

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Oakland Commons Acquisition, LLC,
Petitioner,

MTT Docket No. 333712

v

City of Southfield,
Respondent.

Tribunal Judge Presiding
Stuart Trager

ORDER PARTIALLY GRANTING PETITIONER'S MOTION FOR RECONSIDERATION

ORDER PARTIALLY GRANTING RESPONDENT'S MOTION FOR RECONSIDERATION

CORRECTED FINAL OPINION AND JUDGMENT

PETITIONER'S MOTION FOR RECONSIDERATION

On May 24, 2010, Petitioner filed a Motion for Reconsideration of the May 5, 2010 Final Opinion and Judgment. In the Motion, Petitioner states:

- a. "Petitioner respectfully requests reconsideration . . . for three reasons[:]
 - i. First, the evidence submitted by both sides suggests that the property burdened with wetland would have considerably greater costs to develop than the 11.51 acres that have no wetlands.
 - ii. Second, the Tribunal appears to have excluded or otherwise missed evidence that Petitioner submitted to substantiate its 50% discount of the surplus land.
 - iii. Third, Petitioner points out a significant math error that impacts the true cash value of the surplus property for tax years 2007 and 2008."
- b. "This Tribunal took issue with Petitioner's assertion that the 7.2 acres of wetlands had no value given the questionable legal and financial feasibility of converting the wetlands to useable development (FOJ, p 35). Respondent's appraiser asserted that the wetlands area was approximately nine acres in size."
- c. "In its FOJ, at page 14, the Tribunal recounts Mr. Gerandasy's valuation of the 18.71 acres of excess land . . . In lieu of adopting Mr. Gerandasy's valuation, the Tribunal found a per square foot value for the entire 18.71 acres at a rate of \$4.10 per square foot (FOJ, p 34)."
- d. "The inadequacy and error of this conclusion on the part of the Tribunal lies in the fact that it is premised on the finding that wetland property is equal in value to the non-

wetland surplus land that needs no wetland remediation or zoning variances as a precondition to development.”

- e. “An arm’s length purchaser would certainly take these costs into consideration in determining what to pay for the subject property given that between 37% and 48% . . . of the entire area would require the time and expense of wetlands remediation, and would discount the purchase price to account for those costs. The Tribunal’s conclusion to the contrary is erroneous and should be modified to reflect this differential between wetlands and non-wetlands property.”
- f. “Petitioner believes the Tribunal overlooked or otherwise missed cogent evidence and reasoning that Petitioner submitted through its Appraisal Report to substantiate its 50% discount of the land. On page 36 of its FOJ, the Tribunal determined that the ‘*unsubstantiated* 50% discount of the remaining value, is found by the Tribunal to not be probative or persuasive.’” (Emphasis in original).
- g. “However, the Tribunal makes no reference in its FOJ to Mr. Gerandasy’s report . . . particularly at page P1-55, where Mr. Gerandasy fully explains and substantiates the reason for and calculation of the 50% discount.”
- h. “The crux of Mr. Gerandasy’s discount is that it reflects the significant holding costs that a purchaser would have to incur in buying such a tract in the second worst economy this state and nation have endured.”
- i. “The minimum carrying costs of the loan interests . . . and property taxes, over the past four years would account for a 36% discount at a minimum. This is before costs such as maintenance and property insurance are included.” (Emphasis in original).
- j. “Mr. Gerandasy further opines that ‘the typical prospective buyer of the subject’s existing improvements will assume an interim holding period of *at least two to four years* as of either valuation date.’” (Emphasis in original).
- k. “Mr. Gerandasy’s calculations hold true, as they are supported by Mr. Gutman’s testimony that the property owners had actively marketed the land, but had no plans to develop the excess land because there has not been a market, or financing, for ground up development in the area.”
- l. “The extensive period for carrying these holding costs was also substantiated by Petitioner in the Market Analysis section of its appraisal report”
- m. “The holding costs appurtenant to the land are no different from the lease-up adjustments the Tribunal found were justified . . . for determining the income and expenses of the adjacent building. The lease-up adjustment and holding costs represent discounts that an arm’s length purchaser would consider when purchasing a building with such a large vacancy rate and sizeable surplus land.”

- n. “[W]hile no arm’s length purchaser would be able to exactly determine how long a property would have to be held, given Michigan’s dire economy, the oversupply of properties in the area of Southfield, and the absolute shambles of the financial markets, an estimate of a 50% discount is reasonable, if not truly conservative.”
- o. “The Tribunal finds a land value of \$4.10 per square foot for the 18.71 acres of surplus land . . . which it concluded to a value of \$3,260,030. However, 18.71 acres at \$4.10 per square foot results in a value of \$3,341,531.”

On June 14, 2010, Respondent filed a Response to Petitioner’s Motion. In the Response, Respondent states:

- a. “Petitioner has not satisfied the standard as set forth in MCR 2.119(F)(3) and the Tribunal cannot grant the relief requested.”
- b. “Respondent denies the allegation that the evidence submitted by both parties suggests that property burdened with wetland would require significantly more costs to develop than the portion of the excess land without.”
- c. “Respondent further denies that the Tribunal excluded or ‘missed’ evidence that Petitioner offered to substantiate its 50% discount to the value of the excess land.”
- d. “Respondent strenuously denies the allegation in Paragraph 3 that Respondent’s ‘appraiser asserted that the wetlands area was approximately nine acres in size’ for the reason that the same is untrue. . . . Petitioner cites nothing in the record to support such an allegation. Petitioner appears to have confused Mr. Widmer’s analysis of the subject property with his analysis of Petitioner’s Comparable #3, which Mr. Widmer found to contain approximately nine acres of wetlands.”
- e. “Respondent denies that Petitioner used the excess land valuation methodology espoused in its Motion for Reconsideration. Petitioner only valued 11.51 acres of the 18.71 acres of excess land and then reduced this value by 50%. This is not the equivalent of valuing the alleged non-wetland portion of the property at one unit price and then another, different unit value for the alleged wetland area.”
- f. “Petitioner hasn’t provided any evidence, be it testimony or pages within its valuation disclosure, to justify using different unit rates to value the wetland portion and the non-wetland portion of the excess land.”
- g. “Assuming that Petitioner is correct in asserting that a purchaser would require some discount, the use of sales comparables influenced by wetlands adequately accounts for any necessary discount.”
- h. “In valuing the excess land, the Tribunal noted that there was a significant presence of wetlands at Petitioner’s comparable #3. Under Petitioner’s theory, the price paid by the buyer of comparable #3 would have been discounted because of the ‘time and expense

of wetland remediation.’ Thus, it would be unnecessary to adjust the \$4.10 further to account for the existence of wetlands.”

- i. “Respondent denies . . . that the Tribunal ‘overlooked or otherwise missed cogent evidence’ to substantiate Petitioner’s 50% discount. Respondent further denies that P1-55 ‘fully explains’ Petitioner’s use of the 50% discount.”
- j. “This discount is not substantiated with any analysis, data, or information within Mr. Gerandasy’s report, a fact recognized by the Tribunal. Contrary to Petitioner’s assertion, the Tribunal reviewed Petitioner’s 50% discount and the reasons for the discount but ultimately concluded that it was not probative or persuasive.”
- k. “While the Tribunal accepted the testimony of Mr. Gutman that the ownership group had unsuccessfully marketed the property, this does not provide a basis for the Tribunal to make an adjustment to the valuation of the excess land portion of the subject property. . . . Even if ‘the realities of holding costs have been fully, and painfully, realized by Petitioner[,]’ there has been no demonstration of a palpable error that would require the Tribunal to reduce the value of the excess land.”
- l. “Respondent denies the allegation that ‘holding costs appurtenant to land are no different than the lease-up adjustments.’”
- m. “During the hearing, Gerandasy repeatedly acknowledged that none of this [discussion of 50% adjustment and holding costs] was substantiated in his valuation disclosure. Gerandasy’s lease up discount analysis had at least some data to justify his calculations.”
- n. “Petitioner has demonstrated a palpable error with respect to the application of the \$4.10 unit price to the 18.71 acres of excess land only.”
- o. “Petitioner failed to demonstrate a palpable error . . . with respect to the value of the alleged wetland portion of the property. Petitioner proposes a new methodology to value the excess land following the close of the hearing in this case inasmuch as Petitioner seeks to have the Tribunal apply different unit rates to the alleged wetland portion of the excess land and the non-wetland portion of the property to account for what Petitioner calls ‘wetland remediation.’ At best, the Tribunal rejected a derivative of this claim by finding Petitioner’s valuation methodology to not be probative or persuasive.”
- p. “Finally, Petitioner has not shown palpable error regarding the 50% discount applied to excess land; instead, Petitioner merely presents the same issues already ruled on by the Tribunal either expressly or by reasonable implication. . . . [T]he Tribunal considered Petitioner’s valuation disclosure along with Petitioner’s expert testimony, and concluded that the 50% discount was not appropriate.”

RESPONDENT'S MOTION FOR RECONSIDERATION

On May 26, 2010, Respondent filed a Motion for Reconsideration. In the Motion, Respondent states:

- a. “[T]he 2009 assessment roll reflects a state equalized value of \$21,913,420 for the subject property and not the \$17,250,000 state equalized value listed in the Opinion and Judgment.”
- b. “[T]he Tribunal committed further error by finding that there existed over seven (7) acres of wetlands within the excess land portion of the subject property”
- c. “Petitioner provided no competent evidence to support a claim that . . . there was 7.2 acres of wetlands within the 18.7 acre excess land portion of the subject property.”
- d. “[T]he Tribunal erred in the overall valuation of the excess land through the use of one sale . . . that was contrary to the evidence in the record regarding the value of the excess land.”
- e. “Even if the Tribunal were satisfied that Petitioner’s sale comparable #3 was the most reliable indicator of value, the Tribunal erred in applying the unadjusted sale price per square foot to value the excess land as the actual sale price per square foot of \$4.10 fails to account for the difference in size, location, and shape between comparable #3 and the subject property.”
- f. “Recognizing the existence of significant differences between the two properties, Petitioner’s valuation expert adjusted the sale price per square foot for comparable #3 to \$5.75 for the 2007 tax year and \$4.88 per square foot for the 2008 tax year.”
- g. “Based on Petitioner’s adjusted sale prices per square foot, the Tribunal, at a minimum, should conclude the value of the 18.71 acres to be \$4,686,294 for the 2007 tax year and \$3,977,237 for the 2008 tax year.”
- h. “The values as stated . . . [above] would still be in conflict with Petitioner’s own evidence regarding the value of the excess land. Based on a review of three sale comparables, Petitioner’s valuation expert concluded the value range for the excess land to be between \$7.00 per square foot and \$8.00 per square foot for the 2007 tax year. Had Petitioner’s expert applied these values to the entire 18.71 acres (instead of the 11.51 acres or 501,376 square feet), the value range would have been \$5,705,053 to \$6,520,061.”

On June 8, 2010, Petitioner filed a Response to Respondent's Motion. In the Response, Petitioner states:

- a. "Contrary to the requirements of MCR 2.119(F), each of Respondent's three arguments merely rehashes its arguments presented at trial with no new or reliable evidence that would provide for a different outcome."
- b. "[M]isleading palpable error requires more than Respondent restating its original state equalized value. If anything was misleading [it] is Respondent's original assessment of SEV, which is contrary to its own admission that the SEV should be no more than \$17,250,000 (FOJ, p 2). In fact, the Respondent could not provide evidence justifying an SEV of \$17,250,000, let alone the egregious SEV of \$21,913,420." (Emphasis in original).
- c. "Respondent's *Motion* beseeches the court to use improper values. This would lead to the very thing that Respondent argues against – palpable error. Therefore, Respondent's allegation does not rise to [the] standard set by MCR 2.119(F) and should be disregarded."
- d. "Respondent contends that the Tribunal committed an error by finding that there existed over seven (7) acres of wetlands within the excess land portion of the subject property However, Respondent's own witness testified that there were 'approximately 9 acres of wetland. . . .' (FOJ at 35). Therefore, Respondent's opposition to a determination that the acreage is *over* seven (7) acres appears contradictory." (Emphasis in original).
- e. "Furthermore, Respondent's argument that the Tribunal's conclusion on this matter was not supported by competent, material and substantial evidence on the record as a whole is unfounded because the Tribunal's determination was a finding of fact. . . . The Tribunal's finding of fact as to the acreage of the excess land satisfied the requirement of substantial evidence given: (1) the Tribunal's own independent investigation, (2) the Petitioner's 'probative and persuasive' evidence, and (3) Respondent's witness (who asserted that the excess land was more than seven acres)."
- f. "More important, Respondent's objections are irrelevant because the Tribunal's determination of true cash value was based on the entire 18.71 acres and did not assign a separate value for the wetland property. The Tribunal's decision – whether there was seven (7) acres or nine (9) acres – would not be any different and therefore does not warrant reconsideration under MCR 2.119(F)."
- g. "Finally, Respondent's allegation that the Tribunal erred in using Petitioner's evidence to determine the value of the excess land does not warrant reconsideration."
- h. "[T]he Tribunal clearly states that it found Petitioner's evidence to be 'probative and persuasive,' even though the Petitioner's witness did not make adjustments between the comparable number three and the subject property. (FOJ at 36). The Tribunal

considered the evidence and record as a whole in making its determination as to how much weight to give Petitioner's comparables."

- i. "Respondent had considerable opportunity during its voluminous direct and cross exam on Petitioner's comparables to argue this issue. The Tribunal has already received and evaluated the proffered evidence and Respondent is merely rearguing everything already established at trial."

The Tribunal, having given due consideration to the Motions, the Responses and the case file, finds:

1. Petitioner's Motion for Reconsideration fails to establish error on the part of the Tribunal in its determination to value the entire 18.71 acres of surplus land at \$4.10 per square foot. While it is Petitioner's contention that the wetlands had no value, the Tribunal did not find this contention to be persuasive or substantiated by the evidence. Petitioner has failed to establish, via the evidence or testimony presented, that the wetlands present on the subject property have zero value.

Petitioner's approach as to the non-wetland portion was to value the 11.51 usable acres of surplus land and then apply a 50% discount. This is not a recognized method for determining value and the Tribunal properly found this method to be unpersuasive. Further, Petitioner was not able to substantiate the reasoning for the 50% discount for the surplus land. Petitioner contends that the 50% discount is premised on the fact that a purchaser would incur significant holding costs in buying this type of land in the present economy. While market conditions may make it more difficult to sell excess land of the type contained within the subject property, there is nothing to substantiate the particular percentage discount applied. The impact that holding costs have on the value of the subject property is reflected in the sale price of similarly situated properties that have taken place in the market. Petitioner's evidence fails to establish that the excess land is worth 50% less because of the holding costs and current economy. Respondent correctly states in its Response that the discount utilized by Petitioner was "not substantiated with any analysis, data or information" within the report provided by Petitioner.

2. Petitioner's approach of valuing only the 11.51 acres of surplus land results in a value per square foot of \$3.79. In contrast, Respondent valued the entire 18.71 surplus acres, including wetlands, at \$6.50 per square foot. The Tribunal determined that the best indicator of value for the surplus land was the sales comparison approach, utilizing comparable #3 provided by Petitioner. This sale was also used as a comparable by Respondent (although it was excluded from evidence). The Tribunal utilized a value of \$4.10 per square foot and applied that value to the 18.71 acres to arrive at a value for the surplus land. This comparable also contained wetlands, thus making its sale price representative of what a property that is influenced by wetlands would sell for on the market. The use of a comparable influenced by wetlands takes into consideration any discount that would apply to holding and developing such property. Petitioner's comparable #3 was chosen as the most reliable indicator of value based on the sale date, November 6, 2006, and the extent of wetlands of approximately 9 acres out of 23.21 total

acres. The basis of Petitioner's upward adjustments was not supported by reliable evidence or testimony. As such, the Tribunal finds that the unadjusted sale price of \$4.10 per square foot more accurately represented the market value of property encumbered by wetlands.

3. Respondent's argument that the Tribunal erred in finding that over seven acres of wetlands existed on the subject property has no impact on the valuation determination made. The Tribunal did not apply a separate rate for wetland and non-wetland acreage. As such, the exact number of acres burdened by wetlands has no bearing on the Tribunal's determination that the entire 18.71 acres of surplus land should be valued at \$4.10 per square foot.
4. Petitioner has demonstrated a palpable error in the Tribunal's calculation of the value of the excess land, based on \$4.10 per square foot. The correct value for the excess land should have been \$3,341,531. As such, the correct total true cash value for the 2007 tax year is \$31,841,570. Similarly, the correct true cash value for the 2008 tax year is \$33,026,620.
5. Respondent has also demonstrated a palpable error on the part of the Tribunal in regard to the values for the 2009 tax year. The Tribunal found that Petitioner failed to submit evidence as to a value for 2009. The Tribunal specifically held, at page 40 of the Final Opinion and Judgment, that "the 2009 true cash value and equalized value are as indicated on the tax roll with a revision to the taxable value based on the CPI." As such, it is clear that the values established by the Tribunal for the 2009 tax year were meant to be the actual values stated on the rolls for that year. Therefore, the correct 2009 true cash value is \$43,806,840, with a corresponding SEV of \$21,913,420. The taxable value, based on the CPI increase, remains \$16,960,068.
6. Given the above, the parties have demonstrated palpable errors that misled the Tribunal and the parties and that would have resulted in a different disposition if the errors were corrected, in regard to the correct recording of the true cash and state equalized values for the 2007, 2008 and 2009 tax years. See MCR 2.119. Therefore,

The property's final TCV, SEV and TV for the tax years at issue as determined by the Tribunal are:

Parcel Number: 76-24-22-201-017

Year	TCV	SEV	TV
2007	\$31,841,570	\$15,920,785	\$15,880,035
2008	\$33,026,620	\$16,513,310	\$16,245,276
2009	\$43,806,840	\$21,913,420	\$16,960,068

IT IS SO ORDERED.

IT IS FURTHER ORDERED that Petitioner's Motion for Reconsideration is PARTIALLY GRANTED.

IT IS FURTHER ORDERED that Respondent's Motion for Reconsideration is PARTIALLY GRANTED.

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 true cash and taxable values as provided in this Final Opinion and Judgment within 20 days of entry of this 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 this Final Opinion and Judgment within 28 days of entry of this 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, 2005, at the rate of 3.66% for calendar year 2006, (ii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (iii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, (iv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, and (v) after December 31, 2009, at the rate of 1.23% for calendar year 2010.

MICHIGAN TAX TRIBUNAL

Entered: October 21, 2010

By: Stuart Trager