Kenneth & Gretchen Mungan,
Petitioners,

v

Suttons Bay Township,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 17-003149

Presiding Judge
Steven M. Bieda

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Opinion and Judgment ("POJ") on June 28, 2019. The POJ states, in pertinent part, "[t]he parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing, by mail or by electronic filing, if available,** if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions)."

Neither party has filed exceptions to the POJ.

The Administrative Law Judge ("ALJ") considered the testimony and evidence submitted and made specific findings of fact and conclusions of law. The ALJ's determination is supported by the testimony, evidence and applicable statutory and case law.

Given the above, the Tribunal adopts the POJ as the Tribunal's final decision in this case.[1] The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the POJ in this Final Opinion and Judgment. As a result:

a. The property's TCV, SEV, and TV, as established by the Board of Review for the tax year(s) at issue, are as follows:

Parcel Number: 011-280-015-00

Year	TCV	SEV	TV
2017	$1,951,260	$975,630	$839,202

b. The property's TCV, SEV, and TV, as determined by the Tribunal for the tax year(s) at issue, are as follows:

[1] See MCL 205.726.

Parcel Number: 011-280-015-00

Year	TCV	SEV	TV
2017	$1,637,400	$818,700	$818,700

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) 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.[2] 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%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, and (xi) after June 30, 2019 through December 31, 2019, at the rate of 6.39%.

This Final Opinion and Judgment resolves the last pending claim 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.

[2] See MCL 205.755.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[3] 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.[4] 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.[5] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[6]

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."[7] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[8] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[9]

By _____

Entered: August 1, 2019
jls

[3] See TTR 261 and 257.
[4] See TTR 217 and 267.
[5] See TTR 261 and 225.
[6] See TTR 261 and 257.
[7] See MCL 205.753 and MCR 7.204.
[8] See TTR 213.
[9] See TTR 217 and 267.

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

GRETCHEN WHITMER
GOVERNOR

ORLENE HAWKS
DIRECTOR

Kenneth & Gretchen Mungan,
Petitioners,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 17-003149

Suttons Bay Township,
Respondent.

Presiding Judge
Peter M. Kopke

PROPOSED OPINION AND JUDGMENT

INTRODUCTION

Petitioners filed this appeal disputing the property tax assessment levied by Respondent against Parcel No. 011-280-015-00 for the 2017 tax year. Christopher K. Cooke, Esq. represented Petitioners and Michael D. Homier, Esq. represented Respondent.

A hearing was commenced on January 22, 2019. Petitioners' witness was Robert Follett, Appraiser and Respondent's witness was Kathryn J. Wilson, Assessor.[1]

Based on the evidence (i.e., testimony and admitted exhibits) and the case file,[2] the Tribunal finds that true cash value ("TCV"), state equalized value ("SEV"), and taxable value ("TV") of Parcel No. 011-280-015-00 for the 2017 tax year are as follows:

Year	TCV	SEV	TV
2017	$1,637,400	$818,700	$818,700

FINDINGS OF FACT

The following facts were proven by a preponderance of the evidence (i.e., testimony and admitted exhibits) and concern only the evidence and inferences found to be significantly relevant to the legal issues involved:[3]

[1] Both witnesses submitted valuation disclosures, were offered as experts for testifying as to value, and were admitted without objection. See Transcript ("TR") at 6-12, 154-58 and 163.
[2] The parties' stipulated to the admission of P-1, R-1, R-2, R-3, and R-4 and those exhibits were admitted. See TR at 4-5. P-2 was also offered and admitted without objection. See TR at 226-32.
[3] The Tribunal has not addressed every piece of evidence or every inference that might lead to conflicting conclusions and has rejected evidence contrary to these findings.

1. The subject property is residential real property located at 675 North Stony Point Road, Suttons Bay, Michigan in Leelanau County.[4]
2. Petitioners purchased the property for $1,700,000 on September 24, 2010.[5]
3. The property consists of two lots (i.e., Lot Nos. 14 and 15) and a part of a third (i.e., Lot No. 13).[6]
4. The property is irregularly shaped comprising 2.92 acres.[7] The property also has with 425.08 feet of lake frontage and 223.21 feet of road frontage.[8] The "point," although deeded to Petitioners, is not considered part of the property for assessment purposes.[9]
5. The property is zoned residential with an R-1 designation, which calls for 100 feet of straight-line water frontage for buildable lots.[10]
6. Although the property has enough road frontage to be subdivided into two buildable lots (i.e., 223.2x1/2=111.605), the subject house encroaches on both Lot Nos. 14 and 15 and, as such, the property cannot be subdivided.[11] As a result, the property consists of 100 feet of "prime" or "direct" lake frontage and

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[4] See the Petition and attachments, P-1, Answer, R-1, and R-2.

[5] See R-1. In that regard, Respondent indicates that Petitioners are contending that the property's TCV is less than the property's purchase price despite an increasing market. Neither party is, however, contending that the purchase price is the property's TCV for the tax year at issue. Further, the purchase price was not the "presumptive" true cash value of the property when it was transferred or purchased by Petitioner. See MCL 211.27(1) and (6). See also *Antisdale v Galesburg*, 420 Mich 265, 278-79; 362 NW2d 632 (1984) (i.e., "[t]he **most obvious deficiency** in using the sales price of a piece of property as conclusive evidence of its value is that the ultimate sale price of the property, **as a result of many factors, personal to the parties or otherwise**, might **not** be its 'usual' price").

[6] See P-1 and R-2. See also TR at 180-1.

[7] See R-2 and TR at 164-66. In that regard, Petitioner objected to Ms. Wilson's testimony as to acreage on the basis of hearsay. Said testimony was, however, based on a regular business or assessment practice and is evidence of a type commonly relied upon by assessors and others (i.e., government employees and taxpayers) and, as such, the objection was overruled. See MCL 205.746(1) and 24.275. See also TTR 215 and MRE 803(6); and *Vomvolakis v Dep't of Treasury*, 145 Mich App 238, 247; 377 NW2d 309 (1985). Nevertheless, said testimony, although indicating an error by Petitioner's appraiser, is irrelevant for valuation purposes, as the property's land value is based on its water frontage.

[8] See TR at 166 and 198-200, which provides, in pertinent part, "[t]he legal description of record currently says 425 feet. And so that is - - **that is what is used** . . . . [t]**hat's what's on the Warranty Deed**." [Emphasis added.]
See also P-1 and R-2 .

[9] See TR at 164-6. See also 177-9.

[10] See TR at 179-82, which provides, in pertinent part:

> A: If Mr. Follett had - - remarkably, because the frontage is where we differ so dramatically, if - - even if he had priced only to the 317 feet that he used, that's 117 feet at $1500 a foot. **We would have come in very close to the same value**. So the fact that he chose to ignore that 117 as having nothing to offer, is where the biggest discrepancy is. **There are other small discrepancies**, the time adjustment and some of the inconsistencies, but the big issue here is he only recognized 200 feet. [Emphasis added.]

[11] See P-1 and R-2. See also TR at 180-1.

325.08 feet of excess lake frontage with a rate of $2,600 applied to direct frontage and $1,295 applied to excess frontage.[12]

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[12] See TR at 167-72, which provides, in pertinent part:

Q: What is the base rate?

A: The base rate for the subject property is $2,600 a running foot.

JUDGE KOPKE: And that's the base rate that you use throughout the township for frontage or - -

THE WITNESS: For that area of the township, sir**. It does change because the quality of the frontage changes**. So[,] there are other areas that are higher. There are some areas that are lower, depending on the integrity of the frontage. But for what is called, "Hogan's Point Subdivision," which is also known as Stony Point, **the base rate is $2600**. And I think the discussion about surplus is very appropriate early on, because there is such a huge disparity in the two reports because of that frontage. So[,] I think it's crucial to discuss it right away. [Emphasis added.]

A: What I did is throughout Leelanau County on Grand Traverse Bay, **I looked at sales to establish the initial base rates**. **And I did the initial base rates based on what zoning required as a buildable site**. Some areas, that is only 60 foot. Some areas, it is 100 foot. Some areas, it's 150 feet. So[,] it really depends on where you are, what zoning district you're in, what your base is. **There were 22 vacant sales that I used to build my base rate. And then fortunately, there were nine sales that had excess frontage or frontage in addition to the amount required to be a viable building site**.

And, again, **because zoning districts vary**, **I couldn't just develop a singular rate**. It just wasn't going to work. **So**[,] **I had to look at what was the constant**. **And the constant was almost every site that I looked at when you analyzed what would a viable building site sell for, you deduct that from the purchase price, divide the difference by the excess frontage**. **It was almost consistently 49.8 percent**. **That was the constant**. That, to me, is what excess frontage sells for; 49.8 percent of the going rate. **And that was developed based on the fact that those sites could not be divided**. If, in fact, there were two building sites, you have to look at the potential of two building sites. This was excess land that could not be divided off and sold as a viable building site. [Emphasis added.]

JUDGE KOPKE: And you make the -- what distinction do you make between excess and surplus?

THE WITNESS: Like to me, sir, **there is no surplus**. **If you have enough for two building sites**, **it should be valued as two building sites. If you don't have enough for another viable building site, that's just excess land**. **So**[,] **the excess land came in consistently at 49.8 percent of what a viable building site sold for**. Now, there were some sales that actually showed the more frontage you get, the more you pay for foot. **But those were not the constant**. Those were the exception to the rule. [Emphasis added.]

JUDGE KOPKE: Then to understand your opening statement where you said the rate was -- oh, where you said, "1295" –

MR. HOMIER: Correct.

THE WITNESS: 1295, correct.

JUDGE KOPKE: - - would that be for excess or surplus . . . .

Q: What I understand -- and you correct me if I'm wrong – what I understand your definition includes is for any zoning district in which waterfront property is located, where you have a structure on that land, if you have additional front footage -- and let me give you an example. If the minimum frontage was 100 feet for which you had a house on that property –

A: Uh-huh (affirmative).

Q: - - and you had a front footage of 200 feet, you could potentially develop that additional front footage –

A: Correct.

Q: - - is that correct?

A: That's correct.

Q: Now, it's my understanding - - well, what would you call that additional 100 feet? Is that surplus or excess?

A: I would call it a poten - - -

Q: Or does it matter at all?

A: To me, it - -

JUDGE KOPKE: Well, she said - - she said it would be valued the same. She's already testified to that.

THE WITNESS: Yeah.

Q: That it would be valued the same on our front footage - -

JUDGE KOPKE: Right.

Q: - - because you could now divide it off and build?

A: And make it a viable building site, yes, sir.

Q: **Your explanation of whether or not you're going to apply the $1295 per front footage rate depends on whether or not that additional front footage may be buildable**; is that correct? [Emphasis added.]

A: **Correct; correct**. [Emphasis added.]

JUDGE KOPKE: **So the 1295 is applied to excess**? [Emphasis added.]

THE WITNESS: **Correct**. [Emphasis added.]

Q: **The 1295 is a discounted rate under the 49.8 percent; is that right**? [Emphasis added.]

7. The property also consists of a one and ½ story stick-built house with vaulted ceilings and a finished basement, a two-car attached garage with a finished bonus room, a detached three-car garage, a beach cabana, in-ground irrigation, fencing, and outdoor shower.[13] The house has five bedrooms, four bathrooms, six fireplaces, in-floor heating, high end appliances and finishes, a laundry room, utility room, wine storage, and central air conditioning.[14]
8. The property's assessed value ("AV") for the tax year at issue is $975,630 and its TV is $839,202.[15] However, Petitioners contend that the property's TCV for the tax year at issue is $1,600,000,[16] while Respondent contends that the property's TCV is $2,000,000.[17]
9. The property's highest and best use for the tax year at issue is its continued use for residential purposes.[18]
10. The applicable market area was appreciating for the tax year at issue.[19]

A: **Absolutely**. [Emphasis added.]

Q: Yeah; 49.8 percent, which values the excess - -

A: - - excess - -

Q: - - less than what you would otherwise pay per front foot?

A: Correct.

[Emphasis added.]

See also TR at 159-60, 172-3 (i.e., "we're very similar in our conclusion or value; just not in our application"), and 209-15.

[13] See TR at 9-10 and 161, which provides, in pertinent part:

Q: And since you've been at Sutton's Bay so long, it's likely you've had the opportunity to review the property once or twice?

A: Several times actually. I was the assessor of record when the structure was added to this site in 1998. That's the year it was actually started. And[,] so I did the initial inspection in 1998. I did a follow-up inspection for completion. Typically, at that point, we are looking for decks, landscaping, outbuildings, things like that. I did that inspection in 1999. I re-inspected the property in 2011 after the sale to the current owner. And I re-inspected the property again in 2018. So[,] I've been on site at least four times.

See also P-1 and R-2.

[14] See P-1, R-1, and R-2.

[15] See R-1, R-2, and P-1. See also Respondent's September 18, 2018 Prehearing Statement, Petitioner's October 16, 2018 Prehearing Statement, and the Tribunal's November 19, 2018 Prehearing Summary.

[16] See P-1. See also Petitioner's October 16, 2018 Prehearing Statement and the Tribunal's November 19, 2018 Prehearing Summary.

[17] See R-2. See also Respondent's September 18, 2018 Prehearing Statement and the Tribunal's November 19, 2018 Prehearing Summary.

[18] See P-1.

[19] See TR at 173-75, which provides, in pertinent part:

Q: All right. So[,] you were saying you went through vacant land sales to get to this 49.8 percent of the base value; is that correct?

A: Yes; yes. **And I was very fortunate in that I was able to find, like I said, multiple sales that occurred 2014 through 2017**. **I did time adjust those sales prior to developing the 49.8 percent, because I wanted to make sure that I had recognized that there was appreciation in the marketplace**. So[,] I think that's a very important point. I didn't just look at what had sold each year without taking into consideration that there is appreciation in the marketplace. And that rate was developed. I had five paired sales. You heard Mr. Follett refer to some of his sales as being older sales. **2015 sales are considered old when you have a conclusion date -- a value conclusion date of 12-31-16**. And[,] typically how you determine what that time adjustment would be is to pair sales; properties that have sold multiple times in a limited time frame. **And I was fortunate enough to find five properties, waterfront residential properties, that sold between 2015 and 2017**. **And in the local jurisdiction, I came up with a time adjustment of 5.76 percent per year**. Fortunately, when I looked at the Traverse Area Association Board of Realtor analysis for that time frame, for Leelanau County, **they were actually up 5.86 percent per year**. So[,] I felt that these paired sales were an **excellent** indicator. **So**[,] **I used a .48 percent per month time adjustment on my sales to develop my excess frontage rate**. **And I think that's crucial in a market that is appreciating as Leelanau County's waterfront market is**. [Emphasis added.]

Q: And that analysis, or the basis for that analysis, are the figures from - - what? - - 2011 through 2016?

A: The paired sales actually were even more current than that. The paired sales occurred 2013 through 2017. And then the excess frontage sales all occurred 2014 through 2017; so really very current information.

Q: Yeah, I was - - I'm sorry. I was talking about, if you could turn to R2, 0 - - let's start with R2, 020.

A: Oh, I'm sorry.

Q: That's all right.

A: Yes. The analysis from the Board of Realtors for the years from the date of sale of the subject property, which was 2010.

Q: And what's the purpose of these statistics for you?

A: Again, just to support a time adjustment. It is standard procedure in any appraisal to time adjust if you have to use sales that are outside of - - -typically for a fee appraiser, it's a six-month window. **But it's standard procedure to do time adjustments**. And[,] so the statistics become very important. [Emphasis added.]

See also P-1 at 3, which provides, in pertinent part:

Market conditions have become more stable in the past 18-24 months as this region has recovered. **As a result**[,] **sales activity has increased in the subject market**. Less bank-owned homes on market than in the past. Homes usually sell within a 0-6 month listing time. This market is somewhat seasonal with more of the sales occurring during the warm season. [Emphasis added.]

ISSUES AND 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.[20] In that regard, the Michigan Legislature has, as directed by the Constitution, 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.[21]

In its review of that definition, the Michigan Supreme Court has determined that "true cash value" is synonymous with "fair market value."[22]

As for the Tribunal, the Tribunal must, under MCL 205.737(1), find a property's true cash value in determining a lawful property assessment.[23] The Tribunal is not, however, bound to accept either of the parties' theories of valuation.[24] Rather, 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.[25]

Further, a proceeding before the Tribunal is original, independent, and de novo[26] and the Tribunal's factual findings must be supported by competent, material, and substantial evidence.[27] In that regard, "substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[28]

See further TR at 238-40.
[20] See Const 1963, art 9, sec 3.
[21] See MCL 211.27(1).
[22] See *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).
[23] See *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).
[24] See *Teledyne Continental Motors v Muskegon Twp,* 145 Mich App 749, 754; 378 NW2d 590 (1985).
[25] See *Meadowlanes Ltd Dividend Housing Ass'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991).
[26] See MCL 205.735a(2).
[27] See *Antisdale*, *supra* at 277 and *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-3; 462 NW2d 765 (1990).
[28] See *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-3; 483 NW2d 416 (1992).

Additionally, "the petitioner has the burden of proof in establishing the true cash value of the property."[29] "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 the evidence, which may shift to the opposing party."[30] 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."[31]

As recognized by the courts of Michigan, 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.[32] The market approach is, however, the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.[33] Nevertheless, 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.[34] Regardless of the approach selected, the value determined must represent the usual price for which the subject property would sell.[35]

The Tribunal is also required to consider the "highest and best use" of property in determining the property's true cash value, as that concept is "fundamental" to such determinations, as "[i]t 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….[further,] [l]and is appropriately valued 'as if available for development to its highest and best use,

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[29] See MCL 205.737(3).
[30] See *Jones & Laughlin*, *supra* at 354-5.
[31] See MCL 205.737(3).
[32] See *Meadowlanes*, *supra* at 484-85; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), ***aff'd*** 380 Mich 390 (1968).
[33] See *Jones & Laughlin*, *supra* at 353 (citing *Antisdale*, *supra* at 276 n 1).
[34] See *Jones & Laughlin*, *supra* at 353 (citing *Antisdale*, *supra* at 277 and *Teledyne Continental Motors v Muskegon Twp*, 163 Mich App 188, 193; 413 NW2d 700 (1987), *lv den* 429 Mich 889 (1987)).
[35] See *Jones & Laughlin*, *supra* at 353 (citing *Meadowlanes*, *supra* at 485).

that most likely legal use which will yield the highest present worth.'"[36] In that regard, "highest and best use" of property is shaped by the competitive forces within the market where the property is located, and it provides the support for a thorough investigation of the competitive position of the property "in the minds of market participants."[37] Additionally, highest and best use analysis strongly influences the choice of comparable sales in the sales approach. Only properties with the same or similar highest and best uses are suitable for use as comparable sales.[38] "If the property being appraised is a single site, not a site whose use depends on assemblage with other sites, the highest and best use of the site alone is analyzed as it currently exists by itself. If the property being appraised consists of multiple sites as though sold in one transaction, the highest and best use analysis considers them as one large site."[39]

Finally, the Tribunal is also required to determine the subject property or properties' taxable values for the tax years at issue.[40]

Here, Petitioners claim that "the assessment for 2017 for this particular piece of property rose by $100,700" and "[w]e think that [the] assessment of $1.9 million and some change is high by about $300,000."[41] Petitioners also claim that (i) the assessment increase has "affected the . . . [TV] by about $9,700" and "our concern, of course, is that going forward into the future that kind of assessed value will allow that . . . [TV] to increase dramatically as actually has been shown in the last increase in . . . [TV],"[42] (ii) Petitioners "are being assessed for a prime beachfront parcel of 425 feet . . .

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[36] See *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 633; 462 NW2d 325 (1990).
[37] See Appraisal Institute: *The Appraisal of Real Estate* (2013, 14th ed) at 331.
[38] See *The Appraisal of Real Estate*, *supra* at 345.
[39] See *The Appraisal of Real Estate*, *supra* at 334.
[40] See MCL 205.737(1). See also MCL 211.27a(2).
[41] See TR at 5.
[42] Contrary to Petitioners' claims, the property's TV for the tax year at issue was not "affected" by the increase in the property's AV for that tax year. See the property's 2017 Assessment Change Notice attached to the Petition. More specifically, the property's TV for the 2016 tax year was $831,717 and that TV was increased by the rate of inflation (i.e., 1.009) for the 2017 tax year. Said increase was, however, $7,485 and not $9,700 (i.e., $831,717 * 1.009 = $839,202 and $839,202 - $831,717 = $7,485). See MCL 211.27a(2). Further, the property's TV for the 2016 tax year would have increased by the rate of inflation or $7,485 for the 2017 tax year even if the AV had not increased (i.e., $875,560 > $839,202). Nevertheless, an increase in AV above the capped TV calculation would allow a local unit of government to increase a TV as provided by law. Said increases are not, however, "dramatic," as claimed by Petitioners. Rather, said increases are limited, as indicated above, to the rate of inflation unless there is

. [a]nd . . . [t]hey've got about 200 front feet of prime beach,"[43] and (iii) "Mr. Follett took a lot of broadsides this morning and for doing the very same things that I think Ms. Wilson did - - and that is, relying on MLS data, relying on photographs . . . . [a]nd the difference is, he made his own calculations as far as square footage . . . . of the house . . . [and] his testimony merits greater weight than does the testimony of the Suttons Bay Township representative."[44] In response to said claims, Respondent contends that (i) "Mr. Follet testified that he doesn't value any front footage over, at least in this case 150 or 200 feet" and "[t]hat's problematic when you have 425 feet of lakefront property . . . . [as] [t]here is value attendant with that,"[45] (ii) "[t]he appraisal that Mr. Follett did is full of inconsistencies, missing adjustments, and frankly either flawed or missing analysis" and "[u]sing the report that they've provided, we believe that the Petitioner is unable to meet the burden of showing that they have been inaccurately assessed or taxed by the township,"[46] (iii) "Counsel misstates . . . a crucial part of the testimony today . . . when he says that Mr. Follett gave credit for 317 feet" and "[i]t is counter-intuitive and defies logic that waterfront that is usually valued on front footage does not provide any additional value over this set 200 arbitrary-type limit that Mr. Follett has used,"[47] (iv) "I would argue that at least during the time period in which . . . [Mr. Follett] is valuing this property, he concludes to a value that's $100,000 less from what it was purchased in 2010, despite the fact that the assessor has testified that the values in this area have increased 5.86 [percent] per year - - or 5.75 per year over those - - some of those

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an addition to the property. See MCL 211.34d(1)(a) and (b). In that regard, there was no "addition" utilized in calculating the TV at issue.

[43] See TR at 247-48.

[44] See TR at 248.

[45] See TR at 152.

[46] See TR at 152-53.

[47] See TR at 249. See also TR at 247, which provides, in pertinent part:

> Now, there's been testimony from Ms. Wilson that this point does not include that extended area that reaches out into the Bay, but there's 425 feet of prime footage. Mr. Follett said there's not 425 feet of prime frontage. **You've got about 200 feet of usable beach and he gave credit for about 300 - - and I think 18 feet of frontage**. He walked it. He took some photographs. They're not extensive, but he testified that it's mucky in through that area. [Emphasis added.]

See also TR at 250.

relevant years . . . . [and] Mr. Follett's argument . . . [that] 'they overpaid" . . . . [is not] borne out by the sales as well, which are also included in R[-]4 of the documents submitted to the Tribunal, documenting those residential land sales from 2015 to 2017,"[48] and (v) "I think we have pointed out serious errors in which Mr. Follett conducted his appraisal and report, starting with the acreage, which doesn't seem to bother him, which I, to some degree, understand, if you're valuing on a per front foot basis . . . . [e]xcept that he can't - - could not testify as to why there was a difference between 1.91 acres and the 3 acres . . . . [a]nd I didn't - - I don't think he gave a sufficient explanation for why he didn't use the legal description in the Warranty Deed in the first place."[49]

As for Respondent, Respondent claims that the "this case really boils down to big discrepancies in not only the amount of, but also the characterization of the front footage for lakefront property."[50] Respondent also claims that (i) "the bottom line is, there's no basis to conclude that 225 feet of prime lake frontage has no value" and "[w]hat that value is - - and the township characterizes it a little differently . . . . [b]ut that value is going to be based on an analysis of sales and a percentage applied to surplus property,"[51] (ii) "[w]here Mr. Follett used a $1500 per foot, the township concluded to 1295 per front footage, based on surplus property . . . . [a]nd that was based on a rigorous analysis of sales and surplus property over and above that in the zoning district in which it is located,"[52] (iii) "[t]he bottom line is, we believe that Petitioners have failed to include a substantial value in that lakefront property, which undervalues the property . . . . [a]nd we're seeking - - the township is seeking an increase to a true cash value of 2 million dollars,"[53] (iv) "[t]he biggest issue here is the adjustment or the value of that waterfront excess, surplus, whatever the - - whatever you want to call it . . . . [and] [o]n the one hand, you've got Mr. Follett who says it's 200 feet and not a foot over that

[48] See TR at 250.
[49] See TR a 251.
[50] See TR at 152.
[51] See TR at 153-54.
[52] See TR at 154. In that regard, Respondent also indicates that Mr. Follett performed a similar analysis in determining his frontage rate, but that said analysis was "not quite accurate in how he applied it." See TR at 154.
[53] See TR at 154.

provides any value . . . . [while] [o]n the other hand, you've got the township saying, '[n]o, we analyzed that . . . . [by looking] at 22 sales . . . . [to come] up with figures on how that frontage is calculated for that surplus front footage . . . [and] then used a zoning analysis to determine what that would be and we applied it in that way,"[54] and (v) "[a]ll of the information that Ms. Wilson has testified to is certainly backed up by her valuation disclosure . . . . [b]ut when you boil this all down, it really comes out to a difference in terms of opinion of value on that - - on the waterfront and the front footage."[55] In response to Respondent's claims, Petitioners contend that (i) "Ms. Wilson, in our Petitioner's Exhibit Number 2, illustrated where she walked . . . . [a]nd if you take a look at that, you'll see that she didn't get out to - - actually, I don't think got within 100 feet of the 425-foot dimension that does not include the - - that point"[56] and (ii) Respondent's valuation is "bias" and not supported by an "independent appraiser," who "should have been brought in . . . to look at what they've done instead of completely discounting M[r]. Follett's opinion."[57]

The first step in this process is, however, a determination of the property's highest and best use. Unfortunately, the only indication of highest and best use was provided in Petitioners' appraisal, which stated that the "[h]ighest and best use of the subject property is felt to be its current use as a single family home."[58] More specifically, neither valuation expert testified as to the property's highest and best use or provided the necessary analysis of the four criteria applied in making an "as vacant" or "as improved" highest and best determination.[59] Nevertheless, the parties' evidence indicates that the property's highest and best use is its continued use for residential purposes, as the evidence demonstrates that said use is legally permissible, physically possible, financially feasible, and maximally productive.[60]

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[54] See TR at 250.
[55] See TR at 251.
[56] See TR at 247.
[57] See TR at 248-49.
[58] See P-1 at 3.
[59] See Appraisal Institute: *The Appraisal of Real Estate* (2013, 14th ed.) at 331-58.
[60] See *The Appraisal of Real Estate*, *supra* at 335.

As for Petitioners' sales comparison approach,[61] said approach is, with the exception of Comparable No. 2, an unreliable indicator of value. In that regard, Petitioners' approach utilized six comparable sales – three from 2015 and three from 2016.[62] None of the sales were, despite the appraiser's recognition of an increasing market,[63] adjusted for changing market conditions from the date of the sales to the tax date at issue (i.e., December 31, 2016).[64] Although time adjustments may not have been necessary for the three 2016 sales (i.e., "within six months"), the three 2015 sales are dated or too remote in time for consideration absent an adjustment to reflect the appreciating market impacting the subject property, as recognized by Mr. Follett in his testimony regarding the "older" sales.[65] Unfortunately, Mr. Follett, unlike Respondent, failed to provide any information to indicate the necessary adjustment. As for

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[61] Petitioners' appraisal (i.e., P-1) consists of a sales comparison approach, but not a cost or income approach. Although P-1 at 6 indicates that those approaches were "not developed," Petitioners' appraiser provides justification for his failure to "develop" an income approach only.

[62] Mr. Follet indicated that he obtained the information on his comparables "through the MLS and the township records." He did, however, admit that he did not inspect his comparables and that the photographs he viewed to determine the condition of the comparables would not have necessarily demonstrated deferred maintenance issues. See TR at 49-50 (i.e., "[n]ot that was noticed in any of the photos"), 65-70 (i.e., "[t]he Multiple Listing Service has anywhere from 25 to 95 pictures that's been put in by the realtor of each comparable . . . [s]o we looked through those," "[i]f you had asked for them, I would have gotten them for you," etc.) and 103-10, which provides, in pertinent part:

> Q: So there are things that may have been left out of the photos that you would be unaware of?
>
> A: Totally.

[63] See P-1. See also TR at 102-3, which provides, in pertinent part:

> A: I haven't made a time adjustment in a long time.
>
> Q: Why not?
>
> A: Well, we try to use comparables that are relative to the market in time. Of course, this report, **we had to go back a year and a half on some**. I didn't do a time study to see that the market was increasing. **I knew the market was increasing**, but to do an exact time study, **I didn't do one to make adjustments for them**.
>
> [Emphasis added.]

[64] See MCL 211.2(2).

[65] See TR at 63-4 (i.e., "I guess I don't make time adjustments," "I figure the comparables are recent enough," "[**b**]**ut these two were older and they probably should have had some time adjustment put in there**," etc.). [Emphasis added.]

Respondent's time adjustment, Ms. Wilson did credibly testify as to the determination of her time adjustment and that time adjustment could be utilized to adjust each of Petitioner's comparables (i.e., unverified condition, etc.). Said adjustment is, however, unnecessary given other issues with respect to those comparables or, more specifically, Petitioner's adjustment of those comparables.[66] Of those issues, the most significant

[66] Petitioner's attorney attempted to support Mr. Follett's adjustments based on Mr. Follet's background, training, and experience. Although his background, training, and experience justify his admission as an expert witness, they do not justify or otherwise support his adjustments, which require market evidence and such evidence was not, unfortunately, provided by Mr. Follett, who appears to have relied solely on his "experience" and, to some extent, cost information rather than market information. See TR at 17-25, which provides, in pertinent part:

> Q: And you used 70 - - how many? - - $72 a square foot?
>
> A: 75.
>
> Q: And why did you use that?
>
> A: In a home of this value, **we looked at that as being reasonable**. **We viewed a little bit of Marshal[l] and Swift cost to replace**.
>
> Q: All right. What is Marshal[l] and Swift?
>
> A: **It's a cost handbook that we use for new construction typically**.
>
> Q: And is that an accepted treatise in the area of your profession?
>
> A: Yes, sir.
>
> [Emphasis added.]

See also TR at 24 regarding a possible double dip for the age of the comparables as follows:

> A: We just made a minor adjustment for age. Adjust it - - adjust for age.
>
> Q: All right. So you didn't dramatically reduce the sale price of this property because of the age of the property?
>
> A: No. We kind of took care of that in quality and design appeal.

Further, see TR at 28-30, 101,118-19 regarding Mr. Follett's "reasonably prudent" reliance on MLS information even though said information is not guaranteed or warranted for accuracy, 123-24 regarding Mr. Follett's professional requirement to verify the information he relied on in determining his estimate of TCV, and 128-31.

See also TR at 183, which provides, in pertinent part:

> Q: I want to talk about Comp Number 4. You say - - on Page R2, 018 - -

issue or issues relate to his land value adjustments or, more specifically, his site adjustment based on 1.91 acres given the property's actual acreage of 2.92 acres,[67] and lake frontage adjustment based on 317 feet of direct frontage or, more appropriately, 200 feet of "estimated, useable" beach with no consideration for surplus or excess frontage.[68] In that regard, Mr. Follett's testimony regarding said adjustments

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> A: Yes, sir.
>
> Q: - - **that there was an error on the MLS listing** - -
>
> A: Yes.
>
> Q: - - and it's actually 4350 square feet?
>
> A: Yes. I was able to verify that with the assessing officer **because obviously it was important that the information be correct** . . . .
>
> [Emphasis added.]

Finally, see TR 183-4 regarding "industry standards" and the importance of applying them "consistently" and 224, which provides, in pertinent part:

> Judge Kopke: Well, if you have info - - do you rely on MLS - - do you gather MLS information - -
>
> The Witness: Yes, sir, I do.
>
> Judge Kopke: - - and look at MLS - - what do you do with that information?
>
> The Witness: **I try to verify with either the listing realtor or the selling realtor**. **And in the majority of these cases, I was able to do that**.
>
> [Emphasis added.]

See also TR at 236 (i.e., "primarily the market, because that has to dictate . . . . [b]ut experience has a lot to do with it, absolutely").

[67] See TR at 20, 92-4, 96-101 (i.e., "[o]servations in the market . . . [and] [i]t's hard because we have so few like pairs of adjustments, coming up with accurate, precise - - you know, is it just so many differences in our market up there to try to come up with the exact things), 115, 20-25 and 131-39. See also P-1 and R-2.

[68] See TR at 14-5, which provides, in pertinent part:

> Q: All right. Moving to - - up the point then from where that usable beach is on the north end, how much of that additional beachfront has been considered by Suttons Bay Township in their appraisal of the of the value of that beach?
>
> A: Probably another - - is it 225 feet or - - and it isn't a direct frontage. It's - - what do I want to say? - - it takes some jogs.

Q: All right. And that additional 225 feet of frontage, in your estimation, is that prime beachfront?

A: No; no. To me, it's just surplus property; not excess because excess is dividable. So it's surplus.

Q: Al right. And the difference between surplus and excess is what, sir?

A: Well, excess is something that you could divide and make a saleable piece of property with. This is just surplus. It's - -

Q: And how does surplus frontage - - beach frontage affect the value of this particular piece of property, if at all?

A: When I was making adjustment, I would only give 500 to $1000 for that privacy. Typically frontage is looked at as effective frontage. So it's something that's more in a straight line than if it has jogs and curves and whatnot.

See also TR at 16 (i.e., a "uniqueness" to the property) and P-1 , which provides, in pertinent part:

> Lake frontage appears to be more than what subjects platted subdivision suggest[s], **however is not believed to be for the purpose of establishing an opinion of market value of the subject**. Platted subdivision suggest lake frontage is 317' of frontage. **High water mark would suggest over 400' of frontage**. The subject has **more high water mark land** as described in the legal description/lake frontage than the comparables **but is not felt to enhance due to the overgrowth of shrubs and bushes and is considered unusable**. Twp Assessor advised us to use the frontage of The Plat which we are using and feel that some of that area is surplus due to the frontage location abutting the point **where we feel actually the effective or usable frontage is felt to be closer to 200'**. Never[]the[]less, **lake frontage is excess of 150' is considered surplus frontage in and around the subjects market boundary and discounted accordingly**. [Emphasis added.]

See further TR at 30-6 and 73-92, which provides, in pertinent part:

Q: That's not what [you] testified to earlier. You said repeatedly you gave credit for 317 feet of frontage for the subject. True?

A: I don't believe so.

Q: But you did not do that?

A: **No**.

Q: In fact, over 200 feet you didn't give any credit for surplus or excess frontage, did you?

A: **No**.

Q: Why not?

A: **It really wasn't usable**.

Q: So your testimony is - - and I want to make sure I get this right - - that it was unusable because, as you've described it, there was brush there?

A: Brush and low-type land, mucky.

Q: I want you to turn to Page 5 of your report. About the middle of the paragraph that's labeled 'Subject Comments,' you say, quote,

> "High watermark would suggest over 400 feet of frontage. The subject has more high watermark land as described in the legal description/lake frontage than the comparables[] but is not felt to enhance due to the overgrowth of shrubs and bushes and is considered unusable."

Did I read that correctly?

A: Yes, sir.

Q: **Tell me where you mentioned low land in there**.

A: **I didn't**.

Q: In fact, it's not mentioned anywhere in your report other than our photographs. True?

A: I thought I put it in here, but –

Q: But it's not in there, is it?

A: Okay.

Q: I'm just asking you. Is it in there or not?

A: **Appears not**.

Q: You have indicated that there's 317 feet of direct frontage and yet your report suggests over 400 feet. At least that's what your narrative says.

A: Correct.

Q: There's actually 425 feet, isn't there?

A: What survey are your going to rely on?

Q: **Well, I'm going to rely on the legal description**.

A: Okay.

Q: **That's a pretty good indication**; **correct**?

A: **Yes, sir**.

Q: Okay. Did you ignore it?

A: As I said before, it was very confusing as to what to rely on, **so I ignored I guess the legal description, yes**. I went with what was on the survey . . . .

Q: So when you say, "We, in the appraisal business don't value every foot," that's just simply not true based on your own testimony; correct?

A: **I was using more of an effective frontage at 317 feet** than using the actual 425 feet.

Q: **But yet you didn't give credit for any of that over 200**?

A: **It doesn't appear to**.

Q: Should you have?

A: Again, I thought it was - - felt it was excess, overgrown, just privacy.

Q: There's nothing that would prohibit the removal of the brush, is there?

A: Correct.

Q: **So is the value dependent upon removal of the brush**?

A: **May have been at that time**.

Q: At what time, sir?

A: At the time of inspection, the time of the appraisal.

Judge Kopke: Mr. Homier, if you would, you know, entertain me, **I would like to know how he calculated his effective frontage**.

Mr. Homier: Yeah. That's fine, Judge. If you want - - I don't know whether you want me to ask or you want - -

Judge Kopke: Go ahead, sir.

Q: Mr. Follett, how did you calculate the effective frontage?

A: I believe that we looked at it overhead. I don't think we stepped it off or directly measured it. We took a typical - - I say "typical." **We took what an expensive, large home would expect to have, between 150 and 200 feet of frontage on a body of water**. It had sandy frontage that would resemble 200 feet, so we looked at it that way.

Judge Kopke: **So you didn't calculate an effective frontage**?

The Witness: **Not exactly, no**.

Judge Kopke: But you testified that you calculated an effective frontage?

The Witness: I testified that we used 200 feet of frontage.

Judge Kopke: Okay. But you said that you calculated that the effective frontage was somewhere between 230 and 240?

The Witness: Just now?

Judge Kopke: Just previously, yes, sir.

The Witness: Well - -

Judge Kopke: So I'm trying to understand how it is that you didn't calculate something and yet you came up with a number of 230 and 240. And I'd like to know where that number of 230 and 240 came from.

The Witness: Well, 223 feet of road frontage and then the lot[]wise - - or shape goes out at an angle[] so I said 230, 240 of effective.

Judge Kopke: All right. **So there wasn't a calculation then**?

The Witness: **No. It was an estimate** . . . .

Q: So is it - - overall, is it your testimony that anything with lake frontage over 200 feet adds no additional value?

A: Not necessarily.

Q: So how would we discern what you do or do not think in terms of your opinion on direct frontage and what constitutes surplus that should be included or surplus that shouldn't be included?

A: How I interpret it is what you're saying?

A: Yes. I mean, there's no adjustment at 210 feet; right?

A: Correct . . . .

Q: You testified earlier that part of your experience is you've been in the real estate business; correct?

A: Correct.

Q: In your experience as a realtor, would it have been the norm, do you think, that a 200 front feet of lakefront property would sell for the same as 425 feet of lakefront?

A: **Not if it has a point like the subject**.

Q: **So you're saying that it's the point that brings – that means that that's why it has no additional value**?

A: **Correct**.

Q: And did you look at any sales that would support that position or your opinion?

A: Waterfront sales?

Q: Yes . . . .

is contradictory and not credible. Further, his site adjustments are not only inaccurate given the property's actual acreage, but also unnecessary as the property's land value is based on its frontage and not acreage making any such adjustment redundant except for large acreage parcels.[69] With respect to the comparables themselves, Comparable

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> A: **Other sales that I've seen over time** that don't bring the - - they don't bring the same value that a front foot straight frontage brings.
>
> [Emphasis added.]

Finally, see TR at 125-7 and 175-7, which provides, in pertinent part:

> Q: Let me get back to the front footage, the Deeded frontage on the subject parcel. You heard Mr. Follett testify that above either 150 or 200 feet, there was no value for any additional front footage. Is that - - did you - - were you here when he testified to that?
>
> A: Yeah, I certainly was.
>
> Q: And would you agree that that is your experience?
>
> A: On, absolutely not. **I don't know in my 30-plus years of assessing that I've ever seen waterfront basically be given away**. And that's what that conclusion says. If you can get 400 feet for the same as 200 feet, people are giving land away. And I have a hard time - - I'm still having a hard time wrapping my head around that comment . . . .
>
> Q: And in reviewing those sales and coming up with the base value versus the - - what I'll call the excess frontage value of 1295 - - did you ever see an instance in any of those sales where the excess property had no value?
>
> A: Out of the 27 sales that I initially looked at, **there were three that were very unusual**. I did do some checking and **there were some wetlands on those properties**. And on those three, actually the excess frontage did not produce any additional value. But it was more to do with the topography than it had to do with excess frontage. As I said, the balance - - the balance all showed excess land brings some value and fairly consistently, it was about half of what the going rate was.
>
> [Emphasis added.]

See also MCL 211.1 (i.e., **all property**, real and personal, within the jurisdiction of the state, **not expressly exempted**, shall be subject to taxation"). [Emphasis added.]

[69] See TR at 111-13 (i.e., "[a] token value for size"). See also TR at 161-3 and 185, which provides, in pertinent part:

> Judge Kopke: You have, in your sales comparison approach, adjustments for acreage now. Why are you doing adjustments for acreage when that's not reflected in the original assessment?
>
> The Witness: That was just part of the appraisal process because some of my comps had larger acreage attached to them, sir. I thought I had to recognize the acreage. One of the

Nos. 1 and 6 are in superior locations (i.e., Lake Michigan and Old Mission Peninsula, respectively) with superior "sunset" frontage.[70] Although Mr. Follett adjusted

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> comps has a large buffer area of almost 10 acres. And so it drew attention then to the subject. **The acreage size of the subject has very little impact**. **It is primarily the water frontage**.
>
> Judge Kopke: **Wouldn't that be true of the smaller acreage comparables**? I mean, I can understand you have a 10-acre and a 20-acre parcel and there might be some justification for making adjustment there. But if you're saying that really, based upon the three acres or the 2.92 or the 1.91, whatever the acreage is, there really is no basis for an adjustment. Why would I - - why would I be looking at an adjustment for the 1.25 acre or the 1.3 acre or the 1.72 acre or the 2.87 acre or the 1 acre or the 1.01 acre?
>
> The Witness: Again, **I felt by making one adjustment, I should address all of them**. And because there was a little variation, I felt it was important to address each one. **But as you see, it has very little impact in the overall value**.
>
> [Emphasis added.]

[70] See TR at 18-9, which provides, in pertinent part:

> A: That is over on Lake Michigan. That, oh, it's kind of in the west of the subject. It says 8.4 miles. **It had frontage on Lake Michigan** [i.e., 263 feet of prime frontage]; somewhat of a bank, not a big bank. And then **it had also a little bit of frontage on a little lake behind it called Duck Lake** [i.e., 481 feet of direct frontage], which kind of helped the subject a little bit because it had - - the Duck Lake frontage was marshy and different than most lakefront properties. **But, of course, Lake Michigan is more prime than the subject's Bay frontage** . . . .
>
> Q: You also mentioned you do **not** like to, in this kind of a situation, bring in comparables on Lake Michigan. Why is that?
>
> A: **It's just a superior location**. It has **westerly** sunset views. Our subject has **easterly** views, which not everybody gets up to see the sunrise.
>
> Q: In your opinion, is it - - **that typically tends to be a more desirable area**?
>
> A: **Oh, definitely**.
>
> Q: **That would affect the price upward**?
>
> A: **By all means**.
>
> [Emphasis added.]

See also TR at 42-3, 44, 57-8 (i.e., "[i]t's on Old Mission Peninsula, yes; basically across the West Bay from the subject . . . . [and] I made a $100,000 adjustment for location . . . . [because] [i]t seems though **that the Bay frontage goes for more money out there** . . . . [as] [i]t's a little more noted, I think, amongst the tourists and whatnot"), and 62 (i.e., "[a]nd it's 150 feet versus the subject's 200 - - or 317 and it had west - - **westerly views, which are more demanding**"). [Emphasis added.] Further, see P-1 and TR 18-9, 23, 83, and 242-3 regarding the lack of adjustment to the "Lake Michigan" property by either

Comparable No. 6 for its superior location, he did not adjust Comparable No. 1 for its superior location or adequately explain why no such adjustment was made. In that regard, Mr. Follett adjusted Comparable No. 3 for its location, although both properties are in the same market, because "it's closer to Suttons Bay . . . [and] it's . . . a lot more desirable down in that neck of the . . . woods." The adjustments utilized were the same unexplained or, more appropriately, unsupported adjustment for both comparables (i.e.,

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party despite the recognized superior nature of the frontage. Finally, see TR at 52-3, which provides, in pertinent part:

> Q: And how do you make that determination?
>
> A: It was a size adjustment.
>
> Q: Do you - -
>
> A: For the difference of the 200 feet and some excess.
>
> Q: All right. And do you use a per front - -
>
> A: Per front foot, yes.
>
> Q: - - per front foot calculation?
>
> A: And I can't tell you what we did use though.
>
> Q: Do you recall where you obtained your per front foot calculation?
>
> A: Well, we discounted for the excess frontage; you know, from the - - from what typical Bay frontage goes for, oh, 24-, 23-, $2500.
>
> Q: **2300 to 2500 a front foot**?
>
> A: **Front foot, yeah**.
>
> Q: And once again, you give credit for 317 direct frontage to the subject?
>
> A: Correct.
>
> Q: Although you only see, in your personal observations, about 200 frontage?
>
> A: A couple hundred, yes.
>
> [Emphasis added.]

a negative $100,000).[71] As for Comparable Nos. 4 and 5, neither comparable had a basement and both houses were substantially larger than the subject house.[72] Further, both comparables were located in markets other than the subject market with Comparable No. 4 having a "[n]ice, sandy beach . . . [with] no real vegetation that . . . would hinder it much" and Comparable No. 5 having frontage on an inland lake unlike the subject.[73] As a result, Comparable Nos. 1, 3, 4, 5, and 6 are not, as adjusted by Mr. Follett, reliable indicators of value. Nevertheless, Petitioners' Comparable No. 2, as revised herein, is sufficient to meet Petitioners' burden of going forward.[74]

With respect to Respondent's approaches, Respondent did not submit the property's record card for the tax year at issue. Rather, Respondent submitted two copies of the property's record card for the 2018 tax year, which indicate the tentative determination of the property's assessment for that tax year, which is not at issue in this case.[75] Further, Respondent also failed to submit the land sales study underlying the **single** lake frontage rate reflected on the record cards and utilized to calculate the property's land value or the economic condition factor ("ECF") analysis underlying the ECF factor reflected on the record cards and utilized to adjust the depreciated cost of the improvements to reflect their market value.[76] [Emphasis added.] Although Respondent did credibly testify in support of the **lake frontage rates** that should have

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[71] See TR at 101-2 (i.e., "[j]ust a location adjustment that we feel that - - **I felt that it was better located and worth more money closer to town** . . . . [**but**] **I don't have an exact comparison to put that with**"). [Emphasis added.]
[72] See TR at 50 and P-1.
[73] See TR at 52 and P-1.
[74] Petitioner has the burden of proof in establishing the true cash value of the properties. See MCL 205.737(3). The Court of Appeals in *Jones & Laughlin*, *supra* at 354 did, however, state:

> The tribunal correctly noted that the burden of proof was on petitioner, MCL § 205.737(3); MSA § 7.650(37)(3). **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 the evidence**, **which may shift to the opposing party**. *Kar v Hogan,* 399 Mich 529, 539-40, 251 NW2d 77 (1976); *Holy Spirit Ass'n For the Unification of World Christianity v Dep't of Treasury,* 131 Mich App 743, 752; 347 NW2d 707 (1984). [Emphasis added.]

[75] See R-1.
[76] Respondent did provide a list of sales of Township residential properties from 2015 to 2017. See R-4. Although said list indicates totals, it does not indicate or otherwise calculate a frontage rate or rates. Respondent also provided a list of ECFs for the 2015, 2016, and 2017 tax year. Said list does not, however, provide information or otherwise indicate how the various listed ECFs were determined.

been utilized for the tax year at issue,[77] no testimony was provided in support of its mass appraisal cost approach, land sales study, or ECF analysis for the tax year at issue.[78] [Emphasis added.] As such, the property's record card or mass-appraisal cost approach reflected by the submitted record cards is an unreliable indicator of value for either the tax year at issue or the tax year not at issue. Respondent did, however, also submit a sales comparison approach and a land sales study and testify in support of the approach and study.[79] In that regard, Respondent utilized eight comparables – four from 2015 and four from 2016. Although Respondent provided a reliable time adjustment to those sales from the date of sale to the tax date at issue, Respondent also utilized the same comparables as Petitioners with the exception of two additional comparables (i.e., Comparable Nos. 1 and 3) and the same comparables utilized by both parties are, despite Respondent's better supported adjustments, unreliable indicators of value, as indicated above.[80] As for Respondent's Comparable Nos. 1 and 3, Comparable No. 1 has, in addition to frontage, 20 acres of "conserved" land, while Comparable No. 3 has, in addition to frontage, 10 acres. Although that acreage would, unlike the smaller acreage of the other comparables, require an adjustment, Respondent did not provide a land sales study supporting the acreage adjustments made or otherwise provide sufficient testimony for the Tribunal to determine the market basis of those adjustments

[77] Although the assessor's testimony is confusing, she clearly utilized 100 feet of frontage as the basis for her application of the frontage rates. See TR at 204-9.

[78] Although Respondent's assessor (i.e., Ms. Wilson) did, as indicated above, credibly testify as to the determination of the lake frontage rates for the tax year at issue and their application to the instant frontage, the land value determination reflected on the 2018 property record card is inconsistent with that testimony and **clearly excessive**, as the rate, albeit adjusted 10% for "shape," was applied to the entire 425 feet of frontage and not broken down to reflect the lake frontage and excess or surplus lake frontage dictated by zoning, which raises a question as to why said analysis was not done at the time the assessments for the 2017 and 2018 tax years were determined by Respondent. [Emphasis added.] See also TR at 195-7 and 216-7.

[79] See TR at 197, 202-3 regarding the preparation of the study by the Leelanau County Equalization Department, 220 regarding Respondent's use of $75 as the adjustment for square footage (i.e., "industry standard for this quality of construction"), 224 regarding the assessor's use, like Mr. Follett, of cost information and the need to consistently apply adjustments, 234-5 regarding the assessor's use of a $45 adjustment for lower level square footage, and 235 regarding adjustments differences for attached and detached garages.

[80] Petitioners' Comparable No. 1 is Respondent's Comparable No. 8; Petitioners' Comparable No. 2 is Respondent's Comparable No. 7; Petitioners' Comparable No. 3 is Respondent's Comparable No. 6; Petitioners' Comparable No. 4 is Respondent's Comparable No. 2; Petitioners' Comparable No. 5 is Respondent's Comparable No. 5; and Petitioners' Comparable No. 6 is Respondent's Comparable No. 4.

particularly with respect to the "conserved" land and,[81] as such, Respondent's Comparable Nos. 1, 2, 3, 4, 5, 6, and 8 are, as adjusted by Respondent, also unreliable indicators of value.[82]

Given the above, Petitioners' Comparable No. 2 and Respondent's Comparable No. 7, which are, as indicated herein, the same property, provide, as revised, "the most accurate valuation under the circumstances".[83] More specifically, Comparable Nos. 2 and 7 would, unlike the other comparables,[84] be impacted by the same odd, but necessary land value determinations relative to direct, and excess, or surplus frontage based on Respondent's zoning. As for the other adjustments, the Tribunal primarily adopts, with the exception of the parties' unnecessary adjustments for acreage, Respondent's adjustments based on Respondent's familiarity with the property based on an inspection and not photographs alone. Nevertheless, Respondent admitted that its square foot calculation may be, as indicated herein, incorrect. As such, the Tribunal adopts Mr. Follett's square foot calculations based on his credible testimony relative to his measurement of the dimensions of the improvements with the exception of his determination of the square footage of the living space above the garage, as his testimony and appraisal (i.e., P-1) indicate that he reduced a measurement to account for the A-frame and then reduced the total calculated square footage by 30% to also account for the A-frame, which was redundant or, more specifically, an improper reduction of square footage as he needed to either reduce the measurement or adjust the square footage and not both.[85]

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[81] See TR at 218-9 regarding the questionable 20-acre adjustment for Comparable No.1 based on the fact that the acreage cannot be split or developed (i.e., "conserved land").

[82] See TR at 47-8 regarding the "across the road" frontage of Comparable No. 6 (i.e., "[t]his comparable wasn't directly on the Bay, but it had private Bay frontage and it was across the road . . . . [s]o people had to cross the road," "it did have some - - some vegetation, brush along kind of the outer boundaries of it . . . . [b]ut for the most part, the beach frontage was very comparable," "you give an uptick of $200,000 . . . just being the inconvenience across the road and size," and "[i]s this a busy road . . . [o]h, summertime, it can be somewhat busy, but not terrible"), and 240-1 (i.e., "[a]cross the road is usually not as desirable").

[83] See *Jones & Laughlin*, *supra* at p 353. See also TR 36-41

[84] Petitioner's Comparable No. 3 and Respondent Comparable No. 6 have frontage across a road unlike the subject and the other comparables and, as such, is not truly comparable despite the purported adjustments. In that regard, Petitioner's adjustment is, as indicated herein, erroneous and unsupported, while Respondent's adjustment fails to take into consideration the fact that the frontage is across, a sometimes busy, road.

[85] See TR at 24, 94-6, 127, and 139-50, which provides, in pertinent part:

Based on the above, the Tribunal concludes that the subject properties' TCV and TV for the tax year at issue is as listed in the Introduction Section of this Proposed Opinion and Judgment (POJ).

PROPOSED JUDGMENT

This is a proposed decision and not a final decision.[86] As such, no action should be taken based on this decision. After the expiration of the time period for the opposing party to file a response to the exceptions, the Tribunal will review the case file, including the POJ and all exceptions and responses, if any, and:

1. Issue a Final Opinion and Judgment (FOJ) adopting the POJ as the final decision.
2. Issue an FOJ modifying the POJ and adopting the Modified POJ as the final decision.
3. Issue an Order vacating the POJ and ordering a rehearing or such other action as is necessary and appropriate.

> Judge Kopke: But you already - - **you only measured that 17 right there**; is that correct?
>
> The Witness: **Correct**.
>
> Judge Kopke: **So you're taking another 30 percent off, even though you started your measurement basically not including this space here** (indicating)?
>
> The Witness: **That's correct**.
>
> [Emphasis added.]

See also TR 186-91, which provides, in pertinent part:

> A: . . . I did measure it in 1999. Now, having said that, I know you're aware because you are familiar with how these tables work. But Mr. Follett made a statement that the 1.75 story height can include some open areas. And that is true. **So it is possible that there is less finished square footage on the second floor**. However, there is still finish because the ceiling height is 1-3/4 story. So there is interior finish on the ceiling. There is interior finish on the walls. **So the square footage may not be 100 percent accurate**, but it is in alignment with the State Tax Commission guidelines. You either have a 1-1/2 story house or a 1-3/4 story house or a two-story house. This roof line, the measurements are far more in line with a 1-3/4 story than they are with a 1-1/2 story. And so that's the rate that was applied. **That can distort the second story square footage a little bit**. [Emphasis added.]

[86] See MCL 205.726.

EXCEPTIONS

This POJ was prepared by the Michigan Administrative Hearings System. The parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing, by mail or by electronic filing, if available,** if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions).

Exceptions are **limited** to the evidence submitted prior to or at the hearing and any matter addressed in the POJ. There is no fee for filing exceptions and the opposing party has 14 days from the date the exceptions were mailed to that party to file a written response to the exceptions.[87]

Exceptions and responses filed by *e-mail or facsimile* will **not** be considered in the rendering of the Final Opinion and Judgment.

A copy of a party's written exceptions or response **must** be sent to the opposing party **by mail or email, if** email service is agreed upon by the parties**,** and proof must be submitted to the Tribunal demonstrating that the exceptions or response were served on the opposing party.

Entered: June 28, 2019 By Peter M. Koglar

pmk

[87] See MCL 205.762(2) and TTR 289(1) and (2).