

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

George F. Eyde Family, LLC, a Michigan Limited  
Liability Company,  
Petitioner,

v

MTT Docket No. 453340

Delhi Charter Township, a Michigan  
Municipal Corporation  
Respondent.

Tribunal Judge Presiding  
Preeti Gadola

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, George F. Eyde Family, LLC (“Eyde”), appeals the ad valorem property tax assessments levied by Respondent, Delhi Township (“Township”), against Parcel No. 33-25-05-24-200-018 for the 2013 and 2014 tax years. The parcel consists of 83 + acres of land.

A hearing on this matter was held on March 9-11, 2015. Jared A. Roberts and David Pierson, attorneys, appeared on behalf of Petitioner, and David Revore, attorney, appeared on behalf of Respondent. Petitioner’s witnesses were Mark Clouse, Chief Financial Officer and General Counsel, Eyde Companies and G. Tobin “Toby” Heaton, appraiser, and Respondent’s witnesses were Robert J. Vertalka and David M. Heinowski, appraisers, Tracy Miller, Director, Community Development Department, Delhi Township and Howard Haas, Director, Downtown Development Authority, Delhi Township.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash value (“TCV”), state equalized value (“SEV”), and taxable value (“TV”) of the subject property for the tax years at issue are as follows:

**Parcel Number:** 33-25-05-24-200-018

Year	TCV	SEV	TV
2013	\$3,435,000	\$1,717,500	\$1,717,500
2014	\$3,435,000	\$1,717,500	\$1,717,500

### PETITIONER'S CONTENTIONS

Petitioner contends that the subject property is assessed in excess of 50% of its true cash value.

Petitioner's contentions of TCV, SEV, and TV, before and at hearing, are as follows:

**Parcel Number:** 33-25-05-24-200-018

Year	TCV	SEV	TV
2013	\$915,000	\$457,500	\$457,500
2014	\$915,000	\$457,500	\$457,500

Petitioner's revised contentions of TCV, SEV, and TV are as follows:

**Parcel Number:** 33-25-05-24-200-018

Year	TCV	SEV	TV
2013	\$305,000	\$152,500	\$152,500
2014	\$305,000	\$152,500	\$152,500

### PETITIONER'S ADMITTED EXHIBITS

- P-1 Appraisal Report prepared by Toby Heaton
- P-2 Appraisal Report prepared by Robert Vertalka for tax years 2013-2014
- P-3 Appraisal Report prepared by Robert Vertalka for tax years 2009-2011
- P-4 Fourteen Corporation v. Township of Delhi, MTT 366354
- P-5K August 2011 CBRE Activity and Marketing Documents
- P-6 Property Tax Information and Bills
- P-7A Delhi Township GIS Documents
- P-7B Subject Property Photographs
- P-8 Respondent Comparable One (Waverly Golf Course)
- P-8G CBRE Listing Documents
- P-9A Purchase and Development Agreement – Respondent's Comparable Two
- P-10 Respondent Comparable Three Documents (MSUFCU)
- P-11A Meridian Township Parcel Viewer Images re: Respondent's Comparable Four (Lake Lansing)
- P-11B Media Accounts of Transaction
- P-12A Purchase Agreement – Petitioner's Comparable One (Delhi Township DDA)

P-12B Deed

P-12C Delhi GIS Images

P-14 Respondent's Comparable Six Documents (Delta Township)

P-19 Mock-Up Sketch for Subject

P-21 Respondent's Appraiser Notes

P-22 Comparable Four Closing Statement

P-23 Vertalka Appraisal of Comparable Four

P-24 Concept Plan

#### PETITIONER'S WITNESSES

##### **Mark Clouse**

Petitioner presented testimony from Mark Clouse, Chief Financial Officer and General Counsel, Eyde Companies. He testified that Eyde Company is a “d/b/a of Eyde Construction Company, but under the umbrella of the Eyde Company we have the George F. Eyde Family, LLC, the Louis Eyde Family, LLC, and probably 25 or 30 other LLCs”<sup>1</sup> Mr. Clouse testified that he is the Chief Financial Officer and General Counsel for all the sub entities including Petitioner. When questioned, what does Eyde do? He answered, “I guess I would describe us as real estate developers, both for residential and commercial, industrial, retail, offices. We accumulate properties, we develop and hold it. We build subdivisions. Generally we’ll build it to hold for ourselves.”<sup>2</sup> Mr. Clouse testified that he and George and Lou Eyde, manager members of their families, accumulate property, however, he is the person that does the due diligence as to whether or not to purchase. He is also involved in the development of assets including “special use permits . . . other development approvals through the community, I’m the person that works with the Township. I go to the public hearings, I fill out the applications. I am kind of the – the face of our company when it comes to the local municipalities.”<sup>3</sup> He also keeps track of income statements and carrying costs of the various properties. Mr. Clouse testified that 80% of Eyde properties are in Mid-Michigan including 4,000 acres of vacant land, “most of that

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<sup>1</sup> March 9, 2015 Tr. at 11.

<sup>2</sup> March 9, 2015 Tr at 12.

<sup>3</sup> March 9, 2015 Tr at 13-14.

is in Mid-Michigan.”<sup>4</sup> The majority of their property is in “Lansing, Meridian Township, Delta, Delhi, Shiawassee County, Jackson.”<sup>5</sup> He testified that Eyde holds vacant land, such as the subject property, for development and testified, “that’s probably part of the success for George and Lou Eyde is the fact that they foresaw Mid-Michigan growing. . . . They’ve accumulated land since they started working together in 1958. I have accumulated land throughout Mid-Michigan area, generally in large parcels or accumulating in pieces and bringing them together, and have done an excellent job of doing that, and I think that’s probably the success of their company, because they were able to accumulate those over the years and quite honestly continue to do that where it’s available.”<sup>6</sup>

Mr. Clouse testified that the subject vacant, large (83+ acres) parcel of property is on the corner of Holt and College roads, that he grew up near there, attended Holt schools, and was very familiar with the property. He testified the property is currently being farmed, was on the market for many years and was finally purchased by Eyde in 2012 for \$3,680 per acre of \$305,000 total. There are some industrial buildings nearby, possibly Tailor Steel or RSDC facility, Aspen Lakes or Aspen Springs apartments, condominiums and single family homes, Sierra Heights units, “I don’t know the number of units back there, but there are hundreds, hundreds of them.”<sup>7</sup> There is a sign visible on the Delhi GIS map that says “Eyde Aspen, LLC DTN Holdings Hollow.” When asked what that means, Mr. Clouse answered, “that is a parcel owned by Louis Eyde, one of the principals of our companies and DTN and principals of DTN.” “Q: that helps explain why you know so much about DTN’s Aspen Lakes operation.” “A: That being part of it, I mean but also the fact that we work cooperatively with one another and we also own other properties together.”<sup>8</sup> There is also a freeway exit nearby at Holt Road off of 127, but it’s a rural interchange with no services available.

Mr. Clouse testified that there is no proposed development at the subject property, “but we do have ideas, we have layouts of things that we felt could happen on this site, we’ve been

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<sup>4</sup> March 9, 2015 Tr. at 19.

<sup>5</sup> March 9, 2015 Tr. at 19-20.

<sup>6</sup> March 9, 2015 Tr. at 23.

<sup>7</sup> March 9, 2015 Tr. at 43.

<sup>8</sup> March 9, 2015 Tr. at 44.

discussing what the market is over in that area.” However, “Nothing has come up, but there are certainly no - - no definite plan. There is no rezoning pending.” It is something we’ll continue to look at and work on and eventually do so, but not - - we have not done it.”<sup>9</sup> He also testified that rezoning is not always an easy process as they’ve learned with regard to their development on M-99 which they desired to have rezoned with a residential component. In fact, Eyde is in litigation over this issue because “they would not approve multifamily on and the case is still pending . . . .”<sup>10</sup>

Mr. Clouse testified that Eyde hired Mr. Richard (“Dick”) Cooley to work with it to come up with ideas for the subject site. Mr. Cooley drew up some preliminary concepts which then had to be approved by engineers and surveyors to see if the concepts were feasible. He testified that he chatted with Tracy Miller, Director, Community Development Department, Delhi Township, about Mr. Cooley’s drawing and afterward, the Township changed its Master Plan, however, he did not think the plan was amended strictly as a result of the Cooley drawing because “it’s not consistent with what we were talking about, but there were changes. . . . They did not include multifamily, which is what we had proposed . . . .”<sup>11</sup>

With regard to Mr. Vertalka’s appraisal, Mr. Clouse offered his opinion based on his familiarity with property sales in the area. He testified regarding comparable two, the former Red Cedar Golf Course, adjacent to Frandor Shopping Center and the Michigan State University (“MSU”) Campus. He testified that “this is a place that can be – have student housing on them. And so this is a site that will have a great deal of student housing as well as other retail use, so it is a – it’s a great site for that.”<sup>12</sup> He testified “the student housing market is probably the hottest market that we have in the community today. It is the most - - it is the - -make the most valuable land of anything that we have in our - - in our community for us.”<sup>13</sup> He testified that in the last three years Eyde has sold “three different parcels to a group called Capstone who have developed student housing on the property that we own in Meridian Township . . . .” When

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<sup>9</sup> March 9, 2015 Tr. at 181-182.

<sup>10</sup> March 9, 2015 Tr. at 182.

<sup>11</sup> March 9, 2015 Tr. at 208.

<sup>12</sup> March 9, 2015 Tr. at 137.

<sup>13</sup> March 9, 2015 Tr. at 136.

asked on direct examination, “What’s - - what’s the stuff to Capstone going for?” “A: About \$750,000 an acre.” “Q: And that’s student housing?” “A: Yep.”<sup>14</sup>

### **Toby Heaton**

Petitioner presented testimony from its appraiser, Toby Heaton. Based on his experience and training, the Tribunal accepted Mr. Heaton as an expert in the valuation of real property. Mr. Heaton prepared and communicated an appraisal of the subject property. The appraisal sets forth the sales comparison approach to value by comparing six sales of vacant land and adjusting them to be consistent with the characteristics of the subject property.

Mr. Heaton presented five vacant land, industrial sales and one vacant land, industrial/commercial sale. Mr. Heaton’s first comparable is located on Holt Road directly adjacent to the subject property, consists of 11.34 acres, including some wetlands, and was purchased by Eyde for \$3,728 per acre on April 30, 2013, which is approximately the same price per acre paid for the subject property. The property was purchased from the Downtown Development Authority (“DDA”), and was an arm’s length sale per Mr. Heaton.<sup>15</sup> Comparable two is a Delta Township, three parcel industrial sale of 48.64 acres and sold for approximately \$11,600 per acre on April 23, 2013. Comparable three is a Delta Township industrial parcel of 4.4 acres and sold for \$18,182 per acre on July 18, 2013. Comparable four is a Delta Township industrial parcel consisting of 11.43 acres which sold on August 10, 2012 for \$18,548 per acre. Comparable five is a Delta Township industrial property sale of 11.21 acres and sold for \$26,762 per acre on March 21, 2012 and comparable six is a Delta Township industrial site sale of 79.42 acres and sold for \$10,703 per acre on June 7, 2010. As noted above, all of the comparable sales were of vacant land such as the subject property<sup>16</sup>. Mr. Heaton further testified that he utilized industrial sales comparables due to the proximity of industrial land/ improvements to the subject property and the general lack of availability of sales, but also acknowledged its current zoning included commercial and industrial with special use permits and/or zoning changes possible to

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<sup>14</sup> March 9, 2015 Tr. at 138-139.

<sup>15</sup> March 9, 2015 Tr. at 246-247.

<sup>16</sup> P-1at 26-31.

build single-family residential or multi-family properties. On cross-examination, he testified that Aspen Lakes, a multi-family development is 1/8 mile from the subject property.<sup>17</sup>

Mr. Heaton placed the least weight on comparable one which was the DDA sale, a “clear outlier of the group at the low end of the range.” “Given that the seller was a municipal entity, it will be given less weight in the reconciliation.”<sup>18</sup> He also determined sale five was the outlier at the high end of the range, “which could be attributed to the road infrastructure and/or the lots, which would allow a developer to sell off lots individually, which could be advantageous.”<sup>19</sup> His sales two, three, four and six resulted in a tight value range of \$11,238 to \$14,838 per acre; however he gave the most weight to sale six “which was deemed the most representative of the market due to its similar size compared to the subject property; therefore, I concluded a market value or true cash value of \$12,000 per acre for the subject property.”<sup>20</sup>

On cross examination, Mr. Heaton was questioned as to whether he ascribed any value to the wetlands situated on comparable one and he answered, “[f]or the portions that could be mitigated.” He did not, however, assign any value to the wetlands situated on the subject property confirming that comparable one was directly adjacent to the subject property, but that the wetlands were totally different.<sup>21</sup> With regard to comparable two Mr. Heaton acknowledged that the sale was a bank sale from Eaton Investments, a subsidiary of Independent Bank. He testified, “I was aware it was a distressed property at one time. My understanding was that it was marketed heavily, though, which impacted the thought process in using that as a comparable.”<sup>22</sup> He testified that he was not aware of the motivation to sell nor had he contacted the seller to verify the sale. With regard to comparable three, Mr. Heaton testified that he visited the comparable property, but did not note there was a ravine or billboard upon it, and did not make adjustments for the same. When questioned about comparable four, Mr. Heaton admitted that he was aware the property sold a second time, yet he utilized the first sale price (2012) of the property. Comparable four sold for \$425,000 on June 7, 2013 and for \$212,000 on August 10,

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<sup>17</sup> March 10, 2015 Tr. at 31.

<sup>18</sup> March 9, 2015 Tr. at 260.

<sup>19</sup> March 9, 2015 Tr. at 260-261.

<sup>20</sup> March 9, 2015 Tr. at 261.

<sup>21</sup> March 10, 2015 Tr. at 35-36.

<sup>22</sup> March 10, 2015 Tr. at 38-39.

2012.<sup>23</sup> With regard to comparable six, Mr. Heaton testified that the grantee was a non-profit organization, Peckham Vocational Services and the sale occurred on June 7, 2010 yet he did not make a market conditions adjustment.<sup>24</sup> Mr. Heaton's comparable five was also utilized by Respondent.

Mr. Heaton also gave consideration to the subject sale price in his determination of value and testified regarding the marketing history of the property. He testified that he contacted the listing brokers and determined that the asking price for the property was \$700,000 at the time of purchase, \$550,000 for the subject parcel and \$150,000 for the adjacent acreage put forth in comparable one. Mr. Heaton next analyzed Mr. Vertalka's appraisal to determine some portions of the listing history of the property and obtained some listing information on his own, after completion of his appraisal. The property was listed in the \$4,000,000 range in 2003/2004 by CB Richard Ellis, in 2009 it was listed by Signature Associates in the same price range, in 2009 the property went back to CB Richard Ellis at \$25,000 per acre or \$2,500,000 and then down \$1,200,000 or \$12,000 per acre. In 2011 the property was listed at \$998,000 per Mr. Vertalka's appraisal.<sup>25</sup> As noted above, Eyde purchased the subject property in 2012 for \$3,680 per acre or \$305,000 total. Mr. Heaton testified, "I knew the property had been distressed; I knew that it had been on the market for many years, but prior to completion of my report, was unable to verify any more information."<sup>26</sup> When questioned: "Now does exposure to the market at that \$12,000 an acre, does that influence your value of the subject property?" "A: Yes it does." "Q: Okay. How so? What's important about the marketing history of this property, in general terms?" "A: Well, when I - - I had a very short window to complete my - - appraisal, and in the course of conducting my due diligence, I initially called the - - the brokers at NAI Mid-Michigan, spoke with Jim Vlahakis who had indicated the property was on the market for approximately four months prior to selling and had been listed at \$700,000, which was inclusive of the adjacent 15 acres."<sup>27</sup> He also testified, "So, in looking at this I wish I'd had the information, because I think I would have looked at things a little differently. I think, if anything, I was far too conservative

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<sup>23</sup> March 10, 2015 Tr. at 47-48, P-1 at 29.

<sup>24</sup> March 10, 2015 Tr. at 50-51.

<sup>25</sup> March 9, 2015 Tr. at 229-231.

<sup>26</sup> March 9, 2015 Tr. at 232.

<sup>27</sup> March 9, 2015 Tr. at 231-232.

on some of my adjustments.”<sup>28</sup> When discussing the property sale price as a rebuttal witness, Mr. Heaton testified, “I suppose if I was unethical, my - - my goal would be to try and achieve that \$3,700 per acre, but I didn’t think that was prudent because of the entitlements of zoning.”<sup>29</sup>

With regard to Mr. Vertalka’s comparables, Mr. Heaton testified that comparable one, the former Waverly Golf Course, is not truly comparable to the subject property as it has frontage on Saginaw Highway, Waverly Road and West Michigan which all have high traffic counts. He also noted that the property has not been sold. With regard to comparable two, or Red Cedar Golf Course, Mr. Tobin testified that again, it is not a sale, and even if it closed soon, its date of sale would be beyond tax day and would require adjustment. He testified that the locations are not similar and the comparable is located near Frandor and Michigan State University and is a desirable area.<sup>30</sup> With regard to comparable three, MSU Federal Credit Union (“MSUFCU”), Mr. Heaton testified that the purchase was an assemblage and that the credit union headquarters, next door, wished for expansion onto the comparable property. It also had high visibility and exposure to U/S -127 and “to me someone who is looking to have an East Lansing mailing address or wants to be part of MSU growth would not look at the subject property . . .”<sup>31</sup> With regard to comparable four, the Lake Lansing property, Mr. Heaton testified that it is a residential development that “was also purchased with funds from the Michigan DNR Trust Fund, which is basically a land conservation effort.”<sup>32</sup> He testified that the property was not purchased to be a subdivision, but to make sure it doesn’t become a subdivision he would not call it comparable to the subject property. With regard to comparable five, Mr. Heaton testified it was an assemblage wherein Orchid Orthopedics purchased the property to build a parking lot, at a premium price. Mr. Heaton also testified regarding Mr. Vertalka’s prior appraisal of the subject property for tax years 2009-2011 and noted that he utilized only industrial sales in his market approach to value in that appraisal.<sup>33</sup>

#### RESPONDENT’S CONTENTIONS

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<sup>28</sup> March 9, 2015 Tr. at 235.

<sup>29</sup> March 11, 2015 Tr. at 174.

<sup>30</sup> March 9, 2015 Tr. at 264-268.

<sup>31</sup> March 9, 2015 Tr. at 269.

<sup>32</sup> March 9, 2015 Tr. at 272.

<sup>33</sup> See P-3

Respondent contends that the subject property was properly assessed at 50% of its true cash value for the 2013 and 2014 tax years. Respondent contends that Petitioner did not meet its burden of proof in establishing the true cash value of the subject property.

The property's TCV, SEV, and TV as established by the Board of Review for the tax years at issue are as follows:

**Parcel Number:** 33-25-05-24-200-018

Year	TCV	SEV	TV
2013	\$3,450,000	\$1,725,000	\$1,725,000
2014	\$3,450,000	\$1,725,000	\$1,725,000

Respondent's revised contentions of value:

**Parcel Number:** 33-25-05-24-200-018

Year	TCV	SEV	TV
2013	\$3,435,000	\$1,717,500	\$1,717,500
2014	\$3,435,000	\$1,717,500	\$1,717,500

#### RESPONDENT'S ADMITTED EXHIBITS

- R-1 Respondent's Valuation Disclosure
- R-2 Property Record Card for the subject property
- R-4 Utility Map
- R-5 Maps
- R-6 Future Land Use Map
- R-7 Concept Plan
- Rebuttal – 1 G. Tobin Heaton License 1998-2004
- Rebuttal – 2 G. Tobin Heaton License 2004-2008
- Rebuttal – 3 Photograph

#### RESPONDENT'S WITNESSES

**David Heinowski**

Respondent presented testimony from its review appraiser, Mr. Heinowski, regarding Mr. Heaton's appraisal. Based on his experience and training, the Tribunal accepted Mr. Heinowski as an expert in the valuation of real property. Mr. Heinowski testified about inconsistencies in Mr. Heaton's appraisal, noting, "if the properties, five out of six sales, two, three, four, five and

six [are] all zoned industrial and a 10 percent across the board adjustment is given to all the comps and they're industrial. That's saying that industrial's inferior to the zoning of the subject property and that's sort of - - is contrary to what Mr. Heaton was saying about industrial being higher cost at this time than commercial."<sup>34</sup> Mr. Heinowski further testified that the location adjustment to all the comparables (of 5%) indicates that they are comparable to each other, but not the subject property.<sup>35</sup> Also, with regard to the wetlands discussion, Mr. Heinowski studied GIS maps of the subject property and noted that there are acres of wetlands on the subject property, but no discussion of the wetlands is included in Mr. Heaton's appraisal and no value was ascribed to them.<sup>36</sup>

Mr. Heinowski testified specifically about Mr. Heaton's comparables, with respect to comparable one, he testified that it was sold by a governmental unit, the DDA, and sales from governmental units are not at arm's length because they are to spur market development and this was a liquidation of property. With regard to comparable two, he testified that it is three separate parcels and it is unknown whether there was a discount for buying the three parcels together. He also noted that the property sold three times and the third sale was a sheriff's deed so more verification would be needed. Comparable three has a ravine which affects the usable acreage and there is also lease fee interest in a billboard on the property, which were not taken into account. With regard to sale four, Mr. Heinowski noted that the sale date on the property record card was different than that in the appraisal report, the amount of sale was less than what was in the report and there was a subsequent higher sale of the property, that occurred before the transfer of the appraisal to the client; yet, Mr. Heaton chose to use the lower sale. Sale five was a sale in lieu of foreclosure or forfeiture, therefore, it was not an arm's length sale. Finally, sales comparable six was sold to a tax exempt grantee and it is unknown if part of the sale included a gift. Further, the property transfer affidavit stated that the sale price was \$850,000, yet there was an asterisk next to it indicating that is also included \$5,000 for another parcel, but that parcel was

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<sup>34</sup> March 10, 2015 Tr. at 92.

<sup>35</sup> March 10, 2015 Tr. at 91.

<sup>36</sup> March 10, 2015 Tr. at 80-81.

not identified. He testified that he would not use sale six to determine the value of the subject property.<sup>37</sup>

### **Howard Haas**

Mr. Haas is the Development Director of the Delhi Township DDA and was in commercial banking for 45 years; 35 in the Lansing Area. He was President/CEO of Republic Bank, President of Mercantile Bank and Senior Vice President of Old Kent and Fifth-Third Banks. He testified, by telephone, that he is very familiar with real estate lending in the subject property area, including vacant land.<sup>38</sup> His job at DDA is the “promote business/client for the general community and assisting businesses to grow, and to grow the area within Delhi Charter Township.”<sup>39</sup>

Mr. Haas testified regarding the sale of Mr. Heaton’s comparable one and noted that the DDA began discussions with the Eydes about the property in 2012. He testified that the DDA paid for “sewers, sanitary sewers, storm sewers, roads, electricity, fiber-optics, there’s railroad behind it,” on the comparable property and noted that the subject property has the same amenities provided by DDA financing. He also testified that there is a lift station and the DDA financed to provide “sanitary sewer moving through the plat.”<sup>40</sup> He testified that he chatted with the Eydes about the property and spoke to Mr. Clouse, George Eyde and an Eyde son and that the DDA did not advertise the property and “it wasn’t a normal transaction, because normally we would have - - we would have listed it for sale, certainly advertised it you know, throughout Michigan as a commercial industrial property with all the benefits it has. We didn’t advertise it at all.”<sup>41</sup>

### **Tracy Miller**

Ms. Miller is the Director of Community Development for Delhi Township. Among other duties, Ms. Miller works with “developers and property owners about how they can

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<sup>37</sup> March 10, 2015 Tr. at 83-89.

<sup>38</sup> March 10, 2015 Tr. at 130.

<sup>39</sup> *Id.*

<sup>40</sup> March 10, 2015 Tr. at 131.

<sup>41</sup> March 10, 2015 Tr. at 133

develop their properties, what would conform to the zoning ordinance, and also I take it as my role to help people, developers, property owners, individuals navigate through community regulations so that they can use their properties in a way that conforms to all the applicable ordinances and master plans, but also works for the property owner as well and the businesses.”<sup>42</sup>

Ms. Miller testified that she met with the Eyde Company in 2012 to discuss a concept plan for development of the subject property. She confirmed that the plan was prepared by Mr. Dick Cooley, a landscape architect in the community who also completed a plan for the Aspen Lakes development, “which is just to the north of this piece.”<sup>43</sup> She testified that “the concept plan called for commercial development as well as a significant amount of multi-family housing development . . . .”<sup>44</sup>

Ms. Miller testified that she met with Mr. Clouse and Mr. Cooley about how to pursue their development plan and that the first step in order to have it rezoned for multi-family would require an amendment to the Township Master Plan. The Township amended a significant portion of its master plan in 2013 to “planned development” which would provide for the construction of multi-family units, after Ms. Wilson chatted with the Planning Commission about the Eyde’s concept plan. She testified that Aspen Lakes was developed the same way, by bringing a proposal for multi-family, single-family and future commercial development.<sup>45</sup> When questioned, “[B]ased upon the information and what’s available out there, do you believe that this is a prime track of development land?” “A: I do.”<sup>46</sup>

On cross-examination, Ms. Miller testified that Jackson National Life considered the subject site for their corporate headquarters, but chose to build elsewhere, that the rail service does not come directly to the property and that she didn’t know that the drain commissioner told the property owners that there is no drain outlet. She testified that permission would be required by the Planning Commission and Township Board for multi-family development, even under the planned development zoning, however, she reiterated, that Aspen Lakes was developed the same way. With regard to the litigation in relation to the Eyde site at M-99 and its multi-family zoning

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<sup>42</sup> March 10, 2015 Tr. at 141-142.

<sup>43</sup> March 10, 2015 Tr. at 154.

<sup>44</sup> *Id.*

<sup>45</sup> March 10, 2015 Tr. at 154-156.

<sup>46</sup> March 10, 2015 Tr. at 160-161.

request, Ms. Miller testified that the matter is just about settled other than “some assurance that the units would, you know, have some minimal level of quality . . . . but, I don’t want to represent it as though there’s not a willingness to accommodate multifamily out there.”<sup>47</sup>

The current zoning of the property includes C-2, general business which allows for drive-through restaurants, banks, offices, large big box development with special use permit, gas stations, auto dealerships, AIM High type development, commercial ice rinks, funeral homes, churches, commercial schools, and private schools. The current zoning also includes C-1, low impact commercial, “typical 8-5”<sup>48</sup> businesses which includes dentist offices, doctors’ offices, accounting offices, smaller scale retail like Panera Bread. The property also includes IP or industrial park zoning, which allows for corporate headquarters, data centers, larger office, commercial spaces, like Jackson National, mom and pop machine shops, and materials testing facilities.<sup>49</sup>

### **Robert Vertalka**

Respondent presented testimony from its appraiser, Mr. Vertalka. Based on his 44 years of experience and training, the Tribunal accepted Mr. Vertalka as an expert in the valuation of real property. Mr. Vertalka prepared and communicated an appraisal of the subject property. The appraisal sets forth the sales comparison approach to value. Based on his appraisal, Mr. Vertalka determined a revised contention of value for the subject property of \$3,435,000 for 2013 and 2014. Mr. Vertalka testified that he viewed and inspected the subject property many times and that Delhi Township is in a growth cycle thereby making the subject property more valuable than contended by Petitioner.<sup>50</sup>

Mr. Vertalka testified that the subject property has 5.18 acres of wetlands and that wetlands contribute to value as “an open area in a development. It can be used for density calculations in a development. It can provide drainage to a development. It can be mitigated. It can be filled and mitigated or there’s even concepts that are now brewing, trying to take place

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<sup>47</sup> March 10, 2015 Tr. at 175.

<sup>48</sup> March 10, 2015 Tr. at 150.

<sup>49</sup> March 10, 2015 Tr. at 149-151.

<sup>50</sup> March 11, 2015 Tr. at 7, 13.

out there where you can buy wetland space in a - - newly created wetland.”<sup>51</sup> He also testified, “when you’re dealing with larger acreage sites like this, you expect to have some wetlands or unbuildable areas or areas for recreational use.”<sup>52</sup>

Mr. Vertalka confirmed that the property is zoned C-1, C-2 and IP and testified that it wouldn’t be proper to compare industrial zoning to commercial “because the uses are different. Commercial has a higher value. It’s a more intensive use. It commands higher rents on the buildings, you see shopping centers and things like that; whereas in industrial land you have larger buildings, but they’re not built to the same level as commercial buildings.”<sup>53</sup>

Mr. Vertalka presented four comparable sales, to determine value of the commercially zoned acreage, with adjustments to make them consistent with the characteristics of the property. Sale number one is located on the corner of Saginaw and Waverly Road, with additional road frontage on Michigan Avenue, in Lansing Township and is the former Waverly Golf Course. There is a pending sale of the property for \$5,800,000, it consists of 120.48 acres for a per acre sale price of \$48,141. Mr. Vertalka testified that the property is zoned single-family residential, but he chatted with Lansing Township and was told that the sale is going through and that they were in the process of redrafting their zoning ordinance to allow mixed commercial/residential use.<sup>54</sup> Mr. Vertalka testified that he was comfortable using a pending sale because “a pending sale is a sale where buyers and sellers have gotten together and said, ‘Here’s what I’m going to do.’ That’s a good sale. That’s a good point in time to be looking at the property.”<sup>55</sup> He testified that a pending sale is not the same as a listing or offering when no sale price confirmation is imminent. He also testified that he liked the comparable one sale because the property has wetlands and also has road frontage of three sides such as the subject property which has frontage on Holt, College and Holloway Drive. Mr. Vertalka testified that he gave great weight to the comparable in the determination of value of the commercial portion of the property.

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<sup>51</sup> March 11, 2015 Tr. at 16.

<sup>52</sup> March 11, 2015 Tr. at 19.

<sup>53</sup> March 11, 2015 Tr. at 20.

<sup>54</sup> May 11, 2015 Tr. at 23-24.

<sup>55</sup> May 11, 2015 Tr. at 26.

Sale number two is located near Frandor and Michigan State University and is the former Red Cedar Golf Course. It is also a pending sale for \$233,209 per acre, however, it required a 50% downward adjustment due to its superior location to the subject, therefore, Mr. Vertalka applied zero weight to the comparable. Sale number three was adjacent to the MSUFCU building and had a sale price of \$82,414 per acre for 41.16 acres in July 2012. He testified that he chose that sale because its uses would be similar to the subject and he appraised the property before about four times and was very familiar with it. Comparable four is located near Lake Lansing and would be an extension of an existing subdivision. It was a sale of 116.96 acres for \$3,510,000, or \$30,010 per acre, contains 40% wetlands and is zoned single-family residential. Mr. Vertalka testified that he chose this comparable to set the floor on values. He testified that commercial land has the highest value, industrial land has a lower value and pre-developed land like comparable four would be “the floor of the value of the subject property.”<sup>56</sup> He also chose the comparable to show wetlands have value and he indicated that he has appraised the property before and is familiar with it. Mr. Vertalka gave most weight to comparable one, none to comparable two, lesser weight to comparable three and utilized comparable four to set the floor of value. His conclusion of value for the subject commercial property was \$50,500 per acre or \$2,320,475.

Comparables five through seven were chosen to determine the true cash value of the industrial portion of the subject property as all three were located in industrial zoned areas. Comparable five is a 7.88 acre industrial property in Delhi Township, and sold for \$31,726 per acre in November 2012. He testified, “This is a very - - this is a very good comp. You could give it 100 percent, 100 percent weight.”<sup>57</sup> Comparable six is in Delta Township off of Canal Road, consists of 11.43 acres and sold on June 7, 2013 for \$425,000 or \$37,183 per acre. It is zoned industrial, has some wetland areas and Mr. Vertalka has appraised the property before and is familiar with it. He also noted that the property directly adjacent to comparable six sold in January 2015 for approximately \$52,591 per acre. Mr. Heaton utilized this same comparable in his appraisal, but used an earlier, lower sale price.<sup>58</sup>

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<sup>56</sup> May 11, 2015 Tr. at 26-31; R-2 at 40-41.

<sup>57</sup> May 11, 2015 Tr. at 37.

<sup>58</sup> May 11, 2015 Tr. at 35-41.

Comparable seven is an industrially zoned property located on Grand River across from Royal Scott Golf Course and sold for \$26,762 per acre in March 2012. He testified that it appeared that there was some relationship between the seller and buyer and “they took the property back from the other partner. It was a deed in lieu.”<sup>59</sup> Mr. Vertalka testified that the sale price per acre fit tightly into the range developed, but that there were cleaner sales so he applied less weight to this comparable. Based on the adjusted sale prices of comparables five through seven, Mr. Vertalka concluded in a true cash value for the subject industrial land of \$30,000 per acre or \$1,112,100 for the 2013 and 2014 tax years.

With regard to the sale price of the subject property and its relevance to the property’s fair market value, Mr. Vertalka testified about the difference in market price and market value, indicating that market price is the price paid for a property, but market value is what it’s worth. Mr. Vertalka testified that the subject property was a bank-owned property and “banks make certain decisions that are not necessarily based upon the value of the property. They make financial decisions based on their profitability, their loan losses, reserves and where they are. It doesn’t have anything to do with value, but it could.”<sup>60</sup> He also testified that if a property is not selling at a certain price, “it’s not being marketed correctly. You’re not looking for the correct buyers.”<sup>61</sup>

#### FINDINGS OF FACT

1. The subject property consists of 83+ acres of vacant land located on Holt Road, Holloway Drive and College Road in Delhi Township. Its parcel number is 33-25-05-24-200-018 and it is a mixed-use property. College Road leads north to Michigan State University.
2. 15.42 +/- acres are zoned C-1, Low Impact Commercial District, 30.53 +/- acres are zoned C-2 General Business District and 37.07 +/- acres are zoned IP, Industrial Park District.

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<sup>59</sup> May 11, 2015 Tr. at 42.

<sup>60</sup> March 11, 2015 Tr. at 86, 94.

<sup>61</sup> March 11, 2015 Tr. at 92.

3. The property is currently being used for agricultural purposes and was purchased by Petitioner in March 2012 for \$305,000, or \$3,680 per acre, after sitting on the market for sale since approximately 2003/2004. Mr. Heaton testified that the property was distressed and Mr. Vertalka testified that it was a bank sale. Mr. Haas testified that the DDA sold Eyde an adjacent property and that it paid for sewers, sanitary sewers, storm sewers, roads, electricity, fiber-optics and financed to provide sanitary sewer moving through both plats.<sup>62</sup> 80% of Eyde's holdings are in Mid-Michigan including 4,000 acres of vacant land.
4. There is a multi-family development 1/8 mile from the subject property, Aspen Lakes, that includes apartments, condominiums and townhomes.
5. Ms. Miller testified that Aspen Lakes went through the same zoning process as the subject property would require in order to be rezoned for multi-family and multi-family is allowable under the amended Master Plan for Delhi Township. Mr. Clouse testified that Louis Eyde is involved in Aspen Lakes and Mr. Clouse is familiar with it.
6. Mr. Cooley, a landscape architect, drew up a concept plan for the subject property, at the request of Eyde, including multi-family, and he and Mr. Clouse met with Tracy Miller to discuss the plan.
7. Mr. Clouse testified that the plan was a preliminary one and its feasibility would require expert analysis. Mr. Clouse testified that Eyde has not applied for rezoning of the property and that no development is ongoing at the property.
8. Mr. Heaton prepared an appraisal of the subject property that included five industrial sales and one commercial/industrial sale with adjustments to make them consistent with the characteristics of the subject property.
9. Mr. Vertalka prepared an appraisal of the subject property that put forth four sales of properties to support his determination of value for the subject commercially zoned property and three comparable sales to support his determination of the value of the industrially zoned portions of the property. All of the sales were adjusted to be consistent with the characteristics of the subject property.

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<sup>62</sup> March 10, 2015 Tr. at 131.

## 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. See MCL 211.27a.

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. . . . Const 1963, art 9, sec 3.

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. MCL 211.27(1).

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.” *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

“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.” *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985). “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.” *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991). 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.” *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. MCL 205.735a(2). The Tribunal's factual findings must be supported “by competent, material, and

substantial evidence.” *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990). “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.” *Jones & Laughlin Steel Corp, supra* at 352-353.

“The petitioner has the burden of proof in establishing the true cash value of the property.” MCL 205.737(3). “This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party.” *Jones & Laughlin Steel Corp, supra* at 354-355. 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.” MCL 205.737(3).

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. *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). 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. *Antisdale, supra* at 277. While *Meadowlanes, supra*, does set forth the three “traditional methods” it also indicates that “[v]ariations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to the fair market value of the subject property.” *Meadowlanes, supra*, at 485.

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell. See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991). After considering all three approaches to value, the Tribunal finds that the sales approach is the correct valuation technique to be utilized in determining the true cash value of the subject property for the 2013 and 2014 tax years.

Here, the parties' valuation experts were charged with developing and communicating valuation disclosures regarding the subject property to assist the Tribunal in making an independent determination of its true cash value for the years under appeal. The subject property is an 83+ acre parcel of vacant land with frontage on Holt and College Roads and Holloway Drive. It has mixed use zoning of commercial and industrial. Petitioner's appraiser, Mr. Heaton, developed the sales approach to value by considering five sales of industrial property and one sale of a commercial/industrial zoned parcel. Respondent's appraiser, Mr. Vertalka, developed a sales approach by utilizing four sales to determine the value of the commercial portion of the property and three industrial sales for valuing the industrial portion. Mr. Clouse, CFO and General Counsel to Petitioner, testified that the sale price of the property of \$305,000 in March 2012, its current agricultural use and lack of imminent development potential, should influence the Tribunal's conclusion of value.

The subject property had been on the market for sale for various asking prices since 2003, until it sold in 2012 to Eyde for \$3,680 per acre. At the hearing of this matter, Mr. Heaton testified that his conclusion of value for the property was \$915,000 for 2013 and 2014; however, he also admitted that he did not have the listing history of the property at the time of completion of his appraisal and testified that the same might have influenced his adjustments and therefore his conclusion of value.<sup>63</sup> He testified, "Well, when I - - I had a very short window to complete my - - appraisal . . . ." <sup>64</sup> It should also be noted that at the end of the subject three - day hearing, the Tribunal Judge requested that the parties prepare written closing statements. In that regard, it is curious that in Petitioner's closing statement, it all but discarded Mr. Heaton's appraisal and ended with the following paragraph and request, "After years of exposure to market in the hands of capable brokers, with a final listing of \$550,000 (\$6,626 per acre), a true cash value at the purchase price of \$3,680 per acre or approximately \$305,000 has the clearest legal and evidentiary support." "The Tribunal should enter its order for tax years 2013 and 2014 at a true cash value of \$305,000."<sup>65</sup> Mr. Heaton testified, however, at the hearing after viewing the complete listing history of the property, "I suppose if I was unethical, my - - my goal would be to

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<sup>63</sup> March 9, 2015 Tr. at 235.

<sup>64</sup> March 9, 2015 Tr. at 231-232.

<sup>65</sup> Petitioner's Post-Trial Brief, dated April 1, 2015, at 20.

try and achieve that \$3,700 per acre, but I didn't think that was prudent because of the entitlements of zoning.”<sup>66</sup>

The Tribunal does not find the true cash value of the subject property for the 2013 and 2014 tax years to be \$305,000 or its purchase price, because by law, even for an arms-length transaction, “the purchase price paid in a transfer of real property is not the presumptive true cash value.” MCL 211.27(6). “A great many factors enter into the determination of a sale price, such as need or ability to utilize the property, potential income, actual income, age and physical condition, tax considerations, and financing costs.” *First City Corp v City of Lansing*, 153 Mich App 106, 115; 395 NW2d 26 (1986). Further, a single sale may or may not be indicative of the market at large. “In evaluating whether a subject sale between unrelated parties is representative of the statutory ‘usual selling price,’ it is a better procedure to use independent market sales data (where relevant data exists) to test the sale price.” *Richwood Village Associates v City of Lansing*, 10 MTTR 955 (issued July 17, 2000, Docket Nos. 226798 and 237968). In other words, sale price can be a factor in determining the market value of a property and may even be equal to its market value, but first one has to determine what the market is.

The parties both presented appraisals of the property to demonstrate what the market value of the property is. As noted above, Mr. Heaton, a licensed appraiser, presented six sales to determine the market value of the property and Mr. Vertalka, a licensed appraiser, presented seven sales to determine the market value of the property, therefore eleven sales<sup>67</sup> were presented to determine what the market value of the subject property is, rather than one purchase price. Further, Mr. Vertalka testified that the property was bank-owned and banks have different motivations with regard to their reason to sell a property at a certain price including profitability, loan losses and reserves. Again, the sale price of the property could be its market value and should be considered, however, sale price isn't the only consideration, when other relevant sales are available.

Petitioner, Eyde, is a successful developer in Mid-Michigan. Mr. Clouse, CFO and General Counsel to the company testified that Eyde is in the business of acquiring and holding

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<sup>66</sup> March 11, 2015 Tr. at 174.

<sup>67</sup> Two sales were duplicates, 7863 Northport Drive, wherein Petitioner utilized the 2012 sale date and Respondent utilized the 2013 sale date, and 16700 Radamacher Road.

vacant land such as the subject property, “that’s probably part of the success for George and Lou Eyde is the fact that they foresaw Mid-Michigan growing . . . . They’ve accumulated land since they started working together in 1958. I have accumulated land throughout Mid-Michigan area, generally in large parcels or accumulating in pieces and bringing them together, and have done an excellent job of doing that, and I think that’s probably the success of their company, because they were able to accumulate those over the years and quite honestly continue to do that where it’s available.”<sup>68</sup> In fact, Mr. Clouse testified that Eyde has some very successful student housing developments in the area. He testified “the student housing market is probably the hottest market that we have in the community today.”<sup>69</sup>

Mr. Clouse testified that the subject property is near the Aspen Lakes Development, which, per Mr. Heaton, is, “a multi-family development is 1/8 mile from the subject property.”<sup>70</sup> Mr. Clouse testified that he was familiar with the property, stating, “I don’t know the number of units back there, but there are hundreds, hundreds of them.”<sup>71</sup> He further testified that Louis Eyde is involved in the development of Aspen Lakes and that Eyde works cooperatively and co-owns other properties with the Aspen Lakes partner developer, DTN. He also testified that he grew up near the subject property and was very familiar with it. Interestingly enough, various maps presented by the parties illustrate that College Road, a boundary of the subject property, leads directly to the MSU Campus. Mr. Clouse testified that Eyde is interested in putting multi-family improvements on the subject property, which could include housing rented or purchased by MSU students<sup>72</sup>, testifying regarding the Master Plan change the Township made to accommodate the Eyde concept plan as put forth by Mr. Cooley, “it’s not consistent with what we were talking about, but there were changes. . . . They did not include multifamily, which is what we had proposed . . . .”<sup>73</sup> Further, the desirability of multi-family development is illustrated

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<sup>68</sup> March 9, 2015 Tr. at 23.

<sup>69</sup> March 9, 2015 Tr. at 136.

<sup>70</sup> March 10, 2015 Tr. at 31.

<sup>71</sup> March 9, 2015 Tr. at 43.

<sup>72</sup> The Tribunal does not intend to imply that the subject property is as valuable as the former Red Cedar Golf Course property which is adjacent to MSU and substantial retail. Both Mr. Heaton and Mr. Vertalka testified that the Red Cedar Golf Course comparable is not a good comparable to the subject. The Tribunal opines only that the property could be utilized by MSU students due to its proximity to campus.

<sup>73</sup> March 9, 2015 Tr. at 208.

by Eyde's continuing litigation regarding construction of multi-family housing on M-99 Mr. Heaton testified that "the Eydes are very savvy investors,"<sup>74</sup> The Tribunal opines that as savvy investors, Eyde was informed by Mr. Clouse's due diligence, that the subject property has significant value, which Mr. Vertalka, an appraiser whose primary market has been the Mid-Michigan area for 44 years,<sup>75</sup> testified, is "a hot area, that it is developing area, it'll be one of the next areas to be developed in the metropolitan Lansing area."<sup>76</sup>

As noted above, Eyde has placed little weight on Mr. Heaton's appraisal, other than to state in its written closing statement, "Though True Cash Value in this Case Turns on the Purchase Price and the Lack of Demand to Develop the Subject, Petitioner's Comparable Properties are Far Superior to Respondent's."<sup>77</sup> Mr. Heaton's comparables are, as noted above, comparable one, an industrial/commercial zoned property located on Holt Road, directly adjacent to the subject property, consisting of 11.34 acres, including some wetlands, and was purchased by Eyde for \$3,728 per acre on April 30, 2013, which is approximately the same price per acre paid for the subject property. The property was purchased from the Downtown Development Authority ("DDA"), and Mr. Heaton testified that he placed the least weight on the comparable as it is a "clear outlier of the group at the low end of the range." "Given that the seller was a municipal entity, it will be given less weight in the reconciliation."<sup>78</sup> It should be noted that Mr. Haas testified that the property was not marketed testifying, "it wasn't a normal transaction, because normally we would have - - we would have listed it for sale, certainly advertised it you know, throughout Michigan as a commercial industrial property with all the benefits it has. We didn't advertise it at all."<sup>79</sup> The Tribunal does not find comparable one to be probative to it in determining the true cash value of the subject property for the 2013 and 2014 tax years.

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<sup>74</sup> March 11, 2015 Tr. at 174.

<sup>75</sup> March 11, 2015 Tr. at 5, 22.

<sup>76</sup> March 11, 2015 Tr. at 66.

<sup>77</sup> Petitioner's Post-Trial Brief at 17.

<sup>78</sup> March 9, 2015 Tr. at 260.

<sup>79</sup> March 10, 2015 Tr. at 133

Comparable two is a Delta Township, three parcel industrial sale of 48.64 acres and sold for approximately \$11,600 per acre on April 23, 2013. Mr. Heinowski testified that it is undisclosed as to whether there was a discount for the purchase of three properties, together. He also noted that the property sold three times and the third sale was a sheriff's deed so more verification would be needed.<sup>80</sup> Comparable three is a Delta Township industrial parcel of 4.4 acres and sold for \$18,182 per acre on July 18, 2013. Mr. Heinowski testified that the comparable has a ravine which affects the usable acreage and there is also lease fee interest in a billboard on the property, which were not taken into account. Comparable four is a Delta Township industrial parcel consisting of 11.43 acres which sold on August 10, 2012 for \$18,548 per acre. Mr. Heinowski noted that the sale date on the property record card was different than that in the appraisal report, the amount of sale was less than what was in the report and there was a subsequent higher sale of the property, yet Mr. Heaton chose to use the lower sale even though the higher sale occurred before the transmittal of the appraisal to the client.<sup>81</sup> Mr. Vertalka utilized the same comparable, but referenced the second, higher sales price which the Tribunal finds should be considered. Comparable five is a Delta Township industrial property sale of 11.21 acres and sold for \$26,762 per acre on March 21, 2012; however, sale five was a sale in lieu of foreclosure or forfeiture, therefore, it was not a sale subject to normal market pressures. Mr. Vertalka testified it appeared that there was some relationship between the seller and buyer of comparable five and "they took the property back from the other partner."<sup>82</sup>

Comparable six is a Delta Township industrial site sale of 79.42 acres and sold for \$10,703 on June 7, 2010. However, it was sold to a tax exempt grantee and it is unknown if part of the sale included a gift. Further, the property transfer affidavit stated that the sale price was \$850,000 yet there was an asterisk next to it indicating that is also included \$5,000 for another parcel, but that parcel was not identified. Finally, the parcel sold in 2010 and no time adjustment

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<sup>80</sup> The definition of true cash value in Michigan is "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.**" MCL 211.27.

[Emphasis added.] A sale from a sheriff's deed is a forced sale and, absent ample information regarding the conditions of sale, marketing time, and the market as a whole, a forced sale is not reliable evidence of value.

<sup>81</sup> The second sale occurred on June 7, 2013, and the appraisal was transmitted on September 30, 2014. See P-1 cover letter and R -1 at 38.

<sup>82</sup> May 11, 2015 Tr. at 42.

was applied by Mr. Heaton to make the comparable consistent with its value on the tax days in question. Mr. Heaton, however, gave the most weight to sale six “which was deemed the most representative of the market due to its similar size compared to the subject property.”<sup>83</sup> All of the comparable sales were of vacant land such as the subject property and Mr. Heaton testified that he utilized industrial sales comparables due to the proximity of industrial land/improvements to the subject property and the general lack of availability of sales, but also acknowledged its current zoning included commercial and industrial with special use permits and/or zoning changes possible to build single-family residential or multi-family properties. Mr. Vertalka utilized residential, mixed use and industrial sales to value the different portions of the property. As noted above, the subject property is zoned commercial and industrial. The Tribunal finds Mr. Heaton’s sole use of industrial sales to be inappropriate and also finds that his sales are not probative for the reasons stated above. Further, the fact that Mr. Heaton gave the most weight to comparable six is suspect to the Tribunal given the lack of a market conditions adjustment. Also, further development was necessary regarding the grantee/sales transaction of the property.

On cross examination, Mr. Heaton was questioned as to whether he ascribed any value to the wetlands situated on comparable one and he answered, “[f]or the portions that could be mitigated.” He did not, however, assign any value to the wetlands situated on the subject property confirming that comparable one was directly adjacent to the subject property, but that the wetlands were totally different.<sup>84</sup> Both Mr. Heinowski and Mr. Vertalka testified that wetlands do have value and the Tribunal is persuaded by their testimony that Mr. Heaton inappropriately undervalued the property by not applying proper value to its wetlands.

Mr. Vertalka presented seven sales comparable to the subject property. Comparable one is the pending sale of the former Waverly Golf Course. Mr. Vertalka testified that he put the most weight on this comparable because it has wetlands and road frontage on three sides like the subject property. He testified that he was comfortable using a pending sale because the buyer and seller have gotten together to determine a purchase price and he confirmed with Lansing Township that the sale is going to go through. The Tribunal is persuaded that comparable one is

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<sup>83</sup> March 9, 2015 Tr. at 261.

<sup>84</sup> March 10, 2015 Tr. at 35-36.

a good sale to utilize in its determination of the true cash value of the property for the 2013 and 2014 tax years, despite its pending status.

Comparable two is the pending sale of the former Red Cedar Golf Course. Mr. Vertalka gave the sale zero weight because of its superior location to the subject. Comparable three is land adjacent to MSUFCU and Mr. Vertalka utilized it because its uses would be similar to the subject. He testified that he appraised the property before about four times and was very familiar with it. Mr. Heaton testified that the sale was an assemblage demonstrating that MSUFCU wanted to expand onto the property thereby calling into question its sales price. The Tribunal agrees with Mr. Heaton that comparable three is not the most probative sale, but still finds some value in its inclusion.

Comparable four is residential land adjacent to Lake Lansing in Meridian Township and its development would be an extension of an existing subdivision. Mr. Vertalka chose the comparable because it has 40% wetlands and he was very familiar with the property. He testified, however, that he utilized the property simply to set the floor value of the subject commercially zoned land. Mr. Heaton testified that there was some involvement in the sale of the property with the DNR trust fund, and/or other public contributions and as a result, the Tribunal finds that comparable four is not the best comparable to utilize in determining the true cash value of the subject property. The Tribunal does agree, however, that comparables with potential similar mixed use are the best comparables to utilize to determine the fair market value of the subject commercially zoned land.

With regard to the industrially zoned land included as part of the subject property, Mr. Vertalka put forth three comparable sales of industrially zoned property. Comparable five sold for \$31,726 in November 2012 and is located in Delhi Township like the subject property. Mr. Vertalka gave the greatest weight to this comparable even testifying that he could give it 100% weight. Mr. Heaton testified, however, that Orchid Orthopedics purchased the property to utilize as a parking lot at a premium price. The Tribunal considers Mr. Heaton's testimony, but still finds value in the adjusted sale price of the comparable given Mr. Vertalka's persuasive testimony regarding the applicability of the comparable.

Comparable six is in Delta Township off of Canal Road, consists of 11.43 acres and sold on June 7, 2013 for \$425,000 or \$37,183 per acre. It is zoned industrial, has some wetland areas and Mr. Vertalka has appraised the property before and is familiar with it. He also noted that the property directly adjacent to comparable six sold in January 2015 for approximately \$52,591 per acre. Mr. Heaton utilized this same comparable in his appraisal,<sup>85</sup> but relied on an earlier, lower sale price. The Tribunal does not find Mr. Heaton's use of the earlier, lower sale price to be appropriate, but finds that both sale prices should be considered given the requested determination of value of the subject property for both the 2013 and 2014 tax years.<sup>86</sup>

Comparable seven is an industrially zoned property located on Grand River across from Royal Scott Golf Course and sold for \$26,762 per acre in March 2012. Mr. Vertalka testified that it appeared that there was some relationship between the seller and buyer and "they took the property back from the other partner. It was a deed in lieu."<sup>87</sup> Mr. Vertalka testified that there were cleaner sales so he applied less weight to this comparable. It should be noted that Mr. Heaton utilized this same comparable and applied little weight to it as a high end outlier; therefore based on the testimony of both appraisers, the Tribunal also applies little weight to the comparable with regard to determining the true cash value of the industrial portion of the subject property land.<sup>88</sup>

After independently analyzing the testimony of all witnesses presented at the hearing of this matter and evidence introduced into the record, the Tribunal finds the best evidence of the value of the subject property to be based on Mr. Vertalka's comparables one, three, five and six (also utilized by Mr. Heaton) and not the sale price of the property. His adjustments appear reasonable overall, and the Tribunal is satisfied that they are sufficiently supported on the record. The Tribunal is further satisfied, giving appropriate weight and consideration to these sales and to all of the other market-based evidence on record, that they support the Tribunal's conclusion of value for the property for the 2013 and 2014 tax years.

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<sup>85</sup> Mr. Heaton's comparable four.

<sup>86</sup> MCL 211.2(2) states: The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, any provisions in the charter of any city or village to the contrary notwithstanding.

<sup>87</sup> May 11, 2015 Tr. at 42.

<sup>88</sup> Mr. Heaton's comparable five.

## JUDGMENT

IT IS ORDERED that the properties' state equalized and taxable values for the tax year(s) 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 properties' 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%.

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

Entered: June 5, 2015

By: Preeti Gadola