

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

Hartland M59 Investments LLC,

Petitioner,

v

MTT Docket No. 415661

Township of Hartland,

Tribunal Judge Presiding
Paul V. McCord

Respondent.

FINAL OPINION AND JUDGMENT

Marcos M. Michail (P55784), for Petitioner.
Michael D. Homier (P60318), for Respondent.

INTRODUCTION

This valuation appeal involves an 11.59 acre vacant commercial parcel of land located at the corner of Clark Road and Highland Road (M-59), just east of US-23, in Hartland Township, Michigan (the “subject property”). On May 24, 2011, Petitioner commenced this case challenging the true cash and taxable values of the subject property determined by Hartland Township for the 2011 tax year. Petitioner contends that the true cash value of the subject property for the 2011 tax year is \$383,000, whereas Respondent contends that the subject property was properly assessed yielding a true cash value of \$1,363,600 for the 2011 tax year. Following timely Motions to Amend, the 2012 and 2013 are also at issue in this case. See MCL 205.735a and MCL 205.737.

After a one-day evidentiary hearing on July 16, 2013, in Dimondale, Michigan, the Tribunal is now charged with the responsibility of determining the true cash and taxable values of the subject property for each of the tax years at issue. More specifically, based on the pleadings, motions, testimony, and evidence, the Tribunal must decide the following two questions: (1) whether the water and sewer special assessments imposed on the subject property negatively affect its fair market value; we hold that they do not; and (2) what the “usual selling price” of the subject property is for the 2011, 2012, and 2013 tax years. For the reasoning set forth below, we conclude that the true cash value (“TCV”) of the subject property, together with its state equalized value (“SEV”), and taxable value (“TV”), are as follows:

Parcel No. 4708-22-300-033

Year	TCV	SEV	TV
2011	\$1,363,600	\$681,800	\$681,800
2012	\$1,295,400	\$647,700	\$647,700
2013	\$1,295,400	\$647,700	\$647,700

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After hearing and observing the witnesses who testified at the evidentiary hearing, allowing for the Tribunal to assess credibility, and having further considered the exhibits submitted by the parties, the arguments presented by counsel, and applying the governing legal principles, the Tribunal makes the following independent findings of fact and conclusions of law set forth below in memorandum form.¹ See MCL 205.751(1) (“A decision and opinion of the tribunal . . . shall be in writing or stated in the record, and shall include a concise statement of facts and conclusions of law, stated separately . . .”); see also MCL 24.285.

FINDINGS OF FACT

¹ To the extent that a finding of fact is more properly a conclusion of law, and to the extent that a conclusion of law is more properly a finding of fact, it should be so construed.

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 MCL 24.285. The findings of fact are set forth in narrative form based on the Tribunal’s conclusion that it is the most expeditious manner of proceeding where there are few disputes about facts and the main focus of the controversy is the valuation of the subject property for each of the tax years at issue.

The Subject Property

The subject property is vacant commercial land located on Highland Road (M-59), at the corner of Clark Road, just east of US-23, in Hartland Township, Michigan. The subject property is slightly irregular in shape, 11.59 acres, zoned general commercial district (“GC”), and has level topography. According to Petitioner’s Appraisal, the highest and best use of the subject property, as vacant, is commercial/retail or medical office. See R-1B.

At the time the hearing in this case was conducted, Petitioner had the subject property listed for sale for \$2,636,900, subdivided into “six outlots” ranging in price from \$219,000 to \$750,000. According to the MLS listings, the subject property was initially listed for sale on April 18, 2011, and has been on the market since that time. See R-2B.

Special Assessments

Respondent levied a \$412,500 special assessment against Petitioner's real property beginning in 2005 for water and sewer improvements, payable in 20 equal annual installments with interest thereon. The subject property has 75 residential equivalent units (“REUs”) of sewer service and 32 REUs of water service. The parties agree that special assessments, for water and sewer, have been levied against the subject property by Respondent. Although both parties acknowledge said special assessments, Petitioner contends that the special assessments are

encumbrances (i.e., burdens), which significantly affect the subject property's value. Respondent, however, disagrees and, in fact, argues that these special assessments have added value to the property.

The remaining balance of the special assessments for the tax years at issue are as follows:

Tax Year	Remaining Balance
2013	\$315,275.65
2012	\$342,650.91
2011	\$370,026.17

As discussed in more detail below, Petitioner's appraiser deducted the foregoing values from his sales comparison approach, after applying adjustments for elements of comparison, to arrive at his final values of TCV for the tax years at issue.

Market

The subject property is located in Livingston County, which is in south-central Michigan, in between Detroit, Lansing, Ann Arbor, and Flint. Three major expressways pass through the county: I-96, US-23, and M-59 (i.e., Hartland Road). Livingston County is one of the highest-income counties in the United States. Unemployment in Livingston County, as of 2012, was lower than Michigan's overall unemployment percentage.

Hartland Township was one of the fastest growing areas in Livingston County from 2000-2010. Several retail/commercial establishments have been built along Highland Road (M-59) and US-23 during that time. Hartland Township is comparable to larger cities in terms of amenities offered, such as restaurants (i.e., McDonald's, Burger King, etc.) and large national retailers (i.e., Walmart, Meijer, Target, etc.).

Highland Road (M-59), which the subject property is located on, is a six-lane highway extending east and west from Macomb County to Livingston County.

The subject property is located in a commercial/retail area, which experiences competition from neighboring communities (i.e., Brighton, Howell, and Fenton).

Petitioner's Appraisal included an analysis of vacant land located along Highland Road, with similar zoning or highest and best use, or both. The analysis contains 13 active listings containing a total of 71.55 acres, which evidence an asking price of \$167,630 per acre. See R-1B at 18-29.

Assessment

The subject property is identified on Respondent's assessment roll by Parcel No. 4708-22-300-033. The indicated TCV of the subject property, by method of mass appraisal based on land value sales studies, together with the SEV and TV, as confirmed by the Respondent's Board of Review, as of each of the tax years at issue are as follows:

Year	TCV	SEV	TV
2011	\$1,363,600	\$681,800	\$681,800
2012	\$1,295,400	\$647,700	\$647,700
2013	\$1,295,400	\$647,700	\$647,700

For the tax years at issue, the subject property was classified, for ad valorem tax purposes, as commercial vacant real property. During each of the tax years at issue, the level of assessment for commercial real property within Respondent's jurisdiction equaled 50% of true cash value determined by method of mass appraisal. As discussed in more detail below, Respondent's assessment of the subject property was developed based on Respondent's land value sales studies.

Value Evidence

Both parties determined a value for the subject property based on the sales comparison approach. The cost and income approaches were not developed since the subject property is vacant and not income-producing.

Petitioner's Value Evidence

Petitioner's appraiser, Buolus Ghraib, Certified General Appraiser, opined that the TCV of the subject property, based on the direct sales method, was \$383,000 for the 2011 tax year, \$353,000 for the 2012 tax year, and \$670,000 for the 2013 tax year.

Mr. Ghraib testified that Petitioner purchased the subject property in 2010 for \$250,000. He further testified that he was not sure if the purchase of the subject property was an arm's-length transaction, but did state that the transaction was between two entities. And although Mr. Ghraib testified that he visited the subject property on several occasions, he further testified that he was not aware the subject property was for sale, despite the fact that he had discussions with Dan Callan, the real estate agent listing the subject property for sale, regarding other properties and the fact that there are for-sale signs on the property. Mr. Ghraib testified, however, that while he would have disclosed such information had he known, "it [would] not have an impact" on his value conclusions. Transcript at 98. Mr. Ghraib was also unaware that the subject property has 75 REUs of sewer service and 32 REUs of water service, all of which are being prepaid in connection with the special assessments levied on the subject property. Mr. Ghraib did testify, however, that "[i]f the sewer and water are available at the site, we consider them equal without going into detail" Transcript at 72.

Mr. Ghraib identified seven comparable sales for the 2011 tax year:

	Subject	Comp #1	Comp #2	Comp #3	Comp #4	Comp #5	Comp #6	Comp #7
Location	Hartland Twp	Caledonia Twp	Ash Twp	White Lake	Grand Blanc Twp	Romulus	Oshtemo Twp	Flint Twp
Sales Price		\$85,000	\$1,100,000	\$500,000	\$240,000	\$570,000	\$329,000	\$260,000
SP/Acre		\$60,714	\$44,266	\$97,087	\$44,280	\$54,860	\$87,037	\$9,085
Property Type	Vacant Land	Vacant Land	Vacant Land	Vacant Land	Vacant Land	Vacant Land	Vacant Land	Vacant Land
Property Rights	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Financing	Cash	Cash	Cash	Cash	Cash	Cash	Cash	Cash
Time/Condition	12/2010	1/2010	12/2010	11/2009	8/2009	2/2009	6/2009	10/2010
DOM		(Not Provided)	327 Days	987 Days	(Not Provided)	(Not Provided)	(Not Provided)	1,405 Days
Location	Average	Similar	Similar	Similar	Similar	Similar	Similar	Inferior
Highest & Best Use	Commercial ("Comm")	Comm	Comm	Comm	Office	Comm	Office	Comm
Zoning	GC	C1	Comm	L-B	OS	RC	C	C-2
Lot Size	11.59 acres	1.4 acres	24.85 acres	5.15 acres	5.42 acres	10.39 acres	3.78 acres	28.62 acres
Utilities	Water & Sewer	Private Well & Septic	Water & Sewer at Street ²	Water & Sewer at Street	Water & Sewer at Street	Water & Sewer at Street	Municipal Water & Sewer	Municipal Water & Sewer

After identifying and applying various adjustments for lot size (all comparables), utilities (Comparable #1 only), and location (Comparable #7 only), Mr. Ghraib determined adjusted sale prices ranging from \$15,172 to \$91,262 per acre, with gross adjustments ranging from 1% (Comparable #5)-67% (Comparable #7). Mr. Ghraib concluded that “the true cash value of the subject property for tax year 2011 falls around the mean after adjustments for comparables #1-#7 which are the most reliable comparables for the subject property and stands at \$65,000 per acre.” R-1B at 54.

Mr. Ghraib then made a below-the-line deduction and reduced his value conclusion by subtracting the payoff amount of the special assessment at the time (i.e., \$370,026) to conclude to a TCV of \$383,000 for the 2011 tax year. Although Mr. Ghraib could not cite to any authority to vindicate such a deduction, Mr.

² On page 39 of Petitioner’s Appraisal, Mr. Ghraib states that Comparable No. 2 has no utilities; however, page 50 states “Water & Sewer at Street.” No adjustment, however, was made by Mr. Ghraib for utilities for Comparable No. 2.

Ghraib justified this deduction for all three tax years at issue by testifying that “because of the hefty special assessment, especially in Livingston County, many owner went to the bank and they give them the deed in lieu.” Transcript at 65.

Mr. Ghraib identified eight comparable sales for the 2012 tax year:

	Subject	Comp #1	Comp #2	Comp #3	Comp #4	Comp #5	Comp #6	Comp #7	Comp #8
Location	Hartland Twp	Caledonia Twp	Whiteford Twp	Southgate	Ash Twp	White Lake	Grand Blanc Twp	Oshtemo Twp	Flint Twp
Sales Price		\$85,000	\$250,000	\$350,000	\$1,100,000	\$500,000	\$240,000	\$329,000	\$260,000
SP/Acre		\$60,714	\$25,000	\$27,603	\$44,266	\$97,087	\$44,280	\$87,037	\$9,085
Property Type	Vacant Land	Vacant Land	Vacant Land	Vacant Land	Vacant Land	Vacant Land	Vacant Land	Vacant Land	Vacant Land
Property Rights	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Financing	Cash	Cash	Cash	Cash	Cash	Cash	Cash	Cash	Cash
Time/Condition	12/2010	1/2010	8/2011	9/2011	12/2010	11/2009	8/2009	6/2009	10/2010
DOM		(Not Provided)	(Not Provided)	490 Days	327 Days	987 Days	(Not Provided)	(Not Provided)	1,405 Days
Location	Average	Similar	Inferior	Similar	Similar	Similar	Similar	Similar	Inferior
Highest & Best Use	Comm	Comm	Comm	Comm	Comm	Comm	Office	Office	Comm
Zoning	GC	C1	B-2	M-1	Comm	L-B	OS	C	C-2
Lot Size	11.59 acres	1.4 acres	10.00 acres	12.68 acres	24.85 acres	5.15 acres	5.42 acres	3.78 acres	28.62 acres
Utilities	Water & Sewer	Private Well & Septic	Well & Septic	Water & Sewer at Street	Water & Sewer at Street ³	Water & Sewer at Street	Water & Sewer at Street	Municipal Water & Sewer	Municipal Water & Sewer

After identifying and applying various adjustments for lot size (all comparables), utilities (Comparable # 1 and #2 only), and location (Comparable #2 and #8), Mr. Ghraib determined adjusted sale prices ranging from \$15,172 to \$91,262 per acre, with gross adjustments ranging from 1% (Comparable #3)-67% (Comparable #2 and #8). Mr. Ghraib concluded that “the true cash value of the subject property for tax year 2012 falls around the mean after adjustments for comparables #1-#7 which are the most reliable comparables for the subject property and stands at \$60,000 per acre.” R-1B at 75.

³ See footnote 2 above. Same note applies, but on different pages in the Appraisal.

Mr. Ghraib then made a below-the-line deduction and reduced his value conclusion by subtracting the payoff amount of the special assessment at the time (i.e., \$342,651) to conclude to a TCV of \$353,000 for the 2012 tax year.

Mr. Ghraib identified five comparable sales for the 2013 tax year:

	Subject	Comp #1	Comp #2	Comp #3	Comp #4	Comp #5
Location	Hartland Twp	Hartland Twp	Davison Twp	Troy	Southgate	Mt. Morris Twp
Sales Price		\$327,981 ⁴	\$550,000	\$225,000	\$350,000	\$95,000
SP/Acre		\$92,887 ⁵	\$55,000 ⁶	\$66,509	\$27,603	\$18,199
Property Type	Vacant Land	Vacant Land	Vacant Land	Vacant Land	Vacant Land	Vacant Land
Property Rights	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple	Fee Simple
Financing	Cash	Cash	Cash	Cash	Cash	Cash
Time/Condition	12/2010	5/2012	6/2012	6/2012	9/2011	2/2012
DOM		1,442 Days	(Not Provided)	1,033 Days	490 Days	(Not Provided)
Location	Average	Similar	Similar	Similar	Similar	Similar
Highest & Best Use	Commercial	Office	Commercial	Commercial	Commercial	Commercial
Zoning	GC	OS	GC	O	M-1	C-2
Lot Size	11.59 acres	3.53 acres ⁷	10.00 ⁸ acres	3.383 acres	12.68 acres	5.22 acres
Utilities	Water & Sewer	Water & Sewer at Street	Sewer at Street; Water 1,000' +/- East	Water & Sewer at Street	Water & Sewer at Street	Water & Sewer at Street

After identifying and applying various adjustments for lot size (all comparables) and utilities (Comparable #2 only), Mr. Ghraib determined adjusted sale prices ranging from \$17,107 to \$85,456 per acre, with gross adjustments ranging from 1% (Comparable #4)-8% (Comparable #1 and Comparable #3). Mr. Ghraib concluded that “the true cash value of the subject property for tax year

⁴ Comparable #1 sold for \$280,000, but after a \$47,891 upward adjustment, to add back in the value of the payoff amount of the special assessment on that property, Mr. Ghraib indicated the adjusted price is \$327,981, which is the value he used to determine an adjusted price per acre.

⁵ After his upward adjustment and only taking into consideration the useable acreage due to wetlands (i.e., 3.53 acres), Mr. Ghraib determined that the property sold for \$92,887 per acre.

⁶ This sale price per acre was determined based on the useable acreage (10 acres).

⁷ Comparable #1 is actually 6.16 acres, but Mr. Ghraib only took into consideration the useable acreage.

⁸ Comparable #2 has a total of 19.28 acres.

2013 falls around the high end of the range after adjustments and in line with comparable #1, which is the most reliable comparable, and stands at \$85,000 per acre.” (R-1B, p 89)

Mr. Ghraib then made a below-the-line deduction and reduced his value conclusion by subtracting the payoff amount of the special assessment at the time (i.e., \$315,276) to conclude to a TCV of \$670,000 for the 2013 tax year. Although Mr. Ghraib’s value conclusion for the 2013 tax year nearly doubled from his value conclusion for the 2012 tax year, Mr. Ghraib testified that this was “not shocking” and stated that “[t]here is improvement in the market condition.” Transcript at 83.

Respondent’s Value Evidence

Respondent submitted a property record card for the subject property for each of the tax years at issue. See R-8. Respondent also provided its land value sales study, consisting of 10 comparable properties, which “were utilized to determine the assessed values.” R-9; Transcript at 126.

For the 2011 tax year, Respondent’s assessor, James B. Heaslip, MAAO (Level 3 Assessor), assessed the subject property (11.59 acres) at a rate of \$156,859 per acre, with a 25% adjustment for “M59”, and concluded that the subject property was worth a true cash value of \$1,363,600.⁹

For the 2012 and 2013 tax years, Mr. Heaslip assessed the subject property (11.59 acres) at a rate of \$149,016 per acre, with a 25% adjustment for “M59”, and concluded that the subject property was worth a true cash value of \$1,295,400.

Respondent’s 10 comparable vacant land sales in its land value sales study are as follows:¹⁰

⁹ Mr. Heaslip testified that the 25% adjustment is because “the further you get away from the interchange of US-23 and 59, the values do decrease.” Transcript at 164.

¹⁰ Mr. Heaslip later clarified that “half of [the sales in the land value sales study] were probably [viewed] before [the assessments on the tax roll] and the other half probably after.” Transcript at 127. In reviewing the sales after the assessment rolls were created, Mr. Heaslip admitted that he

	Location	Sale Price	Sale Date	Acres	\$/Acre	Zoning
Subject Property	Hartland			11.59		GC
Comp #1	Genoa Twp	\$175,000	4/2009	1.34	\$130,597	GCD
Comp #2	Brighton	\$375,000	6/2010	0.60	\$625,000	DBD
Comp #3	Hartland	\$435,000	9/2010	0.93	\$467,742	PD
Comp #4	Hamburg Twp	\$340,000	12/2010	1.2	\$283,333	PD
Comp #5	Genoa Twp	\$299,900	6/2011	2.15	\$139,488	GCD
Comp #6	Genoa Twp	\$550,000	6/2011	4.89	\$112,474	NSD
Comp #7	Howell Twp	\$100,000	7/2011	4.54	\$22,026	OS
Comp #8	Bri Twp	\$29,000	7/2011	1.58	\$18,354	B-3
Comp #9	Howell Twp	\$400,000	11/2011	30.38	\$13,167	RSC
Comp #10	Hartland	\$280,000	6/2012	6.16	\$45,455	OS

Based on the foregoing, Mr. Heaslip concluded that the average price per acre was \$185,764, which evidenced a true cash value of \$2,153,001 for the subject property for the tax years at issue.

Mr. Heaslip testified that “[l]ocation is everything in real estate.” Transcript at 126. He also testified that the subject property is located “probably within 500 feet” to Meijer and Walmart, which affects the value of the subject property since “it draws lots more traffic,” and the subject property is a “[p]rime location for future development.” Transcript at 143-144.

With regard to the special assessments on the subject property, Respondent argues that the value of each REU has increased “[a]nywhere from between [\$]3,000 and \$3,500” since 2005, therefore contending that “the value of sewer . . . has actually resulted in a greater value to [the subject] property.” Transcript at 112. Mr. Heaslip also testified that there is a difference between having REUs on a property versus having water and sewer available at the street.

“perhaps ha[s] [the assessed values for the subject property for the tax years at issue] under valued.” Transcript at 127.

CONCLUSIONS OF LAW

Determination of Value

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. MCL 211.27a.

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law. 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 “true cash value” is synonymous with “fair market value.” *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

Under MCL 205.737(1), the Tribunal must find a property's true cash value in determining 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). 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 Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 485-486; 473 NW2d 636 (1991).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735a(2). 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 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 v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

"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, 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).

In the main, the value of property is a question of fact. *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 638; 462 NW2d 325 (1990). There are three general methodologies for determining market value (income, cost, and sales), and we consider all three in arriving at our final conclusion. *Jones & Laughlin, supra* at 353. Only the latter two methods were applied in this case.¹¹ Given both the fact intensive and technical nature of value questions, we often look to the opinions of expert witnesses in deciding valuation cases. We have wide

¹¹ Because the subject property is vacant commercial land and does not generate any income, neither party used the income approach in valuing Petitioner's property. We agree that an income approach is not applicable in this case. For similar reasons, the cost approach is not applicable in this case as there are no improvements located on the subject.

discretion when it comes to accepting valuation testimony and appraisal evidence. See *President Inn Props, LLC v Grand Rapids*, 291 Mich App 625, 639; 806 NW2d 342 (2011). Sometimes, it will help us decide a case; other times, it will not. We weigh the parties' testimony in light of his or her qualifications, knowledge of the subject and relevant market, and with proper regard to all other credible evidence in the record. *President Inn Props, supra* at 640. Along this line, the Tribunal is under no obligation to accept the valuation figures or the approach to valuation advanced by either party. *President Inn Props, supra* at 639, citing *Teledyne Continental Motors, supra* at 754. Instead, in weighing the parties' valuation evidence, we may accept or reject a party's valuation theory in total, place greater or lesser emphasis on a particular method or methods of valuation, or pick and choose the portions we choose to adopt. *Meadowlanes Ltd Dividend Housing Ass'n, supra* at 485-486. Nor are we required to quantify every possible factor affecting value. See *Southfield Western, Inc v Southfield*, 146 Mich App 585, 590; 382 NW2d 187 (1985). Regardless of the valuation approach we employ, the final value determination must represent the usual price at which the subject property would sell. *Meadowlanes, supra*.

Special Assessments

Petitioner's expert treated the balance of the unpaid special assessment as an encumbrance against the subject property and deducted this amount from his value conclusions. While the special assessment levied against the subject property and payable over time does act as an encumbrance on the subject property, this Tribunal agrees with Respondent that it should not be treated as a deduction against value of the subject.

Petitioner's expert explained that he has performed 10 to 15 appraisals of commercial property in Hartland Township. Transcript at 16. Mr. Ghraib also explained that he had previously appraised the subject about five years before for

lending purposes. Transcript at 16. Mr. Ghraib, in his appraisal, states on page 4, “[m]ortgages, liens, encumbrances and lease have been disregarded unless so specified.” Further, as described in the definition of “fee simple,” the term is used as meaning “[a]bsolute ownership unencumbered by other interest or estate; subject only to the four powers of government [eminent domain, escheat, police power, and taxation].” R-1 at 13, citing Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 13th ed, 2008). However, Mr. Ghraib after concluding to a value by the sales comparison approach, then deducts the outstanding balance of the special assessment.

In this instance, Mr. Ghraib’s treatment in his appraisal of deducting the unpaid special assessment (effectively a mortgage appraisal technique) to determine the true cash value of the subject property appears improper. Instead, this Tribunal is of the view that the unpaid balance should have been added to the sale price because special assessments run with the land, not the owner, and as a result, a likely purchaser would have assumed the responsibility of paying it. In this regard, this Tribunal finds the treatment of the unpaid balance of the special assessment is akin to the treatment of expenditures immediately after purchase. See *The Appraisal of Real Estate, supra* at 331-333. A knowledgeable buyer considers expenditures that will have to be made upon the purchase of the property because those costs will affect the price a buyer is willing to pay. *Appraisal of Real Estate, supra* at 331. Petitioner’s expert recognized this fact his testimony. See Transcript at 109. In this case, the anticipated expenditure is the unpaid balance of the special assessment which makes water and sewer service available to the subject property. The adjustment for expenditures immediately after purchase for this property would thus be the anticipated expenditure – the balance of the special assessment added to the purchase price to arrive at value with the reasoning that when the parties negotiated the transaction, they deducted this cost from the price

they otherwise would have arrived at if the property had this amenity. Purchase price and the anticipated expenditure are each components of value. Thus, the inclusion of the balance makes sense and is an appropriate appraisal methodology when determining the true cash value of the subject property, which contains the same special assessment and outstanding balance thereof. Petitioner's treatment of this item was more akin to deducting an outstanding mortgage balance.

Petitioner's appraiser could cite to no authority to warrant such a deduction. The outstanding mortgage balance is not a function of value and deducting it from value does not result in a conclusion of value but of equity.¹²

It may be an appropriate deduction for a lender to consider, where the appraisal is prepared for mortgage finance purposes, depending upon the lender and the lending requirements set by the regulatory agency in order to value an equity interest.¹³ However, valuing the subject property's equity interest is not the same as valuing the market value of the fee simple interest. Valuing the fee simple interest does not include a deduction of the unpaid balance of a special assessment and is inappropriate for determining the subject property's true cash value under MCL 211.27.

This Tribunal is not charged with determining if a party can qualify for mortgage financing. Further, this Tribunal is also not considering the validity of the special assessment, as the period for making that type of claim as long since passed. See MCL 211.746. Nor will this Tribunal venture into whether or not the special assessment confers a special benefit to the subject property because, as a matter of law, the special assessment is presumed valid. See *Kane v Williamstown*

¹² Equity = Value - Mortgage Balance.

¹³ If the appraisal of the subject property was for financing purposes, the lending institution's position would be second to the special assessment and an appraiser would then be required to make a reduction of the market value estimate. The lender would have a second lien position if the property reverted back to the lender, as the special assessment would be paid first.

Twp, 301 Mich App 582; ___ NW2d ___ (2013). Today, the Tribunal is charged only with determining the true cash value of the subject property as it existed during each of the tax years at issue.

As a result, the Tribunal finds that Petitioner's appraisal does not result in a valuation of the "unencumbered" fee simple interest. Petitioner's deduction of the unpaid balance of the special assessment may be a requirement for a mortgage finance appraisal, hence the difference between an appraisal for financing purposes and one for true cash value of the fee simple interest;¹⁴ however, this Tribunal does not accept this methodology as appropriate for purposes of determining the market or true cash value of the subject property for purposes of MCL 211.27.

In addition to the below-the-line deduction, Petitioner's appraiser also made an adjustment for differences in utilities for some of the comparables, which the Tribunal finds to be double-dipping for the same element of comparison.

Appraisers should consider all appropriate elements of comparison and avoid double-counting adjustments for the same difference reflected in multiple elements of comparison. This requires an awareness of situations in which the influence of differences in one element of comparison may have an effect on an adjustment derived for a different element of comparison. *The Appraisal of Real Estate, supra* at 322.

Since the probative value of an expert's opinion must stand or fall upon the facts and reasoning offered in support of that opinion, this Tribunal is not

¹⁴ In *Panitch v Ann Arbor*, 21 MTTR 453 (Docket No. 354366, March 13, 2012), this Tribunal explained that difference in the intended use and user of an appraisal report has a bearing on the value conclusions reached therein. With regard to appraisals prepared in the context of lending finance, the *Panitch* Tribunal opined that when a lender is considering an appraisal for lending purposes it is not considering a selling price with a willing buyer and seller, it is considering whether the value of the property will be sufficient to pay off the mortgage loan. If the property is not worth enough to support the loan, the loan will not be made. This is because the financing appraisals are used to determine the mortgage's loan-to-value ratio, which informs the lending institution's risk-acceptance criteria; the higher that ratio, the more risk, and more onerous the loan terms; the lower the ratio, the less risk, and the more favorable the loan terms.

convinced by the appropriate standard of proof that Petitioner's adjustment for the unpaid balance of the special assessment against the subject property was appropriately devised in this matter. Based on the foregoing, this Tribunal is constrained to reject the sales comparison approach methodology as presented by Petitioner. As this matter involves the valuation of vacant land and, as such, the sales comparison appropriate is the only appropriate method for valuing such properties, Petitioner's expert's opinion, too, is of little assistance to this Tribunal in its attempt to assign market value to the subject property.

Land Value

Pursuant to MCL 211.10, Respondent is required to annually assess property in its jurisdiction. In this case, Respondent assigned the subject property a TCV of \$1,363,600 for the 2011 tax year and \$1,295,400 for the 2012 and 2013 tax years. As previously stated, Respondent provided 10 comparable vacant land sales to support its assessments, some of which Mr. Heasley acknowledged were considered after the assessment rolls for the tax years at issue were created.

Land value estimates are typically derived using the sales comparison method, although other methods are available where appropriate.¹⁵ In mass appraisal, vacant land sales are grouped based on similar characteristics (such as location, highest and best use, size, etc.) and are evaluated using an appropriate unit of comparison.¹⁶ The assessing officer then assigns land values derived from the group to properties sharing similar characteristics with the group. Whichever unit of comparison is selected, the assessing officer is also to give consideration to adjustments for positive or negative influences, if the market recognizes those influences, in setting the land value for an affected parcel.

¹⁵ For a discussion of these alternative methods, see *The Appraisal of Real Estate*, *supra* at 364-376.

¹⁶ For vacant commercial properties, values per square foot or per acre are typical units of comparison that are used.

CONCLUSION

After a careful review and weighing of the testimony and exhibits presented by both parties and after considering the credibility of the witnesses, the Tribunal finds that the TCV of the subject property is \$1,363,600 for the 2011 tax year and \$1,295,400 for the 2012 and 2013 tax years. It is clear from the testimony on record and the admitted exhibits that the valuation evidence presented by both parties is flawed and neither provided a reliable indicator from which we could find the usual selling price of the subject property. Instead, we have found, that the values, as assessed, fall within the range of values provided in both parties' evidence. See *President Inn Props, supra* at 642, wherein the Court of Appeals affirmed the Tribunal's decision, which fell "within the range of valuations in evidence"

In that regard, as indicated above, Respondent assessed the subject property, taking a 25% adjustment for "M59", at a rate of approximately \$156,859 per acre for the 2011 tax year and \$149,016 per acre for the 2012 and 2013 tax years. Although Respondent provided a list of 10 comparable vacant land properties in Livingston County, some of which were taken into consideration in creating the assessment rolls for the tax years at issue, Respondent failed to adjust these sales for elements of comparison for the Tribunal to ascertain whether the sales are truly comparable to be deemed reliable indicators of value. In fact, Respondent's assessor even acknowledged that it was merely a "raw data indication." Transcript at 167. With that being said, however, the Tribunal is hard-pressed to conclude that several of the sales are truly comparable considering that, for example, Respondent's Comparable #2, located in Brighton, is 0.60 acres and sold for \$625,000 per acre, whereas Respondent's Comparable #9, located in Howell Township, is 30.38 acres and sold for \$13,167 per acre. Even if the Tribunal were to only take into consideration those sales that are relatively close in size to the

subject property (i.e., Comparable #6, #7, and #10), again, as indicated above, those sales were not adjusted for elements of comparison to conclusively determine that they are the most reliable indicators of value.

Respondent also provided the MLS listings of the subject property which showed that as of April 17, 2013, Petitioner had the subject property listed for sale for \$2,636,900, subdivided into “six outlots” ranging in price from \$219,000 to \$750,000. According to the MLS listings, the subject property was initially listed for sale on April 18, 2011, and has been on the market since that time. See R-2B. Although listings are not the most reliable indicators of value as they fail to state what a property will ultimately sell for, listings are nevertheless indicators of value. There is no reason for this Tribunal to believe that a reasonably knowledgeable and informed seller, working with its broker would set a listing price so astronomically high and out of line with the market that the property would never sell. If nothing else, this listing places a possible ceiling on the subject property’s TCV and provides insight as to the value Petitioner places on the subject property. The fact that Petitioner now contends that the subject property’s TCV for the tax years at issue are approximately 75-87% lower than the subject property’s listing price does not lend to Petitioner’s credibility.

Petitioner submitted an Appraisal for the tax years at issue. In addition to providing a sales comparison approach for each of the tax years at issue, Petitioner’s Appraisal also included an analysis of vacant land located along Highland Road, with similar zoning or highest and best use, or both. The analysis contains 13 active listings containing a total of 71.55 acres, which evidence an asking price of \$167,630 per acre. See R-1B at 18-29. While, again, listings are not the most reliable indicators of value, the Tribunal finds these listings provide some evidence of value and, as such, takes them into consideration. With this evidence in mind, a property the size of the subject property, selling at this asking price per

acre, would sell for approximately \$1,942,830. Again, while not a conclusion of value, this fact calls into question the credibility and reliability of Petitioner's value conclusions.

With regard to Petitioner's sales comparison approach for the tax years at issue, the Tribunal finds that it likewise does not provide the most reliable evidence of value. More specifically, although Petitioner's appraiser adjusted the sales for elements of comparison, the Tribunal is skeptical the sales are truly comparable. More specifically, although the majority of Petitioner's comparables are listed as "similar" in terms of location, all of Petitioner's comparables, except Petitioner's Comparable #1 for the 2013 tax year, are located outside of Respondent's jurisdiction and in different counties. With regard to Petitioner's Comparable #1 for the 2013 tax year, although in Respondent's jurisdiction, Petitioner's appraiser indicated that only 3.53 out of 6.16 acres of that property are usable, which is substantially inferior in size as compared to the subject property. Additionally, Petitioner's appraiser added the payoff amount of the special assessments that were levied on Comparable #1 to the sales price as a transactional adjustment, but then contends that the payoff amounts on the subject property need to be subtracted after developing an adjusted sale price per acre. This process is disconcerting given that Petitioner's appraiser contends that the sales price of Comparable #1 *includes* the value of the special assessment payout (i.e., sales price plus payoff amount of special assessments), but not for the subject property since he subtracts the same in developing a TCV for the subject property (i.e., sales price of comparables, with adjustments, minus payoff amounts).

With that being said, absent reliable evidence submitted by either party, as stated above, the Tribunal finds that the values, as assessed, fall within the range of values provided in both parties' evidence. See *President Inn Props, supra*. To reflect the foregoing,

IT IS SO ORDERED.

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 provided 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 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 FOJ. 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,

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2012, at the rate of 1.09%, and (iv) after June 30, 2012, through December 31, 2013, at the rate of 4.25%.

This Final Opinion and Judgment resolves the last pending claim and closes this case.

By: Paul V. McCord

Entered: October 15, 2013