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

Hartland Glen Development, LLC,
Petitioner,

v

MTT Docket Nos. 11-000012,
14-002513-R and 15-003485

Hartland Township,
Respondent.

Tribunal Judge Presiding
Preeti Gadola

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Hartland Glen Development, LLC, appeals ad valorem property tax assessments levied by Respondent, Hartland Township, against Parcel No. 4708-26-100-019 for the 2011, 2012, 2014, and 2015 tax years. Mark B. Dickow and Paul V. McCord, Attorneys, represented Petitioner, and Michael D. Homer and Laura Genovich, Attorneys, represented Respondent.

A hearing on this matter was held on January 23, 24, and 25, 2018, and March 20 and 21, 2018. Petitioner's witnesses were Michael Rende, Appraiser, Bob Demyanovich, Daniel Kaniarz, Aboud Atiyeh, Basil Nona, and James Heaslip, Hartland Township Assessor. Respondent's sole witness was James Hartman, Appraiser.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values ("TCV"), state equalized values ("SEV"), and taxable values ("TV") of the subject property for the 2011, 2012, 2014, and 2015 tax years are as follows:

Parcel No.4708-26-100-019	Year	TCV	SEV	TV
4708-26-100-019	2011	$2,700,000	$1,350,000	$1,350,000
4708-26-100-019	2012	$2,400,000	$1,200,000	$1,200,000
4708-26-100-019	2014	$2,400,000	$1,200,000	$1,200,000
4708-26-100-019	2015	$2,400,000	$1,200,000	$1,200,000

On May 27, 2011, Petitioner filed a valuation appeal with the Tribunal for the 2011 and 2012 tax years, involving the subject property, a 36-hole golf course, which property comprises

380.30 net acres and includes a clubhouse, pro shop, restaurant-bar, office. and miscellaneous outbuildings.[1] Following a hearing and decision by the Tribunal, Petitioner appealed the Tribunal's 2011 and 2012 Final Opinion and Judgment to the Michigan Court of Appeals ("COA," COA Docket No. 318843). The COA reversed and remanded the decision to the Tribunal for further proceedings but ordered the Tribunal to hold the case in abeyance pending a decision in COA Docket No. 321347. The appeal in COA Docket No. 321347 arose out of Petitioner's appeals with the Tribunal regarding supplemental and corrected special assessments levied against the property (MTT Docket Nos. 423343 and 427021, "Supplemental and Corrected Special Assessment Appeals"). The Supplemental and Corrected Special Assessment Appeals were consolidated and, following a hearing and decision by the Tribunal, finding the supplemental and corrected special assessments valid, were appealed to the COA. The COA ordered the Tribunal remand in Docket No. 318843 held in abeyance, pending the Supplemental and Corrected Special Assessment Appeals, because on remand the Tribunal must "fully explore the question whether the outstanding special assessments can and did decrease the property's TCV."[2]

The COA affirmed the decision of the Tribunal, holding the corrected and supplemental special assessments valid, in COA Docket No. 321347, and Petitioner made application for leave to appeal to the Michigan Supreme Court (Supreme Court Docket No. 153016). The Supreme Court issued a decision denying the application for leave on November 30, 2016, and as such, the Tribunal's decision holding the supplemental and corrected special assessments valid remained affirmed by the COA decision in Docket No. 321347.

While the 2011 and 2012 valuation appeal remained pending on remand at the Tribunal, Petitioner filed 2014 (Docket No. 14-002513-R) and 2015 (Docket No. 15-003485) valuation appeals of the subject property, which were held in abeyance pending resolution of all appeals in the Supplemental and Corrected Special Assessment Appeals and the 2011 and 2012 Valuation Appeal. On December 15, 2016, the Tribunal took this case out of abeyance and consolidated the appeals, and on February 7, 2017, it ordered new appraisals for the 2011, 2012, 2014, and

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[1]Former Docket No. 416369, now known as Docket No. 11-000012 under the Tribunal's new docketing system. [2]
[2]See *Hartland Glen Development, LLC, v* nip *of Hartland,* unpublished opinion per curiam of the Court of Appeals, issued February 19, 2015 (Docket No. 318843).

2015 tax years. In its remand, the COA wrote, "The proceedings should entail arguments, testimony, and evidence on the issues and questions raised and highlighted in this opinion, including clarification and elaboration with respect to the township appraiser's testimony cited in this opinion and possibly the preparation of new appraisals." In its remand, the COA further wrote:

> The bottom line here is that petitioner's appraiser opined that the outstanding special assessments decreased the golf course's TCV and the township's appraiser indicated that, if a purchaser had to make future special-assessment payments, it would likely decrease the property's TCV. Therefore, there was no evidence supporting the MTT's ruling that the outstanding special assessments would not decrease TCV. The MTT treated the issue as a purely legal question, but the testimony of the township's appraiser suggested that is a factual question, at least in part where he testified that a decrease in TCV would likely result if a purchaser had to assume an outstanding special assessment, **but a new appraisal would have to be undertaken to make a** *definitive determination.* [Emphasis added].

In this matter, the Tribunal considered the testimony and evidence presented, including the valid special assessment and the new appraisals, in rendering its independent findings of fact and conclusions of law.

PETITIONER'S CONTENTIONS

Petitioner contends that the subject property's true cash value is zero dollars for the 2011, 2012, 2014, and 2015 tax years due to the outstanding special assessments and poor soil conditions. In 2005, Petitioner entered into a special assessment agreement with Respondent for the assignment of 144 Residential Equivalent Units ("REUs") for sewer taps to the subject property golf course, which it wished to develop into residential units. Petitioner contends the original special assessment amount was $792,000, but after a corrected special assessment, which resulted in a total of 603 REUs assigned to the property, and supplemental special assessment were levied by the Township, it was subject to a liability of an additional $2,500,000.

Petitioner contends that its expert appraiser, Mr. Michael Rende, concluded in a preliminary value for the property of $1,150,000 for tax years 2011 and 2012 and $1,350,000 for tax years 2014 and 2015. Mr. Rende also concluded that the preliminary conclusions required further adjustment resulting in the subtraction of the outstanding special assessment balance in order to arrive at a true cash value of zero. Petitioner contends no reasonable and prudent buyer would purchase the property without considering the special assessment payments due, and as

such, would subtract the amount of the special assessment from its offering price. Petitioner claims, as the amount of the corrected and supplemental special assessment is greater than the preliminary value conclusions, the subject property is worth zero dollars. In further confirmation of the zero value of the property, Petitioner contends that its soil conditions require remediation at great expense.

PETITIONER'S ADMITTED EXHIBITS

P-2: Correspondence Dated 7/10/2009 from Jim Heaslop to the property owner

P-3: Special Assessment Contract dated 8/23/04 and 4/1/05 between Petitioner and Respondent

P-4: Assessment Card Dated 2/26/15 for Petitioner

P-5: Assessment Card Dated 3/3/15 for Petitioner

P-6: Assessment Card Dated 4/16/13 for Petitioner for Years 2008-2011

P-7: Assessment Card Dated 4/16/13 for Petitioner for Years 2009-2012

P-8: Assessment Card Dated 5/9/17 for Premier Property

P-9 Notice of Assessment for Petitioner Dated 2/27/15 (original and revised)

P-11: Sketch/Drawing by Williams and Works Dated 11/12/03

P-15: Email dated 7/25/16 from Bob Demyanovich

P-28: Email from Bob Demyanovich to Steve Scherff Dated 8/14/13

P-29: Board of Trustee Resolution of Respondent Dated 7/27/11 (11-R032)

P-30: Board of Trustee Resolution of Respondent Dated 8/16/11 (11-R-034)

P-31: Website of Respondent for Venture Church Assessment Dated 6/3/17

P-32: Deed from SRB Servicing LLC to River Community Church Recorded 12/7/09

P-34: Sole Construction letter regarding soil conditions

P-35: Michael Rende Appraisal Dated 5/18/17 for 2011 and 2012

P-36: Michael Rende Appraisal Dated 5/18/17 for 2014 and 2015

P-39: McDowell and Associates Report Dated 11/29/04

<u>Petitioner's Admitted Rebuttal Exhibits:</u>

PR-1: Self-Contained Appraisal Report of Hartland Glen Golf Course, Date of Value January 2007

PR-2: Self-Contained Appraisal Report of Hartland Glen Golf Course, Date of Value September 2008

PETITIONER'S WITNESSES

Michael Rende

The Tribunal admitted Mr. Rende as an expert in real property appraisal. He testified that the subject property has a true cash value of zero dollars for the 2011, 2012, 2014 and 2015 tax years. Mr. Rende prepared two appraisals of the subject property, one for the 2011 and 2012 tax years and the second for the 2014 and 2015 tax years, utilizing both the market and income approaches to value. Mr. Rende, however, found valuing the property as vacant, using the sales approach to value, yielded an accurate determination of the market value of the property for the tax years in question. Mr. Rende's conclusion of highest and best use for the property as vacant, was to hold for future development, with an interim use as a golf course. Mr. Rende testified that he has never before completed a special assessment appraisal.[3]

From his calculation of potential sale price through the appraisal process, Mr. Rende concluded the true cash value by subtracting the amount of the outstanding corrected and supplemental special assessments from the potential sale price,[4] because a buyer would not purchase the property with a large dollar special assessment lien during the dates of value. He testified, "No developer in their right mind would assume that liability."[5] He further testified it might be decades before a buyer could utilize the 603 sewer taps because new building had greatly diminished during the 2011, 2012, 2014, and 2015 tax years. Mr. Rende testified that "[Oven the total absence of any benefit afforded to the subject by the improvements funded by these assessments, they are considered a liability, not an asset." On cross-examination, Mr. Rende testified he was aware, however, that in 2015 Petitioner paid off the corrected special assessment, supplemental special assessment and back taxes owed for 2011, 2012, 2013, and 2014, in the amount of approximately $2,000,000,[6] which was just before the property forfeiture date. Also, Mr. Rende, in his appraisals, subtracted the outstanding special assessment retrieved from an amortization schedule that assumes that the prior year's assessment was paid. As such,

[3] 3/21 Transcript ("Tr.") at 49.
[4] *Id.* at 75.
[5] 1/23 Tr. at 41.
[6] 1/24 Tr. at 54-55.

it does not reflect any delinquencies that might be added to the outstanding balance.[7] In fact, in this matter, there were three years of delinquency until the special assessment was paid.[8]

Mr. Rende testified that during the tax years in question, the market had declined significantly, and as such, he had difficulty finding good comparables to the subject property, testifying, "I recognize these comps are not ideal — well, because, unfortunately, a really good comp simply doesn't exist." [9] Mr. Rende testified, because of the large size of the property and the availability of only much smaller comparables, it was "impossible to quantify any kind of a reasonable adjustment for size."[10] Using seven comparable sales for the 2011 and 2012 tax years, however, Mr. Rende concluded in a value of $3,000 per acre or $1,150,000, rounded. From that value, "because of the total absence of any demand for the sewer, I deducted the outstanding special assessment as of the dates of value. And it got me to a significant negative number."[11]

Mr. Rende testified there were soil issues with the property, making it very difficult to utilize it for residential development. He considered two documents, prepared by McDowell and Associates and Sole Construction, that indicated soil remediation was necessary at the subject site. Sole put forth a soil remediation estimate of $1,334,664.[12] With regard to the soil conditions in his appraisal, however, Mr. Rende testified, "I did not deduct the additional cost because of the extraordinary soil conditions because, frankly, it didn't make any difference, It was over - I was already in a significant negative position. I saw no point in even addressing that issue."[13] Even though Mr. Rende indicated there is a problem with soil conditions, he did not in this market approach to value, make adjustments to the comparables to make them consistent with the characteristics of the subject property soil conditions.[14] Mr. Rende testified, "[y]ou know, to do an appraisal and to suggest that you have soil issues but have no way of quantifying those issues, leaves a huge hole in the analysis."[15] Mr. Rende also testified he chatted with Mr.

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[7] *Id* at 132.
[8] *Id.* at 133-134.
[9] 1/23 Tr. at 109.
[10] *Id* at 108.
[11] *Id* at 110-111.
[12] P-35 at 128, P-36 at 127.
[13] *Id.* at 111.
[14] 1/24 Tr. at 69,
[15] 3/21 Tr. at 7. 3/22 Tr. at 27.

Atiyeh, the author of the remediation report, for approximately, "five minutes." "Ten minutes? I honestly don't recall."[16]

For the 2014 and 2015 tax years, Mr. Rende concluded from six vacant land comparables that the property's preliminary value was $1,350,000. From that, again, he deducted the amount of the outstanding corrected and supplemental special assessments to conclude in a true cash value of zero dollars. In his 2014 and 2015 valuation, Mr. Rende again did not consider the soil reports, Mr. Rende also testified that the property, in its current use as a golf course, has a positive cash flow. However, he found the cash generated simply offset the special assessment payments and holding costs of the land, until such time as it is put to an alternate use."[17]

On cross-examination, Mr. Rende acknowledged the COA found each REU assigned by the corrected special assessment contributed almost $2,000 of value to the property. However, he also testified that each REU can be revalued each year because factors change that impact value with each passing year.[18] Mr. Rende testified that a special assessment runs with the land, so any purchaser would have to assume the liability for any unpaid balance.

Robert Demyanovich

Mr. Demyanovich works for the Livingston County Drain Commission as Deputy Drain Commissioner. He is familiar with the subject property because the sewer system funded by the corrected and supplemental special assessments is operated by the Commission. He is also familiar with the location of the sewer connections in relation to the subject property and that some connections may be more than 200 feet away. He testified, "there is a Public Health Act that requires sewer connections within 200 feet of the property line."[19] He further testified the Special Assessment District sewer improvement was built according to its approved plan and if a developer wishes to connect, and is more than 200 feet away, it is his understanding that the developer would pay any additional costs and the Township is not required to put in additional

[16] 3/22 Tr. at 23.
[17] P-36 at 130. For example, Mr. Rende projected a net operating income of $150,000 in 2011, and $113,000 in 2012. See 1/23 Tr. at 92. Mr. Rende projected a NOT of $113,959 in 2014, see P-35 at 98, and $114,228 in 2015. See P-36 at 96.
[18] 1/23 Tr. at 150.
[19] 1/24 Tr. at 30.

taps, Further, there is nothing that prohibits a developer from connecting to the sanitary sewer if it's more than 200 feet away, but per the Code, it must connect if it is within 200 feet.[20]

Daniel Kaniarz

Mr. Kaniarz is a senior geotechnical engineer employed by McDowell and Associates, which participates in geotechnical engineering, environmental testing, and environmental assessments. Mr. Kaniarz was qualified as an expert in those areas by the Tribunal. McDowell and Associates was engaged in 2004 by Pulte Homes to conduct soil boring tests on the subject property. Pulte was "interested in developing the sites as residential."[21] Soil boring tests were performed to determine what type of soils are present on the property and to determine ground water conditions and how those items would affect construction of the subdivision. Mr. Kaniarz testified that he found high water levels and soils not conducive to basements. He testified that five of the thirty-three borings indicated the necessity of deep home foundations for the construction of basements, and some areas required the removal of bad soil and replacement with engineered fill. As such, he testified that the subject property is a difficult site to build for residential. Mr. Kaniarz testified he was aware Pulte determined not to pursue development of the property due to the ground water issues. The date of Mr. Kaniarz's report is November 29, 2004.

Mr. Kaniarz testified regarding his report at the original hearing, and he confirmed in his testimony at this hearing, that again, he did not have a specific dollar amount calculated for remediation, he did not know the number of residential units available on the property, and it would be expensive but not impossible to prepare the site for development. He testified he did not talk to Mr. Rende about soil conditions for the purpose of his appraisals of the subject property.

Aboud Atiyeh

Mr. Atiyeh was qualified as an expert in civil engineering by the Tribunal. Mr. Atiyeh manages Sole Construction and participates in project estimating and management for residential development. He specifically works on sanitary sewer, storm sewer, water mains, and pump stations. He was engaged by Petitioner "to prepare a proposal for the remediation of soil

[20] *Id.* Tr. at 31.
[21] *Id.* at 153.

conditions, etcetera, on this property."[22] In determining his remediation costs, Mr. Atiyeh considered the preliminary concept plan for the property with 436 acres and a 36-hole golf course. The property is to be developed in stages, starting with the north nine holes, followed by the east and west ends. The golf course was to remain in operation as a 27-hole golf course after development of the north nine and at 18 holes after development of the east nine holes, then a new nine holes will be constructed after the west nine-hole development, in order to maintain an 18-hole golf course, with a 600-to-650-unit residential development around it.[23] Mr. Atiyeh was asked to review a conceptual plan for 436, rather than 380, acres or 600-to-650 units, which he opined might have something to do with buying an additional 40 acres next to the property. [24]

The basis for determining soil conditions was the 2004 McDowell and Associates report. From the report, Mr. Atiyeh concluded that a storm system would be required because of the high-water table as a cost of about $450,000. He also noted that new dirt was necessary due to the poor conditions. He considered the sanitary sewer elevation constructed by the Township and concluded that some of the subject property cannot be serviced by the sewer unless pump stations are constructed, which he estimated would cost approximately $300,000 each. However, the number is "a preliminary guess on my experience on a pump station."[25] Mr. Atiyeh testified about additional issues with the property that would impede development; however, he testified, "I'm giving you budget numbers. Again, I don't have an actual design. You would have to go through, you know, hiring a civil engineer, spend probably three, $400,000 with some design to give you numbers, the exact cost."[26] Mr. Atiyeh testified he was unsure if he talked to Mr. Rende about his remediation findings.

James Heaslip

Mr. Heaslip in the Assessor for Hartland Township and testified regarding the assessed value of the property for the tax years in question. Mr. Heaslip indicated he made an adjustment to the land value of the property for wet soils and ponds under the commercial improved classification. However, he changed the class of the property from commercial improved to developmental improved based on a conversation with the owner of the property. As such, his

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[22] *Id.* at 176.
[23] *Id*. at 197, P-35.
[24] *Id.* 200.
[25] *Id.* at 180.
[26] *ld*. *at* 185.

valuation, which did not require adjustment, was based on comparison to other wet properties to determine its true cash value. Mr. Heaslip testified the developmental improved classification is appropriate for a property in transition - for example, a property held for future development, such as the subject.

Basil Nona

Dr. Nona is a part owner and managing partner of Hartland Glen Development LLC. He is also a dentist, referred to himself as a developer, and testified he has developed other properties. Dr. Nona testified he spoke with Mr. Heaslip regarding the assessed value of the subject property as he determined the property is over assessed.

Dr. Nona testified he was not directly involved with the negotiations with Pulte to develop the property but was aware of them and understood Pulte ordered soil boring tests. Dr. Nona testified Petitioner purchased the property in 1999, but at that time, no soil tests were done. He testified Petitioner voluntarily entered into the Special Assessment District for a sanitary sewer improvement when 144 REUs were suggested but did not agree to the reallocation.

Dr. Nona testified Petitioner sought to rezone the northern 73 acres of the property to high-density residential in order to develop it. A concept plan was submitted to the Township, and in 2017, the application was granted. 8,400-square-foot lots were approved, and sewer must be available to those lots for development.[27] Dr. Nona testified, however, because of the necessity for roads and other infrastructure and with consideration of the wetlands, about 25% of the 73 acres would be unusable for building.[28]

RESPONDENT'S CONTENTIONS

Respondent contends that the outstanding special assessments do not impact the subject property's true cash value, but rather, the special assessment lien only affects the amount of the owner's equity interest. Respondent puts forth that the entire corrected and supplemental special assessments for sewer installation were found valid by both the Tribunal and the COA, and as such, they are proportionate to the benefit conferred to the subject property. In this matter, however, Petitioner seeks for a third time to challenge the special assessment's validity, contending that at different points in time the assessment added value and at others that its

[27] 1/25 Tr, at 106-110.
[28] *Id.* at 111-112.

outstanding balance should be deducted from its true cash value. Respondent claims, however, that in order to challenge a special assessment, there is a 30-day appeal window, which has long passed.[29]

Respondent notes it would be difficult to make public improvements if the financing mechanism for the improvements may be challenged year after year. Respondent also claims that if the outstanding corrected and supplemental special assessment is deducted from value each tax year, an illegal tax preference would be afforded to property owners who choose not to pay the property's special assessment up front. Further, property owners who pay their special assessments in installments, and are able to deduct the outstanding balance from the true cash value of the property, will lower the Township's tax base, requiring other taxpayers to make up the difference, even while outside of the sewer improvement district.

Respondent contends that the COA found each REU added $2,000 in value addition to the property over the cost of the special assessment for that REU. However, in this matter, Mr. Rende testified numerous times that the sewer improvement conferred no benefit to the property.

Respondent claims that Mr. Rende testified there were no good comparables to the subject property and that his comparables were not bona fide. Respondent contends Mr. Rende testified that he calculated the market value of the property, then subtracted the special assessment liability, when the purpose of an appraisal in a Tribunal appeal is to help it determine market value. Finally, Respondent contends the alleged soil conditions may not decrease the value of the property as Mr. Rende ignored them in his reports, did not adjust value down by any amount due to poor soil conditions, and found that the potential expenses might not be a "deal breaker." Finally, Respondent alleges, no amount of value decrease was delineated and conveyed to the parties regarding how much soil conditions impact value. Respondent contends its appraiser, Mr. Hartman, properly determined the true cash value of the subject property for the tax years at issue.

RESPONDENT'S ADMITTED EXHIBITS

R-I: Summary Appraisal Report—Tax Years: 2011, 2012, and 2013

R-2: Property Record Cards — Tax Years 2011, 2012, 2014, and 2015

A. R-2A 2011

[29] Respondent's post hearing brief ("Respondent's Brief') at 2, referencing Act 188 of 1954, MCL 41.721 *et seq.*

B. R-2B 2012

C. R-2C 2014

D. R-2D 2015

R-3: Affidavit of Interest in Real Property, and Special Assessment Contract

R-4: Appraisal Report — Tax Year: 2011 and 2012

R-5: Appraisal Report — Tax Year: 2014

R-6: Appraisal Report — Tax Year: 2015

R-7: Proposed Site Plan

R-8: Original Allocation of Residential Equivalent Units (2005)

RESPONDENT'S WITNESS

James Hartman

The parties stipulated that Mr. Hartman is an expert in appraisal and he was designated so by the Tribunal. For the 2011 and 2012 tax years, Mr. Hartman testified that, in the prior hearing, he did indicate that the corrected special assessment would impact the value of the property. He further testified, however, that he was referring to the value of the ownership's interest.

Prior to the testimony regarding the impact on value in the earlier hearing, Mr. Hartman was testifying regarding a mortgage appraisal, where the ownership's interest, or its equity interest, is calculated because it's the bank's collateral for a loan.[30] Mr. Hartman testified, however, when concluding to the true cash value of a property for ad valorem tax purposes, market value is calculated.

Mr. Hartman testified the special assessment may change the sale price of the property but not the value of the property in the marketplace. For example, if a property's market value is $3,000,000, its value for ad valorem tax purposes is $3,000,000. If there is a $2,500,0000 special assessment on the property, and the buyer assumes the special assessment or pays it off as a lien on the property, he/she pays the seller $500,000, which is the equity value to the buyer.[31]

[30] 3/20 Tr. at 19.
[31] *Id* at 20.

Mr. Hartman testified that his appraisal for the prior hearing, and his appraisal for this remand hearing, are almost identical. However, in the appraisal for this hearing, he calculated both the true cash value and the equity value of the property. He also removed the hypothetical condition that the special assessment was paid when concluding in true cash value, because the Tribunal requested the same. He found that the pre-payment of the special assessment does not affect the market value of the property but affects the owner's equity interest, and therefore, the hypothetical condition did not affect value.[32]

For all the tax years in question, Mr. Hartman made the extraordinary assumption that major soil remediation would not be necessary given he was not provided with anything that definitively indicates the amount that soil conditions will increase the development cost of the subject property.[33] With regard to the second report from Sole Construction, Mr. Hartman testified the cost estimate had to do with development, "but it was based on a specific plan and it also included more acreage than what is at the subject property."[34] Mr. Hartman also testified that he heard Mr. Atiyeh from Sole Construction testify earlier in the proceeding that he could not quantify the impact of the report on true cash value. Mr. Hartman stated that in order to take into consideration soil conditions, he would have to do a "thorough highest and best use analysis that takes in the factors different development scenarios and different additional costs that would be incurred for those development scenarios."[35] He testified, from the information provided, "I could not definitely come up with an estimate of what would be an adjustment based on their testimony and their reports."[36]

For all the tax years in question, Mr. Hartman found the highest and best use of the property to be as vacant and for use for future residential development. Mr. Hartman considered all three approaches to value, but since he determined the highest and best use of the property to be vacant, he relied on the market approach and compared the property to vacant land sales with adjustments to make them consistent with the characteristics of the subject property. Mr. Hartman utilized a 2009 sale of a property in the same special assessment district as the subject, also on Highland Road in Hartland Township. The property was sold with the assumption of 80

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[32] *Id*, at 16-18, 140.
[33] *Id.* at 40.
[34] *Id.* at 41.
[35] *Id.* at 112.
[36] *1d, at* 109.

REUs, and Mr. Hartman utilized the sale for all four tax years because it was so similar to the subject property, is in close proximity to the property, the market had not changed substantially since that time, and as such, the 2009 sale was relevant to all the tax years in contention.[37]

In his conclusion of value, Mr. Hartman determined it was appropriate to subtract costs to raise the improvements on the property, specifically, the club house, parking area and irrigation system. Therefore, he subtracted $175,000 in demolition costs for the 2014 tax year and $180,000 for the 2015 tax year.[38]

FINDINGS OF FACT

1. The subject property is a 36-hole golf course, which property comprises 380.30 net acres and includes a clubhouse, pro shop, restaurant-bar, office, and miscellaneous outbuildings.
2. The property is subject to corrected and supplemental special assessments for sewer improvements.
3. In valuing the property, both Petitioner's and Respondent's appraisers found the highest and best use of the property to be as vacant.
4. In valuing the property for the 2014 and 2015 tax years, Mr. Rende, Petitioner's appraiser, compared the property to five comparable vacant land sales that he adjusted to be consistent with the characteristics of the subject property.
5. Mr. Rende applied gross adjustments to the sales of 30% to 95% and testified there were no good comparables to the subject property. Mr. Rende's conclusion of the potential sale price of the property, however, was $1,350,000 for the 2014 and 2015 tax years. Mr. Rende subtracted the unpaid balance of the corrected and supplemental special assessments from his preliminary value conclusion to render a final conclusion of true cash value of zero dollars.
6. Mr. Hartman compared the subject property to six vacant land sales for the 2014 tax year and eight vacant land sales in the 2015 tax year with adjustments to make them consistent with the characteristics of the subject property. Mr. Hartman's gross adjustments were from 20% to 60%. Mr. Hartman's conclusion of the true cash value of the subject

[37] *Id.* at 49.

[38] *Id.* at 58,

property for the 2014 tax year was $2,870,000, which included a subtraction of demolition costs, for the various building and site improvements, of $175,000. For the 2015 tax year, Mr. Hartman's conclusion of value was $2,860,000, which included the subtraction of demolition costs of $180,000.

7. The Tribunal previously determined the true cash value of the subject property for the 2011 and 2012 tax years.
8. Per Petitioner, the property was subject to soil-boring tests to determine the quality of the soil, among other factors. A developer, Pulte Homes, ordered the soil-boring tests in order to assess the property for residential development. McDowell and Associates completed the soil boring tests in 2004.
9. The tests concluded that there were soil issues on the property that would require deep basements, soil removal, and the installation of engineered fill. There was no estimate of remediation costs in the soil-boring report.
10. In 2016, an estimate for soil remediation, among other remediation, was sought from Sole Construction. It found extraordinary development costs, however, those costs were an estimate and not quantified in final form. The remediation plan was also based on a conceptual plan that included more acreage than the subject property.
11. In 2017, a conceptual plan was presented to Respondent by Petitioner to develop 73 acres of the subject property, with a rezoning request to high-density residential. In 2017, the rezoning request was approved.
12. In 2015, Petitioner paid the subject property back taxes and special assessments to avoid forfeiture of the property. Petitioner has not, at any time, abandoned the property.

CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value.[39]

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of

[39] See MCL 211.27a.

> true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not .. . exceed 50 percent. . . .[40]

The Michigan Legislature has defined "true cash value" to mean:

> The usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.[41]

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . are synonymous."[42]

"By provisions of [MCL] 205.737(1) ... , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment."[43] The Tribunal is not bound to accept either of the parties' theories of valuation.[44] "It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case."[45] In that regard, the Tribunal "may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination."[46]

A proceeding before the Tax Tribunal is original, independent, and de novo.[47] The Tribunal's factual findings must be supported "by competent, material, and substantial evidence."[48] "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[49]

"The petitioner has the burden of proof in establishing the true cash value of the property."[50] "This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with

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[40]Const 1963, art 9, sec 3.
[41]MCL 211.27(1).
[42] *CAF Investment Co v Michigan State Tax* ***CO117111,*** 392 Mich 442, 450; 221 NW2d 588 (1974).
[43] *Athi Der Co v Orion Twp,* 110 Mich App 764, 767; 314 NW2d 479 (1981).
[44] *Teledyne Continental Motors v Muskegon Twp,* 145 Mich App 749, 754; 378 NW2d 590 (1985).
[45] *Meadowlanes Ltd Dividend Housing Ass 'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991).
[46] *Jones & Laughlin Steel Corp v City of Warren,* 193 Mich App 348, 356; 483 NW2d 416 (1992).
[47] MCL 205.735a(2).
[48] *Dow Chemical Co v Dept of Treasury,* 185 Mich App 458, 462-463; 462 NW2d 765 (1990).
[49]*Jones & Laughlin Steel Corp, supra* at 352-353.
[50] MCL 205.737(3).

the evidence, which may shift to the opposing party."[51] However, "[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question."[52]

The three most common approaches to valuation are the capitalization of income approach, the sales comparison, or market, approach, and the cost-less-depreciation approach.[53] "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading."' The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances.[55]

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would se11.[56]

After considering all the evidence, testimony, case file, and remand instructions from the higher court before writing this Final Opinion and Judgment, the Tribunal finds for 2011 and 2012 tax years, the value of the subject property was already determined by the Tribunal in its Final Opinion and Judgment issued October 11, 2013.[57] As noted above, the decision was appealed and remanded by the higher Court in order for the Tribunal to consider the effect of the corrected and supplemental special assessments on that value determination, because, in part, Mr. Hartman testified that if a purchaser had to make future special assessment payments, it would likely decrease the property's true cash value, but a new appraisal would have to be undertaken to make a definitive determination. The higher Court also instructed the Tribunal to hold the valuation remand in abeyance in order for the Court to determine if the corrected and supplemental special assessments were valid, which it found so on October 20, 2015.

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[51] *Jones & Laughlin Steel Corp, supra at* 354-355.
[52] MCL 205.737(3).
[53] *Meadowlanes, supra* at 484-485; *Pantlind Hotel Co v Slate Tax Comm,* 3 Mich App 170, 176; 141 NW2d 699 (1966), afid 380 Mich 390 (1968).
[54] *Jones & Laughlin Steel Corp, supra at* 353 (citing *Antisdale v City of Galesburg,* 420 Mich 265; 362 NW2d 632
(1984) at 276 n I).
[55] *A ntisdale„stpra* at 277.
[56] See *Meadowlanes Ltd Dividend Housing Ass)? v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991).
[57] The October 11, 2013 Final Opinion and Judgment was authored by another Tribunal Judge who carefully considered the testimony, evidence, and the case file in her conclusion of true cash value.

For the 2014 and 2015 tax years, the Tribunal shall perform a complete analysis, utilizing its own expertise,[58] to conclude in the true cash and taxable values of the property, from the parties first and only appraisals relevant to those tax years.[59] Because the same issues regarding the valid special assessments apply to all tax years, the Tribunal finds it will discuss value in the 2014 and 2015 tax years, and then return to the special assessment issue. The Tribunal finds both appraisers must find the fee simple estate of the property, which is defined as "absolute ownership unencumbered by other interest or estate; subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat."[60]

2014 and 2015 Value of the Property - Highest and Best Use

Highest and best use is the crux of determining the market value of a property. As noted in the *Appraisal of Real Estate*,[61] "[t]he analysis of highest and best use is at the heart of appraisals of the market value of real property . ." "The essential components of the analysis of highest and best use are contained in the following definition of the term: The reasonably probable use of the property that results in the highest value." In other words, in determining the true cash or fair market value of a property, it is the use that results in maximum productivity that is aimed for. Highest and best use "recognizes that the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay."[62] The subject property is an operating golf course. However, both parties' expert appraisers, Mr. Michael Rende and Mr. James Hartman, found that the property's highest and best use to be for future residential development with interim use as a 36-acre golf course.[63]

When determining the highest and best use of a property, an appraiser must consider the highest and best use of the property as vacant and as improved. As noted above, the subject

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[58] See *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998).
[59] See *Edward Rose Bldg Co v Independence* nil), 436 Mich 620,638;462 NW2d 325 (1990).
[60] Appraisal Institute, *The Dictionary of Real Estate Appraisal,* (Chicago: Appraisal Institute, 6th ed, 2015), p. 90,
[61] Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14" ed, 2013), p 332.

The Appraisal of Real Estate is the appraisal profession's "flagship text, reflects this recommitment to the essential principles of appraisal and the sound applications of recognized valuation methodology." Further, "both appraisers and users of their services can be assured that this volume builds on time-tested foundational knowledge and contains the most up-to-date information and learning on valuation available anywhere." *Appraisal of Real Estate,* Forward, written by Richard L. Borges II, MAI, SRA, 2013 President, Appraisal Institute.
[62] *Edward Rose Bldg Co v Independence Twp,* 436 Mich 620, 633; 462 NW2d 325 (1990).
[63] See P-36 at 59, R-5 at 90, R-6 at 90.

property is improved with a golf course, but both appraisers gave most weight to its vacant use. When concluding its highest and best use, as vacant, the appraiser must consider the legal permissibility of the use — i.e. zoning, building codes or environmental restrictions; the physical permissibility of the use — i.e. size, shape, frontage, utilities, soil composition; the financial feasibility of the use — i.e. can it produce a positive return to the land after considering risk and all costs to create and maintain the use; and the maximum productivity of the use — i.e. the use that produces the highest value.[64]

As noted above, after completing appraisals calculating both the market and income approaches to value, both appraisers found valuing the property as vacant, using the market approach to value, yielded an accurate determination of the true cash value of the property for the tax years in question. Mr. Rende, however, determined it was also appropriate to subtract the unpaid balance of the special assessment related to the property, from its "potential sale price" for each tax year in question, to conclude in a final value for the property of zero dollars in true cash value, state equalized value and *taxable value.* If the subject property is worth zero dollars on all dates of value, due to necessary soil remediation, water table problems, unreachable sewer hook-ups, zoning issues, and especially the outstanding special assessment, how can holding for, or use for, future residential development be legally permissible, physically possible, financially feasible, or the reasonably probable use of the property that results in the highest value for the tax years in question? The Tribunal queries if Mr. Rende concluded in the correct highest and best use of the property as the essential premise of his appraisal, as it appears his concluded highest and best use is, in reality, no use.

Further, if Petitioner contends that the Tribunal determine the true cash value of the subject property to be zero dollars, then this Petitioner, as long as it owns the property as is, will never pay a single dollar in tax. MCL 211.1 states, however, "[t]hat all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation." The subject property is not the exempt property of a charitable or educational institution, church or religious society, nonprofit hospital, or the property of the boy-scouts,[65] but

[64] *The Appraisal of Real Estate, supra,* at 332-338.
[65] See MCL 211.7o, 7n, 7s, 7r and 7q.

is a for-profit golf course. As noted above, all property that is not exempt under law is subject to taxation. MCL 211.27a states:

> (1) Except as otherwise provided in this section, property shall be assessed at 50% of its true cash value under section 3 of article IX of the state constitution of 1963.
> (2) Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:
> (a) *The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions.* For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994. (Emphasis added).

If the Tribunal determines the taxable value of the subject property is zero dollars, then in subsequent tax years, zero dollars times 1.05 or the inflation rate is still zero dollars. As indicated above, even if the value of the property skyrockets, *Petitioner will not be required to make any contribution to public taxation.* In fact, Dr. Nona, owner of the subject property, admitted that he submitted a conceptual plan to the Township with a request to rezone 73 acres of the property to high-density residential, which was approved in 2017 and would allow for 8,400-square-foot lots.[66] Mr. Rende also confirmed his understanding of the conceptual plan and rezoning, which would allow for 378 potential units, with the possibility of another 620 units on the remaining acreage.[67] Mr. Atiyeh was asked to review a conceptual plan for 436 acres, or 600 to 650 units, which he opined might have something to do with buying an additional 40 acres next to the property.[68] Mr. Rende testified he was aware that in 2015 Petitioner paid off the corrected special assessment, supplemental special assessment, and back taxes owed for 2011, 2012, 2013, and 2014 in the amount of approximately $2,000,000,[69] which was just before the property forfeiture date. If the property was worthless, why not abandon it instead of paying $2,000,000 to hold on it to? The Tribunal finds the allegation that the subject property is worth zero dollars to be unimpressive.

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[66] See 1/25 Tr. at 106-108. Dr. Nona also testified, however, that about 25% of the land would be unusable for building given the need for roads, infrastructure, wetlands and common areas. See 1/25 Tr. at 111-112.
[67] 1/24 Tr. 96, 130-131.
[68] *Id.* 200.
[69] *Id.* at 55.

As noted above, both appraisers found the market approach to value[70] to be the best method to utilize in determining the fair market value of the property, and the Tribunal agrees. In his appraisal for the 2014 and 2015 tax years, Mr. Rende put forth five sales of vacant land as comparables. However, his gross adjustments were between 30 to 95 percent, which would affirm the fact that are not truly comparable to the subject property. Mr. Rende testified, "I recognize that these comps are not ideal because - - well, because, unfortunately, a really good comp simply didn't exist."[71] He also testified, "there were no bona fide comps of similar properties . . . ."[72] Finally, he testified he made no adjustments to the comparables for soil conditions, though he considered it might be appropriate to subtract the cost of soil improvements from the true cash value of the property.[73] Mr. Rende wrote in his appraisal:

> For this analysis, these potential extraordinary expenses are being ignored. Although these additional costs are most probably warranted, they may not, in and of themselves, be a "deal breaker". If there were sufficient demand for developed residential land in the immediate area, a land developer, may conclude that even with these additional expenditures, the finished lots would command a sufficiently high price and be absorbed so rapidly so as to mitigate these additional costs and minimize risk.[74]

The purchase of a property for development, with a special assessment, is a business decision. The developer sees the potential of a property, and rather than abandon it for its zero value, he or she holds on to it until the market improves, as demonstrated by the approved rezoning and concept plan for the property submitted by Dr. Nona, and as further demonstrated by Petitioner's payment of the back taxes and special assessments due rather than abandonment. Mr. Rende found the highest and best use of the property to be to hold for future development, which is what Petitioner did, in fact, do. Further, the Tribunal finds it may not be impossible to develop the property within the confines of any soil issues. Mr. Kaniarz testified that he found high water levels and soils not conducive to basements in five of the thirty-three borings. He testified *some* areas required the removal of bad soil and replacement with engineered fill. Mr. Rende,

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[70] "Sales comparison is the most commonly used and preferred method of valuing land. Data on sales of similar parcels of land is collected, analyzed, compared and adjusted to reflect the similarity or dissimilarity of those parcels to the subject property." *The Appraisal of Real Estate* at 366.
[71] 1/23 Tr.at 109,
[72] 3/21 1'r. at 8.
[73] 1/24 Tr. at 69-71.
[74] P-36 at 127

however, failed to explain why a plan couldn't be developed to keep the inferior soil areas as part of the golf course or as a natural area, or why Petitioner couldn't build a different type of residential development without basements. In fact, Mr. Rende wrote in his appraisal:

> The appraiser had a conversation with Mr. Aboud Atiyea, [sic] Project Engineer with Sole' Construction. Mr. Atiyea [sic] indicated that this substantial volume of till would be required only to accommodate single-family residential development. If the subject's zoning could be altered to facilitate attached condominiums constructed on slabs (no basements) by way of example, the volume of fill required to raise the site may be reduced.[75]

Further, Mr. Hartman testified:

> Well there are certain areas that are unbuildable or financially not feasible to build. You would have to look at different layout scenarios based upon that. I think in this instance, it may be areas that the highest and best use is a golf course. And maybe just do housing around it and a golf course. So, there's a number of scenarios that could come into play.[76]

Petitioner has not convinced the Tribunal of the amount by which soil conditions on the property might potentially decrease its true cash value, nor were any soil remediation figures conclusively provided. The Tribunal finds Petitioner has not met its burden of proof with regard to any specific decrease in value to the property based on soil conditions.

The Tribunal also finds Mr. Rende's subtraction of the outstanding special assessment from the property's potential sale price to be in inaccurate method of valuing a property's true cash or market value. In *Hartland M59 Investments, LLC v Hartland Township,*[77] the Tribunal was also charged with determining the true cash and taxable values of the property for 2011, 2012, and 2013 tax years - specifically, whether water and sewer special assessments imposed on the property negatively affect its fair market value. Petitioner's appraiser concluded to the value of the property in question, then deducted the amount of the outstanding special assessment to conclude in true cash value, just as Mr. Rende did in this case. The Tribunal agreed, that "[a] knowledgeable buyer considers expenditures that will have to be made upon the purchase of a

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[75] P-35 at 128, P-36 at 127
[76] 3/20 Tr. at 117-118.
[77] *Hartland 11/159 Investments, LLC v Hartland Twp,* issued October 15, 2013 (MTT Docket No. 415661), written by Petitioner's counsel, a former Tribunal Member.

property because those costs will affect the price a buyer is willing to pay."[78] The Tribunal further found, however:

> In this case, the anticipated expenditure is the unpaid balance of the special assessment which makes water and sewer service available to the subject property. The adjustment for expenditures immediately after purchase for this property would thus be the anticipated expenditure — the balance of the special assessment added to the purchase price to arrive at value with the reasoning the when the parties negotiated the transaction, they deducted this cost from the price they otherwise would have arrived at if the property had this amenity. Purchase price and the anticipated expenditure are each components of value. Thus, the inclusion of the balance makes sense and is an appropriate appraisal methodology when determining true cash value of the subject property, which contains the same special assessment and outstanding balance thereof [79]

The Tribunal went on to find, "[v]aluing the fee simple interest does not include a deduction of the unpaid balance of a special assessment and is inappropriate for determining the subject property's true cash value under MCL 211.27."[8°]

The Tribunal finds Mr. Hartman's testimony regarding equity interest versus true cash value for ad valorem tax purposes to be persuasive. Subtraction of the special assessment from value reveals the owner's equity interest in the property rather than its market value.

The subject corrected and supplemental special assessments may be paid up front or be financed over time. Some property owners pay the special assessment up front to, among other possible reasons, avoid interest charges from financing. If a second property owner chooses to finance the same special assessment obligation but is allowed to deduct that amount from the true cash value of the property, its tax liability would be greatly reduced, even to zero dollars, as in this case. How is a municipality to make public improvements if its funding source is diminished, or obliterated, each year, and how is it equitable to allow one property owner within the district to pay its special assessment obligation up front, thereby realizing no tax benefit, but allow another to reduce its tax liability to zero dollars? Again, Petitioner's argument in allowing the deduction of the special assessment liability is unimpressive.

For the 2014 tax year, Mr. Hartman compared the subject property to six vacant land sales adjusted to be consistent with the characteristics of the subject property and in 2015 to eight

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[78] *Id*. at 15.
[79] *Id* at 15-16.
[80] *Id.* at 16.

sales. The Tribunal finds the majority of his adjustments to be appropriate but finds the gross adjustments to sale four for the 2014 and 2015 tax years, located at 10 Mile Road, to be too high at 60% in location and physical characteristic adjustments and, as such provides it no weight. The Tribunal finds the sale at "N/s Highland Road," sale number one for the 2014 and 2015 tax years, to be the best comparable to the subject.[81] It is in the same special assessment district as the subject property, in close proximity, the special assessment was assumed at the time of purchase, and it sold for $9,271 per acre. The sale was adjusted for each tax year for market conditions, location, size, and site utility, including wetlands, to $6,871 per acre. The Tribunal finds the Highland Road sale to be the best evidence of value of the subject property for the 2014 and 2015 tax years. Mr. Hartman also concluded that demolition costs of $175,000 for 2014 and $180,000 for 2015 are necessary in order to remove the improvements to the property and prepare it for residential development. The Tribunal finds the demolition costs to be an appropriate deduction in determining the true cash value of the property for the tax years in question.

It should also be noted that sale number four in the tax year 2014 and 2015 appraisals, sold with the assumption of $1,022,966 in outstanding special assessments, and sale number eight for the 2015 tax year, sold for $654,328 with the payoff after sale of 100 REUs for sewer and water, demonstrating again that an outstanding special assessment does not have to decrease the value and salability of the property.[82] Sales comparable four is located in Lyon Township, and sale eight is in Howell Township, and as such, the Tribunal does not find them to be the best comparables to the subject property but finds the comparable in the same special assessment district to be the best.

Special Assessment, tax years 2011 and 2012

[81] This comparable was also Petitioner's 2011-2012 comparable three, however, Respondent added the amount of the paid special assessment to the sale price, which the Tribunal finds to be the appropriate appraisal technique in determining the sale price of the property. If Petitioner paid $320,000 and assumed a $386,361 special assessment obligation, the sale price is $706,361. In fact, in Mr. Rende's 2014/2015 land comparable one, he puts forth a sale price of $864,999, including the paid special assessment in the reported sale price, however, he did not do so in 2011/2012 comparable three. See P-36 at 117. Also, in Mr. Rende's 2014/2015 land comparable two, he included the special assessment amount in the sale price. See 1/24 Tr. at 77-78.

[82] See R-5, R-6, Respondent's Brief at 24, 3/20 Tr. at 63, 68.

As noted above, the COA remanded this value appeal to the Tribunal in order for it to consider the impact of the corrected and supplemental special assessments on the property's true cash value. Petitioner's appraiser, Mr. Hartman, testified at the original hearing of this matter that the value of the property would likely be less if the buyer assumed the responsibility of the payment of the special assessment, but also added, "I cannot say without doing the research."[83] Also, as noted above, the Tribunal ordered new appraisals of the property in order for the appraisal experts to explain to it how the *valid* special assessments affected the value of the property. In order to challenge the validity of a special assessment, a petitioner must demonstrate a substantial or unreasonable disproportionality using a comparison of the true cash value of the property with and without the benefits conferred by assessment and then compare that against the cost of the assessment.[84]

The original special assessment on this property was levied in 2005 for 144 REUs for sewer taps, and Petitioner voluntarily entered into the special assessment district.[85] In 2011, however, the Township corrected the Special Assessment and levied an additional sum for 603.14 REUs, to which Petitioner objects. Respondent also levied a Supplemental Special Assessment. In the Supplemental and Corrected Special Assessment Appeals,[86] the Court found:

> Despite Hartland Development's objection, the Township did not saddle it with "additional" REUs. Instead, the Township reallocated the REUs that Hartland Development initially sought for their parcels in lieu of how those REUs would likely be used, Nor can Hartland Development show that it was unfairly put upon, or singled out, for disparate treatment. Although not all the owners who initially joined the special assessment district had their REUs reallocated, there was testimony that those with contiguous parcels, or at least initially contiguous parcels, did have their REU allocations revisited as well.

The original Special Assessment in this matter, levied in 2005, may be paid in installments over twenty years, with a declining balance payment schedule at 5.25% interest. The Supplemental Special Assessment was levied in 2011 and may be paid over fifteen years, with a declining balance payment schedule at 5.5% interest.[87] In order for a special assessment to be valid, the amount assessed must be proportional to *the increased value* of the property as a result

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[83] *Hartland Glen,* (Docket No. 318843) at 2.
[84] See *Michigan's Adventure, Inc. v. Dalton Two.,* 290 Mich.App. 328, 335, 802 N,W.2d 353 (2010). *Hartland Glen,* (Docket No. 321347) at 2.
[86] *Id.* at 6.
[87] *Id*. at 2.

of the special assessment improvement.[88] The COA found the entire corrected and supplemental special assessments valid and wrote, "[t]he Tax Tribunal . .. did not err in finding that the special assessment was valid because the benefits of the special assessments to the subject property outweigh its costs."[89]

In the matter before us, Petitioner is yet again trying to assert the corrected and supplemental special assessments are invalid and put forth no benefit to the property. Its expert, Mr. Rende, wrote in his appraisal, completely disregarding the COA's decision, "[f]urther referencing the State of Michigan Court of Appeals *unpublished opinion,* given *the total absence of benefit* resulting from the subject's allocated 603 REUs, a willing purchaser would likely offer a price that was adjusted down by the outstanding balance of the special assessment as of the purchase date."[90] Mr. Rende also testified, regarding his reduction in the true cash value of the property based on its outstanding special assessment payments due, "I'm deducting it because *the liability far exceeds any benefits afforded the property by virtue of its access with these 603 REUs.* "[91] He testified in response to the question, "Q: Okay, And we know that it [the special assessment] was proportionate now, right? The Court of Appeals has ruled on that case." "A: I'm not sure I agree with that conclusion."[92] Finally, he testified, "the reason I believe that the deduction is legitimate is because these are REUs. They're not providing any benefit to the subject property. They're not enhancing its value on a - - to any measurable degree.. .."[93]

In its remand, the COA referenced a hypothetical given at oral argument: a property with a starting value of $200,000 and an assumable $100,000 special assessment. Respondent argued that the sale price of the property is $300,000, given that the special assessment amount would have to be reasonably proportionate to an increase in the property's value cause by the improvement. The Court found:

> This begs two questions. First under the hypothetical, it would seem that the "selling price" would be $200,000, given the purchaser's assumption of the $100,000 special assessment, and how can a $300,000 TCV be reconciled with

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[88] *Kadzban v City of Grandville,* 442 Mich 495; 502 NW2d 299 (1993)
[89] *Hartland Glen,* (Docket No. 321347) at 8.
[9°] P-35 at 128 (emphasis added).
[91] 1/23 Tr. at 57 (emphasis added).
[92] 1/24 Tr. at 45.
[93] 3/21 tr. at 16.

> MCL 211.27(1)'s dictate that TCV "means the usual *selling price* ... at the time of assessment." (Emphasis added.) Second, what is the result if, contrary to law, the special assessment is *not* reasonably proportionate to the supposed benefit accruing to the property, which petitioner vigorously argues is the situation in this case. Returning to our hypothetical ($200,000 starting value and $100,000 outstanding special assessment), if no value were added to the property because of a construction project, a willing purchaser would likely offer only $100,000 for the property, given that he or she would have to pay an additional $100,000 in the future absent any added value to the property resulting from the project. It would seem that if a special assessment were unchallenged or ultimately found to be valid under the law, the township's position might be sound, but even then the problem is the testimony of its expert that suggested otherwise.

The Tribunal finds the sale price of a property with a valid special assessment, such as the subject property, includes the paid-off or assumed special assessment. As such, in the example above, the sale price is $300,000. Further, this technique was put forth by both appraisers as demonstrated by Mr. Rende's 2014 and 2015 land comparables one and two, Mr. I4artman's 2014 and 2015 land comparables one and four, and 2015 comparable eight. The Court states, if the $100,000 special assessment adds no value to the property, the purchaser would likely offer only a $100,000 purchase price. The Tribunal finds if the special assessment added no value to the property, it would be invalidated, and no future payments would be due.

Whether the outstanding corrected supplemental and supplemental special assessments decrease value is an interesting question. As noted above, Mr. Rende and Mr. Hartman put forth five sales that occurred of properties with special assessments liens which did not affect the value and salability of the comparables, one of which is in the same special assessment district as the subject property. For the reasons stated above, the Tribunal finds the special assessments do not decrease the market value of the subject property. The Tribunal also finds the same analysis applies to the 2014 and 2015 tax years.

Conclusions

For the 2011 and 2012 tax years, the higher Court's directive was for the Tribunal to determine the effect of the corrected and supplemental special assessments on the already-determined true cash value of the property. For the 2014 and 2015 tax years, the Tribunal concludes in the true cash value of the property, including the effect of the special assessments on that value.

The Tribunal finds Mr. Hartman's comparables provide the best indication of the true cash value of the subject property for the tax years in question. The value was calculated to be $2,700,000 for tax year 2011 and $2,400,000 for tax year 2012. As the Tribunal has determined that the valid special assessments do not decrease value, those numbers remain accurate.

For the 2014 tax year, the Tribunal finds the true cash value of the subject property to be based on the adjusted sale price of comparable one from Mr. Hartman's vacant land, market approach to value. The sale was in the same special assessment district as the subject property and sold with the assumption of 80 sewer REUs for $706,361 on November 2, 2009. Though the sale is remote in time from the dates of value of December 31, 2013, and December 31, 2014, Mr. Hartman convincingly testified that the market had not changed substantially, and as such, the Tribunal finds comparable one to be the best comparable to the subject property. Mr. Hartman's adjusted sale price for the property was $6,871 per acre and for the 2014 and 2015 tax years, Mr. Hartman valued 380.30 net acres. As such, for the 2014 tax year, 380.3 acres multiplied by $6,871 per acre amounts to $2,613,041. From that amount, Mr. Hartman subtracted $175,000 in demolitions costs, which the Tribunal finds to be appropriate, to adjust the value down to $2,400,000, rounded. For the 2015 tax year, the Tribunal again finds sales comparable one to be the best indication of the true cash value of the property. Its adjusted sale price is $6,871 per acre, however, demolition costs for 2015 were calculated to be $180,000. The Tribunal finds the true cash value of the subject property for the 2015 tax year to be $2,400,000, rounded.[94]

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the valid corrected and supplemental special assessments do not negatively affect the property's true cash value for the tax years in question. The subject property's TCV, SEV, and TV for the tax years at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax years at issue are MODIFIED as set forth in the Introduction section of this Final Opinion and Judgment.

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[94] The increase in demolition costs are lost in rounding.

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 finally shown 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 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 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, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, and (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[95] Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.[96] A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.[97] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[98]

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[99] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appea1.[100] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[101]

By Preeti P. Gadola

Entered:

JUN 1 1 2018

[95] See TTR 261 and 257.
[96] See TTR 217 and 267.
[97] See TTR 261 and 225.
[98] See TTR 261 and 257.
[98] See MCL 205.753 and MCR 7.204.
[100] See TTR 213.
[101] See TTR 217 and 267.