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

William and Marilyn Froling,
Petitioners,

v

MTT Docket No. 443766

City of Bloomfield Hills,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

ORDER VACATING OCTOBER 21, 2014 FINAL OPINION AND JUDGMENT

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioners, William P. and Marilyn Froling, appeal ad valorem property tax assessments levied by Respondent, City of Bloomfield Hills, for the 2012, 2013, and 2014 tax years. Frank Lawrence, agent, represented Petitioners, and Derk Beckerleg, Attorney, represented Respondent.

A hearing on this matter was held on August 26, 2014. Petitioners' witnesses were Carole Froling, William J. Froling Jr, and Kenneth Johnson, appraiser. Respondent's witnesses were Terry Schultz, assessor, and James Burton, a consulting engineer, of Hubbell, Roth and Clark.

The subject property is described as a one and two-story brick home of excellent quality construction with 3 full and 1 half bath, 4,739 square feet constructed around 1956 on 2.5 acres that abuts the Bloomfield Hills Country Club. Petitioners contend a severe flooding problem exists on the subject property and that the flooding has a negative effect on the property's value. Petitioners further contend that external obsolescence is measurable.

A Final Opinion and Judgment in this matter was entered on October 21, 2014. Petitioners filed a Motion for Reconsideration on November 12, 2014, which claimed, in part, that Respondent's witness, James Burton, was not identified on the Tribunal's Prehearing Summary and Petitioners were unable to question Mr. Burton regarding his alleged prior inconsistent statements. On December 17, 2014, the Tribunal entered an Order partially granting

Petitioner's Motion for Reconsideration, placing the Final Opinion and Judgment in abeyance and scheduling a continued hearing "limited to the cross-examination of Mr. Burton by Petitioners, as well as any re-direct of Mr. Burton by Respondent."

The continued hearing for additional cross-examination of James Burton was held on March 3 and March 25, 2015. Petitioners' rebuttal witnesses were Jeffrey Rizzo and John Michalski.

The Tribunal finds, in order to more effectively address all issues, incorporate all testimony and exhibits, and otherwise provide a complete and accurate decision, that the October 21, 2014 Final Opinion and Judgment shall be vacated for administrative efficiency and the current decision shall be the Tribunal's sole Final Opinion and Judgment.

The parties' contentions (based on the assessment roll and pleadings) of true cash value ("TCV"), state equalized value ("SEV"), and taxable value ("TV") are as follows:

Parcel No. 63-12-19-15-126-005

	Petitioners			Respondent		
Year	TCV	SEV	TV	TCV	SEV	TV
2012	$800,000	$400,000	$400,000	$1,692,220	$846,110	$606,700
2013	$1,000,000	$500,000	$500,000	$1,767,120	$883,560	$621,260
2014	$1,350,000	$675,000	$675,000	$1,773,492	$886,746	$631,200

Respondent's revised contentions based on its valuation disclosures are as follows:

Parcel No. 63-12-19-15-126-005

Year	TCV	SEV	TV
2012	$1,600,000	$800,000	$606,700
2013	$1,650,000	$825,000	$621,260
2014	$1,700,000	$850,000	$631,200

Based on the admitted 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 2012, 2013, and 2014 tax years are as follows:

Parcel No. 63-12-19-15-126-005

Year	TCV	SEV	TV
2012	$1,575,000	$787,500	$606,700
2013	$1,625,000	$812,500	$621,260
2014	$1,675,000	$837,500	$631,200

PETITIONERS' CONTENTIONS

The cost to cure the external obsolescence decreases the market value of the subject property. More specifically, the adjacent country club has overflow piping that feeds into a neighboring pond. In turn, the water comes down the street and flows towards the subject property creating an "over-flow ponding." The ponding causes occasional flooding on the subject property that negatively affects the value of the subject property. Therefore, reduction in value is warranted.

PETITIONERS' ADMITTED EXHIBITS

P-1 Appraisal report prepared by Kenneth Johnson.
P-2 DVD.
P-10 Photographs of the subject property.
P-19 City of Bloomfield Hills Storm Water Management Ordinance
P-20 September 4, 2004 letter from Hubbell, Roth & Clark, Inc. ("HRC"); October 7, 1997 letter from HRC, with exhibits
P-21 Advanced Mapping Technology Contour Map[1]

PETITIONERS' WITNESSES

Carole Froling

Carole Froling, Petitioners' daughter, works for her father's land development and construction company. Further, she is the supervisor and project manager for a property management company.

Ms. Froling testified that she videotaped flooding at the subject property on November 29, 2011. Petitioners' exhibit P-2 is a DVD that she videoed during a 4-hour rain to depict the typical ponding of water on the subject property. In addition, Ms. Froling testified that some photographs were taken of the flooding at her parents' property; however, she was unable to recall the year that the pictures were taken. Ms. Froling lives within a few miles of her parents' home and has discretion in calling for assistance in pumping the water out of the yard.

Ms. Froling also testified that the subject property does not have a storm sewer because the city would not agree to pay for it, and she offered several times to pay for a storm sewer installation. She further explained her efforts to correct the problem:

[1] P-21 was objected to at the hearing and was taken under advisement by the Tribunal. While admitted, P-21 was presented as a rebuttal document only and is not considered by the Tribunal in support of any value contention made by Petitioners in their case-in-chief

> We tried to build a wall, a garden wall, a little, small, 2-foot wall around the perimeter of the property to block the water that came in from all sides. We were voted down. We tried to build a berm from the – I think that would be the west – the north side of the property. I'm not really sure on my things, anyway; the line. We tried to build a berm, and the City forced us to take the berm down, which we did.
>
> And we petitioned the City to build another berm in a different area, and they turned that down. One of the main influxes of water is from a culvert that runs underneath Rathmor Road. All the homeowners on the north side of the road – there are no drain ditches whatsoever on Rathmor Road, so everything is just flat. So, the houses on the north side of the road, all the houses on the north side of the road sit way up on a hill, and their water just flows down, and it runs into two different culverts and they run underneath Rathmor Road. And, eventually, the water from both those culverts ends up on my parents' property. There was one culvert in particular where probably 80 percent of the water comes through and end up directly on my parents' property because it is only 20 feet away from the property. So, the water comes from the north side, mainly a lot of water from the golf club, which flows into the pond, which flows into the north side of the properties. They go through the culvert underneath the road. It exits out, and it all empties onto my dad's property, hence the flooding you saw on those pictures of the front and side yards. TR at 54-56.

On cross-examination, Ms. Froling explained that the subject property does have a catch basin which is cleaned out every year, that the basement has exterior and interior drain tiles, and that extra water is pumped to a swale between the subject property and the neighbor's property.

She also stated that Petitioners consulted with a real estate agent in 2006, who opined that the subject property wouldn't sell due to its water ponding issue, and that there have been no other realtor consultations since that year.

Kenneth Johnson

Kenneth Johnson, Certified General Real Estate Appraiser, prepared a separate appraisal report for each tax year under appeal. Based on his experience, Johnson was qualified as an expert in appraising residential property.

Mr. Johnson testified that the subject property was appraised as if it were in normal condition then the cost to cure was deducted from the conclusion of value. Johnson testified that he was given the cost estimate to cure by Petitioners, which he relied on to measure the obsolescence. He remarked that assessors and appraisers make judgments in the selection of

comparable sales used. In this regard, Johnson noted that the assessor did not make any adjustment for the location or functional utility for the flooding issue.

Johnson inspected the subject property on April 28, 2014, and did not observe any evidence of flooding. Page 1 of each appraisal report states "There are no general adverse locational influences noted, although drainage from 7th and 8th holes of golf course adversely affects (floods) subject yard regularly, per client (see addenda), creating a curable external obsolescence." Likewise, he admits having done no research and the flooding is an assumption of the report. His scope of work for the appraisal was to visually inspect the property and to research the market for comparable sales. Johnson testified that he verified information with MLS, public records, Oakland County Gateway and BS&A, and the assessor's office. He did not physically inspect the comparable sales or speak with any parties with regard to these sales transactions. Johnson made negative adjustments of $300,000, $310,000 and $320,000 respectfully for the tax years for "poor-ext" (AKA external obsolescence). Johnson explained that the measurement of external obsolescence is the cost to cure it and Petitioners provided Johnson with the "Cost of Storm Sewer." Johnson testified his adjustments for site, square footage, age, and amenities were based on his expertise.

The following sales were considered for 2012:

2012 Sales	SUBJECT	P-1	P-2	P-3	P-4	P-5
Address	1895 Rathmor	1931 E Valley	215 Chestnut	326 Lakewood	1966 Tiverton	518 Kingsley
Sale Price		$1,550,000	$517,500	$780,000	$864,350	$555,000
Sale Date		05/11	05/11	07/11	03/11	10/11
SF	4,738	5,629	4,693	5,405	5,996	3,569
BR	3	4	5	5	6	4
Baths	3.1	4.2	3.2	4.2	5.1	2.2
Basement	Pt Fin	Pt Fin	Fin	Fin	Pt Fin	Pt Fin
Gar	3 car	3 car	3 car	3 car	3 car	2 car
FP	1	2	3	2	3	2
Misc		Pool				
Acres	2.72	2.03	0.75	1.13	2.28	0.76
CC Golf Front	CC Golf Front	No Golf Front	No Golf Front	No Golf Front	No Golf Front	No Golf Front
GROSS ADJ.		43%	147%	90%	84%	141%
Adj SP		$1,337,300	$566,700	$640,900	$581,650	$734,400

Johnson stated that Sales P-2 and P-4 were sold after foreclosure and that the most weight was placed on P-2 because it had the lowest net adjustment as noted in the appraisal. Johnson

testified that he did not place any weight on P-1. Although P-1 is located in close proximity to the subject property, and had the least net adjustments, Johnson concluded P-1 was not a good comparable because it had larger square footage. Johnson used his judgment to determine the true cash value of $800,000 as of December 31, 2011.

The following sales were utilized for 2013:

2013 Sales	SUBJECT	P-6	P-7	P-8	P-9	P-10
Address	1895 Rathmor	287 Barden	3750 Lakecrest	1825 Rathmor	1650 Rathmor	2091 W Valley
Sale Price		$1,160,000	$910,000	$1,945,000	$1,350,000	$1,875,000
Sale Date		10/12	07/12	07/12	08/12	06/12
SF	4,738	4,758	4,168	7,092	6,137	6,012
BR	3	3	4	5	3	5
Baths	3.1	4.1	4	5.4	3.1	5.2
Basement	Pt Fin	Fin WO	UnFin WO	Fin WO	Unf	Fin
Gar	3 car	2 car	3 car	4 car	4 car	4 car
FP	1	1	2	4	2	2
Misc						
Acres	2.72	1.5	2.1	2.2	1.71	1.2
CC Golf Front	CC Golf Front	No Golf Front	No Golf Front	CC Golf Front	No Golf Front	No Golf Front
Gross Adj.		51%	74%	44%	62%	57%
Adj Sale Price		$1,076,000	$927,000	$1,137,200	$995,200	$1,298,200

The appraisal states that the most weight should be given to P-6 and P-7 for similar size and requiring the least adjustments. Johnson opined to a true cash value of $1,000,000 as of December 31, 2012.

The following sales were utilized for 2014:

2014 Sales	SUBJECT	P-11	P-12	P-13	P-14
Address	1895 Rathmor	2070 W Valley	145 Canterbury	23 Pine Gate	1800 Rathmor
Sale Price		$1,852,500	$975,000	$1,700,000	$1,600,000
Sale Date		10/13	02/13	04/13	12/13
SF	4,738	4,891	4,151	5,942	6,702
BR			4		
Baths	3.1	5.2	4.2	5.2	6.2
Basement	Unf	Pt Fin	Pt Fin	Pt Fin	Pt Fin
Misc		Pool			Pool
Gar	3 car	3 car	3 car	4 car	4 car
FP	1	3	1	3	2
Acres		1.09	2.3	1.09	2.28
CC Golf	CC Golf Front	No Golf Front	No Golf Front	No Golf Front	No Golf Front
Gross Adj.		34%	67%	49%	59%
Adj Sale Price		$1,730,900	$975,400	$1,358,200	$1,068,200

The most weight was placed on P-11 and P-12. Johnson opined to a true cash value of $1,350,000 as of December 31, 2013.

Johnson explained that the sales were adjusted for differences in site, view, bathrooms, square footage, basement finish, and additional fireplaces, as well as, the negative adjustment for the subject's external obsolescence. Johnson testified that the sale with the least net adjustments was the most reliable sale.

William John Froling

William John Froling testified to his responsibilities in contracting services to pump water from the property. He stated that the water issue has been ongoing since the early to mid-90s. Bids were taken to determine that a closed storm sewer system was a proper permanent solution. Regrading to re-direct water flow was not a viable option due to a lack of cooperation from abutting property owners. Again, Petitioners' costs to cure are found within the Johnson appraisals.

Mr. Froling acknowledged he is a licensed real estate broker. He also contends selling the property is difficult due to the flooding. Mr. Froling compiled the addendum in P-1 that included costs and estimates from 2006 to 2014. The data contains quotes, but no engineering plans or witness to explain the basis for the numbers found in the addenda of Petitioners' appraisals. The septic system plan documents were not included as an exhibit.

Jeffrey S. Rizzo

Jeffrey S. Rizzo, civil engineer and President at Fenn & Associates, was called as Petitioner's first rebuttal witness and was admitted as an expert in engineering. He testified that he has been familiar with the subject property since about 2004 and has personally inspected the property. He stated that he has studied various ways to correct the flooding problem, including a swale plan. He stated that the land is flat in certain spots and the water would not effectively flow without doing grading. He indicated that the property is contoured in a way that would facilitate water off the property to some extent because the southeast corner is slightly lower than the southwest corner, but not by much; once you are off the property, the land is flat and the water will not flow and will pond. Mr. Rizzo stated there is a flat area on the Kiriluk property where the elevation is decreasing to 96.7 and then increases to 96.8. He believes the Frolings are probably pumping water over this flat area currently and that is why it is not a problem. He

stated that the water would eventually overflow and drain down the Kiriluk swale, but he does not agree that the swale plan offered by Respondent's expert (R-15) is a good design. Because of the wide swales in R-15, the use of the property would be limited if it was implemented and you would not be able to use the yard like you should be able to and could not put in a swimming pool.

Mr. Rizzo stated his opinion that R-15 is not a suitable solution for the flooding problem because the slopes are very low and he would never design something that flat "because what will happen is you're going to basically take the water that was separated by those high points and just put it all together. You're still going to have ponding water."[2] He stated that when a slope is too low the water is not going to move as effectively and more siltation will develop where the soil settles out. He further stated that there is a potential for siltation to develop in the Kiriluk swale over time under R-15; he is not aware how the siltation could be removed or remedied because he has never attempted to remove silt. He also stated that the existing drainage pipes and catch basins are not going to alleviate the flooding, the only are helpful when there is a light rain. He agreed that R-15 should work when there is a normal rain, but it would not work with a ten-year storm event; for anything less than a ten-year storm, R-15 "would move water, but you still could have some flooding issues."[3]

Mr. Rizzo does not believe R-15 is in conformance with the City storm water management ordinance because it has slopes that are less than the 1.5% stated. He further stated that there is a total of 55 acres flowing toward the subject and the plan in R-15 would not be able to accommodate a ten-year storm event. He indicated that the slopes of 0.4% in R-15 will not be enough to effectively move the water. He stated there would be no way to implement R-15 without adversely affecting neighboring properties like the Kiriluk's and the golf course. He further stated that Petitioners would need to get permission from neighboring property owners to do grading on their properties otherwise R-15 would not work. Mr. Rizzo testified "it would be less disruptive if you did a storm drain system . . . and then put in pipes and drains wherever you needed them as opposed to making these really wide swales."[4] In his opinion, there is no real

[2] 3-3-15 Tr at 243
[3] 3-25-15 Tr at 399
[4] 3-3-15 Tr at 273

difference between the 2004 plan and R-15; both have the same end point and both would require grading on neighboring properties.

Mr. Rizzo stated that the pipe size required to handle the 55 acres that drain to the subject would be 36 inches in diameter. He stated that the 4-6 inch pipes presently on the subject are not infiltration devices because the pipes would need to have holes in them; the existing pipes are "simply conveying the water from one catch basin to another . . . when you get a light . . . rain."[5] He stated the existing 4-6 inch pipes would not help R-15 be effective because they will not do anything with the amount of water flowing to the subject. He testified that there is nothing located solely on the Froling property that could alleviate the flooding problem.

Mr. Rizzo stated that the ponding problem would be very minimal with a storm drain system. He further stated that Fenn & Associates prepared a storm drainage system plan that he believes is the only feasible solution; this plan also involves some grading on the subject property.[6]

Mr. Rizzo acknowledged that R-24 is a plan he designed in 2010 for a project at Square Lake and Woodward in Bloomfield Township for a vegetated swale and drainage ditch system that had slopes of less than 1%. He also stated that this was for a commercial property, not residential, and the swale in R-24 is 115 feet long, but R-15 has a 330 foot swale. He stated this project was about a mile from the Froling property and that HRC was the consulting engineer that reviewed drainage plans for Bloomfield Township.

John Michalski

John Michalski was called as Petitioner's second rebuttal witness. He is a civil engineer and a Certified Floodplain Manager ("CFM") and was admitted as an expert civil engineer specializing in water resources. He testified that he was contacted to do a study to determine the amount of water flowing to the Froling property in 2007 in conjunction with plans to develop a new storm sewer. Based on his study, 55 acres of the surrounding properties flow toward the Froling property. He specifically identified a "significant area to the northwest that flows from

[5] 3-25-15 Tr at 300
[6] The Fenn & Associates storm sewer plan, dated May 15, 2007, is contained in Petitioners' proposed exhibit 16. This document was *not* admitted into evidence because it goes beyond rebuttal of the swale plan prepared by Mr. Burton in R-15 (3-25-15 Tr at 297-298)

the golf course" and "significant land that contributes flow from the northeast side that goes through the front of the Kiriluk property . . . ."[7]

Mr. Michalski indicated that he was asked to review R-15 for the March 3, 2015, continued hearing in this matter; he stated that in that review:

> I calculated the slopes of the drain, and then I did a rudimentary HEC-RAS model, which HEC-RAS is a computer model developed by the Army Corps of Engineers to calculate water surface profiles in open channels. And so I looked at some sections along there to determine what type of depth and width a swale at those dimensions shown on there would need in order to pass the flow rates that we calculated in our report.[8]

His analysis of flow rates under R-15 was based on a ten-year storm event, which is "a rainfall amount that has a probability of occurring 10 percent in a year."[9] He also used the topographic map by Fenn & Associates and aerial map in his analysis with respect to the elevation and grades on the property, which he compared with the United States Geological Society ("USGS") map to see if the numbers were in agreement. Mr. Michalski testified that R-15 "passed the flow rates that [he] use[s] for the ten-year storm event"[10] but his concern is that "the water level in the swale was up against the side of the house in order to do that."[11]

His concerns with R-15 are "that the slope is very low . . . [and] it requires more energy to convey flow," "grading earth to that level is difficult," and when "maintaining that slope over a period of time you get settlement and you can get buildup of areas of either vegetation or soils that will change the slope over time."[12] He also stated there is an issue with R-15 actually directing flow toward the house when you usually would "create a drainage swale . . . designed to direct flow away from the house towards the property corners . . . ."[13] If R-15 was implemented, Mr. Michalski believes there would still be "issues with saturated soils and the problems with conveying flow over time."[14] He also indicated that to implement R-15 adequately, the Kiriluk swale would need to be enhanced and changes would need to be made on

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[7] 3-25-15 Tr at 451
[8] 3-25-15 Tr at 479
[9] 3-25-15 Tr at 482
[10] 3-25-15 Tr at 488
[11] *Id*
[12] 3-25-15 Tr at 452
[13] 3-25-15 Tr at 453
[14] *Id*

the golf course property. If permission from neighboring owners was not granted, he stated that "the overland flow would not efficiently be conveyed off of the property."[15] He testified that R-15 is not "a complete solution;"[16] a complete solution would remove water from the property before it could infiltrate into the ground around the home. He also stated that the grade of R-15 "will convey flow from one end to the other"[17] but it would not be efficient and there would still be a lot of the same problems the property is currently experiencing.

Mr. Michalski stated that R-15 does not comply with the City storm water management ordinance because it does not meet the minimum percentage slopes required. He testified that the existing 4-6 inch pipes on the Froling property would not be considered an infiltration device as it is written in the ordinance.

Regarding the use of cost estimates, Mr. Michalski stated "it depends on what the number is going to be used for"[18] and "[i]f it's in a very, very beginning planning stage where the number is not going to be used for any decision-making beyond conceptual planning, then we go through and develop the numbers based on our past experience."[19] He further stated that for an appeal before the Tribunal, he "would try to get additional reference for the numbers I was using."[20]

RESPONDENT'S ADMITTED EXHIBITS

R-1 Respondent's valuation disclosure for December 31, 2011, and December 31, 2012.
R-2 Respondent's valuation disclosure for December 31, 2013.
R-15 Engineer's drawing of proposed grade, swale, underdrain and proposed contour.[21]
R-17 Froling v. Bloomfield Hills Country Club, et. al., Existing On-Site Drainage Conditions, Facilitation Exhibit No. 2
R-19 City of Bloomfield Hills City Commission June 8, 2004 minutes
R-20 Letter from James Burton dated June 4, 2004

[15] 3-25-15 Tr at 459-460
[16] 3-25-15 Tr at 458
[17] 3-25-15 Tr at 462
[18] 3-25-15 Tr at 473
[19] 3-25-15 Tr at 474
[20] *Id*
[21] R-15 was not initially presented as an exhibit by Respondent. Petitioners' representative asked James Burton if he had the document and it was used as a reference during cross-examination (8-26-14 Tr at 222-224). At the close of Mr. Burton's August 26, 2014 testimony, the Tribunal questioned the parties' representatives as to whether the document was being offered as an exhibit (8-26-14 Tr at 251):

Judge Enyart: It hasn't been offered. I haven't heard it offered.
Mr. Beckerleg: It's his call on the exhibit. Whatever he wants to do.
Mr. Lawrence: Yeah. I'd like to offer it as an exhibit.

R-22 James Burton's meeting notes of June 8, 2004
R-23 James Burton's notes dated June 2, 2004, including photographs
R-24 Fenn & Associates' Site Engineering Plans for Woodward & Square Lake Commercial

RESPONDENT'S WITNESS

James F. Burton

James F. Burton is employed by Hubbell, Roth and Clark, a consulting engineering firm. He is a licensed professional engineer with a Certified Floodplain Manager designation. The CFM designation represents an ongoing, continuing education program dealing with FEMA flooding, flood management, and local floodplain ordinances. Based on his experience, skills, knowledge, education, and training, he was admitted as an expert.

Mr. Burton testified that he has reviewed every grading plan in the city since 2000, and that he became familiar with the subject property in 2002-2003 during a city review of complaints from the property owner. He stated that the subject property has been inspected several times, and he has witnessed the water ponding. His general observations of the flooding were given in the following testimony:

> The water ponds in generally three locations. From the pictures, that we referred to earlier with the pump, some areas behind the property. There is ridges and valleys and low spots throughout the property, and those are typically where there are catch basins. So, when the rain exceeds the capacity or that is the system is in a state of disrepair, it ponds in the areas that you would expect it to pond. It's in the lowest areas of the property.[22]

In addition, Burton testified that he reviewed "The Cost of Storm Sewer System" found in Johnson's appraisals. He explained that the cost does not include a plan associated with the numbers and that it is not clear what the $320,000 cost is intended for. He explained that there are various options, but he was uncertain what Petitioners' plan entails. Burton's professional opinion is Petitioners' plan lacks detail for the over $320,000 cost.

Burton testified that he came up with an alternative grading plan that was utilized in previous litigation, that the best estimate of cost was $20,000 to $25,000 for the plan that was discussed with Petitioners during mediation. Burton testified he suggested utilizing the surface water outlet and underdrain to regrade the subject property. He stated:

[22] 8-26-14 Tr at 204

> The lowest spot on the Froling property is near the southeast corner of the property adjacent to the Kiriluk property. There's actually an easement that runs in between the two properties, but generally speaking, both parties have kind of landscaped into that area. It's not a useful easement anyways. Low spot in that area, which is lower than the other areas within the property.
> So, while not necessarily perfect or ideal, you could regrade the property so it would surface flow around and out to the outlet on their property. You would not need to grade anybody else's property. You could outlet the storm water via surface.
>
> In addition to that, below the swale that runs behind Mr. Kiriluk's home are at least two edge drains. These would be 4-to-6-inch diameter pipes that show up on the -- Mr. Froling's surveys in the past that could be extended and run underneath any of the gradings. So you wouldn't even necessarily need to get all the grading out. You would simply need -- you could lower it by grading. Then you could bleed it off quicker via an underdrain-type system. But my understanding is there is one there already, which is connected into this area downstream.[23]

Burton explained that the grading, the addition of a dry riverbed, and some landscaping were akin to a project he accomplished in his own yard over a weekend. He explained that the swale could be designed, graded and built to accommodate a ten-year storm event. Water would move off the subject property into a neighbor's swale between the two yards and out. This suggested plan does not change the flow of the water, but keeps the water from standing. The suggested plan changes the grading to allow gravity for the natural low areas on the subject property to drain.

Burton further testified that the landscaping could reflect a dry river bed which makes the grading more attractive. Upsizing the pipes would allow the swale to be downsized. The base grade of the slope is sufficient to move water from one end to the other. The swale grade is higher, if it exceeds capacity, it will come out of the banks. As long as the swale is positive, the amount of water draining is not an issue, it will take the flow off the subject property.

Mr. Burton testified on cross-examination in March of 2015 that there was prior facilitation between the parties in which sketches and plans were developed, with the one believed to be correct marked as Respondent's R-15 for this Tribunal hearing.

He testified that he still believes that his swale plan in R-15 is in conformance with the City's grading ordinance and minimum slope requirements. Mr. Burton testified that the slopes

[23] 8-26-14 Tr at 207 - 208

in R-15 are 0.4% and 0.5%. He stated that the 1% slope is typical engineering practice around a home. He indicated that there are exemptions in the ordinance that allow for less than a 1% slope and that the 1% minimum slope is part of "the general guidelines that fit normal conditions within the city. Not every plan is going to fit into this category."[24] Mr. Burton indicated there are several developments on Hunt Club Estates and Barrington Park with rear yard swales and/or roadside ditches less than 1%, but he cannot recall specific addresses or the specific percentage of those slopes.

He stated that his proposed swale plan in R-15 did not include any infiltration devices, which are referenced in the ordinance, because there are already infiltration devices in place on the property; there is a "series of underdrain systems, catch basins, underdrain pipes, which are infiltration that move the water down and help the water get into the soil."[25] He believes the pipes present on the subject to be 4 – 6 inches.

Mr. Burton stated that he has been familiar with the subject property since the early 2000s. The September 1, 2004 letter (P-20) refers to representatives from the office who had visited the subject. The September 1, 2004 letter makes reference to the October 7, 1997 letter prepared by Mr. Ritchie, a prior employee at HRC. The 1997 letter by Mr. Ritchie did recommend a storm drainage system for the subject property, but Mr. Burton stated he is not aware of the context, history, or conversations that may have gone into Mr. Ritchie providing this opinion. Mr. Burton stated that the 1997 plan for a storm drainage system had an estimated cost of $210,000. He would not recommend today that a storm drainage system is the best solution to address the ponding issue on the subject because "it does not take care of the on-site issues. The storm drainage system is on the perimeter."[26] Mr. Burton testified that he believes a storm sewer is *a* solution but he does not think it is the most appropriate or best solution. Mr. Burton explained that his assignment in 2004 was to review and update the prior 1997 report, but he was not asked in 2004 to "comment specifically on the adequacy of that [1997] plan."[27] Mr. Burton further stated that the 2004 letter was in response to requests, including requests by Mr. Froling, "to review alternative plans to the storm sewer, including the swale and other

[24] 3-3-15 Tr at 39
[25] 3-3-15 Tr at 41
[26] 3-3-15 Tr at 145
[27] 3-3-15 Tr at 69

opportunit[ies]."[28] He explained that Mr. Froling had requested the City Commission to update the report and Mr. Burton was asked by the City to do so and his 2004 letter was addressed to the City. For the 2004 plan, he walked the route from the subject property to the country club, looking at "the existing vegetation cover, the pond outlet and other site features."[29] He testified that the 2004 letter indicates, and he still believes, "that a swale is technically possible"[30] but there are challenges. He stated that the swale in the 2004 letter is not on the Froling property; it is "from behind Frolings' property to the culvert at Long Lake Road. It's an important distinction."[31] He explained that the 2004 plan is the result of meetings with the Frolings for a review of the cost estimate to bring the costs down, stating that the 2004 plan is an alternative to the pipe system shown in the 1997 letter and is not the same as R-15; he does not believe the 2004 letter has any relevance at all to R-15 because they are different plans. He also indicated that the 2004 letter was done at the City's request regarding the cost and what the pros and cons of that system might be.

Mr. Burton further stated the 2004 plan would incorporate changes to neighboring properties that would require obtaining easements at a cost to the Frolings. He stated that the 2004 plan "did not address any of the grading on the property"[32] which is addressed under R-15. For the swale plan in R-15, Mr. Burton stated that it would not require making changes to neighboring properties. He further testified that the two swale plans are not the same "and therefore the construction is materially different. They're different locations and they're different construction, and it doesn't require the easements from additional property owners because it doesn't impact them."[33] He stated that R-15 would be easier and less expensive to implement than the 2004 plan. Mr. Burton indicated that the ultimate outlet in both the 2004 plan and R-15 is the pond at Long Lake. He testified that there were several small hills involved in the 2004 plan, but these hills do not exist in R-15 due to a different path which outlets along the golf course fairway. Mr. Burton did not believe the country club would say anything about this because it "is the same outlet that the underdrains of the Froling property currently correct

[28] 3-3-15 Tr at 70
[29] 3-3-15 Tr at 72
[30] 3-3-15 Tr at 75
[31] 3-3-15 Tr at 77
[32] 3-3-15 Tr at 88
[33] *Id*

to, and this is the outlet where you pump to when there's surface flooding . . ."[34] and he is not aware of anyone objecting.

He testified that R-15 utilized data provided by Fenn Engineering and Oakland County GIS data for the contours; in addition, he walked the property including the outlet to the pond. Mr. Burton stated that without any changes to the contours, R-15 could be implemented and would move water through surface drainage and the existing underdrains. It is his opinion that R-15 would move water around the home better than the current situation and would improve, and substantially correct, the water ponding situation. He stated that the $25,000 estimate to implement R-15 includes landscaping to improve aesthetics, by resodding and replacing any disrupted plants. Mr. Burton explained that the $25,000 was an engineering estimate on what he thought it would cost to construct; no bids were taken because it is not something the City would construct, it would be the Froling's responsibility to seek bids for construction on their property.

Terry Schultz

Respondent's other witness was Terry Schultz, an employee at Oakland County Equalization. He is the Equalization Field Supervisor, and is certified as a Michigan Advanced Assessing Officer. Schultz prepared Respondent's valuation disclosures. He testified that the cost approach and sales comparison approaches were used to determine a decrease in the true cash value for the years at issue.

Schultz testified that the cost new less depreciation was calculated on a mass assessment basis for each year. The land value is based on vacant land sales. The actual building cost is calculated, with additions for extra amenities, and a county multiplier is applied. Depreciation is calculated with an economic condition factor (reflecting the increase or decrease in sales) to their related assessments is applied to the building. The depreciated value of the building is added to the value of the land and land improvements for each year for each property. The same methodology was applied for the years at issue per Schultz.

Schultz discussed the positive adjustment for location on the golf course. Two sales, 1825 Rathmor and 3715 Lahser, were located on the golf course. The remaining five sales utilized by Respondent were located within the subject neighborhood, but, without abutting the golf course. The difference between the averages of the sale prices is $350,000. In addition, the

[34] 3-3-15 Tr at 103

vacant land sales were included for each year at issue. This confirmed the additional value for golf front locations. As noted, Bloomfield Hills Country Club is private membership.

Improved Sales were selected that were similar to the subject in location and relevant characteristics. Schultz explained the comparable adjustments bring the sales more in line with the subject. The comparative analysis was applied for each year at issue. The sales comparison approach is an effective reliable method to determine the true cash value of the subject property. There were an adequate number of sales that were similar to the subject property.

The 2011 sales that reflect market value for tax year 2012 are:

2012 Sales	SUBJECT	R-1	R-2	R-3	R-4	R-5
Address	1895 Rathmor	1931 E Valley	3926 Oakland	578 Rudgate	2091 W Valley	1825 Rathmor
Sale Price		$1,550,000	$1,400,000	$1,425,000	$1,875,000	$1,945,000
Sale Date		05/11	08/11	03/11	06/12	07/12
SF	4,738	5,929	4,857	5,865	6,012	7,092
BR	3	4				5
Baths	3.1	4.2	3.3	4.2	5.2	5.4
Basement	Unf	Pt Fin	Pt Fin	Pt Fin	Fin	WO
Gar	3 car	4 car	3 car	3 car	3 car	3 car
FP	1	2	4	4	3	4
Fence/pool		Pool				
Acres	2.5	2.03	0.56	1.3	1.2	2.2
CC Golf	CC Golf Front	No Golf Front	No Golf Front	No Golf Front	No Golf Front	CC Golf Front
Gross Adj.		22%	6%	38%	34%	23%
Adj Sale Price		$1,597,000	$1,698,000	$1,564,000	$1,958,000	$1,624,000

The comparable properties were adjusted for differences in market date, square footage, land size, bathrooms, basement finish and amenities. The adjustments were extracted from market sales. Schultz testified that the most weight was given to Sale 1 because it is located in the subject neighborhood. He opined that the true cash value of the subject property, as of December 31, 2011, is $1,600,000.

The 2012 sales that reflect market value for tax year 2013 are:

2013 Sales	SUBJECT	R-6	R-7	R-8	R-9	R-10
Address	1895 Rathmor	1825 Rathmor	2091 W Valley	1650 Rathmor	45 Pine Gate	3715 Lahser
Sale Price		$1,945,000	$1,875,000	$1,350,000	$1,657,000	$2,050,000
Sale Date		07/12	06/12	08/12	11/12	12/12
SF	4,738	7,092	6,012	6,137	6,557	5,933
BR						
Baths	3.1	5.4	5.2	3.1	5.3	6.2

Basement	Unf	WO	Fin	Unf	Pt Fin	Pt Fin
Misc					Pool	
Gar	3 car	3 car	3 car	4 car	4 car	4 car
FP	1	4	3	2	6	4
Fence/pool						
Acres	2.5	2.2	1.2	1.71	1	1.4
CC Golf	CC Golf Front	CC Golf Front	No Golf Front	Golf view	No Golf Front	CC Golf Front
Gross Adj.		23%	34%	30%	46%	24%
Adj Sale Price		$1,624,000	$1,958,000	$1,362,000	$1,697,000	$1,975,000

Schultz placed the most weight on R- 6, 8, and 10; these sales are located in the subject neighborhood. The market derived indication of value for tax year 2012 is $1,650,000.

Sales from 2013 that reflect market value for tax year 2014 are as follows:

2014 Sales	SUBJECT	R-11	R-12	R-13	R-14	R-15
Address	1895 Rathmor	2070 W Valley	1800 Rathmor	23 Pine Gate	305 Pine Ridge	260 Guilford
Sale Price		$1,852,500	$1,600,000	$1,700,000	$1,425,000	$1,797,500
Sale Date		10/13	12/13	04/13	12/13	08/13
SF	4,738	4,891	6,702	5,942	5,178	6,264
Baths	3.1	5.2	6.2	5.2	4.2	4.4
Basement	Unf	Pt Fin	Pt Fin	Pt Fin	Pt Fin	Pt Fin
Misc		Pool	Pool		Pool	Pool
Gar	3 car	3 car	4 car	4 car	2 car	3 car
FP	1	3	2	3	1	5
Acres	2.5	1.09	2.28	1.12	1	1.43
CC Golf	CC Golf Front	No Golf Front	No Golf Front	No Golf Front	No Golf Front	No Golf Front
Gross Adj.		26%	28%	34%	35%	31%
Adj Sale Price		$2,141,500	$1,439,000	$1,870,000	$1,745,000	$1,875,500

Schultz explained that after adjustments, R-11, 12, and 13 were relied upon to determine the true cash value as of December 31, 2013, at $1,700,000.

Regarding Petitioners' sales, Schultz challenged their validity. For example, Sale 2 is a bankruptcy sale that was adjusted 147%; Sale 1 is located in the subject neighborhood, but still had relatively large gross adjustments of 47%. For the 2nd year of the appeal, Petitioners' appraiser relied on Sales 6 and 7 which are outside of the subject neighborhood. On the other hand, Schultz acknowledged the use of some common comparable sales that were used by Petitioners' appraiser.

FINDINGS OF FACT

1. The subject property is located at 1895 Rathmor, City of Bloomfield Hills, Oakland County.

2. The parcel identification number for the subject property is 63-12-19-15-126-005.
3. The single family residential property is described as 1 and 2 story brick construction, Class A-10%, built in approximately 1956, with 4,378 square feet. The dwelling has 3 bedrooms, 3 full and one half bath, a recreation room and attached 3-car garage. The site has 2.5 acres which is adjacent to the Bloomfield Hills Golf and Country Club.
4. Petitioners purchased the subject property in June, 1988.
5. Petitioners' photographic and video evidence depicts flooding at the subject property on an unspecified date.
6. Petitioners' rely on their son and daughter for the maintenance of the flooding issues at the subject property.
7. Petitioners' appraiser presented appraisal reports that set forth a separate sales comparison approach for each year at issue.
8. Petitioners' appraiser's most significant adjustment to the comparables sales was the $300,000 (2012), $310,000 (2013) and $320,000 (2014) for external obsolescence.
9. Petitioners' appraiser relied upon the "Cost of Storm Sewer System"[35] document provided by Petitioners for the cost to cure and did not verify, or otherwise determine, whether the proposed adjustment was appropriate.
10. Petitioners' appraiser's conclusion for the "Cost of Storm Sewer System" was not supported by any engineering plans or expert testimony.
11. Petitioners' appraiser determined comparable sale adjustments from his expertise and experience.
12. Petitioners' appraiser did not verify any of the comparable sales with the buyer, seller, or real estate agents.
13. Petitioners' appraiser cites outdated authoritative texts.
14. Respondent's assessor presented a valuation disclosure that contains both a cost new less depreciation (under the mass assessment technique) and a sales comparison approach for each year at issue.
15. Respondent offered reduced contentions of value based on its sales comparison approach.
16. The parties have analyzed the following common sales: 2012: 1931 East Valley, 2013: 1825 Rathmor, 1650 Rathmor, and 2091 West Valley, 2014: 2070 West Valley, 23 Pine Gate, and 1800 Hathor.
17. On October 7, 1997, Thomas Ritchie, on behalf of HRC, prepared a letter (P-20) regarding the cost to construct a proposed storm drainage system by the Frolings of $210,000.
18. On September 4, 2004, James Burton, of behalf of HRC, prepared a letter (P-20) in response to the City's request regarding a review of alternative plans to the storm sewer proposed by HRC in 1997.
19. Respondent's expert engineer, James Burton, proposed a different swale plan (R-15) on the subject property as part of previous mediation and facilitation during 2006 – 2007.
20. Burton's proposed swale plan recommended regrading to the subject property.
21. Burton indicated a cost estimate of this swale plan of $20,000 to $25,000.
22. The City of Bloomfield Hills storm water management ordinance contains provisions regarding minimum slope requirements for vegetated swales and open ditches.

[35] P-1 at 19 - 30

23. The slopes in R-15 are between 0.4% and 0.5%.
24. Based on a study conducted by John Michalski, certified floodplain manager, 55 acres of the surrounding properties flow toward the subject 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.[36]

> 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 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. . . .[37]

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.[38]

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."[39]

"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."[40] The Tribunal is not bound to accept either of the parties' theories of valuation.[41] "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."[42] 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."[43]

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[36] See MCL 211.27a.
[37] Const 1963, art 9, sec 3.
[38] MCL 211.27(1).
[39] *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).
[40] *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).
[41] *Teledyne Continental Motors v Muskegon Twp,* 145 Mich App 749, 754; 378 NW2d 590 (1985).
[42] *Meadowlanes Ltd Dividend Housing Ass'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991).
[43] *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

A proceeding before the Tax Tribunal is original, independent, and de novo.[44] The Tribunal's factual findings must be supported "by competent, material, and substantial evidence."[45] "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[46]

"The petitioner has the burden of proof in establishing the true cash value of the property."[47] "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."[48] 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."[49]

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.[50] "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading."[51] 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.[52]

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.[53]

The parties' valuation experts were charged with presenting reports to assist the Tribunal in making an independent determination of the true cash value for the three tax years at issue.

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[44] MCL 205.735a(2).
[45] *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).
[46] *Jones & Laughlin Steel Corp, supra* at 352-353.
[47] MCL 205.737(3).
[48] *Jones & Laughlin Steel Corp, supra* at 354-355.
[49] MCL 205.737(3).
[50] *Meadowlanes, supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968).
[51] *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).
[52] *Antisdale, supra* at 277.
[53] See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

TRUE CASH VALUE

In regard to the 2012 valuation, Petitioners' comparative analysis has inconsistencies and misapplications. Specifically, none of Johnson's sales have golf course frontage. Further, all of his sales have excessive net and gross adjustments. In that regard, an expert's testimony for support of adjustments must amount to more than one's experience and expertise.[54] Data verification facilitates a complete analysis on the part of an appraiser. On the other hand, Respondent's testimony regarding its market based adjustments is persuasive and supports its overall comparative analysis. Therefore, the Tribunal will apply the parties' common comparable sales to arrive at an independent determination of value for the three years under appeal.

Petitioners' testimony and documentary evidence were not supportive of their contentions of value as the Johnson appraisal contains inconsistencies and errors which indicate arbitrary and subjective actions on the part of the appraiser. Citing outdated appraisal sources, avoiding the verification of data and applying net adjustments are examples of advocacy for the client. In this instance, Petitioners' appraiser relied on the lower range of adjusted sales, and then applied a cost to cure deduction of $300,000. The cost to cure was given to Johnson by Mr. Froling. Johnson failed to do an independent verification or analysis. This extreme skewed analysis does not give any consideration to the thought of bracketed sales.

> An appraiser must not allow assignment conditions to limit the scope of work to such a degree that the assignment results are not credible in the context of the intended use.[55]

The Johnson appraisal's citation to invoke professional appraisal standards is a stark contradiction to the appraiser's actions. "An appraisal must not allow the intended use of an assignment or a client's objectives to cause the assignment results to be biased."[56]

Petitioners' case is built around the appraiser determining that the ponding is considered external obsolescence. "External obsolescence is a loss in value caused by negative externalities, i.e., factors outside a property."[57] It usually has a market wide effect and influences a whole class of properties, rather than just a single property. The ponding is not external obsolescence;

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[54] Appraisal Institute *Appraising Residential Properties*, (Chicago: 4th ed., 2007) at 110 and 316.
[55] The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice*, (2014-2015 Ed.), p 14.
[56] *Id*.
[57] Appraisal Institute, *Appraisal of Real Estate*, (Chicago: 14nd ed, 2012), p 632.

the issue is one more akin to deferred maintenance that is still ongoing. Deferred Maintenance is described as:

> Curable, physical deterioration that should be corrected immediately, although work has not commenced; denotes the need for immediate expenditures, but does not necessarily suggest inadequate maintenance in the past.
>
> Cost to cure: The cost to restore an item of deferred maintenance to new or reasonably new condition.[58]

As discussed in more detail below, the Tribunal finds that Burton's testimony and documentary evidence points to a reasonable solution for the subject's flooding. Moreover, the $25,000 estimate to cure the problem is consistent with a deferred maintenance issue, and not a monumental physical deterioration, as inferred by Petitioners. In other words, Petitioners' efforts at interval sump pumping water is not mitigating, but prolonging the flooding issue. Likewise the cost of litigation does not appear to be an appropriate solution to Petitioners flooding. The true cash value of the subject property is not reduced by Petitioners' claimed cost to cure. Petitioners' appraiser did *not* make an independent determination regarding the cost to cure the subject's flooding problem. The loss in value claimed by Petitioners has not been proven by the Johnson appraisal. Petitioners' testimony further does not answer why the property has not been maintained to solve or alleviate the issue.

As noted, there were no sales of impaired properties or properties that had a loss in value due to flooding issues. Regardless, Respondent analyzed neighborhood sales for a comparative analysis.

As indicated above, the Tribunal will apply the parties' common sales, as well as, the sales that each party places reliance for the 2012 tax year:

2012 Sales	SUBJECT	P-2	P-1	R-1	R-4	R-5
Address	1895 Rathmor	215 Chestnut	1931 E Valley	1931 E Valley	2091 W Valley	1825 Rathmor
Sale Price		$517,500	$1,550,000	$1,550,000	$1,875,000	$1,945,000
Sale Date		05/11	05/11	05/11	06/12	07/12
SF	4,738	4,693	5,629	5,929	6,012	7,092
BR	3	5	4	4		5
Baths	3.1	3.2	4.2	4.2	5.2	5.4
Basement	Pt Fin	Fin	Pt Fin	Pt Fin	Fin	WO
Gar	3 car	3 car	3 car	4 car	3 car	3 car

[58] Appraisal Institute *Appraising Residential Properties*, (Chicago: 4th ed., 2007) at 197.

FP	1	3	2	2	3	4
Misc			Pool	Pool		
Acres	2.72	0.75	2.03	2.03	1.2	2.2
CC Golf Front	CC Golf Front	No Golf Front	No Golf Front	CC Golf Front	CC Golf Front	CC Golf Front
GROSS ADJ.		147%	43%	22%	34%	23%
Adj SP		$566,700	$1,337,300	$1,597,000	$1,958,000	$1,624,000

Petitioner opined to a true cash value of $800,000, with a reliance on P-2 because it had a net adjustment of 9.5%. Respondent's value was $1,600,000. Respondent relied on market based adjustments. Respondent also displayed the vacant land sales that were relied upon in determining a value. Petitioner's P-2 is not a reliable sale. The Tribunal finds the other sales indicate that Respondent's true cash value of $1,600,000, is appropriate, based upon the market.

In a like fashion, the Tribunal will apply the parties' common sales, as well as, the sales that each party places reliance for the 2013 tax year.

2013 Sales	SUBJECT	P-6	P-7	R-6	R-8	R-10
Address	1895 Rathmor	287 Barden	3750 Lakecrest	1825 Rathmor	1650 Rathmor	3715 Lahser
Sale Price		$1,160,000	$910,000	$1,945,000	$1,350,000	$2,050,000
Sale Date		10/12	07/12	07/12	08/12	12/12
SF	4,738	4,758	4,168	7,092	6,137	5,933
BR	3	3	4			
Baths	3.1	4.1	4	5.4	3.1	6.2
Basement	Pt Fin	Fin WO	Un Fin WO	WO	Unf	Pt Fin
Gar	3 car	2 car	3 car	3 car	4 car	4 car
FP	1	1	2	4	2	4
Acres	2.72	1.5	2.1	2.2	1.71	1.4
CC Golf Front	CC Golf Front	No Golf Front	No Golf Front	CC Golf Front	Golf view	CC Golf Front
Gross Adj.		51%	74%	23%	30%	24%
Adj Sale Price		$1,076,000	$927,000	$1,624,000	$1,362,000	$1,975,000

Petitioners' sales P-6 and P-7 are not located on a golf course or within the subject neighborhood. Petitioners' rely on these sales for their lower net and gross adjustments. However, Respondent's adjustments are lower than Petitioners' lowest adjusted sales. Again, Respondent relies on market based adjustments. Therefore, a reasoned and reconciled determination of value is consistent with Respondent's conclusion of $1,650,000 for tax year 2013.

The relevant sales for tax year 2014 are:

2014 Sales	SUBJECT	P-11	P-12	R-11	R-12	R-13
Address	1895 Rathmor	2070 W Valley	145 Canterbury	2070 W Valley	1800 Rathmor	23 Pine Gate
Sale Price		$1,852,500	$975,000	$1,852,500	$1,600,000	$1,700,000
Sale Date		10/13	02/13	10/13	12/13	04/13
SF	4,738	4,891	4,151	4,891	6,702	5,942
Baths	3.1	5.2	4.2	5.2	6.2	5.2
Basement	Unf	Pt Fin	Pt Fin	Pt Fin	Pt Fin	Pt Fin
Misc		Pool		Pool	Pool	
Gar	3 car	3 car	3 car	3 car	4 car	4 car
FP	1	3	1	3	2	3
Fence/pool				Pool	Pool	
Acres		1.09	2.3	1.09	2.28	1.12
CC Golf	CC Golf Front	No Golf Front	No Golf Front	No Golf Front	No Golf Front	No Golf Front
Gross Adj.		34%	67%	26%	28%	34%
Adj Sale Price		$1,730,900	$975,400	$2,141,500	$1,439,000	$1,870,000

The parties' use of 2070 West Valley is persuasive in the analysis for the 2014 value. Further, Respondent's use of other common sales in prior years bolsters a conclusion of value. Consistent with 2012 and 2013, Petitioners' appraiser bases his adjustments on his experience. Respondent's adjustments are market based with an extraction for the difference of golf course frontage. Therefore, a reasoned and reconciled determination of value is consistent with Respondent's conclusion of $1,700,000 for 2014.

COST TO CURE

The remaining issue for consideration is the parties' contention of the cost to cure the subject's flooding. Petitioners' complaint of water ponding at various heavy rainfalls throughout any given year goes back to early 1990s.[59] Petitioners' concerns have played out in litigious actions with the Township. Through this adversity, Petitioners have been presented with various options to cure the flooding. Petitioners have gone through a mediation process, as well as, numerous hearings and are unsatisfied with the results. Respondent argues that this is a case of "self-imposed nonmaintenance"[60] similar to the situation in *Javens v City of Madison Heights*.[61]

[59] 8-26-14 Tr at 162
[60] 8-26-14 Tr at 188 - 189

Regardless of what measures, if any, have been undertaken or proposed to alleviate the flooding issue, the Tribunal is not a court of equity and cannot determine the parties' responsibility or liability for the flooding issues. This Tribunal's sole focus is the independent determination of true cash value for the subject property.

As stated above, Petitioners' appraisal contained a cost to cure of $300,000 (2012), $310,000 (2013) and $320,000 (2014) for external obsolescence. Johnson explained that the measurement of external obsolescence is the cost to cure it and Petitioners provided Johnson with the "Cost of Storm Sewer System" included as pages 19-30 of his appraisal. The appraiser did not, however, provide any independent analysis of this number, nor was any other evidence submitted regarding this alleged cost of a storm sewer. The "Cost of Storm Sewer System" information indicates a total cost of $320,078.21. As pointed out by Respondent's expert, James Burton, it is not known what the approximate $320,000 "is intended to construct because there's not a drawing associated with that."[62] In addition, Burton credibly testified that this "Cost of Storm Sewer System" would have to involve other properties, given the discussion of a 1,800 foot pipe, and the proposed outlet is at least four properties away from the subject.[63] Again, Petitioners' only expert with respect to their value contention was their appraiser, Kenneth Johnson, who did not prepare the "Cost of Storm Sewer System" and was unable to provide any specifics as to how the cost was derived or the specifics of how the system was to be constructed and implemented. The Tribunal finds the extreme cost of $300,000 - $320,000 to cure, without the benefit of actual evidence or supporting plans, documentation, or testimony from an expert called by Petitioners' in their case-in-chief, is not reasonable or logical.

R-15, prepared by Respondent's engineering expert, James Burton, proposes regrading the subject, which was explained as follows during cross-examination at the August 26, 2014 hearing:

> [I]t would operate very similar to a roadside ditch or a roadside swale where it would get wet and fill up. But considering that the outlet is a lower elevation, the water will not stand or pond or fill up. It will continue to move forward. There

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[61] *Javens v City of Madison Heights*, 11 MTT 396 (Docket No. 268355), issued June 12, 2001. Aff'd in *Javens v City of Madison Heights*, unpublished opinion per curiam of the Court of Appeals, issued October 28, 2003 (Docket No. 235301)

[62] 8-26-14 Tr at 206

[63] 8-26-14 Tr at 211-212

> could be a flow of water in there that could have some depth, but it would continue to move downstream into the swale and out.[64]

Burton further stated that his plan includes a single swale and that all of the additional grading would be done on the subject property, not the neighboring properties, and explained that his plan "captures the water, and it drains the areas that the water is flowing to, the low areas around the property."[65] He conceded that in theory, the plan would increase the amount of water that flows onto the Kiriluk property "but [is] no different than [Petitioners]. . . draining the surface ponds by pumping into his backyard as it was. It would be the same amount of water."[66] The proposed swale was stated to be 10 to 20 feet wide at its base and on a dry day, would not take up any part of the backyard, which would remain usable property. Burton did not believe that the patio on the subject would need to be removed in order to implement this swale plan; "it would go right around the patio. The rock wall would stay. The patio would stay. The trees would stay."[67] Testimony was further given at the August 26, 2014 hearing that the amount of water flowing to the subject property is irrelevant "because the base grade of the slope is sufficient to move water from one end to the other."[68]

With respect to the cost of R-15, Burton testified:

> [I]n past litigations . . . we came up with some grading plans. We added things in there . . . . We've thrown around the numbers $20,000 to $25,000. It's not a difficult sale, and I . . . think it would be much cheaper, but I also didn't do a count . . . for aesthetics and treatment . . . how you would want it to look.

Petitioners' arguments as to why they should be afforded the opportunity to further cross-examine James Burton included violation of due process and lack of access to a fair hearing and allegations that Mr. Burton provided false testimony and had prior inconsistent statements.[69] In order to afford Petitioners their due process and because of the error in the Prehearing Summary, the Tribunal scheduled a continued hearing, limited to the cross-examination of Mr. Burton (which included the opportunity to present rebuttal witnesses). Petitioners' did not, however, point to any specific testimony by Mr. Burton at the August 26, 2014 hearing that was

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[64] 8-26-14 Tr at 217
[65] 8-26-14 Tr at 226
[66] 8-26-14 Tr at 230
[67] 8-26-14 Tr at 232
[68] 8-26-14 Tr at 239
[69] See Petitioners' November 12, 2014 Motion for Reconsideration

inconsistent with statements he had made at an earlier time, nor did Petitioners point to any specific statements from the August 26, 2014 hearing transcript that were inconsistent with statements Mr. Burton had previously made. Instead, during the continued hearing in March of 2015, Petitioners introduced exhibit P-20, a 2004 letter prepared by Mr. Burton to the City of Bloomfield Hills that "evaluated the feasibility of extending a swale from Mr. Froling's [property] down to the pond."[70] *Black's Law Dictionary* (10th ed) defines "prior inconsistent statement" as "[a] witness's earlier statement that conflicts with the witness's testimony at trial." Under the Michigan Rules of Evidence, a prior inconsistent statement is an exception to the hearsay rules and may be introduced at trial.[71] The September 4, 2004 letter, however, is not a prior inconsistent made by Mr. Burton. Mr. Burton credibly testified regarding the history of how the September 4, 2004 letter came into existence: that it was the result of a June 8, 2004 meeting with the City Commissioners and that it included reviewing the cost estimate previously provided by HRC in 1997. The September 4, 2004 letter evaluated a swale that would run from behind the Froling property to the culvert under Long Lake Road and would require cutting a swale through several small hills on the Froling property. Further, the September 4, 2004 letter indicated that easements would be necessary from the adjacent property owners and that the "swale constructed along this route and given the information above would be difficult to maintain and could be considered unattractive."[72] He stated several times that the plan proposed in the September 4, 2004 letter is *not* the same as the swale plan proposed in R-15, specifically:

> This letter came out of conversations in June of 2004 . . . in meetings with [the Frolings] requesting a review of the cost estimate and is there an alternative way to get the costs down, meaning could we do it via swale versus an enclosed pipe system. This swale is a replacement of the pipe system which is not what is shown on R-15.[73]

Further, Mr. Burton indicated that the September 4, 2004 letter anticipated making changes to neighboring properties that would require easements while R-15 would not; he stated that the 2004 letter did not address any grading on the subject property and the "construction is

[70] P-20
[71] See MRE 801(d)
[72] P-20
[73] 3-3-15 Tr at 77-78

materially different" from R-15, with "different locations and . . . different construction . . . ."[74] Further, he explained that R-15 "is a swale around the home, around the property, to move the water from the areas that pond out to a suitable outlet."[75] The Tribunal finds that the September 4, 2004 plan and the R-15 swale plan are not of the same design or location. More importantly, the September 4, 2004 letter was prepared by Mr. Burton, on request by the City, to review and update the 1997 storm system previously proposed by HRC (prepared by Mr. Ritchie). The mere fact that over the course of several years, various plans have been proposed and developed does not make R-15 less credible. Petitioners failed to establish any prior inconsistent statements made by Mr. Burton that would discredit the truthfulness or accuracy of the testimony given at either the August 26, 2014 hearing or the March 2015 hearings.

Mr. Burton testified an estimated cost of the swale plan in R-15 at $20,000 to $25,000. Mr. Burton acknowledged that he did not request bids from contractors when making this estimate, as it was an engineering estimate, done by going over the plan and estimating what he thought the costs would be for the amount of dirt removed, the length of the swale, and drainage improvements, and would be up to the Frolings to construct and seek bids for the construction.[76] Mr. Rizzo testified that he would have grading contractors provide the quotes, but "as a preliminary cost . . . [an engineering estimate] gives you an idea, but it isn't appropriate if you want to get an actual cost."[77] Mr. Michalski stated:

> [I]t depends on what the number is going to be used for. You have a level of confidence in the work you do, and if I feel I need a high level of confidence in a cost estimate . . . my personal procedure is to try to get a check from a contractor. If it's in a very, very beginning planning stage where the number is not going to be used for any decision-making beyond conceptual planning, then we go through and develop the numbers based on our past experience.[78]

It appears that the $25,000 remedy, as indicated by Respondent's expert, to implement a swale and regrade the subject property would be a simple and affordable solution to alleviate the ponding on the subject property. This alternative has been presented to Petitioners by Burton, a professional engineer with the CFM designation. Further, Mr. Burton participated in the drafting

[74] 3-3-15 Tr at 88
[75] 3-3-15 Tr at 167
[76] 3-3-15 Tr at 200 – 201
[77] 3-25-15 Tr at 304
[78] 3-25-15 Tr at 473-474

of the City of Bloomfield Hills storm water management ordinance and is involved in the review process. It is his opinion that, although the slopes in R-15 are less than the 1%- 1.5% in the ordinance, the plan would still be approved if submitted, as the ordinance allows for other techniques and infiltration to be implemented. He further stated that there are other exemptions, as well as engineering judgment, that would allow deviation from the general guidelines.[79] The relevant section of the City ordinance contains provisions regarding minimum slope requirements for vegetated swales and open ditches, and states:

> Open ditch running slopes will depend on existing soils and vegetation and, whenever possible, will be greater than one and one-half (1.5) percent. For slopes less than one and one-half (1.5) percent, additional inspection will be necessary to ensure proper, positive drainage. *In no case shall slopes be less than one (1.0) percent, unless other techniques such as infiltration devices are implemented.* Maintenance for such devices must be detailed in the overall maintenance plan. [Emphasis added.][80]

Burton stated that R-15 does not include any additional infiltration devices because they are already in place on the property, namely, the catch basins, 4-6 inch underdrain pipes, and existing vegetation.[81] Petitioners' rebuttal witnesses both indicated that they would not design a plan with slopes less than 1%, with Mr. Rizzo indicating that the water would not move as effectively and there would still be ponding water under the slopes reflected in R-15.[82] The issue with ponding water, however, appears to be once you get off the Frolings' property; as Mr. Rizzo testified that the water would flow off the subject property, reach a flat point[83] on the neighboring Kiriluk swale, and would eventually overflow and drain.[84] Mr. Michalski stated "I will agree that the swale will convey flow in a positive direction."[85] Both rebuttal witnesses are also of the belief that easements would need to be obtained by both the Kiriluks and the golf course in order to implement R-15. Mr. Burton, however, testified that his swale plan in R-15 would not require any easements or off-site grading.

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[79] 3-3-15 Tr at 39
[80] P-19, Sec. 21-236(h)(2)(d)
[81] 3-3-15 Tr at 41
[82] 3-3-15 Tr at 244 – 246
[83] This flat point was indicated to be on the Kiriluk property where the elevation is declining to 96.7 and then goes to 96.8. See 3-25-15 Tr at 394-395
[84] 3-3-15 Tr at 256
[85] 3-25-15 Tr at 487

While both rebuttal witnesses expressed concerns with R-15, they conceded that R-15 would have some improvement on the flooding and ponding on the subject property:

> [Mr. Rizzo]: Will it be as bad as it is now? It probably would be a little better now . . . . But you're still going to have the water . . . . So you really just . . . created a situation where you're holding the water, and then eventually it drains. In my mind it's not really improving it much.[86]

> [Mr. Michalski]: [I]t's not a complete solution . . . you could do this work, but you would still have a lot of the same problems that they're experiencing now.[87]

Mr. Michalski further stated that R-15 is a solution, to some extent, and that the Frolings "would have less standing water on the property."[88]

Both rebuttal witnesses also acknowledged that R-15 would work when there is a light or normal rain event; Mr. Rizzo did not agree that R-15 would work in a ten-year storm event.[89] Mr. Michalski stated that the depths of water that would exist in R-15 during a ten-year storm event would be near the edge of the Frolings' house, which would add pressure to the basement walls.[90] He further acknowledged that R-15 would pass the flow rates for a ten-year storm event, but his concern is with the water level being near the side of the house.[91]

The rebuttal witnesses also expressed concerns regarding the additional volume of water that would be diverted to the swale on the Kiriluk property under R-15 and their belief that an easement would be required. The Tribunal finds, however, that Petitioners are currently utilizing the Kiriluk swale and have been doing so for several years, with no indication of any express permission or easement. It has not been persuasively established that continued use of the swale on the neighboring property by Petitioners, after implementation of R-15, would so substantially alter Petitioners current use of that swale that an easement would be required.

The Tribunal finds that implementation of R-15 is a reasonable solution to remove, or at least alleviate, the ponding issue on the subject property and this has been conceded to by Mr. Michalski, as well as testified to by Mr. Burton, both of whom are certified floodplain managers. While some concerns have been expressed, there have also been challenges and concerns

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[86] 3-25-15 Tr at 396
[87] 3-25-15 Tr at 472
[88] 3-25-15 Tr at 495-496
[89] See 3-25-15 Tr at 396-397
[90] See 3-25-15 Tr at 469
[91] See 3-25-15 T at 488

indicated with implementing a storm sewer system or a different swale. The Tribunal finds the swale proposed in R-15, contained to the subject property, is both reasonable and cost effective. While both of Petitioners' rebuttal witnesses are of the opinion that a storm drainage system is a better solution, as previously stated, Petitioners *did not*, in their case-in-chief, present expert testimony with respect to any proposed storm sewer system, nor did Petitioners submit plans for a proposed storm sewer system. Petitioners' appraiser did not independently prepare or evaluate the costs of a storm sewer system and the approximate $320,000 deduction taken in his appraisal, as stated above, was not supported.

The Tribunal considers that the $25,000 cost to cure could increase the market value of the subject property when completed. The landscaping (as described by Burton), in addition to curing the ponding of the water, may be an attractive feature that could add overall esthetic value to the subject property. Petitioners' effort in pumping rain water to divert ponding is commendable but these actions amount to a temporary solution. All parties agree that there is an issue on the subject property with respect to flooding and ponding water. Respondent's sales comparison approach, relied on by the Tribunal in the determination of true cash value, does not contain any additional deduction for the ponding issue and did not include comparables that were burdened by a similar problem. The only evidence properly presented to the Tribunal, and supported by expert testimony, with respect to any reduction in value that could be considered in light of this flooding/ponding issue is the engineering estimate of the cost to implement the swale plan proposed in R-15. Therefore, the cost to cure of $25,000, based on R-15 and testimony of James Burton, will be deducted from the true cash values reflected above in making a final value conclusion for the 2012, 2013, and 2014 tax years.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioners' fail to meet the burden of proving that the assessment exceeds market value. Respondent's revised true cash value based on the sales comparison approach indicates that the subject property is over assessed. The Tribunal will reduce the true cash value for the $25,000 cost to cure.

The subject property's TCV, SEV, and TV[92] for the tax years at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the October 21, 2014 Final Opinion and Judgment is VACATED.

IT IS FURTHER 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.

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, and prior to July 1, 2012, at the rate of 1.09%; and (iv) after June 30, 2012, through June 30, 2015, at the rate of 4.25%.

[92] Pursuant to MCL 211.27a2(a), the taxable value of the subject property is not affected by the reduction in true cash value.

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

By: Victoria L. Enyart

Entered: May 27, 2015