

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

TCF National Bank,
Petitioner,

v

MTT Docket No. 318948

Tyrone Township,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

FINAL OPINION AND JUDGMENT

INTRODUCTION

This real property tax valuation dispute came before the Michigan Tax Tribunal for hearing on January 31, 2008, in Lansing, Michigan. Fred Gordon of Law Offices of Fred Gordon and John Premo of Kickham Hanley P.C., Attorneys at Law, represented Petitioner. Bruce Little, Assessor for Tyrone Township, represented Respondent.

At issue in this appeal is the true cash value (TCV), state equalized value (SEV), and taxable value (TV) of sixteen subject properties with the following parcel identification numbers: 04-08-101-048, 04-08-101-049, 04-08-101-050, 04-08-101-051, 04-08-101-057, 04-08-101-060, 04-08-101-061, 04-08-101-062, 04-08-101-063, 04-08-101-065, 04-08-101-066, 04-08-101-067, 04-08-101-068, 04-08-101-069, 04-08-101-070, 04-08-101-071. The tax years at issue are 2005 and 2006. The properties are classified for taxation purposes as residential real property. The average level of assessment in effect for the subject property's classification for 2005 and 2006 is 50%.

Petitioner offered the testimony of an expert witness, Donald Wieme of Wieme, Rende & Associates, P.C. Respondent offered the testimony of an expert witness, Bruce Little, State Certified Level IV Assessor. Each party submitted a valuation disclosure containing their

opinions of fair market value. Petitioner's Valuation Disclosure (Exhibit P-1) was admitted into evidence. Respondent's Valuation Disclosure (Exhibit R-1) was also admitted into evidence. Petitioner filed a post-hearing brief on March 31, 2008. Respondent did not file a response to Petitioner's brief or its own post-hearing brief.

PROCEDURAL HISTORY

The property tax assessments were based on Respondent's estimate of the TCV of the subject property as of December 31, 2004, for the 2005 calendar year, and December 31, 2005, for the 2006 tax year. Petitioner appeared before the March 2005 Board of Review for Tyrone Township to protest the TCV, AV, and TV of the subject properties. The Board of Review denied the relief requested and affirmed the assessments. On June 30, 2005, Petitioner filed a Petition with the Tribunal alleging that ". . . the 2005 assessment and taxable value as tentatively equalized: (a) exceeds 50% of the cash value of the property as required by statute [and] (b) [h]as been erroneously determined by the application of an inappropriate method of valuation, or by an inappropriate application of an otherwise acceptable method of valuation."¹ Respondent filed a timely answer. In its Answer, Respondent contends that the TCV for each subject property is \$120,000 for the 2005 tax year. Further, Respondent argues that the 2005 assessed value is \$60,000 and the taxable value is \$51,150. On June 6, 2006, Petitioner then filed a Motion to Amend its original Petition to add the subsequent tax year, 2006. The Tribunal granted Petitioner's Motion on July 27, 2006. Assessments for 2007 and 2008 are not at issue in this proceeding.

¹ Petitioner's Petition

PARTIES' CONTENTIONS OF TCV, SEV, AND TV

Petitioner contends that the property is assessed in excess of 50% of its true cash value and that the sixteen subject properties comprise the entire subdivision at question and should be assessed as a whole rather than individually by parcel number. As such, Petitioner contends that the actual true cash value of the subdivision for the 2005 tax year is \$550,000 and \$450,000 for the 2006 tax year. These values indicate a land value of \$34,375 per subject property for the 2005 tax year and \$28,125 per subject property for the 2006 tax year.

Conversely, Respondent contends that the property is assessed at 50% of its true cash value and further contends that the true cash, state equalized, and taxable values for tax years 2005 and 2006 are as follows:

| <u>Year</u> | <u>ID Number</u> | <u>TCV</u> | <u>SEV</u> | <u>TV</u> |
|-------------|------------------|------------|------------|-----------|
| 2005 | 04-08-101-048 | \$105,000 | \$52,500 | \$51,150 |
| 2005 | 04-08-101-049 | \$105,000 | \$52,500 | \$51,150 |
| 2005 | 04-08-101-050 | \$105,000 | \$52,500 | \$51,150 |
| 2005 | 04-08-101-051 | \$105,000 | \$52,500 | \$51,150 |
| 2005 | 04-08-101-057 | \$105,000 | \$52,500 | \$51,150 |
| 2005 | 04-08-101-060 | \$105,000 | \$52,500 | \$51,150 |
| 2005 | 04-08-101-061 | \$105,000 | \$52,500 | \$51,150 |
| 2005 | 04-08-101-062 | \$105,000 | \$52,500 | \$51,150 |
| 2005 | 04-08-101-063 | \$105,000 | \$52,500 | \$51,150 |
| 2005 | 04-08-101-065 | \$105,000 | \$52,500 | \$51,150 |
| 2005 | 04-08-101-066 | \$105,000 | \$52,500 | \$51,150 |
| 2005 | 04-08-101-067 | \$105,000 | \$52,500 | \$51,150 |
| 2005 | 04-08-101-068 | \$105,000 | \$52,500 | \$51,150 |
| 2005 | 04-08-101-069 | \$105,000 | \$52,500 | \$51,150 |
| 2005 | 04-08-101-070 | \$105,000 | \$52,500 | \$51,150 |
| 2005 | 04-08-101-071 | \$105,000 | \$52,500 | \$51,150 |
| 2006 | 04-08-101-048 | \$105,000 | \$52,500 | \$52,500 |
| 2006 | 04-08-101-049 | \$105,000 | \$52,500 | \$52,500 |
| 2006 | 04-08-101-050 | \$105,000 | \$52,500 | \$52,500 |
| 2006 | 04-08-101-051 | \$105,000 | \$52,500 | \$52,500 |
| 2006 | 04-08-101-057 | \$105,000 | \$52,500 | \$52,500 |
| 2006 | 04-08-101-060 | \$105,000 | \$52,500 | \$52,500 |
| 2006 | 04-08-101-061 | \$105,000 | \$52,500 | \$52,500 |
| 2006 | 04-08-101-062 | \$105,000 | \$52,500 | \$52,500 |

| | | | | |
|------|---------------|-----------|----------|----------|
| 2006 | 04-08-101-063 | \$105,000 | \$52,500 | \$52,500 |
| 2006 | 04-08-101-065 | \$105,000 | \$52,500 | \$52,500 |
| 2006 | 04-08-101-066 | \$105,000 | \$52,500 | \$52,500 |
| 2006 | 04-08-101-067 | \$105,000 | \$52,500 | \$52,500 |
| 2006 | 04-08-101-068 | \$105,000 | \$52,500 | \$52,500 |
| 2006 | 04-08-101-069 | \$105,000 | \$52,500 | \$52,500 |
| 2006 | 04-08-101-070 | \$105,000 | \$52,500 | \$52,500 |
| 2006 | 04-08-101-071 | \$105,000 | \$52,500 | \$52,500 |

TRIBUNAL’S CONCLUSIONS OF TCV, SEV, AND TV

From its examination of the evidence at the hearing in this matter, the Tribunal concludes that the true cash, state equalized, and taxable values of the subject property is best measured by the sales comparison approach with the resulting final values:

| <u>Year</u> | <u>ID Number</u> | <u>TCV</u> | <u>SEV</u> | <u>TV</u> |
|-------------|------------------|------------|------------|-----------|
| 2005 | 04-08-101-048 | \$67,500 | \$33,750 | \$33,750 |
| 2005 | 04-08-101-049 | \$67,500 | \$33,750 | \$33,750 |
| 2005 | 04-08-101-050 | \$67,500 | \$33,750 | \$33,750 |
| 2005 | 04-08-101-051 | \$67,500 | \$33,750 | \$33,750 |
| 2005 | 04-08-101-057 | \$67,500 | \$33,750 | \$33,750 |
| 2005 | 04-08-101-060 | \$67,500 | \$33,750 | \$33,750 |
| 2005 | 04-08-101-061 | \$67,500 | \$33,750 | \$33,750 |
| 2005 | 04-08-101-062 | \$67,500 | \$33,750 | \$33,750 |
| 2005 | 04-08-101-063 | \$67,500 | \$33,750 | \$33,750 |
| 2005 | 04-08-101-065 | \$67,500 | \$33,750 | \$33,750 |
| 2005 | 04-08-101-066 | \$67,500 | \$33,750 | \$33,750 |
| 2005 | 04-08-101-067 | \$67,500 | \$33,750 | \$33,750 |
| 2005 | 04-08-101-068 | \$67,500 | \$33,750 | \$33,750 |
| 2005 | 04-08-101-069 | \$67,500 | \$33,750 | \$33,750 |
| 2005 | 04-08-101-070 | \$67,500 | \$33,750 | \$33,750 |
| 2005 | 04-08-101-071 | \$67,500 | \$33,750 | \$33,750 |
| 2006 | 04-08-101-048 | \$67,500 | \$33,750 | \$33,750 |
| 2006 | 04-08-101-049 | \$67,500 | \$33,750 | \$33,750 |
| 2006 | 04-08-101-050 | \$67,500 | \$33,750 | \$33,750 |
| 2006 | 04-08-101-051 | \$67,500 | \$33,750 | \$33,750 |
| 2006 | 04-08-101-057 | \$67,500 | \$33,750 | \$33,750 |
| 2006 | 04-08-101-060 | \$67,500 | \$33,750 | \$33,750 |
| 2006 | 04-08-101-061 | \$67,500 | \$33,750 | \$33,750 |
| 2006 | 04-08-101-062 | \$67,500 | \$33,750 | \$33,750 |
| 2006 | 04-08-101-063 | \$67,500 | \$33,750 | \$33,750 |
| 2006 | 04-08-101-065 | \$67,500 | \$33,750 | \$33,750 |

| | | | | |
|------|---------------|----------|----------|----------|
| 2006 | 04-08-101-066 | \$67,500 | \$33,750 | \$33,750 |
| 2006 | 04-08-101-067 | \$67,500 | \$33,750 | \$33,750 |
| 2006 | 04-08-101-068 | \$67,500 | \$33,750 | \$33,750 |
| 2006 | 04-08-101-069 | \$67,500 | \$33,750 | \$33,750 |
| 2006 | 04-08-101-070 | \$67,500 | \$33,750 | \$33,750 |
| 2006 | 04-08-101-071 | \$67,500 | \$33,750 | \$33,750 |

PETITIONER'S EVIDENCE, APPRAISAL AND EXPERT TESTIMONY

Petitioner claims that the true cash value should be based on the income approach utilizing a discounted cash flow analysis described in its appraisal report and testified to by its expert witness Donald Wieme of Wieme, Rende & Associates, P.C.

Petitioner's expert witness appraiser testified in support of his appraisal report, whose conclusions of the subject's TCV and TV as of December 31, 2004 and December 31, 2005 are included in the above section.

PETITIONER'S CONTENTIONS

Donald Wieme, Petitioner's Expert Witness, testified that ". . . the subject property consists of 16 completed single-family residential lots . . . that are irregularly shaped and generally range in size between .9 and 1.7 acres."² Mr. Wieme further testified that as of December 31, 2004, the first tax day of value, the subject properties were completed and marketed at prices ranging from \$60,000 to \$90,000 per lot.³ Petitioner contends that the valuation approach that is the most reliable indicator of the property's true cash value for the tax years at issue is the income approach utilizing a discounted cash flow analysis. Applying this analysis to the subject properties, Petitioner finds that, as a subdivision, the properties are worth \$550,000 for the 2005 tax year and \$450,000 for the 2006 tax year.⁴

² Transcript, p 9, ¶¶ 7-8, ¶¶ 23-24

³ Transcript, p 10, ¶¶ 7-11

⁴ P1, p1

Petitioner contends that the highest and best use of the property is to be held and sold as a subdivision for investment purposes. Petitioner assumes that the subject properties, as a subdivision, are best assessed with an investment value rather than assess the parcels individually with a market value. As such, Petitioner contends that the most likely purchaser of the 16 lots at question is a “. . . home builder or speculator willing to take on the burden of 16 lots.”⁵

Mr. Wieme testified that:

. . . the first step is to identify not only the probable price of the homes that could be expected to be built within these lots, but also the probable prices at which the lots could be sold. . . . [W]e looked at five or six competing subdivisions within about a three or four mile radius of the subject property and found lot sales within those developments generally between a low of 60 to a high as a little over \$100,000 per lot, and we concluded that it would be reasonable to expect that the subject lots could be sold at an average price of about \$70,000 per lot.⁶

Mr. Weime further testified that the next step is to utilize the discounted cash flow analysis. This specific analysis would

. . . identify the probable revenues that could be generated through the sale of these individual lots over reasonable absorption time, and then also identify the negative revenues – that is, the carrying costs, the costs to complete some small items relating to the road that remain uncompleted – to identify a series of net cash flows that could be expected over the anticipated sell-off period.⁷

Petitioner’s appraisal indicates that “[a]dditional work is required in order to finalize the common areas of this development. A list was provided the appraiser, dated February 16, 2004, that indicates a total estimated expenditure approximating \$556,000. This preliminary cost estimate includes:

- | | |
|---|-----------|
| 1. Installation of a low-pressure, forced main sanitary | \$160,000 |
| 2. Connection to public sewer | \$5,000 |
| 3. Removal of existing septic field | \$60,000 |

⁵ Transcript, p 11, ¶¶ 6-7

⁶ Transcript, p 11, ¶¶ 7-18

⁷ Transcript, p 11-12, ¶¶ 19-25, ¶¶ 1-4

| | |
|--|------------------------|
| 4. Pavement core Phase I | -0- |
| 5. Private drive construction | \$60,000 |
| 6. Road pavement repair and restoration | \$45,000 |
| 7. Installation of final lift coat of asphalt on all roads | \$135,000 |
| 8. Soil erosion control | \$5,000 |
| 9. Ditch restoration | \$10,000 |
| 10. Tree clearing at Linden Road | \$5,000 |
| 11. Road signs | \$2,000 |
| 12. Abandonment of well | \$3,000 |
| 13. Landscaping | \$50,000 |
| 14. Conservation easement | \$10,000 |
| 15. Other | <u>\$6,000</u> |
| Total: | \$556,000 ⁸ |

As stated above, when Petitioner employs the discounted cash flow analysis, Petitioner asserts that the subject properties, as a subdivision, are worth \$550,000 for the 2005 tax year and \$450,000 for the 2006 tax year.⁹

RESPONDENT'S EVIDENCE, APPRAISAL AND TESTIMONY

Respondent's case was presented through the testimony of Mr. Bruce A. Little, State Certified Level IV Assessor, who prepared a valuation disclosure for the subject to support the TCV and TV indicated in the above section.

⁸ P1, p5

⁹ P1, p1

RESPONDENT'S CONTENTIONS

Respondent contends that the highest and best use of the properties is individual parcels of property for sale and use by individual owners to build residential homes on. Further, Respondent contends that the sales comparison approach is the best indicator of the properties' value. Mr. Little testified that he lowered the taxable value of the subject properties in 2005 from \$50,000 to \$40,000. In 2006, the state equalized value was raised to \$52,000 and the taxable value increased by the inflation rate multiplier.

Respondent testified that he is “. . . asking the Tribunal to actually raise [the 2005] assessment[] from 40,000 to 52,500 and the taxable value would follow along with that. And the basis for that is the appraisal that I've done here.”¹⁰ As such, Respondent contends that the subject properties' true cash values are \$105,000 for the tax years at issue. For the 2005 tax year, Respondent contends that the taxable values of all sixteen subject properties should be increased to \$51,150 and the taxable values of all sixteen subject properties is \$52,500 for the 2006 tax year.

Respondent testified that he created a comparable sales analysis based on Applewood Estates, a comparable subdivision that is also a site condo project, and is also located in Tyrone Township.¹¹ However, Respondent testified that Applewood Estates is dissimilar to The Preserve because it never went into foreclosure and the sales within that subdivision range from \$95,000 to \$122,000.¹² Respondent contends that if the subject properties were not mishandled and foreclosed on, the subject properties should be selling within the same range as the comparables from Applewood Estates.

Respondent also argues that utilizing a two-year sales study produces comparable sales on August 2002, November 2002, August 2003 and January 2004 for the 2005 tax year. The

¹⁰ Transcript, p 24, ¶¶ 13-17

¹¹ Transcript, p 32, ¶¶ 21-22

¹² Transcript, p 33, ¶¶ 9-12

sale prices range from \$95,000 to \$122,000. Further, Petitioner, again utilizing a two-year sales study, testified that for the 2006 tax year there were comparable sales on August 2003, January 2004, and November 2004. The sale prices range from \$95,000 to \$116,000.

As stated above, Respondent has utilized the sales comparison approach and found that the subject properties, individually, have a TCV of \$105,000 and a TV of \$51,500 for the 2005 tax year and a TCV of \$105,000 and a TV of \$52,500 for the 2006 tax year.

FINDINGS OF FACT

This section is a “concise, separate, statement of facts” within the meaning of MCL 205.751; and, unless stated otherwise, the matters stated or summarized are “findings of fact” within the meaning of 1969 PA 306, MCL 24.285.

The subject properties consist of sixteen individual parcels of residential units located within a site condominium development known as “The Preserve.” The subject parcels are located in Tyrone Township in Livingston County. The property owner is TCF National Bank who acquired title to the properties through a Sheriff’s Deed during 2002 when the original purchaser/developer, Tri-M Preserve, defaulted on its development loans. The Preserve consists of 72 residential home sites and includes Phase I and Phase II; properties within Phase I are at issue in this appeal. Phase I consists of 26 total home sites; 10 have previously been sold and the 16 remaining sites are at question in the above-captioned appeal.

The TCV, SEV, and TV for the subject properties for the 2005 and 2006 tax years, as established by Respondent, are as follows:

| <u>Year</u> | <u>ID Number</u> | <u>TCV</u> | <u>SEV</u> | <u>TV</u> |
|-------------|------------------|------------|------------|-----------|
| 2005 | 04-08-101-048 | \$80,000 | \$40,000 | \$40,000 |
| 2005 | 04-08-101-049 | \$80,000 | \$40,000 | \$40,000 |
| 2005 | 04-08-101-050 | \$80,000 | \$40,000 | \$40,000 |
| 2005 | 04-08-101-051 | \$80,000 | \$40,000 | \$40,000 |
| 2005 | 04-08-101-057 | \$80,000 | \$40,000 | \$40,000 |

| | | | | |
|------|---------------|-----------|----------|----------|
| 2005 | 04-08-101-060 | \$80,000 | \$40,000 | \$40,000 |
| 2005 | 04-08-101-061 | \$80,000 | \$40,000 | \$40,000 |
| 2005 | 04-08-101-062 | \$80,000 | \$40,000 | \$40,000 |
| 2005 | 04-08-101-063 | \$80,000 | \$40,000 | \$40,000 |
| 2005 | 04-08-101-065 | \$80,000 | \$40,000 | \$40,000 |
| 2005 | 04-08-101-066 | \$80,000 | \$40,000 | \$40,000 |
| 2005 | 04-08-101-067 | \$80,000 | \$40,000 | \$40,000 |
| 2005 | 04-08-101-068 | \$80,000 | \$40,000 | \$40,000 |
| 2005 | 04-08-101-069 | \$80,000 | \$40,000 | \$40,000 |
| 2005 | 04-08-101-070 | \$80,000 | \$40,000 | \$40,000 |
| 2005 | 04-08-101-071 | \$80,000 | \$40,000 | \$40,000 |
| | | | | |
| 2006 | 04-08-101-048 | \$105,000 | \$52,500 | \$41,320 |
| 2006 | 04-08-101-049 | \$105,000 | \$52,500 | \$41,320 |
| 2006 | 04-08-101-050 | \$105,000 | \$52,500 | \$41,320 |
| 2006 | 04-08-101-051 | \$105,000 | \$52,500 | \$41,320 |
| 2006 | 04-08-101-057 | \$105,000 | \$52,500 | \$41,320 |
| 2006 | 04-08-101-060 | \$105,000 | \$52,500 | \$41,320 |
| 2006 | 04-08-101-061 | \$105,000 | \$52,500 | \$41,320 |
| 2006 | 04-08-101-062 | \$105,000 | \$52,500 | \$41,320 |
| 2006 | 04-08-101-063 | \$105,000 | \$52,500 | \$41,320 |
| 2006 | 04-08-101-065 | \$105,000 | \$52,500 | \$41,320 |
| 2006 | 04-08-101-066 | \$105,000 | \$52,500 | \$41,320 |
| 2006 | 04-08-101-067 | \$105,000 | \$52,500 | \$41,320 |
| 2006 | 04-08-101-068 | \$105,000 | \$52,500 | \$41,320 |
| 2006 | 04-08-101-069 | \$105,000 | \$52,500 | \$41,320 |
| 2006 | 04-08-101-070 | \$105,000 | \$52,500 | \$41,320 |
| 2006 | 04-08-101-071 | \$105,000 | \$52,500 | \$41,320 |

The TCV, SEV, and TV for the 2005 and 2006 tax years are at question in this appeal.

The Tribunal finds that the highest and best use of the subject properties is individual parcels of property for sale and use by individual owners to build residential homes on. Petitioner argues that the highest and best use of the properties is for resale to a developer as a subdivision for investment purposes. However, the Tribunal finds that Petitioner's analysis is inappropriate for single residential lots that are not contiguous. Specifically, the Tribunal finds that the subject properties are not income producing properties. The Tribunal recognizes that given different circumstances the properties could be income producing properties. For instance, if the subject properties were contiguous and all contained within one subdivision, a developer

could purchase the properties as an investment. However, this is not the case with the current facts. The subject parcels are not contiguous and are not contained within one subdivision. Additionally, testimony and evidence show that lots within Phase I of The Preserve have previously sold as individual residential lots to private purchasers, rather than developers for investment purposes. As such, the Tribunal finds that valuing the subject properties individually is appropriate.

Petitioner created a discounted cash flow analysis to determine the subject properties values for the tax years at issue. The Tribunal finds that Petitioner's discounted cash flow analysis is inappropriate as it assumes that the correct valuation of the properties is for investment purposes rather than valuing the property using market values. Further, the Tribunal finds that Petitioner's appraisal is not based on what a potential purchaser would pay for the property. Nevertheless, the Tribunal finds that Petitioner's expert witness, Mr. Weime, testified that "[w]e suggested [that the subject properties] be sold for approximately \$70,000 per lot, so those were finished lots. I mean, that's obviously a different number than a number that reflects unfinished lots if there is work to be completed."¹³ Mr. Weime was asked and testified to the following on examination:

Q: Maybe I was mistaken, but the testimony I heard earlier that you appraised them as though they were going to sell as 16 lots all at one time.

A: No. No, that's not true.

Q: Because I did read in there that your estimation of market value for the individual lots is \$70,000 per.

¹³ Transcript, p 20, ¶¶ 11-15

A: Yes. The probable sale price of the individual lots, yes.¹⁴

The Tribunal finds Petitioner's expert testimony persuasive regarding the market value of \$70,000 for the individual lots. Petitioner's expert testified that this value is based on the probable sale price of the property. Further, this value is based on comparable subdivisions within about a ". . . three or four mile radius of the subject property."¹⁵

Mr. Weime also testified that ". . . the costs to complete some small items relating to the road that remain uncompleted. . ." were taken into consideration in Petitioner's discounted cash flow analysis.¹⁶ Petitioner's appraisal indicates that "[a]dditional work is required to finalize the common areas of th[e] development."¹⁷ Specifically, in relation to the items relating to the road, the Tribunal finds that Petitioner's appraisal states that the cost estimates for "road pavement repair and restoration" and cost estimate the "installation of final lift coat of asphalt on all roads" is \$45,000 and \$135,000, respectively.¹⁸ The Tribunal finds Petitioner's expert witness's testimony regarding the additional work required to finalize the road persuasive.

The Tribunal further finds that the proper method to assess the subject properties is to base the value on what a potential purchaser would pay for the property. Respondent's sales comparison approach values each individual parcel of property based on what a potential purchaser would pay for the property.

However, although Respondent used a proper sales comparison approach, Respondent's appraisal is however insufficient to prove the properties' values for the tax years at question. Respondent's appraisal highlights sales of purportedly comparable properties from Applewood Subdivision. The Tribunal finds that Respondent testified Applewood Estates is dissimilar to

¹⁴ Transcript, p 25, ¶¶ 4-11

¹⁵ Transcript, p 11, ¶¶ 13-14

¹⁶ Transcript, p 11-12, ¶ 25, ¶¶ 1-2

¹⁷ P1, p 5

¹⁸ *Id.*

The Preserve because it was never subject to foreclosure and the sales within that subdivision are not comparable to the subject properties. The Tribunal finds that Respondent's appraisal fails to show evidence of the comparable properties' amenities and fails to properly adjust the comparable properties to the subject property. The Tribunal further finds that Respondent used a two-year sales study to determine the appropriate comparables to be used in valuing the subject properties. As such, many of the sale dates of Respondent's comparable properties are distant from the requisite tax days.

CONCLUSIONS OF LAW

The assessment of real property in Michigan is governed by the constitutional standard that property shall not be assessed in excess of 50% of its true cash value, as equalized, and that beginning in 1995 the taxable value is limited by statutorily determined general price increases, adjusted for additions and losses.

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735(1). The Tribunal's factual findings are to be supported by competent, material, and substantial evidence. *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Dept of Treasury*, 185 Mich App 458, 462-463; 452 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." (Citations omitted) *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

As used in the General Property Tax Act, "true cash value" means 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).

“True cash value” is synonymous with “fair market value.” *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974). The Michigan Supreme Court, in *Meadowlanes, supra*, acknowledged that the goal of the assessment process is to determine “the usual selling price for a given piece of property.” In determining a property’s true cash value or fair market value, Michigan courts and the Tribunal recognize the three traditional valuation approaches as reliable evidence of value. See *Antisdale v Galesburg, supra*.

“The petitioner has the burden of establishing the true cash value of the property....” MCL 205.737(3); MCL 211.27(1); *Meadowlands Limited_Dividend Housing Ass’n v City of Holland*, 437 Mich 473, 483-484; 473 NW2d 363 (1991). “This burden encompasses two separate concepts: (1) the burden 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, supra* at 354-355, citing: *Kar v Hogan*, 399 Mich 529, 539-540; 251 NW2d 77(1976); *Holy Spirit Ass’n for the Unification of World Christianity v Dept of Treasury*, 131 Mich App 743, 752; 347 NW2d 707(1984).

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*, at 484-485; *Pantilind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966), *aff’d* 380 Mich 390 (1968); *Antisdale*, at 276. 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*, at 277.

Under MCL 205.737 (1), the Tribunal must find a property’s true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 Mich App

764, 767; 314 NW2d 479 (1981). The Tribunal may not automatically accept a respondent's assessment but must make its own finding of fact and arrive at a legally supportable true cash value. *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979). 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; 377 NW2d 908 (1985). 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. *Meadowlanes*, at 485-486; *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980); *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982).

In this case, the Tribunal concludes that the evidence, testimony and law favor the application of the sales comparison approach. Although there is some minuscule evidence that the subject properties have potential to be used as investment property if sold as a subdivision to a commercial developer, the Tribunal concludes that the property should be valued at its highest and best use, which is for residential purposes. An appraisal of fair market value requires a determination of the property's "highest and best use" which is "the reasonably probable and legal use of vacant land or an improved property that is legally permissible, physically possible, financially feasible, and that results in the highest value." *Appraising Residential Properties*, Third Edition, p 211.

There is insufficient evidence to support Petitioner's expert's assertion that "... the most likely purchaser would be a builder or developer. . ." ¹⁹ There is no evidence that the subject parcels are not best sold as individual parcels to individual purchasers who desire to improve the

¹⁹ Transcript, p 11, ¶¶ 6-7

vacant land. Petitioner's expert relies on the notion that because all 16 lots are owned by one entity, the lots should be sold as a subdivision. However, Petitioner's expert testified that ". . . I don't see why they couldn't be sold individually, but somebody owns all 16 lots. . . . whoever owns those 16 lots, in order for him to realize a fair return on his investment, is going to have to sell those lots individually."²⁰ Further, ten parcels of property within Phase I of The Preserve have previously been sold as residential lots to individual purchasers desiring to improve the land. The Tribunal concludes that the 16 subject parcels should be categorized the same as the previously sold 10 parcels of property within Phase I of The Preserve.

Based upon the above findings of fact, the Tribunal concludes that Petitioner has failed to prove its contention regarding the highest and best use of the subject properties. The highest and best use determination is critical to the selection of reliable comparable sales in the sales comparison approach. "The sites of potentially comparable properties should have the same or a similar highest and best use as though vacant as the site of the subject property. If they do not, the sale properties are not comparable." *Appraisal Institute: Appraising Residential Properties* (Chicago, Appraisal Institute, Third ed, 1999, p 213.

The first step in the process of estimating the fair market value of the subject properties is to consider its highest and best use as vacant residential property. In this case, the parcels have utility as individual building sites for residential homes, which is determined to be its highest and best use. Sales comps must compete with the subject in the minds of potential purchasers based on this highest and best use. Reliable sales comps must be demonstrated to have utility as a residential building site.

²⁰ Transcript, p 25, ¶¶

Because Petitioner's appraiser considered the highest and best use to be for investment purposes by a developer, Petitioner erroneously valued the property using a discounted cash flow method. The Tribunal concludes that this method is flawed because the highest and best use analysis is inappropriate for single residential lots that are not contiguous. Further, Petitioner erred in appraising the subject properties with investment value rather than market value. The following excerpt from *The Appraisal of Real Estate* describes market value and investment value:

An important distinction is made between market value and investment value. Investment value is the value of a certain property to a particular investor. Investment value may coincide with market value, which was defined in Chapter 2, if the client's investment criteria are typical of successful buyers in the market. In this case the two opinions of value may be the same number, but the two types of value and their concepts are not interchangeable.

Market value is objective, impersonal, and detached. Investment value is based on subjective personal parameters. To develop an opinion of market value with the income capitalization approach, the appraiser must be certain that all the data and forecasts used are market-orientated and reflect the motivations of a typical investor who would be willing to purchase the property as of the effective date of the appraisal. A particular investor may be willing to pay a price different from market value, if necessary, to acquire a property that satisfies other investment objectives unique to that investor. Appraisal Institute, *The Appraisal of Real Estate*, (Chicago; 13th ed, 2008), p 450.

The Tribunal concludes that Petitioner's appraisal is not persuasive and a combined valuation of the subject properties as a subdivision is erroneous.

Respondent appropriately analyzed the subject properties highest and best use for single residential lots in its sales comparable analysis. However, although Respondent presented evidence of sales of allegedly comparable properties, none were proven to be sufficiently similar to the subject, and therefore, the Tribunal does not place primary reliance upon Respondent's sales comp method. The Tribunal further concludes that Respondent's Assessor's testimony was vague regarding the comparable properties. In regard to the comparable properties,

Respondent's Assessor merely testified that "[the comparable properties] are all comparably sized lots. That was one thing I did look for is lots that are similar in size and age."²¹

Respondent did not make convincing adjustments for location, condition, size, or other pertinent amenities.

Respondent also used a two year sales study period for developing its sales comparable analysis. The Assessor's Manual requires assessors to use a two year study period for developing the economic condition factor. This is the same time period that is used by the equalization department in the sales study to set the starting base. For example, for 2006 assessments, this is the period beginning April 1, 2003, and ending March 31, 2005. State Assessor's Manual, Volume III, Chapter 14, pages 14-6. This time period is NOT applicable to a sales comparison approach appraisal. With regard to the sales comparison method, the State Assessor's Manual states as follows:

The sales comparison approach, also referred to as the market approach, is frequently the most easily understood and most convincing method of estimating value. It begins with the investigation of **recent sales** of properties which are similar to the property to be appraised. These sales are then adjusted to make the like the subject property in all significant respects. The adjusted sales then become indicators of the value of the property being appraised. State Assessor's Manual, Volume III, Chapter 9, page 9-1. [Emphasis Added.]

The State Assessor's Manual further states:

The reliability of the sales comparison approach is directly related to the availability of **recent comparable sales**. When sufficient sales are available, this approach is often considered the most accurate and defensible approach....Since the assessor is usually dealing with a mass of properties to appraise in a very short time, it is usually not possible to apply the sales comparison approach methods used in the appraisal of individual properties. Instead, the assessor uses a cost approach related to the sales market by use of an economic condition factors....However, there are instances when the assessor will find it necessary to concentrate on an individual property, and the sales comparison approach may

²¹ Transcript, p 42, ¶¶7-9

then be used. [Emphasis Added.] State Assessor's Manual, Volume III, Chapter 9, page 9-1.

Generally, the assessor should use the sales comparison approach when defending an assessment of residential property before the Michigan Tax Tribunal. The State Assessor's Manual clearly states that the reliability of the sales comparison approach is directly related to the similarity of the comparable sales. This requires the use of "recent sales of properties that are similar to the property to be appraised." **The most reliable indicator of value of the subject property is a sale of a replica property that occurred very close in time to the relevant tax day.** The date of the sale is an element of comparison, which ideally should require little or no adjustment. The goal is to determine fair market value of the subject in a hypothetical sale on the relevant tax day. Therefore, the sale of a similar property that occurred on or near tax day eliminates the need to adjust for market conditions ("time") because the market conditions related to the date of sale are identical. Therefore, when choosing comparable sales in the sales comparison approach, the assessor is not limited to the two year sales study period referred to above, but should consider relevant sales that occurred closest in time to the tax day in question. [Emphasis Added.]

Even assuming that Respondent's comps have any evidentiary value, Respondent's analysis assumes that there are no relevant differences in any element of comparison and no market-based adjustments are offered. Adjustments for changes in market conditions, location, or physical characteristics should have been attempted. Respondent's comps that sold in 1999, 2000, 2001, 2002, and 2003 are so remote in time from the relevant valuation dates (December 31, 2004 and December 31, 2005) that they should be disregarded. The Tribunal is not persuaded that Respondent's sales comparison analysis is sufficiently probative of the subject properties' TCV.

The best evidence of the value of the subject properties is provided by Petitioner's expert witness's testimony, which supports a finding that the subject properties' true cash value is \$67,500. Petitioner's expert witness testified that he ". . . looked at five or six competing subdivisions within about a three or four mile radius of the subject property and found lot sales within those developments generally between a low of 60 to as high as a little over \$100,000 per lot, and we concluded that it would be reasonable to expect that the subject lots could be sold at

an average price of about \$70,000 per lot.²² In fact, Petitioner's expert testified that the subject properties could sell for \$70,000 multiple times throughout his examination.²³ However, the Tribunal recognizes that Petitioner's expert also testified that ". . . the costs to complete some small items relating to the road. . ." ²⁴ were not taken into consideration in the properties prospective sale price of \$70,000. As such, the Tribunal concludes that the additional work required to finalize the road construction must be subtracted from the \$70,000 sale price. The Tribunal finds that there is \$180,000 of additional work to the road required to be completed to finalize the common areas of The Preserve.²⁵ The Tribunal further finds that there are 72 total lots included in the preserve. We must divide the \$180,000 additional road work among the 72 total lots in the development and come to a \$2,500 expenditure per lot. Taking this expenditure into consideration, the Tribunal concludes that each subject parcel would sell for \$67,500. Thus, the subject properties' TCV is \$67,500, SEV is \$33,750 and TV is \$33,750 for the 2005 and 2006 tax years.

JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the tax years at issue shall be as set forth in 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

²² Transcript, p 11, ¶¶ 11-18

²³ See also Transcript, p 20 & 25

²⁴ Transcript, p 11, ¶ 25 and p 12, ¶ 1

²⁵ P1, p5; (Road pavement repair and restoration - \$45,000 and Installation of final lift coat of asphalt on all roads - \$135,000).

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 as required by the Final Opinion and Judgment within 28 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of 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, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998, at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar

year 2005, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, and (xiii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009.

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: September 17, 2009
sms

By: Victoria L. Enyart