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

Prestige Properties of Grand Blanc LLC,
Petitioner,

v

MTT Docket No. 15-005218
& 15-005219

Grand Blanc Township,
Respondent.

Tribunal Judge Presiding
David B. Marmon

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Prestige Properties of Grand Blanc LLC appeals ad valorem property tax assessments levied by Respondent, Grand Blanc Township, against 34 parcels for the 2015 and 2016 tax years. David Nykanen, attorney, represented Petitioner, and William Delzer, attorney, represented Respondent.

A hearing on this matter was held on September 11, 2017. Two of Petitioner's witnesses were adverse witnesses. Those adverse witnesses were Respondent's independent appraiser Michael Snyder, along with Respondent's assessor, Rebecca Salvati. Petitioner also called Petitioner's principal owner, C. James Sabo. Respondent's witnesses were Michael Snyder as well as Rebecca Salvati.

In reviewing the transcript for the hearing, an issue not presented by either party was discovered concerning the timing of a transfer of ownership, and the possibility that the taxable value for the parcels must be uncapped for one or both of the years in question. A telephonic conference was held with the parties' attorneys, and post hearing briefs were ordered on an agreed upon schedule regarding the uncapping issue.[1] Petitioner filed its Post Hearing Brief on October 18, 2017. Respondent filed its Brief on November 7, 2017, and Petitioner filed its Reply on November 15, 2017.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values ("TCV"), state equalized values ("SEV"), and taxable values ("TV") of the subject

[1] Order Requiring Information and Schedule for Post Hearing Briefs, dated September 20, 2017.

property for the 2015 and 2016 tax years are set forth on the schedule attached at the end of this opinion.

PETITIONER'S CONTENTIONS

Petitioner contends that the selling price it paid for the subject property in 2013 of $15,000 per unit is the true cash value for the subject for both 2015 and 2016. Petitioner bases this contention on the selling price in two transactions, from two banks in the first quarter of 2013, as well as upon a bank sale for lot 27 which took place in 2012. Petitioner's contentions for each parcel are also included in the attached schedule.

PETITIONER'S ADMITTED EXHIBITS

P1 Marketing Brochure / Map of Pine Hollow Estates
P2 Survey of Unit 26

RESPONDENT'S CONTENTIONS

Respondent contends that the price per unit is $35,000 for both 2015 and 2016 based upon the appraisal performed by Michael Snyder. The assessed and taxable value on the roll for unit numbers 23-26, and 29 through 56 is $11,900 for 2015 and $11,300 for 2016. The values on the tax roll for units 57 and 58 are $23,800 for 2015 and $22,500 for 2016. The attached schedule includes the values currently on the tax roll, as well as Respondent's contentions.

RESPONDENT'S ADMITTED EXHIBITS

R1 Appraisal dated December 5, 2016 by Michael Snyder
R2 Jeff Sears letter to David Lattie dated March 22, 2017

WITNESSES

Michael Snyder

Petitioner called Michael Snyder, Respondent's appraiser in this matter, as an adverse witness. Snyder testified that he is a certified general appraiser licensed through the State of

Michigan.[2] Snyder testified that he inspected the subject 5 times; that the roads were gravel rather than paved, and that he would not consider the property to be wooded.[3] He was led through by Petitioner's counsel, the differences between the subject and the adjoining first phase of the Plum Hollow development, from which he chose two of his comparables. He agreed that the adjoining subdivision was wooded and had streams, as well as a clubhouse. As to the club house, Snyder pointed to P1, showing that the other phases, including the subject also had the clubhouse available.[4] He also agreed with Petitioner's counsel that developer's marketing materials may not specifically identify all of the limitations contained in separate phases of developments.[5]

Snyder gave the following explanation as to the unit of comparable used, and his application on a per site basis:

> Q. So, again, once you determine that price per square foot you would apply that price per square foot to your subject?
>
> A. I would, the only caveat I would say in this case, because I was kind of straddling between that and a mass appraisal where there is the price per site to keep consistent through valuation, that my total valuation was based on a price per square foot, my allocation was then based on a price per site based on the value I assigned to the whole.
>
> Q. With all due respect, Mr. Snyder, it sounds like you changed your approach halfway through your appraisal, it sounds like when you were calculating or selecting your comps you used a per square foot approach, didn't you?
>
> A. Yes.
>
> Q. When you applied it to the subject you used a per unit approach?
>
> A. For my final reconciliation, yes.[6]

Snyder went on to agree that after he determined a unit rate for those subject to this appeal, he reduced that rate by an allocated cost to complete. He further reduced that figure by a

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[2] T at 11.
[3] T at 14.
[4] T at 18-19.
[5] T at 20.
[6] T at 26.

50% lump sum which took into account market condition, absorption, possible marketing costs, and inability to construct units. He further testified that buried within the 50% discount were the outstanding fees owed for inspection, which Respondent required paid before allowing Petitioner to proceed with completion.[7] Snyder agreed with opposing counsel that the largest factor in that 50% reduction is market absorption.[8] He also agreed that unsold units (lots) from Phase 1, which was developed in 2002 remain unsold.[9]

Snyder also agreed that the subject's lot sizes were all at least twice as large as Petitioner's comparables 5 through 11, and that none of Petitioner's comparables were on unpaved roads.[10] He also agreed that he did not consider the sale of Unit 27 because it was a bank sale.

Later in the day, Snyder was called by Respondent as its valuation witness, at which time he presented his appraisal. He testified that "Grand Blanc is considered overall one of the most affluent areas in the county."[11] As to the subject's location, Snyder testified:

> That is considered one of the more affluent areas or at least larger homes on larger sites are nearby, that of the subject and there are also some larger subdivisions across McCandlish Road and as you travel further down to the south you have the Warwick Hills Golf Course, which was once the site of the Buick Open and Warwick Hills Country Club and that at one time was probably the most affluent area until some of these newer homes have been constructed.[12]

Regarding the condition of the property, Snyder testified that storm sewers and water lines appeared to be in place, and that the property was in the Grand Blanc school district.[13] As to highest and best use, he testified to his conclusion of residential condominium development.[14]

When asked about how he chose his sales comparables, Snyder had the following exchange:

> Q. There was no need for you to look outside of a close proximity based on the amount of comparables there are?

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[7] T at 29-31.
[8] T at 32.
[9] T at 34.
[10] T at 36.
[11] T at 111.
[12] T at 111-112.
[13] T at 112.
[14] T at 113.

> A. I don't know if I categorize it as need but the applicable sales I tried to find were within the township, within the same school district and nearest location to the subject so there were other sales I may have ran across either I did not feel were arms-length sales or represented as well as the [ones] I used.
>
> Q. Okay. And as you did on page 32, can you walk us through your conclusions with respect to the analysis of these comparables?
>
> A. Yes, after I compiled the sales and broke them down on the price-per-acre basis, it appears to me there was somewhat of a cohesive range irregardless [sic] of the size of the individual properties that were used so I did not try to make an arbitrary adjustment on them. What I did is tried to find sales of individual sites that have since been improved and drive the price per acre and took it from there.[15]

Snyder also testified that the price per acre was not affected by smaller sites, nor by the presence or absence of streams and woods.[16]

He then explained that his initial value per acre was $100,000, which was then reduced by the cost to complete, primarily paving the roads and curbs, prorated for the 34 subject lots. He then reduced this figure by 50%, and allocated the resulting value equally among the 34 parcels and concluded to a value of $35,000 per unit for 2015 and 2016.[17]

As to the highest and best use, Snyder eventually opined that it was for 34 individual buyers rather than a bulk buyer. He also testified that the 50% discount included the inability of the developer to build because of the lack of roads.[18]

Rebecca Salvati

The second witness called was Respondent's assessor, Rebecca Salvati. As with Michael Snyder, Salvati was called first by Petitioner as an adverse witness. Salvati was queried about the value she assessed on Unit 26 in Phase 1 of Pine Hollows, to which she responded that the owners brought her DEQ paperwork showing the lot to be non-buildable.[19]

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[15] T at 115-116.
[16] T at 117.
[17] T at 118-120.
[18] T at 126.
[19] T at 45-46. This line of inquiry, which eventually included a rebuttal exhibit as to whether it was buildable, was never linked up to Petitioner's theory of the case. An assessment of a lot in a neighboring subdivision, regardless of whether it was buildable in fact, is not a basis for valuing the subject property. This is especially true in this case,

Petitioner also made inquiries regarding the assessments found in the Emerald Waters Subdivision. Salvati did not believe that Emerald Waters was similar, because the lots were smaller than the subject and the school district was different. Salvati testified that the biggest difference is the school district.[20]

On examination by Respondent, Salvati, testified that Emerald Waters was in a different quadrant in the township, in a different school district, (Lake Fenton), and the lots were much smaller at only a third of an acre. Regarding the importance of the school district, Salvati had the following exchange with Respondent's counsel:

> We talked earlier, I'm sure you heard plenty about the school districts, how much of a factor is the school district in your opinion when assessing or looking at the value of properties within a township?
>
> A. The school district is what sets the market value.
>
> Q. Okay. Why is there -- or is there a difference as far as value between a property that has a school district of Lake Fenton schools and a property that has a school district of Grand Blanc Community Schools?
>
> A. From our assessing standpoint we have to take the sales that are out there to set our values and the Lake Fenton properties just don't sell the same way that the Grand Blanc school properties sell.
>
> Q. What are the values of sales of Grand Blanc Township homes in the Lake Fenton school district?
>
> A. The highest one I can think of was $207,000 and it was a brand-new house.
>
> Q. That was an improved lot, not a vacant lot?
>
> A. No, it was an improved sale but 207,000 is the highest sale in the Lake Fenton school district that we have. I don't consider that at all comparable to what Pine Hollow is.[21]

C. James Sabo

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where Respondent did not rely upon the assessor's assessments, and instead relied upon an appraisal prepared by an independent fee appraiser.

[20] T at 49-51.

[21] T at 128-129.

Petitioner's final witness was C. James Sabo, the sole member of Petitioner. Sabo denied that he had an ownership interest in the prior ownership of the subject. Rather, he testified that he was the manager of the project.[22] He then testified that Petitioner purchased the subject from two banks. He explained as follows:

> They then approached me in tandem, that is the two banks, knowing that I had some emotional interest, for lack of a better word, in trying to finish this out. Concurrent at that time I approached the township and they told me that if I was to buy that property back in New Co (phonetic), which would be Prestige, the other -- that they would allow me to build four homes on what was existing there, although we know it's not complete and substantial, there was a million dollars left to improve it. The logic is, at least that I applied at that time, would be if I bought it, I built four properties and it would help with the finance. Subsequent to the purchase the next set of management at the township determined that you can't do anything until it's fully completed, fully completed.
>
> Q. So let's step back again to the banks' marketing of the property. It's your understanding through being a builder in the community and in the state that the bank was marketing that property to builders?
>
> A. Aggressively, aggressively to developers. They were particularly unhappy about the fact that they got it. There was a lot of money owed so they were aggressively soliciting builders both in-county and out-county. I'm familiar with both Genesee County and I'm obviously familiar with the out-county being Oakland and they were trying to bring in as much as they could.[23]

The purchase price paid to the banks totaled $535,000, or $15,000 a lot. The sales closed in February and March of 2013.[24]

Sabo also discussed the sale of lot 27 in the same subdivision, which he testified was "the best one of the group."[25] The purchaser of that lot was also a developer who owned 90 acres across the street, and lived in the lot next to Lot 27. The sale price was also $15,000. However, the sale was in December of 2012.[26]

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[22] T at 54-55.
[23] T at 55-56.
[24] T at 64. Dividing $535,000 by 34 lots actually results in a price of $15,735 per lot.
[25] T at 58.
[26] T at 64.

On cross examination, Sabo testified that for the years in question, Petitioner's asking price for the subject lots ranged from $99,000 to $159,000 per lot.[27] Sabo did point out that he has not sold a lot since 2008.

Sabo also testified regarding the various ownership interests in the subject property. He testified that in 1997, SNM was the developer, signed by his mother, Mildred Sabo. It then at some point transferred to Pine Hollow Estates LLC, to which he claims never to have been a member. The property eventually was purchased from the banks by Petitioner, and his then wife Wendy Sabo was the sole member. He testified that he wound up with the membership interest in his divorce at some point between 2014 and the present.[28] He claimed never to have owned the subject prior to receiving it in the divorce, but stated he was the manager of the entities that did hold title.[29]

Regarding the area of Grand Blanc where the subject property sits, Sabo had the following exchange with opposing counsel:

> Q. Mr. Sabo, my question was where are the nicest homes in Grand Blanc Township, would you consider Pine Hollow as one of the nicest developments in Grand Blanc Township?
>
> A. I would certainly like to believe that, correct.
>
> Q. Would you agree that subdivisions, developments, whatever you like to call them, very close to Pine Hollow are also very nice or some of the nicer developments in Grand Blanc Township?
>
> A. Right across the street from me is a 400-home subdivision called Pulty [sic] so I guess I didn't agree with you.

Sabo also testified as to what was holding him back from building roads on the subject property. He admitted that he is in a dispute with the Township involving unpaid inspection fees. He denied that finances were holding him back, as he claims to have an investor.[30] Sabo also argued

[27] T at 75.
[28] T at 78-81.
[29] T at 82.
[30] T at 95-96.

that the Emerald Waters subdivision "is as close as we can get to what we're trying to do, about a $470,000 price point with a $49,000 lot."[31]

The final line of inquiry on cross examination was whether Sabo had ever placed sold signs on vacant lots that had not sold in an effort to increase sales. Sabo admitted to having used this marketing ploy in the past.[32] On redirect examination, he answered in the negative as to whether any of his testimony regarding sales prices and value of property being untrue.[33]

FINDINGS OF FACT

1. The subject is 34 parcels of land in Grand Blanc Township, Genesee County, north of McCandlish Rd and west of Vassar Rd. in a condominium development known as The Woods of Pine Hollow.
2. This development is a latter phase of a luxury development known as Pine Hollow; is marketed as though part of Pine Hollow Estates, and is accessible through Pine Hollow Estates, as well as from Vassar Rd.
3. The lot sizes range from .65 acres to 1.47 acres, with total acreage of the units being 31.88 acres.[34]
4. The master deed requires a minimum size home to be built of 3,000 square feet for a 1 story home, and 3,400 square feet for a 1.5 story home.[35]
5. The subject is in the Grand Blanc School District.
6. The marketing brochure presented by Petitioner shows pictures of luxury homes, and indicates that the homes start at $600,000.
7. Sabo testified that although he failed to sell any units, they were listed between $99,000 and $149,000 for the years at issue in this appeal.
8. The units and roads are platted, but the roads themselves have not been paved.
9. A construction cost estimate performed by Griggs Quaderer, to complete the project, including demolition, earthwork, installation of paving and utilities, clean up, landscaping

[31] T at 100.
[32] T at 106.
[33] T at 107.
[34] See R1, at 16.
[35] *Id*.

soil erosion control and engineering, and submitted by Petitioner with its Petition, and is also part of Respondent's appraisal totals $840,000.[36] This sum also includes work needed for two parcels that are not the subject of this appeal.

10. For the years in question, Petitioner has failed to pay $23,398 in inspection fees, which subsequently, has increased to $27,333.[37]
11. None of the units can be built upon until the construction for the infrastructure is completed, and the inspection fees have been paid.
12. The subject fell into foreclosure in 2009 to Citizens Bank and Union Bank, and was eventually sold to Prestige Properties of Grand Blanc LLC for $535,000, or $15,735 per lot in February and March of 2013.
13. Lot 27 of the same development sold for $15,000 in December of 2012 to a party unrelated to Petitioner.
14. The membership makeup of the subject transferred from its one member, Wendy Sabo to C. James Sabo pursuant to a divorce finalized in 2015.
15. Petitioner failed to provide the Tribunal with an appraisal, or any documentary evidence of the actual sales price paid.
16. Michael Snyder, CGA performed an appraisal on the subject for tax years 2015 and 2016.
17. Snyder determined that the subject's highest and best use is as a high end, residential condominium development.
18. Snyder used the sales comparison approach, and found 11 comparable sales of vacant sites that took place in 2014 or 2015.
19. While one comparable sold significantly below the others, (P-10, 10046 Mulberry Ln for $76,712 per acre), the other 10 comparables were in a tight range between $90,909 and $105,024 per acre.
20. Snyder concluded that neither the sizes nor locations of the parcels in his comparables had a significant effect on price per acre.[38]
21. The comparables ranged in size from .24 acres to .99 acres.

[36] R1 at 34.
[37] See R2, letter from Jeffrey Sears.
[38] R1 at 32.

22. The comparables were all in the Grand Blanc school district, were all in the same quadrant of the Township, and were located either in the adjoining development, or within 5 miles of the subject.
23. Respondent concluded that the price per acre is $100,000, which when allocated per unit "as completed" is $93,764 per unit.[39]
24. Using the cost to complete performed by Griggs Quaderer of $840,000, and subtracting the acreage associated with two units not subject to this appeal, and prorating the cost per unit, Snyder concluded that the cost to complete per unit at $22,588 and the adjusted estimated value equals $70,431 per unit, which he rounded to $70,000 per unit.[40]
25. Snyder then deducted an additional 50% due to "current market conditions, absorption, and inability to construct at the time of value."[41]
26. At hearing, Snyder testified that this 50% deduction also included the unpaid inspection fees to the township, but mainly included the market effect of absorption of these lots.[42]
27. With the 50% discount, Snyder concluded that the true cash value for each unit was $35,000.
28. One Hundred percent of the membership interest in Petitioner transferred from Wendy Sabo to C. James Sabo pursuant to a judgment of divorce, signed by the Hon. David Newblatt on May 26, 2017.
29. No consideration for the transfer of the membership interest was specified in the divorce judgment or property settlement agreement incorporated into the judgment.

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.[43]

> 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

[39] *Id*., at 32-33
[40] *Id*, at 33.
[41] *Id*.
[42] T at 31-32
[43] See MCL 211.27a.

> 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. . . .[44]

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.[45]

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."[46]

"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."[47] The Tribunal is not bound to accept either of the parties' theories of valuation.[48] "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."[49] 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."[50]

A proceeding before the Tax Tribunal is original, independent, and de novo.[51] The Tribunal's factual findings must be supported "by competent, material, and substantial evidence."[52] "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[53]

"The petitioner has the burden of proof in establishing the true cash value of the property."[54] "This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with

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[44] Const 1963, art 9, sec 3.
[45] MCL 211.27(1).
[46] *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).
[47] *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).
[48] *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).
[49] *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).
[50] *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).
[51] MCL 205.735a(2).
[52] *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).
[53] *Jones & Laughlin Steel Corp*, *supra* at 352-353.
[54] MCL 205.737(3).

the evidence, which may shift to the opposing party."[55] 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."[56]

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.[57] "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading."[58] 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.[59]

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.[60]

In this matter, Petitioner failed to file or exchange a valuation disclosure by the deadline established by the Prehearing General Call and Order of Procedure dated May 16, 2016, nor did it even offer a valuation at the Show Cause Hearing held on March 9, 2017 to determine if there was cause to allow a valuation to be presented. Nonetheless, Petitioner went to hearing with no valuation disclosure. The Tribunal allowed Petitioner to proceed as to valuation by calling Respondent's valuation witness and assessor as adverse witnesses. Rather than attempt to solicit an opinion of value from either Respondent's appraiser or assessor using hypotheticals, Petitioner called into question the comparability of Snyder's comparable sales, as well as other assumptions underlying both the appraisal and the assessment.

While Petitioner raised questions as to the reliability of Snyder's appraisal, it utterly failed to put forth a convincing case as to why the Tribunal should accept the 2013 bank sales of the subject to Petitioner as the basis of valuation in 2015 and 2016. The Tribunal rejects this

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[55] *Jones & Laughlin Steel Corp, supra* at 354-355.
[56] MCL 205.737(3).
[57] *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).
[58] *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale v City of Galesburg,* 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).
[59] *Antisdale, supra* at 277.
[60] See *Meadowlanes Ltd Dividend Housing Ass'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991).

formulation of value for multiple reasons. First of all, the sales were not in the appropriate year. That is especially significant in this case, where the region was just starting to emerge in 2013 from the economic malaise of 2008-2009. For tax year 2015, the Tribunal generally looks at sales in 2014. Respondent provided two such sales, along with 9 sales from 2015, again evidencing that a market existed for this type of property in the years in question, and thus rendering the subject's distress sales in 2013 a very unreliable indicator of value. Secondly, the actual sales price is not the presumed price, per MCL 211.27(6), which states as follows:

> (6) Except as otherwise provided in subsection (7), the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred. In determining the true cash value of transferred property, an assessing officer shall assess that property using the same valuation method used to value all other property of that same classification in the assessing jurisdiction. As used in this subsection and subsection (7), "purchase price" means the total consideration agreed to in an arms-length transaction and not at a forced sale paid by the purchaser of the property, stated in dollars, whether or not paid in dollars.

Thirdly, as suggested in subsection (6), "purchase price" does not include forced sales. In the present case, Petitioner relies upon the sale from two banks, which acquired the property through foreclosure. While bank sales may be considered,[61] Petitioner gave no evidence that in 2014 or 2015, bank sales were the normal method of acquisition in the community. In fact, there was testimony that Pulte had developed and sold homes in close proximity to the subject.[62] Moreover, the eleven sales located by Snyder are strong evidence that there is a market for residential lots, albeit in subdivisions that have been completed. Finally, the highest and best use concluded to by Respondent, as well as by Petitioner is for the sale of single family home sites. Petitioner acquired the subject property for completed residential development. There was no evidence that the banks were looking to sell off the individual units. Rather, it appears that the sales price from the banks to Petitioner reflect the investment value of the land for future development in 2013, and is not reflective of the property's highest and best use in 2015 and 2016.

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[61] See *Samonek v Norvell Twp*, 208 Mich App 80; 527 NW2d 24 (1994). In *Samonek*, the Court of Appeals held that it was error to automatically exclude the admission of a sale by quit-claim deed without determining whether or not it was a forced sale. Even if the sale was a forced sale, the Tribunal was instructed to determine if such sales were the common method of acquisition of similar parcels, and was allowed to determine how much weight to give this sale.

[62] T at 86.

The Michigan Supreme Court opined on the appropriateness of valuing lot sales on a wholesale basis in *Edward Rose Bldg Co v Independence Twp*.[63] In *Edward Rose*, the Supreme Court held that where the highest and best use was agreed to be residential lots, and the lots were platted, with infrastructure installed, the Tribunal erred in valuing the lots at a discount. Rather, the lots were to be valued at their retail value, rather than a wholesale value. The decision in *Edward Rose* is also problematic to Snyder's appraisal in establishing a true cash value under Michigan law.

Snyder applied a 50% discount to his value, which apparently took into account absorption. Snyder provided no evidence as to how he came up with the 50% value, as opposed to another value such as 20% or 80 %. The Tribunal does agree that in the real world, there would likely be a discount for the fact that the lots would not likely sell to individuals at the same time. However, the legality of employing discounts to determine true cash value of residential lots has been ruled upon in *Edward Rose*. The Supreme Court stated:

> However, the Tax Tribunal inappropriately proceeded one step further. The tribunal discounted the valuations per lot "to allow an 18% mark up for the influence of development costs during the holding period of liquidation." Thus, the Tax Tribunal essentially took the "wholesale" approach, adopting the township's assessment, less eighteen percent. This application of a wholesale discount disregards several factors essential to an accurate computation of true cash value.[64]

The Court went on to approvingly site the following quotes, and conclude as follows:

> "There is no dispute that the highest and best use of each lot is for the construction of a single-family residence. Only by valuing the property at its highest and best use can the true cash value of a property be determined. [Citation omitted.] *The developer's discount does not assess the value of the properties if put to their highest and best use, but reduces their value to arrive at the value of the properties considered as an investment. Investment is not the highest and best use of the properties."*
>
> ***
>
> "Although we reject a developer's discount in the situation in which the original holding has been subdivided into several lots and the subdivision has been fully developed, it is appropriate to take into account the present legal and physical status of the property. Even if the best use of a property would be for subdivision, the property's present value would take into account the fact that the property

[63] *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620; 462 NW2d 325 (1990).
[64] *Id*., at 633.

> would not be presently usable for the sale of individual lots. *However, when the property has been subdivided and roads and utilities provided to each lot, there are no longer development costs which would affect the present market value of each lot. Each lot is fully developed and ready to be put to its highest and best use.*" *First Interstate, supra,* pp. 453-455, 760 P.2d 880. (Emphasis added.) Cf. *Appeal of Sawmill Brook Development Co.*, 129 N.H. 410, 529 A.2d 902 (1987); *Cigolini Associates v. Borough of Fairview*, 208 N.J.Super. 654, 506 A.2d 811 (1986).
>
> In the present analogous circumstances, it similarly cannot be said that the investment value to the petitioner bears a relationship to the fair market value of the improved property when put to its highest and best use. A discount may be appropriate where an undeveloped tract of land exists without improvements. The recognized "developmental approach" to valuation allows for such a discount. However, this approach is appropriate only in instances involving unimproved property. [Emphasis in original].[65]

In this appeal, the only valuation witness has concluded that the highest and best use is for the sale of residential units at retail. While the Tribunal is bothered by Snyder's reliance on the outdated Eleventh Edition of the Appraisal of Real Estate for his definition,[66] the Tribunal concurs that residential development for retail sale meets the definition found in the most current edition of *The Appraisal of Real Estate*.[67] Those tests are: physically possible, legally permissible, financially feasible and most profitable. Here, the property is already platted and cleared, much of the infrastructure has been installed, and master deed and zoning require this use. As to financially feasible, the sales which Snyder has located indicate that unlike the dark economic period from 2009 through 2013, the market for residential housing in this neighborhood has improved. The neighboring Pulte development is another indicator that homes can be built and sold. As to "most profitable," it is notable that Petitioner has priced the lots at $99,000 to $159,000 per lot for the tax years in question.[68]

Here, Snyder used eleven sales comparables close in time to the valuation dates, and close in physical proximity to the subject to reach its conclusion of value "as completed." He then reduced this amount by the cost to complete, which was based upon the estimate prepared

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[65] *Id*., at 634-636.
[66] Appraisal Institute, *The Appraisal of Real Estate*,(Chicago: American Institute of Real Estate Appraisers,11th ed 1996).
[67] Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013) p 308.
[68] T at 75.

by Griggs Quaderer, and submitted by *Petitioner* in support of its original Petition. The resulting figure, prior to applying the 50% discount is $70,000 per unit. The Tribunal finds this analysis credible. It takes into account the fact that Petitioner has not yet made the property sale ready. The range of prices per acre are tight, regardless of size. However, Snyder's reduction by another 50% is flawed in that it apparently was derived based solely on his judgment, and fatally flawed in determining true cash value as it runs afoul of *Edward Rose*.

Petitioner's attempt to discredit the pre-discount portion of Snyder's analysis misses the mark. Petitioner suggests that the subject lots do not have all of the amenities of Phase 1, (upon which 3 comparables were used), including a club house and walking paths around the ponds. Interestingly, its marketing materials, which it introduced over the objection of Respondent, imply that buyers of the subject are also entitled to use these amenities. Petitioner's argument that its own materials may be misleading in this regard hardly does much to establish Sabo's credibility, even if he promised the Tribunal that despite less than honest business practices, he was testifying truthfully.[69] Petitioner could have brought in the master deed, or other documents as rebuttal if it wished, to convince the Tribunal that its marketing materials are misleading, and the subject parcels cannot use these amenities.

Nor does the Tribunal find the argument that Snyder's comparables were all on paved streets, and thus not comparable, to have any merit. Snyder used the comparables to value the sites "as completed." Snyder then took the lack of paved roads into account by using Petitioner's submitted costs as the cost to cure, and reducing the value per unit site accordingly. The Tribunal is also unimpressed with Petitioner's arguments that the subject is inferior because of lack of trees. Its own cost to cure includes landscaping. Snyder's comment on this point, that "some people don't want to rake leaves," has merit.[70] In any case, Petitioner failed to provide a single piece of evidence showing how the market differentiates between the subject's luxury lots on a former horse farm versus luxury lots on whatever Phase 1 of its development once sat upon.

Petitioner also attempted to argue that the assessment for Lot 26 is somehow relevant to the true cash value of the subject. Petitioner introduced evidence which it contends shows that Lot 26, which apparently has a low, (but undisclosed) assessment, which is more in line with

[69] T at 107.
[70] T at 117.

Petitioner's contention. Salvati testified that she assessed Lot 26 as if it were not buildable because of water issues, after reviewing materials from the DEQ. Even if Petitioner could prove, as it tried to do with Exhibit P2, that Lot 26 was buildable, and the assessor's assumptions were unfounded, that is not reliable evidence to establish the true cash value of the subject lots. That is especially true here, where the Respondent is not relying upon the assessments to support its contention of value. All Petitioner's attempt to prove that Lot 26 is buildable could accomplish is to show that Lot 26 was under assessed. That inquiry is irrelevant in determining the subject lots' true cash values.

Petitioner also made much of the fact that Snyder developed a price per acre and then spread it upon the lots in an allocation. The Tribunal holds in this case this allocation is not erroneous. The lots varied in size from .6483 acres to 1.47 acres for 34 units on 31.88 acres, so the average lot is slightly smaller than an acre. Snyder testified that he was concerned about uniformity, and allocated the acreage price to a standardized price per lot. While not ideal, the Tribunal was not presented with evidence on the differences and similarities of each of the 34 lots, or any common areas. Accordingly, given the inexactness of the science of appraisal, the Tribunal finds Snyder's allocation to be adequate for purposes of determining the true cash value of this development.

The Tribunal therefore concludes pursuant to Respondent's appraisal prior to the application of the 50% discount, and pursuant to the Supreme Court's holding in *Edward Rose,* that the true cash value for each of the subject lots is $70,000 and the state equalized value for both years is $35,000 per lot.

Taxable Value

During the testimony of C. James Sabo, the Tribunal became aware of what appears to be a transfer of ownership for one or both years under appeal. Specifically, Sabo testified that Petitioner was owned 100% by his then wife Wendy, and that pursuant to a divorce, he acquired 100% ownership. Sabo was not clear as to when the judgment of divorce was entered.[71] As the Tribunal is duty bound per MCL 205.737 to determine a property's taxable value pursuant to MCL 211.27a, the Tribunal ordered post-hearing briefs on this issue, and also ordered that,

[71] T at 81-82.

"[s]aid brief shall include as a separate exhibit, the divorce judgment, and any other relevant document that transferred the interest in Petitioner from Wendy Sabo to C. James Sabo."[72]

Attached to Petitioner's Post-hearing Brief filed on October 18, 2017 is a heavily redacted copy of the judgment of divorce signed by Judge Newblatt on May 26, 2015.[73] In paragraph 4, the Judgment adopts the parties' Property Settlement Agreement dated March 25, 2015. In that agreement, Charles [C. James] Sabo was awarded "any and all interest, assets and liabilities, in Prestige Properties of Grand Blanc LLC, and the real estate associated therewith." Unredacted copies of the divorce judgment and property settlement agreement were later supplied as attachments to Petitioner's Reply Brief filed on November 15, 2017.

The relevant provision providing for a transfer of ownership, and thus the uncapping of taxable value is MCL 211.27a(6)(h), which states:

> Except as otherwise provided in this subdivision, a conveyance of an ownership interest in a corporation, partnership, sole proprietorship, *limited liability company*, limited liability partnership, or other legal entity if the ownership interest conveyed is *more than 50% of the* corporation, partnership, sole proprietorship, *limited liability company*, limited liability partnership, or other legal entity. Unless notification is provided under subsection (10), the corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity shall notify the assessing officer on a form provided by the state tax commission not more than 45 days after a conveyance of an ownership interest that constitutes a transfer of ownership under this subdivision. [Emphasis added].

Clearly, a transfer of 100% membership interest in Petitioner from Wendy Sabo to C. James Sabo in 2015 raised the issue of an uncapping of taxable value in 2016. Further, for uncapping purposes, it is well settled that a transfer of a controlling interest of an LLC is a transfer in interest of the property owned by that LLC. *Signature Villas v Ann Arbor*.[74]

However, Petitioner argues that there are at least two exceptions to this provision that are relevant here. The first exception is found in MCL 211.27a(7)(a), which states:

> (7) Transfer of ownership does not include the following:
> ***

[72] Order Requiring Information and Schedule for Post hearing Briefs dated September 20, 2017.
[73] *Wendy Sabo v Charles Sabo* 7th Cir Ct Docket No, 14-312185 DO.
[74] *Signature Villas v Ann Arbor*, 269 Mich App 694; 714 NW2d 392 (2006).

> (a) The transfer of property from 1 spouse to the other spouse or from a decedent to a surviving spouse.

Petitioner argues that because the parties were married, this transfer falls within the first exemption from uncapping. The Tribunal disagrees. While the parties entered into a property settlement on March 25, 2015, that settlement did not become effective until judge Newblatt crossed the two t's in his name on the judgment, at which point, Mr. and Mrs. Sabo were no longer spouses. *Tiedman v Tiedman.*[75] In *Tiedman*, our Supreme Court observed:

> After a judge's oral pronouncement that he will sign a judgment of divorce a dispute might arise regarding the meaning of the words used by the lawyers in stating the terms of a property settlement, or the parties might reconcile or, for other reasons, by mutual agreement abandon the action for divorce and resume the marriage relationship. They would not be divorced simply because the judge had said a divorce is or will be granted or that he would sign a judgment of divorce.
>
> The rule is well established that courts speak through their judgments and decrees, not their oral statements or written opinions. Generally, a judgment or order is reduced to written form, as was contemplated in this case; until reduced to writing and signed, the judgment did not become effective and the parties remained married. [Footnotes omitted].[76]

Accordingly, as the parties were not spouses at the time the transfer became effective, the exception to transfer of ownership under MCL 211.27a(7)(a) does not apply.

Petitioner next argues that the transfer of Petitioner's membership interest is not a transfer of ownership under MCL 211.27a(7)(h), because it was court ordered, and no specific monetary consideration was specified. The Tribunal agrees. That section excludes from "transfer of ownership":

> (h) A transfer pursuant to a judgment or order of a court of record making or ordering a transfer, unless a specific monetary consideration is specified or ordered by the court for the transfer.

Clearly, the transfer was pursuant to a court's judgment. The same reasoning which holds that the transfer was ineffective until the judgment was entered compels the conclusion that the

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[75] *Tiedman v Tiedman*, 400 Mich 571; 255 NW2d 623 (1977).
[76] *Id*., at 575-576.

judgment is the event that effectuates the transfer from Mrs. Sabo to Mr. Sabo. Further, neither the unredacted copy of the settlement agreement nor the divorce judgment itself specify monetary consideration for the transfer of Petitioner's membership interest ordered by the court. Accordingly, per MCL 211.7a(7)(h), the change in ownership of Petitioner is not considered a transfer of ownership for uncapping purposes.

In its Brief,[77] Respondent seems to argue that Petitioner's failure to file a Property Transfer Affidavit, ("PTA") or to update its corporate filings with the State of Michigan raise questions of fact as to whether any of the above provisions apply. The Tribunal disagrees. As to the failure to file a PTA, Petitioner's point that because the transaction was exempt, the filing of a PTA is unnecessary is well taken. While MCL 211.27a(10) requires the purchaser to file a PTA within 45 days, the membership transfer in this circumstance is not a transfer of ownership, and accordingly, that requirement does not apply. While such failures may eventually raise concerns with at Title Company, Michigan law allows for correction of limited liability company documents effective to the document's original date.[78] The Tribunal also agrees with Petitioner that its failure to file the appropriate documents with the State of Michigan is not relevant as to whether or when a transfer occurred for uncapping purposes. The final factual issue raised by Respondent is an email dated April 20, 2016 by Mr. Sabo concerning ownership of Prestige Properties through another LLC, which might create another uncapping issue. However, this email, while an interesting side note, is outside of the evidence at hearing, and outside the scope of the Tribunal's September 20, 2017 Order. Accordingly, the Tribunal declines to consider this last bit of evidence as beyond the scope of this appeal.[79]

Respondent also apparently argues that while a change in ownership of an entity triggers an uncapping, the exceptions found under (7)(a) and (h) only apply to a change in title of the property. The Tribunal disagrees. The uncapping definitions found in MCL 211.27a relate to both "the conveyance of title to or a present interest in property, including the beneficial use of the property…."[80] As to (7)(h), the operating language is "a transfer pursuant to judgment."

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[77] Respondent's Brief in Response Regarding Conveyance of Membership Interest, filed November 7, 2017.
[78] MCL 450.4106(4).
[79] If Respondent is so inclined, it can take actions under MCL 211.27c. The Tribunal declines to comment as to whether such an action, if litigated here would be successful, or subject to such doctrines as res judicata or collateral estoppel.
[80] MCL 211.27a(6).

Subsection (7)(h) does not use the term conveyance of title. Accordingly, the Tribunal holds that "transfer" as used in this subsection refers to the same broad set of transactions as found in subsection (6), and Respondent's argument fails.

As to taxable value, the Tribunal holds that although assessed values for each parcel have been significantly raised, there is no transfer of ownership for uncapping purposes, per MCL 211.27a(7)(h). Accordingly, the taxable values for 2015 remain as they appear on the roll. For 2016, as the taxable value remains capped, the values increase only by the Consumer Price Index of 1.003.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject property's TCVs, SEVs, and TVs for the tax year(s) at issue are as stated in the attachment.

JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax year(s) at issue are MODIFIED as set forth in the attachment to 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, 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%, and (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%.

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

APPEAL RIGHTS

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

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[81] 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.[82] 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.[83] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[84]

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

[81] See TTR 261 and 257.
[82] See TTR 217 and 267.
[83] See TTR 261 and 225.
[84] See TTR 261 and 257.

than 21 days after the entry of the final decision, it is an "appeal by leave."[85] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[86] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[87]

By David B. Marmon

Entered: December 5, 2017

[85] See MCL 205.753 and MCR 7.204.
[86] See TTR 213.
[87] See TTR 217 and 267.