners failed to offer reliable and credible market data and analysis that would permit the Tribunal to quantify these influences.

Similarly, Respondent's analysis suffers the same maladies: the lack of "whys" and "wherefores." Government restrictions on the use of property can impact a property's highest and best use and thus affect its fair market value by decreasing the property's utility. See The Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 13th ed, 2008), pp 40-42 (Governmental restrictions include zoning laws, building codes, rent control laws, and health codes.) *Id*. at 40. As a result, many state statutes, including Michigan's General Property Tax Act, require that market value reflect such governmental restrictions on property. See MCL 205.27(1) (assessors must consider advantages and disadvantages of location,

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the difference in market value of the property with the improvement (or restrictions) and the market value of the property without the improvement (or restrictions).

[14] We also note that, in the alternative, the application of a "percentage loss in value" to the Subject property could have been used effectively if the Subject's local market does not have sales of similarly restricted properties, necessitating analysis of the relationship of encumbered and unencumbered (but otherwise comparable) sales in other areas.

quality of soil, zoning, and existing use). Here, while it is apparent that Respondent recognized the governmental restrictions placed on the Subject, Respondent's mere naked assertions that these government restrictions which encumber almost the entire lot have no effect on value are not credible. Such a conclusion, without evidentiary support, strikes us as patently defective in that it ignores the reality of the effect of these regulatory forces.

Our conclusion in this regard is supported by a brief examination of Respondent's sales analysis. Respondent's sales grids contain properties that are quite different from the Subject and lack quantification and adjustments for features such as the wetlands. The testimony of Respondent's appraiser was vague and conclusory regarding his sales approach. Furthermore, the fact that the final value conclusion is the same as that under the cost approach indicates that Respondent's sales comparison approach is not independent analysis as it was apparently conducted with a predetermined value in mind. Thus, Respondent's sales comparison analysis, like Petitioners', is not persuasive and is of little assistance to the Tribunal in our attempt to assign market value to the Subject property.

As the above discussion illustrates, the same rules apply regardless of which party offers the unreliable evidence. Justice is frequently portrayed as blindfolded to symbolize impartiality, but we need not blindly accept absurd expert opinions. Based on the foregoing, the Tribunal is constrained to reject the sales comparison approach methodologies presented by both parties and turn to Respondent's cost approach to develop our independent determination of the Subject's true cash value.

3. Cost Approach

Respondent offered its assessment records, which utilize a modified cost approach. Under the cost approach to value, the market value for a subject

property is determined by adding the land value to the replacement cost of the improvements, less any depreciation accruing to the improvements. See *Meadowlanes, supra* at 484 n 18. The theory underlying the cost approach is that an informed buyer would pay no more for the property than the replacement cost of property with the same utility. The cost approach is most reliable with new construction or other types of property that are not traded frequently in the marketplace. The Appraisal Institute, *The Appraisal of Real Estate* (Chicago: The Appraisal Institute, 13th ed. 2008), pp 142, 382. As indicated above, the Subject, as of the relevant tax years at issue, was new construction. Therefore, under the circumstances of this case, the Tribunal concludes cost approach is applicable to the valuation of this newly constructed residential property. See *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984). Specifically, we find that Respondent's cost-less-depreciation analysis, with modification, yields a proper finding of the true cash value in this case. We take issue with Respondent's land value for 2009, however, and make various adjustments to the size of the residence, the size for rates for purposes of entering the appropriate cost table, living area above the garage, garage area, and other adjustments affecting value, which we discuss as follows.

a. Land Value

Under the cost approach, land and improvement values are always estimated separately; this is because land does not have a construction cost. Land simply exists. Respondent is responsible for estimating a land value for every taxable parcel of property that is valued using the cost approach to value within its assessment jurisdiction. In this case, Respondent assigned the Subject land a value of $900,000 for tax year 2009, and $630,000 for each of tax years 2010 and 2011. Respondent did not introduce its land value study for any of the three tax years at

issue. For the reasons discussed below, we determine that the value of the Subject land is $630,000 for each of the three tax years at issue.

Land value estimates are typically derived using the sales comparison method although other methods are available where appropriate.[15] In mass appraisal, vacant land sales are grouped based on similar characteristics (such as location, highest and best use, size, etc.), and are evaluated using an appropriate unit of comparison.[16] The assessing officer then assigns land values derived from the grouping to subject properties sharing similar characteristics with the group. Whichever unit of comparison is selected, the assessing officer is also to give consideration to adjustments for positive or negative influences, if the market recognizes those influences, in setting the land value for an affected parcel.

For mass appraisal purposes land lying under a public road right-of-way is treated as exempt. As a result, in determining a parcel's value per acre, the area under a public road right-of-way is not to be included in the parcel's area. In this case, Respondent determined that the land area of the Subject, net of the area under Inkster and Lone Pine Roads and the portion of the lot extending into Walnut Lake, was 2.96 acres for 2009. After this case was initiated, Respondent revised its assessable land area computation for the 2010 and 2011 tax years to 3.18 acres. Petitioners' expert asserts that the Subject land should be valued limited to its usable area of only 0.44 acres. As discussed previously, we disagree with this reasoning. We are persuaded by the appropriate standard of proof that the assessable area of the Subject land is 3.18 acres.

While we may agree with Respondent as to the assessable land area of the Subject land, we are not persuaded from the evidence presented that Respondent, in its mass appraisal, gave adequate consideration to the physical characteristics of

[15] For a discussion of these alternative methods, see *The Appraisal of Real Estate*, pp 364-376.
[16] For residential properties, value per front foot, value per square foot, or value per acre are typical units of comparison that are used.

the Subject land (such as its lake view, frontage on a lake, topography, irregular shape, woodland area, and easements) or adequately addressed the zoning restrictions placed on the Subject land and other encumbrances. Respondent would have us believe from its evidence that although the Subject carries a wetland determination, this condition would not carry a negative influence on value. To the contrary, it is clear to this Tribunal that the Subject land has extraordinary impediments. Of the total land area of the Subject, only .44 acres are usable due to a myriad of encumbrances by protective woodland and wetland zoned areas that require permits, easements for ingress and egress of both the Subject and the neighboring lands, public road right-of way, and littorals. Accordingly, the true cash value of $900,000 that Respondent placed on Subject land for 2009 is not what the market would pay for a problem property such as the Subject.

For tax years 2010 and 2011, Respondent reduced the value of the Subject land to $630,000. Respondent attributes the substantial decrease in the value of the Subject lot to the market. We, however, find Respondent's testimony in this regard to be unpersuasive and unreliable as the underlying land sales study was not provided in support thereof. Coincidentally, this valuation follows the filing of this appeal and we infer likely reflects Respondent's closer examination of the various factors influencing the value of the Subject land. As a result of the questions and doubts discussed, this Tribunal concludes, after analyzing, weighing, and evaluating the evidence, that the most probable price a knowledgeable buyer would pay for the Subject land would be $630,000 for each of the three tax years at issue.

b. Residence

The parties dispute the square footage that the Subject residence contains. Petitioner contends that the square footage is 8,683 square feet, whereas Respondent contends that the residence is actually 9,259 square feet. Respondent offers that this size differential stems from "the area over the garage, the living

area." Tr at 102. Respondent's witness testified that this area is comprised of 1,418.9 square feet. Tr at 126. We do not, however, believe this to be the case as the total difference in the parties' size contentions is only 576 square feet. Furthermore, after examining the documentary evidence submitted, the Tribunal calculates that the living area above the garage is only 1,079 square feet. Thus, Respondent overestimated the living area above the garage by approximately 340 square feet. Likewise we have also calculated the gross footprint of the attached four car garage to be 1,822 square feet. The difference in size is also partially explained by the fact that Mr. Sears testified that he included the square footage of the elevator shaft as well as the stairways. Tr at 158. The Tribunal finds that "[o]penings to the floor below cannot be included in the square footage calculation." Appraisal Institute, *Appraising Residential Properties* (Chicago: Appraisal Institute, 4th ed, 2007), p 460. The subject property has an elevator and a large two-story stairway and the square footage contained therein should not be included in the valuation of the residence. Therefore, the Tribunal finds, based on a fair preponderance of the evidence, that the square footage of the subject residence is 8,683. After making these adjustments to Respondent's cost-less-depreciation computation, the Tribunal has also determined that the appropriate "size for rates"[17] to be utilized for the Subject is 4,439 square feet. The Subject is classified as a "Class A" residence. Because we have determined that the size for rates to be used for the Subject is greater than 3,600 square feet, we applied a

[17] The specific cost method typically used by assessing units for estimating the cost of residential properties is the Square Foot Cost Method. *Michigan Assessor's Manual* (2003), VOL I, p 1. This is a simple cost estimating system. It is based on the square footage of ground area of the residence, and with a minimal number of adjustments from a basic residence cost table, an accurate reproduction cost can be estimated. *Id*. A residence's first floor area is its "size for rates" and determines the point - size - for entering Square Foot Costs tables. *Id*. at 3. For example, a house with 960 square feet on the first floor would be priced by entering the cost table for a 950 square foot size cost. The 950 square foot size cost would be multiplied by the actual 960 square foot area. *Id*. In this case, because the Subject's size for rates is larger than the upper limit of the cost table entry point, a multiplier has to be applied. *Id*.

multiplier of 0.96856 (after interpolation) to the estimated replacement cost. See *Michigan Assessor's Manual* (2003), VOL I, p 3.

Further, Respondent also erred in the measurements of the brick veneer, and in turn, erred in the cost calculations for the 2009 tax year. Specifically, in the 2009 tax year the record card indicates that the size of the exterior brick veneer was 1,792; however, for 2010 and 2011, it was properly listed at 1,507 based on measurements. Tr at 189. Therefore, the Tribunal finds that the 2009 record card should be modified to reflect the proper 1,507 measurement and the calculations adjusted accordingly.

Petitioner presented no evidence challenging the county multiplier applied each year, which shows a generally increasing trend from 1.29 in 2009 to 1.39 in 2011. Nor did Petitioner challenge Respondent's rate of depreciation applied – generally 1 percent per year for this newly constructed home. Thus, after carefully considering the evidence presented by both parties, and making the necessary adjustment to Respondent's cost computations as discussed above, the Tribunal has independently determined that the depreciated cost of the Subject residence is $1,649,650, $1,708260, and $1,740,500 as of tax years 2009, 2010 and 2011.[18]

VI. CONCLUSION

[18] Our value conclusion for the depreciated cost of the Subject residence is before application of Respondent's Economic Conditions Factor or ECF. Use of an ECF in this instance is not appropriate. This is because when valuing new construction, the cost of the land and building are generally known and are not generally subject to the same market forces as existing properties. Because the cost approach becomes less accurate over time as structures age, the relationship between costs and value becomes problematic. Because state law requires that all property be valued at no more than 50% of its TCV, an ECF is used to adjust the indication of value obtained via the cost approach to local market conditions on a mass appraisal basis. An ECF is developed from extracted building values developed from sales of existing, and generally older, structures occurring within the assessing unit and producing an adjustment of building costs to property sale prices. Therefore, further application of an ECF, in this instance, would require us to use non-specific information from generally older and dissimilar structures from that of the Subject. The end result would adjust the value of the Subject above its cost. We decline to introduce this imprecision into our analysis. We point out, however, that for purposes of establishing a property's assessment for ad valorem tax purposes, the local assessor is required to apply an ECF, even in valuing new construction, to ensure uniformity and proper equalization. These considerations are not our focus, as we are required to make our own, independent determination of the true cash value of the property based on the evidence presented. See *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984).

After a painstaking and careful review and weighing of the testimony and exhibits presented by both parties and after considering the credibility of the witnesses, the Tribunal finds that the true cash or market value of Petitioners' property is $2,279,650, $2,338,260, and $2,370,500 as of tax years 2009, 2010, and 2011, respectively. It is clear from the testimony on record and the admitted exhibits that the valuation evidence presented by both parties is flawed and neither, standing by itself, provided a reliable indicator from which we could find the usual selling price of the Subject. Instead, we have found, from the limited evidence presented, that Respondent's cost approach after modification provides the most reliable indicator of value. In reaching the holdings in this opinion, we have considered all arguments for contrary holdings, and have rejected all arguments not discussed as without merit or irrelevant. To reflect the foregoing,

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's special assessment as finally provided in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

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 the Final Opinion and Judgment within 28 days of the entry of the Final Opinion and Judgment. 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. The refund shall also separately indicate the

amount of the taxes, fees, penalties, and interest being refunded. 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 Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09% for calendar year 2012 and (iv) after June 30, 2012 and prior to January 1, 2013, at the rate of 4.25%.

This Opinion resolves all pending claims and closes this case.

MICHIGAN TAX TRIBUNAL

By: Paul V. McCord

Entered: December 06, 2012