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

Esquire Development & Construction Inc.,
Petitioner,
v

MTT Docket No. 14-005644 and 15-004504

City of Mason,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER DENYING PETITIONER'S MOTION TO FILE POST TRIAL BRIEF

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Esquire Development & Construction Inc., initially appealed the true cash value ("TCV"), assessed value ("AV"), and taxable value ("TV") determined by Respondent for twenty-four parcels for the 2014, 2015, 2016 and 2017 tax years.[1] However, on October 12, 2017, the Tribunal issued its Order Granting Joint Stipulation for Entry of Partial Consent Judgment whereby the parties stipulated to the TCV's and AV's of the subject parcels for the tax years at issue. Therefore, the only remaining issue in this matter is to determine the TV's of the subject properties for the tax years at issue.

On May 16, 2017, the Tribunal denied separate Motions for Partial Summary Disposition filed by Petitioner and Respondent because the Tribunal determined that fact issues remained. Specifically, the Tribunal concluded that because the parties' calculations of the TV's for the tax years at issue differed substantially, an evidentiary hearing was necessary.

[1] In July 2014, Petitioner appealed the TCV, AV and TV on seventeen parcels. In July 2015, Petitioner filed a Motion to Amend Petition to Add Tax Year 2015, in which Petitioner again appealed the TCV, AV and TV on the original seventeen parcels. On July 27, 2015, Petitioner filed a separate petition with the Tribunal appealing the TCV, AV, and TV on the initial 17 parcels and seven additional parcels owned by Petitioner, contending that Respondent had improperly determined the AV and TV of the subject parcels from the inception of the development project. On October 28, 2015, the Tribunal issued its Order which, among other things, granted Petitioner's Motion to Consolidate MTT Docket Nos. 14-005644 and 15-004504, partially dismissed MTT Docket No. 15-004504, and denied Petitioner's Motion for Relief from Judgment in MTT Docket Nos. 371003 and 433850. On March 17, 2016, the Tribunal issued its Order denying Petitioner's Motion for Reconsideration of the Tribunal's October 28, 2015 Order, which Petitioner appealed to the Michigan Court of Appeals. On August 17, 2016, the Michigan Court of Appeals denied Petitioner's application for leave to appeal the Tribunal's October 28, 2015 Order denying Petitioner's Motion for Reconsideration.

A hearing on this matter was held on October 9, 2017 and October 10, 2017 to determine the correct TV's for the subject parcels for the 2014, 2015, 2016 and 2017 tax years, based on the principal determined by the Michigan Court of Appeals in *Michigan Properties LLC v Meridian Township*, 491 Mich 518; 817 NW 2d 548 (2012), that the Tribunal possesses the duty to adjust erroneous taxable values to bring current tax rolls into compliance with the General Property Tax Act.[2] All exhibits proffered by both parties were admitted into evidence.

On October 26, 2017, Petitioner filed a Motion to File Post Trial Brief. Respondent filed a response to Petitioner's Motion on November 17, 2017. Petitioner requested the opportunity to file a post-trial brief to address a hypothetical posed by the Tribunal during closing arguments.

James Bonfiglio and William D. Tomblin, Attorneys, represented Petitioner, and Thomas M. Hitch, Attorney, represented Respondent. Petitioner's witnesses were James Bonfiglio[3] and Terrell R. Oetzel, a licensed real estate appraiser. Respondent's witnesses were Julie Pulling, Petitioner's former assessor, and Scott Cunningham, Petitioner's former and current assessor.

Based on the evidence, testimony, and case file, the Tribunal finds that the taxable values ("TV") of the subject property for the 2014, 2015, 2016 and 2017 tax years are as follows:

Parcel No.	Year	TV
33-19-10-08-352-149	2014	$21,935
	2015	$22,285
	2016	$22,351
	2017	$22,552
33-19-10-08-352-155	2014	$21,926
	2015	$22,276
	2016	$22,342
	2017	$22,543
33-19-10-08-352-157	2014	$21,935
	2015	$22,285

[2] *Michigan Properties* at 545-546.
[3] Mr. Bonfiglio is Petitioner's President and majority shareholder. Mr. Bonfiglio appeared as a fact witness, as well as counsel to Petitioner.

	2016	$22,351
	2017	$22,552
33-19-10-08-352-159	2014	$22,784
	2015	$23,148
	2016	$23,217
	2017	$23,425
33-19-10-08-352-161	2014	$23,106
	2015	$23,475
	2016	$23,545
	2017	$23,756
33-19-10-08-352-162	2014	$22,766
	2015	$23,130
	2016	$23,199
	2017	$23,407
33-19-10-08-352-163	2014	$22,230
	2015	$22,585
	2016	$22,652
	2017	$22,855
33-19-10-08-352-164	2014	$22,105
	2015	$22,458
	2016	$22,525
	2017	$22,727
33-19-10-08-352-165	2014	$22,239
	2015	$22,594
	2016	$22,661
	2017	$22,864
33-19-10-08-352-166	2014	$22,105
	2015	$22,458
	2016	$22,525

	2017	$22,727
33-19-10-08-352-170	2014	$22,766
	2015	$23,130
	2016	$23,199
	2017	$23,407
33-19-10-08-352-171	2014	$22,230
	2015	$22,585
	2016	$22,652
	2017	$22,855
33-19-10-08-352-172	2014	$22,105
	2015	$22,458
	2016	$22,525
	2017	$22,727
33-19-10-08-352-173	2014	$22,239
	2015	$22,594
	2016	$22,661
	2017	$22,864
33-19-10-08-352-174	2014	$22,105
	2015	$22,458
	2016	$22,525
	2017	$22,727
33-19-10-08-352-175	2014	$23,106
	2015	$23,475
	2016	$23,545
	2017	$23,756
33-19-10-08-352-176	2014	$22,766
	2015	$23,130
	2016	$23,199
	2017	$23,407

33-19-10-08-352-284	2014	$1,845
	2015	$1,874
	2016	$1,879
	2017	$1,895
33-19-10-08-352-285	2014	$1,845
	2015	$1,874
	2016	$1,879
	2017	$1,895
33-19-10-08-352-300	2014	$1,845
	2015	$1,874
	2016	$1,879
	2017	$1,895
33-19-10-08-352-301	2014	$1,845
	2015	$1,874
	2016	$1,879
	2017	$1,895
33-19-10-08-352-313	2014	$1,845
	2015	$1,874
	2016	$1,879
	2017	$1,895
33-19-10-08-352-314	2014	$1,845
	2015	$1,874
	2016	$1,879
	2017	$1,895
33-19-10-08-352-316	2014	$1,845
	2015	$1,874

	2016	$1,879
	2017	$1,895

PETITIONER'S CONTENTIONS

Petitioner contends that the TVs at issue are incorrect because land improvements, public service improvements, and non-physical improvements were improperly included as additions to the TV calculations in prior tax years. Petitioner also argues that the prior Consent Judgments can be collaterally attacked, and the issues raised in this case were not decided by the parties through their settlements.

In support of its Motion for Partial Summary Disposition, Petitioner contended that the main issue is to decide what is included and excluded from TV, "where the previously vacant land has been improved but never transferred by the property owner." Specifically, Petitioner contended that, beginning in 2004,[4] Respondent incorrectly calculated the TVs for the subject properties by determining the TV for land to be $244,973 instead of $28,185, because Respondent included as additions land improvements that should have been excluded from the TV calculation.[5] Petitioner contended that Respondent unlawfully included public service improvements and non-physical improvements (e.g., subdividing property, zoning changes, site plan approvals), as additions in calculating the TV of the subject properties. Petitioner then contends that these errors were exacerbated by the parties when they entered into a settlement of Petitioner's appeal to the Tax Tribunal for tax years 2009 through 2012,[6] basing the TVs agreed to by the parties on those earlier determined incorrect TVs, and by failing to calculate TVs separately for land and land improvements. In that regard, Petitioner further contended that

[4] In Petitioner's Preface Brief in Support of its Motion for Partial Summary Disposition, on page iii, Petitioner states it "disputes the calculation for land tax value beginning in 2004. On page iv, Petitioner states it "agrees with the methodology used by Respondent in 2004 with respect to these units and contends that [the] methodology is the correct methodology for determining tax value of land and additions under the facts of this case." At oral argument, Petitioner's Counsel stated the parties agree the first error took place in 2003 "when the city failed to remove the full amount of additions and the land that was added to the development . . . from its valuation of the future development plan which became parcel 009." Because an error regarding the 2003 tax year was only referenced at oral argument and not fully briefed by Petitioner, the Tribunal shall refer to the first year including errors as the 2004 tax year.
[5] *Toll Northville Ltd v Township of Northville,* 480 Mich 6; 743 NW2d 902 (2008); *WPW Acquisition Co v City of Troy,* 466 Mich 117; 643 NW2d 564 (2002); MCL 211.34d(1)(c).
[6] MTT Docket Nos. 371003, 371004, 371005, 371006, 371007, 371008, 371009, 371010, and 433850.

neither party is bound by the terms of the Consent Judgments entered by the Tribunal.[7] Petitioner further contended that although the parties settled the TCVs, AVs and TVs of each of the subject parcels separately in their Consent Judgment, and although Respondent calculated the TVs of the subject parcels on that basis for the 2013 tax year, Respondent erroneously and in violation of Michigan statute calculated TVs for the subject properties for the 2014, 2015 and 2016 tax years based on the aggregate AVs of the subject properties rather than on each separate parcel, thereby increasing TVs for some of the parcels by an amount greater than the statutory inflation rate. Finally, Petitioner contended that (1) contrary to Respondent's representations, Respondent has not corrected prior errors in calculating TV, and (2) Respondent's contention that Petitioner is barred by collateral estoppel from recalculating TVs for tax years subsequent to 2012, based on the Consent Judgment entered into among the parties for the 2009 through 2012 tax years, ignores the Michigan Court of Appeals decision in *American Mutual Liability Insurance Company v Michigan Mutual Liability Company*,[8] which Petitioner contended held that "consent judgments are not entitled to collateral estoppel effect in new causes of action unless the intent to be so bound is clearly reflected in the parties' consent judgment."[9]

Petitioner reiterated the above arguments at the evidentiary hearing. At the hearing, Petitioner primarily relied upon its contention that in determining the TCV's, AV's and TV's of the parent parcel and subsequently created parcels, Respondent erroneously included the value of improvements and intangibles discussed in *Toll.*[10]

RESPONDENT'S CONTENTIONS

In support of its original Motion and in response to Petitioner's Motion, Respondent contended that the TVs of the subject properties for the tax years at issue were properly determined and that any errors in calculating TVs for tax years prior to 2009 were corrected by Respondent in subsequent years or by virtue of the Consent Judgments issued by the Tribunal for

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[7] *American Mutual Liability Insurance Co v Michigan Mutual Liability Co*, 64 Mich App 315; 235 NW2d 769 (1975).
[8] *Mutual Liability Insurance Company v Michigan Mutual Liability[8] Company*, 64 Mich App 315; 235 NW2d 769 (1975)
[9] Petitioner's Brief in Opposition to Respondent's Motion for Partial Summary Disposition, p. 1.
[10] *Toll*, supra. Because the *Toll* decision was issued by the Michigan Supreme Court in 2008, Respondent clearly was not aware of the impact of this decision when determining TCV's, AV's and TV's of Petitioner's property during tax years prior to 2008.

the 2009 through 2012 tax years, or by evidence submitted at the hearing. Respondent further contends that Petitioner's claims regarding errors in calculating TV do not survive the aforementioned Consent Judgments, as they are barred by the doctrine of *res judicata.* Respondent further contends that Petitioner's argument regarding the inclusion of impermissible additions in the calculation of TV, or the increase in TV to reflect costs otherwise prohibited by law, is without merit. Respondent further disputes the recalculation of TVs prepared by Petitioner's expert, Mr. Oetzel, as incorrect, unsupported, and irrelevant given the 2009 – 2012 settlement. Finally, Respondent contends that Petitioner is estopped from collaterally attacking the TVs determined for the subject properties because of the settlement.[11]

FINDINGS OF FACT

The Tribunal's Findings of Fact concern only evidence and inferences found to be significantly relevant to the legal issues involved; the Tribunal has not addressed every piece of evidence or every inference that might lead to conflicting conclusions and has rejected evidence contrary to those findings.[12]

1. In April 1999 Petitioner purchased approximately 43.8 acres of vacant land which was assigned Parcel Number 33-19-10-08-351-003.
2. Petitioner's plan to develop the 43.8 acres of land into single-family homes, multifamily residential units and garages was approved by Respondent in 2000.[13]
3. Ultimately, the parent parcel was developed into single-family home sites, multifamily residential units, and detached garages.
4. As units were constructed, Respondent created new parcels and allocated TV from the parent parcel to the newly created parcels.
5. Respondent agrees with Petitioner that certain errors were made by Respondent in the allocation of values (and calculations of TV) of the various parcels created as the development progressed during the period 1999 through 2004.

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[11] *Leahy v Orion Township,* 269 Mich App 527; 711 NW2d 438 (2006).
[12] In addition to a substantial number of pages of exhibits submitted by the parties in various phases of this appeal prior to the hearing, Petitioner's 66 exhibits submitted for the hearing consist of more than 1,000 pages; Respondent's 32 exhibits exceed 150 pages.
[13] See Petitioner's Exhibit P-59 (pages 1,152 through 1,216) for a detailed summary of the progress of the development from its inception, including Petitioner's understanding of the TV calculations of the various parcels during the development period.

6. The subject properties are the properties remaining from the development that were not transferred and continue to be owned by Petitioner.
7. Of the subject property, 17 parcels are apartment units and seven are detached garages. Four of the 17 apartment units were constructed in 2007, with the remainder constructed in 2008. The garages were constructed during 2004 through 2007.
8. The parties stipulated to the TCV's, AV's and TV's of the subject property for tax years 2009, 2010, 2011 and 2012.[14]
9. For 2013, Respondent adjusted the TV's of the subject properties by increasing the 2012 settled TV's by the applicable rate of inflation.
10. For the 2014 tax year, Respondent adjusted the TV's of the subject properties by increasing the 2013 calculated TV's by the applicable rates of inflation. The TV's for subsequent tax years were similarly calculated.
11. The TV's on the assessment roll for the subject properties for the tax years at issue are:

Parcel No.	Year	TV
33-19-10-08-352-149	2014	$21,935
	2015	$22,285
	2016	$22,351
	2017	$22,552
33-19-10-08-352-155	2014	$21,926
	2015	$22,276
	2016	$22,342
	2017	$22,543
33-19-10-08-352-157	2014	$21,935
	2015	$22,285
	2016	$22,351
	2017	$22,552
33-19-10-08-352-159	2014	$22,784

[14] Consent Judgments were issued by the Tribunal in Docket Nos. 371003 and 433850 in February 2012 and April 2013, respectively.

	2015	$23,148
	2016	$23,217
	2017	$23,425
33-19-10-08-352-161	2014	$23,106
	2015	$23,475
	2016	$23,545
	2017	$23,756
33-19-10-08-352-162	2014	$22,766
	2015	$23,130
	2016	$23,199
	2017	$23,407
33-19-10-08-352-163	2014	$22,230
	2015	$22,585
	2016	$22,652
	2017	$22,855
33-19-10-08-352-164	2014	$22,105
	2015	$22,458
	2016	$22,525
	2017	$22,727
33-19-10-08-352-165	2014	$22,239
	2015	$22,594
	2016	$22,661
	2017	$22,864
33-19-10-08-352-166	2014	$22,105
	2015	$22,458
	2016	$22,525
	2017	$22,727
33-19-10-08-352-170	2014	$22,766
	2015	$23,130

	2016	$23,199
	2017	$23,407
33-19-10-08-352-171	2014	$22,230
	2015	$22,585
	2016	$22,652
	2017	$22,855
33-19-10-08-352-172	2014	$22,105
	2015	$22,458
	2016	$22,525
	2017	$22,727
33-19-10-08-352-173	2014	$22,239
	2015	$22,594
	2016	$22,661
	2017	$22,864
33-19-10-08-352-174	2014	$22,105
	2015	$22,458
	2016	$22,525
	2017	$22,727
33-19-10-08-352-175	2014	$23,106
	2015	$23,475
	2016	$23,545
	2017	$23,756
33-19-10-08-352-176	2014	$22,766
	2015	$23,130
	2016	$23,199
	2017	$23,407
33-19-10-08-352-284	2014	$1,845
	2015	$1,874
	2016	$1,879

	2017	$1,895
33-19-10-08-352-285	2014	$1,845
	2015	$1,874
	2016	$1,879
	2017	$1,895
33-19-10-08-352-300	2014	$1,845
	2015	$1,874
	2016	$1,879
	2017	$1,895
33-19-10-08-352-301	2014	$1,845
	2015	$1,874
	2016	$1,879
	2017	$1,895
33-19-10-08-352-313	2014	$1,845
	2015	$1,874
	2016	$1,879
	2017	$1,895
33-19-10-08-352-314	2014	$1,845
	2015	$1,874
	2016	$1,879
	2017	$1,895
33-19-10-08-352-316	2014	$1,845
	2015	$1,874
	2016	$1,879
	2017	$1,895

12. The parties' contentions of TV for the subject properties for the tax years at issue:

Parcel No.	Year	RESP TV	PET TV
33-19-10-08-352-149	2014	$21,935	$10,689
	2015	$22,285	$10,860
	2016	$22,351	$10,893
	2017	$22,552	$10,991
33-19-10-08-352-155	2014	$21,926	$10,682
	2015	$22,276	$10,853
	2016	$22,342	$10,885
	2017	$22,543	$10,983
33-19-10-08-352-157	2014	$21,935	$10,689
	2015	$22,285	$10,860
	2016	$22,351	$10,893
	2017	$22,552	$10,991
33-19-10-08-352-159	2014	$22,784	$11,369
	2015	$23,148	$11,551
	2016	$23,217	$11,585
	2017	$23,425	$11,690
33-19-10-08-352-161	2014	$23,106	$11,626
	2015	$23,475	$11,812
	2016	$23,545	$11,847
	2017	$23,756	$11,954
33-19-10-08-352-162	2014	$22,766	$11,354
	2015	$23,130	$11,535
	2016	$23,199	$11,570
	2017	$23,407	$11,674
33-19-10-08-352-163	2014	$22,230	$10,925
	2015	$22,585	$11,100
	2016	$22,652	$11,133
	2017	$22,855	$11,233

33-19-10-08-352-164	2014	$22,105	$10,825
	2015	$22,458	$10,998
	2016	$22,525	$11,031
	2017	$22,727	$11,131
33-19-10-08-352-165	2014	$22,239	$10,937
	2015	$22,594	$11,107
	2016	$22,661	$11,140
	2017	$22,864	$11,240
33-19-10-08-352-166	2014	$22,105	$10,825
	2015	$22,458	$10,998
	2016	$22,525	$11,035
	2017	$22,727	$11,134
33-19-10-08-352-170	2014	$22,766	$11,354
	2015	$23,130	$11,535
	2016	$23,199	$11,570
	2017	$23,407	$11,674
33-19-10-08-352-171	2014	$22,230	$10,925
	2015	$22,585	$11,100
	2016	$22,652	$11,133
	2017	$22,855	$11,233
33-19-10-08-352-172	2014	$22,105	$10,825
	2015	$22,458	$10,998
	2016	$22,525	$11,031
	2017	$22,727	$11,131
33-19-10-08-352-173	2014	$22,239	$10,932
	2015	$22,594	$11,107
	2016	$22,661	$11,140
	2017	$22,864	$11,240
33-19-10-08-352-174	2014	$22,105	$10,825

	2015	$22,458	$10,998
	2016	$22,525	$11,031
	2017	$22,727	$11,131
33-19-10-08-352-175	2014	$23,106	$11,626
	2015	$23,475	$11,812
	2016	$23,545	$11,847
	2017	$23,756	$11,954
33-19-10-08-352-176	2014	$22,766	$11,354
	2015	$23,130	$11,535
	2016	$23,199	$11,570
	2017	$23,407	$11,674
33-19-10-08-352-284	2014	$1,845	$1,069
	2015	$1,874	$1,087
	2016	$1,874	$1,090
	2017	$1,895	$1,100
33-19-10-08-352-285	2014	$1,845	$1,069
	2015	$1,874	$1,087
	2016	$1,874	$1,090
	2017	$1,895	$1,100
33-19-10-08-352-300	2014	$1,845	$1,069
	2015	$1,874	$1,087
	2016	$1,874	$1,090
	2017	$1,895	$1,100
33-19-10-08-352-301	2014	$1,845	$1,069
	2015	$1,874	$1,087
	2016	$1,874	$1,090
	2017	$1,895	$1,100
33-19-10-08-352-313	2014	$1,845	$1,069
	2015	$1,874	$1,087

	2016	$1,874	$1,090
	2017	$1,895	$1,100
33-19-10-08-352-314	2014	$1,845	$1,069
	2015	$1,874	$1,087
	2016	$1,874	$1,090
	2017	$1,895	$1,100
33-19-10-08-352-316	2014	$1,845	$1,069
	2015	$1,874	$1,087
	2016	$1,874	$1,090
	2017	$1,895	$1,100

CONCLUSIONS OF LAW

1. Petitioner's Motion to File Post Trial Brief

Petitioner contends because one of its witnesses was unable to offer a complete response to a hypothetical posed by the Tribunal during closing argument, it should be allowed to provide a full analysis of the hypothetical to offer "insight into the constitutional and legislative intent that is relevant to the resolution of the issues in this matter." Although Respondent acknowledges that Michigan Administrative Hearings Rules, R 792.10130, allow a party to request an opportunity to submit a post-hearing brief, it contends that the "hypotheticals set forth in the brief have no bearing on the facts as presented by the Petitioner." The Tribunal has reviewed the file and the transcript of the hearing and finds that the seventeen-page motion offered by Petitioner was not requested by the Tribunal, does not contribute to the decision reached by the Tribunal in this matter, and is simply unnecessary. The Tribunal finds that it must deny Petitioner's Motion to File a Post-Trial Brief.

2. Determination of TV's of the Subject Parcels for the Tax Years at Issue.

The parties' interpretations differ regarding the appropriate calculation of the TV's for the tax years under appeal. More specifically, Respondent contends, "[i]n this case, Mr. Oetzel, on behalf of Esquire Development, has set out a methodology that derives the claimed TVs for the years 2007 and 2008. The City disputes the manner and method by which Mr. Oetzel arrived at the numbers."[15] Similarly, Petitioner asserts that it "disputes that [Respondent's] calculation[s] are correct, [stating that] among other things, the calculations are not made as required by the State Tax Commission and other state law."[16]

Respondent acknowledges that pursuant to the Supreme Court ruling in *Michigan Properties*,[17] if Petitioner "can demonstrate an error in calculation of the taxable values, it is entitled to an adjustment, absent certain circumstances."[18] In *Michigan Properties*, the Michigan Supreme Court stated that the Tribunal has authority to "reduce an unconstitutional previous increase in taxable value for purposes of adjusting a taxable value that was timely challenged in a subsequent year. The Tax Tribunal Act sets forth the Tax Tribunal's jurisdiction. Once its jurisdiction is properly invoked, the Tax Tribunal possesses the same powers and duties assigned to a March board of review under the GPTA, including the duty to adjust erroneous taxable values to bring the current tax rolls into compliance with the GPTA."[19] Thus, the Tribunal has authority to recalculate TV's from the year(s) in which the error(s) occurred and then correct the 2014, 2015, 2016 and 2017 TVs, if appropriate.

Respondent contends, however, that the subject properties' TVs were determined in accordance with state law,[20] and that any claimed error was eliminated by the settlement reached for the 2009 through 2012 tax years, and is also barred by the doctrine of res judicata.[21] More specifically, Respondent contends that the TVs for all of the subject properties were litigated in the 2012 tax appeal, and both parties "had a fair and adequate opportunity to litigate and came to a mutual agreement."[22] Respondent contends that pursuant to *Leahy*,[23] if the tax year was

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[15] Respondent's Brief in Support of its Motion for Partial Summary Disposition, p. 8.
[16] Petitioner's Brief in Opposition to Respondent's Motion for Partial Summary Disposition, p. 5.
[17] *Michigan Properties LLC v Meridian Township*, 491 Mich 518; 817 NW 2d 548 (2012).
[18] Respondent's Brief in Support of its Motion for Partial Summary Disposition, p.8.
[19] *Michigan Properties* at 545–546.
[20] *Id.* at p.4
[21] Respondent uses the doctrine of res judicata and the doctrine of collateral estoppel interchangeably. However, collateral estoppel is a variation of res judicata. *American Mutual Liability Insurance Co v Michigan Mutual Liability Co*, 64 Mich App 315, 326; 235 NW 2d 769 (1975).
[22] *Id.*

actually and necessarily determined in a prior decision, then that decision cannot be collaterally attacked.

The Supreme Court acknowledged the distinction in *Michigan Properties*, as follows:

> The facts before us in both cases are distinguishable from those presented in *Leahy v Orion Twp*, 269 Mich App 527; 711 NW2d 438 (2006). In *Leahy*, the Court of Appeals refused to allow a taxpayer's challenge to a property's taxable value from a previous year for purposes of adjusting a subsequent year's taxable value. The taxpayer in *Leahy* had already challenged that previous year's taxable value in the year that the value was entered, claiming that the taxable value was erroneous. The taxpayer's challenge went to the Tax Tribunal, which ruled against him, and the taxpayer did not appeal that decision. Accordingly, the Court of Appeals correctly concluded that the taxpayer was collaterally estopped from relitigating the issue.[24]

Michigan Properties relates to situations where there was either a failure by the assessor to adjust the taxable value or an unconstitutional increase in taxable value by the assessor, with no litigation of those specific tax years before the Tribunal. *Leahy* involved a challenge to a prior year's taxable value that had already been litigated before the Tribunal. Here, Petitioner is asserting that the TVs for the tax years under appeal were made in error as Respondent increased the TV for each year beyond the constitutional limits, and the error compounded each year.[25] As such, if the 2003 or 2004 TV was improperly calculated, the Tribunal is authorized to adjust the erroneous value to bring the *current tax rolls* into compliance with the General Property Tax Act. The Tribunal agrees that Petitioner is collaterally estopped from attacking the TVs for the 2009 through 2012 tax years, considering the settlement of these years, under *Leahy*. However, as was concluded by the Tribunal in its Order denying the parties respective Motions for Partial Summary Disposition, Petitioner is not asking the Tribunal to recalculate *and correct* the TV of the tax years settled within the Consent Judgment. Instead, Petitioner is simply requesting that the Tribunal correct the alleged errors made by Respondent in calculating TV's beginning in the 2004 tax year and recalculate the TV's for the tax years at issue.[26]

As discussed above, in addition to its contentions that errors were made by Respondent in allocating TV to the parcels split from the parent parcel, Petitioner presented two theories with

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[23] *Leahy v Orion Township*, 269 Mich App 527; 711 NW2d 438 (2006).
[24] *Michigan Properties*, 491 Mich at 533 n 18.
[25] Petitioner's Preface Brief in Support of its Motion for Partial Summary Disposition, page v.
[26] *Michigan Properties*, 491 Mich at 545-546.

respect to TV calculations. First, Petitioner contends that Respondent erroneously included infrastructure improvements[27] and intangible costs such as zoning and planning costs in its calculation of taxable values of the subject properties during the development of those properties, which conflicts with statute and case law. Second, Petitioner contends that Respondent also failed to separately calculate TV for land and buildings. Further, Petitioner contends that among other errors during the development period, Respondent erred by allocating TV from the property owned by Petitioner to transferred property but failed to negatively adjust the TV of Petitioner's remaining property to reflect those transfers.

a. Errors made by Respondent in allocating the TV of the parent parcel to subsequently created parcels.

Mr. Bonfiglio, Petitioner's President and majority owner, has passionately presented thousands of pages of exhibits, argument and testimony throughout the process of this appeal, detailing his analysis of the errors committed by Respondent during, and after, the development phase of the subject project. Respondent agrees that there were errors made by its assessing department in allocating TV's from the parent parcel to the subsequently created parcels. Mr. Oetzel and Mr. Cunningham, the expert witnesses offered by the parties, attempted to correct those errors, attempted to recalculate TV's by first recalculating the allocated TV's for the parent parcel land. Mr. Oetzel calculated his land TV's by (i) determining that 94% of the TCV of the parent parcel in 2002 was attributable to the condominium units and 6% was attributable to the garage units, (ii) applying 94% to the parent parcel's AV ($32,607), and (iii) then dividing Respondent's TV for the 28.623 acres of condominium land by the 160 units approved in the site plan, to determine a TV for each unit's land of $192. For the garage units, Mr. Oetzel's starting point was a TV of $20, as determined by Respondent.[28]

Mr. Cunningham calculated his initial land TV's to be $165 for the condominium units and $28 for the garages (compared to the $192 TV and $20 TV, respectively calculated by Mr. Oetzel.) The Tribunal finds that the attempts of both parties' experts to correct the initial errors made by Respondent in initially allocating land TV to the subject parcels are reasonable; and, in the final analysis, whether the initial TV's for condominium land are $165 or $192 (or $28 or

[27] E.g., subdivision roads, sewers, water lines.
[28] Petitioner's Exhibit 58, pages 1,129 and 1,130.

$20 for garage units) is irrelevant to the Tribunal's ultimate determination of TV's for the subject properties for the tax years at issue.[29]

b. Public service improvements and intangible costs were erroneously added to TV by Respondent when calculating the TV's of the subject parcels.

MCL 211.27a provides that the TV for a specific year is determined by subtracting "losses" from the prior year TV, multiplying that value by the lower of the annual rate of inflation or 5%, and then adding "additions." In this regard, MCL 211.34d provides that costs attributable to platting, splits, property combinations, and changes in zoning are not additions or losses. Further, "public services" such as water service, sewer service, primary access road, natural gas service, electrical service, telephone service, sidewalks, or street lighting are not to be included as additions until the property has transferred.[30] Petitioner contends that Respondent included all of Petitioner's costs for these items in determining the TCV of the subject property during the development phase. Thus, Petitioner contends that the TV's of the subject properties were overstated because the TV's allocated to those parcels (which continue to be owned by Petitioner) included such costs that should not be included until the subject parcels are sold.

In this regard, Mr. Bonfiglio specifically testified that "I . . . Petitioner does not know the best methodology to use. Petitioner believes that Mr. Oetzel has set forth two ways of arriving at it, and that, I believe, it's a legal issue as to which one is the correct way to calculate it."[31] Further, Mr. Bonfiglio reiterated that he agreed with the valuations proposed by Mr. Oetzel and that he is "going along with Mr. Oetzel's valuations.[32]

Mr. Oetzel determined "public services" costs and intangible costs to equate to 20% of the building cost determined by Respondent for each of the subject properties and, as a result, reduced the AV's (and, therefore, the TV's) of the subject properties at the time the buildings were placed on the assessment roll, by that 20% factor. Respondent contends that Mr. Oetzel provided no basis or logical rationale for his determination of the 20% reduction factor. The Tribunal agrees with Respondent that Petitioner has failed to provide any evidence or support for its contention that Respondent erroneously or illegally included public services or intangible

[29] This determination of land TV's beginning in 2004 is not relevant to the Tribunal's ultimate determination of TV's for the tax years at issue because of the impact of the parties' settlement of the 2009 through 2012 tax years.
[30] *Toll*, supra.
[31] Transcript, p. 125.
[32] Transcript, p. 143.

costs in its determination of the TCV's, AV's and TV's of the subject properties. Further, the Tribunal finds that Mr. Oetzel's convoluted methodology for first determining a 10.6% factor and then arbitrarily doubling that factor simply is unsupported and makes no sense.[33]

Ms. Pulling, Respondent's former assessor, could not recall how the assessments for the parcels comprising Petitioner's development were determined, nor could she remember whether public services costs were included in the valuation of the subject parcels.[34] Ms. Pulling did acknowledge that such costs should not be included in the calculation of TV until the parcel is transferred.[35] Mr. Cunningham, on the other hand, testified that (i) he never includes public services costs in building costs, (ii) that in applying the cost approach to value, such costs are reflected as land improvements, and (iii) that prior to a transfer of ownership, he never includes public service costs in TV.[36] The Tribunal has reviewed the multitude of assessment records provided in this matter and finds that: (i) both parties agree that the TV's of the subject land (prior to improvements) are less than $200 for each condominium parcel and less than $30 for each garage parcel, (ii) that these amounts determined for the TV's of said land could not realistically include costs incurred for "public services" or intangibles, (iii) building costs for the condominium units and garages were developed using the Assessor's Manual issued by the State Tax Commission, which do not include "public services" costs or intangible costs. Not only does the Tribunal find no support for Petitioner's determination that such costs were included in Respondent's TV calculations, it also finds no support for the 20% factor applied by Petitioner to identify such costs included in Respondent's TV calculations.

c. TV's for the subject properties should be determined by separately calculating land TV's and building TV's.

Petitioner contends that the TV's for the subject properties for the tax years at issue should be determined by separately calculating land TV and building TV. Petitioner further contends that this approach makes sense where, for example, land values are increasing, but building values are decreasing, sufficient to yield a lower calculated TV than would have been calculated by simply increasing the prior year TV for a parcel by the applicable inflation rate.

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[33] Petitioner's Exhibit 58.
[34] Transcript, pp. 312 – 316.
[35] Transcript, p. 317.
[36] Transcript, pp. 363, 364.

However, neither Mr. Bonfiglio nor Mr. Oetzel provide any legal support for such a contention. MCL 211.27a(2) provides that "the taxable value of each parcel of property" is the lesser of the prior year TV less losses, multiplied by the lesser of 5% or the inflation rate, plus additions. Nothing the Tribunal can find in the statute or case law interpreting the statute would support Petitioner's contention that separate TV's must be calculated for land, buildings, and presumably, land improvements.

Given the above analysis, the Tribunal finds that absent the parties' settlement of TCV's, AV's and TV's of the subject properties for the 2009 – 2012 tax years, the TV's of the subject properties for the tax years at issue would have been revised by the Tribunal based on the revised TV's for land as calculated by both Petitioner and Respondent. The Tribunal further finds that Petitioner's contentions that Respondent improperly included value for "public services" and intangibles such as rezoning costs in its TV calculations are without merit. Finally, the Tribunal finds that the parties' settlement reduced the TV's for those years such that a recalculation of TV's pursuant to *Michigan Properties* does not result in any change from the TV's on the assessment roll. Therefore, the Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that TV's of the subject parcels for the 2014, 2015, 2016 and 2017 tax years are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that Petitioner's Motion to File Post Trial Brief is DENIED.

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

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, and (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%.

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

APPEAL RIGHTS

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

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[37] 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,

[37] See TTR 261 and 257.

there is no filing fee.[38] 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.[39] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[40]

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[41] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[42] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[43]

By Steven H. Lasher

Entered: March 19, 2018

[38] See TTR 217 and 267.
[39] See TTR 261 and 225.
[40] See TTR 261 and 257.
[41] See MCL 205.753 and MCR 7.204.
[42] See TTR 213.
[43] See TTR 217 and 267.