

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

Michael Lynch,  
Petitioner,

v

MTT Docket No. 371093

City of Novi,  
Respondent.

Tribunal Judge Presiding  
Marcus L. Abood

**OPINION AND JUDGMENT**

**INTRODUCTION**

Petitioner, Michael Lynch, through his amended Petition in the above-captioned case, is appealing the ad valorem property tax assessment levied by Respondent, City of Novi, for the 2009, 2010, 2011, and 2012 tax years. On August 23, 2012, the Tribunal entered an Order denying Respondent's Motion to Compel and Motion to Adjourn. In that Order, the Tribunal also indicated that Petitioner would be precluded from offering a 2012 valuation disclosure for admission into evidence, as Petitioner failed to timely submit that disclosure as required by the Tribunal's Order of August 4, 2011, or in the alternative, timely cure the prejudice caused to Respondent by the untimely submission. A hearing was held in the matter on August 31, 2012. Joshua T. Shillair, attorney at 1-800-LAW-FIRM, PLLC, appeared on behalf of Petitioner. Stephanie Simon Morita, attorney at Johnson, Rosati, Schultz, Joppich, PC, appeared on behalf of

Respondent. Stanley Lenk was Petitioner's valuation witness, together with property owner Michael Lynch. D. Glenn Lemmon was Respondent's valuation witness.

### SUMMARY OF JUDGMENT

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

Parcel Number: 50-22-14-251-012

Year	TCV	SEV	TV
2009	164,000	82,000	82,000
2010	123,000	61,500	61,500
2011	118,000	59,000	59,000
2012	110,000	55,000	55,000

The property's TCV, SEV, and TV as determined by the Tribunal for the tax years at issue shall be as follows:

Parcel Number: 50-22-14-251-012

Year	TCV	SEV	TV
2009	135,000	67,500	67,500
2010	123,000	61,500	61,500
2011	118,000	59,000	59,000
2012	110,000	55,000	55,000

### GENERAL PROPERTY DESCRIPTION

The subject property is located at 43100 Twelve Oaks Crescent, Apartment 3066, City of Novi, Oakland County, Michigan. It is a residential condominium unit located in a gated 90-unit development. The development was originally constructed as an apartment building in 1984 and converted to condominium use in 1995. It is classified as 405-Residential and zoned RM-1 Multiple-family

Residential, but located in a predominately commercial area in central Novi near the Twelve Oaks Mall. It is situated north of I-96, south of Twelve Mile Road, west of Meadowbrook Road, and east of Novi Road.

### SUMMARY OF PETITIONER'S CASE

Petitioner contends that the subject property is assessed in excess of 50% of its true cash value. Petitioner's contentions of TCV, SEV, and TV are as follows:

Parcel Number: 50-22-14-251-012

Year	TCV	SEV	TV
2009	105,000	52,500	52,500
2010	N/A	N/A	N/A
2011	N/A	N/A	N/A
2012	N/A	N/A	N/A

In support of its value contentions, Petitioner offered the following exhibits, which were admitted into evidence:

- P-1: Appraisal Report Prepared by Stanley Lenk, valuing the Subject Property at \$105,000 as of December 31, 2008.
- P-2: Appraisal Report Prepared by Stanley Lenk, valuing the Subject Property at \$125,000 as of December 31, 2009.

Petitioner did not offer for admission any exhibits relating to the 2011 tax year, and as previously indicated, was precluded from offering any such exhibits for the 2012 tax year by prior order of the Tribunal.

Respondent objected to the admission of Petitioner's Proposed Exhibit P-4, a general ledger prepared by Petitioner for tax purposes, detailing all expenditures related to the subject property, on the basis that it included numerous expenses that

were not relevant for valuation purposes under MCL 211.27 and lack of a proper foundation. Respondent's objections were sustained and Petitioner's Exhibit P-4 was not acknowledged or admitted into evidence. (TR, pp 144-151)

### Michael Lynch

Petitioner Michael Lynch presented testimony on his own behalf. Mr. Lynch testified that he purchased the subject property in October of 2008 for \$80,000. (TR, p 139) He indicated that the property was in poor condition at the time of sale: "[I]t was a disaster. Most of the cabinets, virtually all of the cabinets, were ripped out. A lot of the...fixtures were busted or broken." (TR, p 140) Mr. Lynch also indicated, however, that he had viewed the property and was fully aware of its condition prior to buying it. (TR, p 139) In addition to a substantial amount of cleaning, necessary repairs included patching existing drywall and concrete floors and replacing the carpeting, cabinets, sinks, toilets, and fixtures, as well as the furnace, air conditioner, and hot water heater. (TR, pp 142, 157-158) Mr. Lynch testified that expenditures related to the property included \$2,576.59 for appliances, \$16,031.97 for the cabinets and granite, and \$2,964.34 for the carpeting. (TR, p 151-154)

With respect to a completion timeline, Mr. Lynch indicated that all of the stripping, cleaning, and gutting of the property was done prior to the end of 2008:

I tried to do as much as I can, get it all ready so when the cabinets came in, the appliances came in, and the sinks came in, you know,

everything came in, it was already painted...the floors ready to go...just so all the contractors could come in and do their thing. (TR, pp 157-158)

The majority of the repairs, however, were not finished until 2009, and as of December 31, 2008, only the new furnace, hot water heater, and toilets were in place. (TR, pp 154, 157-158, 163) Renovations continued through 2009, and while he could not provide an exact date, Mr. Lynch indicated that the remainder of the work was fully completed sometime prior to the leasing of the property in October of 2009. (TR, p 163) As to the quality of the improvements made, Mr. Lynch testified that he believed them to be comparable to the rest of the units in the building based on discussions he had with the president of the condominium association and viewings of other units. (TR, pp 191-192) He explained:

He said most of the people, you know, as they're updating, they're putting granite, and not necessarily cherry cabinets, but certainly, you know, styles change. Just new cabinets. I took that into account. So did my wife. But it was pretty much my wife that determined what we were going to put in there with the budget that we had....We didn't go though 90 units, but I certainly met most of my neighbors and they were happy to invite me in....So, I kind of saw maybe what five or six, I would say, five or six people. (TR, pp 194-195)

On the leasing issue, Mr. Lynch testified that the property has been tenant occupied since October of 2009 and rented for \$1,360 per month. (TR, p 163) He indicated that associated expenses include the mortgage, property taxes, insurance, and an association fee of approximately \$400. (TR, pp 176-177) Mr. Lynch noted, however, that he did not purchase the property with the intent of converting

it into a rental. Rather, he purchased it with the intent of fixing it up and moving his mother and father-in-law into it, as both were very ill. (TR, pp 191-192).

Shortly after closing on the property, however, it became clear that Mr. Lynch's parents would not be able to occupy it as planned due to tragic, unforeseen circumstances. (TR, pp 191-192) It was only after this discovery that Mr. Lynch began advertising the property for sale and/or lease. (TR, pp 192-193)

### Stanley Lenk

Petitioner also presented testimony from his appraiser, Stanley Lenk. Based on his experience and training, the Tribunal accepted Mr. Lenk as an expert in the valuation of residential properties. Mr. Lenk prepared and communicated two appraisals of the subject property. The appraisals set forth a sales comparison analysis for the 2009 and 2010 tax years. The cost and income approaches were considered but not developed.

Mr. Lenk testified that he was initially contacted by Petitioner Michael Lynch in October of 2008 "to perform an appraisal on...[the subject property]. He just wanted to determine whether or not what he was paying for it was a reasonable amount." (TR, p 27) In accordance with this request, Mr. Lenk inspected the property on October 20, 2008. Numerous photographs and interior measurements were taken. Mr. Lenk described the state of the property at the time of the inspection as follows:

All the kitchen cabinets were gone. Counters were gone. Appliances were gone. Some of the hard plumbing was gone. The carpeting in the living room, den, dining room, and bedrooms needed to be replaced. They were badly soiled....[and] ripped in a few areas. The interior walls, there weren't any holes, with the exception of where the cabinets were affixed and they were pulled off. But the rest of the condo was basically was normal wear, paint and stuff. (TR, p 46)

Based upon this inspection and subsequent analysis of five comparable sales, four of which are the same as those utilized in Petitioner's Exhibit P-1, Mr. Lenk concluded to a value of \$110,000 for the subject property as of October 21, 2008. (TR, p 39)

Mr. Lenk indicated that when he was asked to do a second appraisal on the property for purposes of this appeal, he requested another inspection, but was unable to get approval, as the property was tenant-occupied at that time. (TR, p 39, 176) He testified that he had not inspected the subject property since October of 2008 and admitted that he had no actual knowledge of the property's condition as of the relevant valuation dates for the tax years at issue. (TR, pp 39, 82) Accordingly, his appraisals provide retrospective analyses and are based on extraordinary assumptions relating to the condition of the property.

Mr. Lenk's 2009 sales comparison analysis examines four sales of residential condominium units. Write-ups and photographs of each comparable are included in the submitted appraisal report. A summary of the properties is as follows:

Sale #	1	2	3	4
Location	The Enclave (Unit 2)	The Enclave (Unit 47)	Carlton Forest	Carlton Forest
Sale Date	Mar-08	Mar-08	Sept-08	Jul-08
Sale Price	\$140,000	\$164,400	\$133,000	\$147,900
Concessions	0	0	\$2,090	\$4,719
Age	24	24	5	5
Condition	Average	Average	Average	Average
Size (SF)	2,200	2,200	1,488	1,491
Adj Sale Price	\$105,000	\$129,000	\$110,110	\$119,181

Mr. Lenk testified that the above comparables were selected from all available sales of residential condominium units that occurred in the 2008 calendar year. When asked why he chose to search outside of the subject development for comparables, Mr. Lenk stated:

At this point in time, there wasn't a whole lot of data out there. The market was hurting badly. My research only showed . . . two legitimate sales [in the subject development] . . . that were publicized . . . [and] sold through the MLS where the terms and the conditions of the sale could be documented. The third sale I came up with was a sale that was recorded through public records that I did not use because, quite honestly, in my opinion, this wasn't an arms-length transaction. It was between two relatives. It wasn't listed on the market. I couldn't confirm the terms of the sale. (TR, p 53)

The comparable sales data indicates differences in various elements of comparison, with the biggest factor being condition. All four comparables were adjusted for this element. Mr. Lenk testified that the condition adjustment was based on the cost to complete the necessary repairs and that he utilized the 2005 edition of the Marshall and Swift Residential Cost Handbook to obtain his cost estimates. (TR, pp 59-60,124, 137) Mr. Lenk testified that he did attempt to do a

market analysis to determine appropriate adjustments, but given the minimal sales data, “could find no other properties . . . that I could determine an adjustment for a . . . missing component from the market.” (TR, p 61) He acknowledged that his methodology was somewhat unconventional and explained further:

Market adjustments should be derived from the market when possible. [However,] [w]hen the data is not out there, the appraiser has to use his best judgment. We have to use manuals, repair cost. If an item is missing, it has to be replaced to become marketable. In this case, this property was not marketable. It did not have a functional kitchen and it needed one to become marketable. (TR, pp 61-62)

Adjustments were also made for date of sale, sale concessions, size, age, and view, among other site specific and shared amenities. Although Mr. Lenk’s research indicated that property values were declining, he testified that no time adjustments were necessary because all of the comparables were from the 2008 calendar year. (TR, p 56) After adjustments, Mr. Lenk concluded to a market value of \$105,000 for the subject property. “The final conclusion of value . . . was based on . . . what sales I was able to obtain . . . [and] on the overall condition of the subject property. I rendered the low end of value . . . because of the subject’s condition at the time of the effective date of this report.” (TR, p 78)

Mr. Lenk prepared a similar analysis for the 2010 tax year. It examines three sales of residential condominium units. Write-ups and photographs of each comparable are included in the submitted appraisal report. A summary of the properties is as follows:

Sale #	1	2	3
Location	The Enclave	The Enclave	Meadowbrook
Sale Date	Jul-09	Jul-09	Jan-09
Sale Price	\$120,000	\$125,000	\$136,000
Concessions	0	0	0
Age	25	25	4
Condition	Average	Average	Average
Size (SF)	2,200	2,200	1,778
Adj Sale Price	\$120,000	\$125,000	\$131,400

No adjustments were made to Comparables 1 and 2, but the comparable sales data did indicate differences in various elements of comparison between the subject and Comparable 3. This property was adjusted for age, size, and basement finish, among other site specific and shared amenities. After adjustments, Mr. Lenk concluded to a market value of \$125,000 for the subject property.

#### SUMMARY OF RESPONDENT'S CASE

Respondent contends that the subject property is not assessed in excess of 50% of its true cash value. Respondent's contentions of TCV, SEV, and TV are as follows:

Parcel Number: 50-22-14-251-012

Year	TCV	SEV	TV
2009	164,000	82,000	82,000
2010	123,000	61,500	61,500
2011	118,000	59,000	59,000
2012	115,000	57,500	57,500

In support of its value contentions, Respondent offered the following exhibits, which were admitted into evidence:

- R-1: Valuation Disclosure prepared by D. Glenn Lemmon.
- R-3: Assessment Records for the Subject Property.

D. Glenn Lemmon

Respondent presented testimony from its assessing officer, D. Glenn Lemmon. Based upon his experience and training, the Tribunal accepted Mr. Lemmon as an expert in assessing real and personal property. Mr. Lemmon developed and communicated a valuation disclosure for the subject property. The disclosure sets forth a sales comparison analysis for each of the tax years at issue. The cost and income approaches were considered, but not developed.

Mr. Lemmon testified that he attempted to follow the Uniform Standards of Professional Appraisal Practice (USPAP) in preparing his valuation disclosure for the subject property. (TR, pp 206-207) More specifically, the report was intended to comply with the reporting requirements set forth under Standards Rule 2-2(c) for a Restricted Appraisal Report. (TR, p 207) Mr. Lemmon indicated that although he was not required by his certification to do so, he chose to utilize the USPAP guidelines because they are a recognized standard in appraising property. (TR, p 207)

Mr. Lemmon's 2009 sales comparison analysis examines three sales of residential condominium units. Write-ups and photographs of each comparable are included in the submitted appraisal report. A summary of the properties is as follows:

Sale #	1	2	3
Location	The Enclave Unit 2	The Enclave Unit 20	The Enclave Unit 47
Sale Date	Feb-08	Mar-08	Mar-08
Sale Price	\$140,000	\$190,000	\$164,400
Building	Forest	Forest	Landings
Floor	1	4	3
Unit Type	Handicapped	Typical	Typical
Primary Parking	Tower	Tower	Tower
Adj Sale Price	\$145,920	\$174,192	\$161,162

Mr. Lemmon testified that each of the above comparables is located in the subject development. When asked why he chose not to utilize any comparables located outside of that development, he explained:

[The subject] development is absolutely unique to Novi. It's the only high-rise residential development we have in the city....So, going out and evaluating, you know, trying to compare a townhouse to the subject, or units like the subject, is an apples and oranges kind of comparison. (TR, pp 212-213)

With respect to the reliability of Respondent's Comparable 2, Mr. Lemmon testified:

[N]ormally what I would expect, if it was a sale from between relatives . . . [is] a lower than normal sale price rather than a higher than normal sale price. I didn't see anything that would indicate that they were relatives in the deed. Nothing in the property transfer affidavits that would indicate that they were related parties. They just happened to have the same last name. (TR, p 213-214)

Respondent's 2009 comparable sales data indicates differences in various elements of comparison, with the biggest factor being market conditions. All four comparables were adjusted for this element. Mr. Lemmon testified that such

adjustments were appropriate, because “[l]ike Mr. Lenk, who had determined from his gross analysis about a negative 4.9%, I felt that, from my review of the sales that occurred in there over a four-year period, that 6% was about the annual adjustment, negative adjustment.”

Adjustments were also made for building location, floor location, and unit type. Each of these adjustments was derived from the same analysis. Mr. Lemmon explained:

I . . . looked at approximately 27 sales . . . from 2008 through 2011 . . . . And if I segregate out into the towers . . . it indicated that . . . the Forest sales were approximately 5% higher than the sales that were occurring in the Shores or the Landings . . . . In going through and segregating by floors, I was able to determine that it was a 10% difference between the first residential floor and the fifth residential floor. Because of that . . . I assigned a 2% negative adjustment for the units above the subject, [and a] 2% plus adjustment for any sales occurring on the first residential floor. (TR, pp 214-215)

As for the unit type differential, Mr. Lemmon indicated as follows:

In the four years of sales I looked at, two of the sales were of the two. So, I had two-thirds representative of that, which is a reasonably pretty good representation. From that I was able to determine that the modified and the handicaps were sold for a little less than the typical units and they required a plus adjustment. (TR, p 215)

After adjustments, Mr. Lemmon concluded to a market value of \$164,000 for the subject property.

Mr. Lemmon prepared a similar analysis for the 2010 tax year. It examines four sales of residential condominium units. Write-ups and photographs of each

comparable are included in the submitted appraisal report. A summary of the properties is as follows:

Sale #	1	2	3	4
Location	The Enclave Unit 53	The Enclave Unit 5	The Enclave Unit 79	The Enclave Unit 30
Sale Date	Jan-09	Jul-09	Jul-09	Nov-09
Sale Price	\$123,000	\$120,000	\$125,000	\$155,000
Building	Landings	Forest	Shores	Forest
Floor	4	1	4	5
Unit Type	Typical	Typical	Typical	Typical
Primary Parking	Tower	Tower	Tower	Tower
Adj Sale Price	\$117,165	\$119,340	\$122,850	\$144,243

As with the 2009 analysis, Respondent's 2010 comparable sales data indicates differences in various elements of comparison, with the biggest factor again being market conditions. All four comparables were adjusted for this element, and for building location, floor location, and unit type. After adjustments, Mr. Lemmon concluded to a market value of \$123,000 for the subject property.

#### FINDINGS OF FACT

1. Petitioner purchased the subject property from TCF National Bank on October 30, 2008 for \$80,000. The property was the subject of a foreclosure by TCF National Bank against William C. Phillips on an April 8, 2008, Sheriff's deed. The property was previously purchased by Jeannine Phillips on February 3, 2007, for \$230,000.
2. The subject property is located at 43100 Twelve Oaks Crescent, Apartment 3066, City of Novi, Oakland County, Michigan.
3. The subject property is a residential condominium unit located in a gated, 90-unit development. The development was originally constructed as apartments in 1984 and converted to condominium use in 1995. It is classified as 405-Residential and zoned as RM-1, Multiple-family Residential.

4. The subject development is located in a predominantly commercial area in central Novi near the Twelve Oaks Mall. It is situated north of I-96, south of Twelve Mile Road, west of Meadowbrook Road, and east of Novi Road. Access to the development is provided at Twelve Oaks Mall Drive.
5. The subject development sits on approximately 16.6 acres of land. Site improvements consist of a recreation building and three residential towers, landscaping, concrete sidewalks, and asphalt drives and surface parking areas. The site is bordered on the west by Twelve Oaks Mall and on the east by Twelve Oaks Mall Lake.
6. Each of the three residential towers (Forest, Landings, and Shores) has six levels, with the lowest (ground) level used for parking and storage. Each of the upper five floors has six residential units, for a total of 30 units per building. The units are comprised as follows: One handicapped access unit, 10 modified units, and 19 typical units. The recreation building is centrally located between the towers, forming a hub with covered walkways connecting to each.
7. In addition to the 18 designated parking spaces in the lower level of each residential tower, each tower has a sheltered parking structure that holds 12 vehicles. Paved surface parking exists for 90 cars plus maneuvering areas. Per the Master Deed, each unit has one dedicated covered space and one dedicated surface space. (Respondent's Exhibit, R-1)
8. The subject is a typical unit located on the 3<sup>rd</sup> level (2<sup>nd</sup> residential floor) of the Forest tower, which is the most westerly tower of the development. The subject unit is accessed by elevator. The subject unit has covered parking in the lowest level of the Forest tower.
9. According to the Master Deed, a typical unit is 2,091 square feet in size and has two bedrooms, two bathrooms, living room, dining room, dining nook, laundry, den, kitchen, and attached enclosed sunroom. (Respondent's Exhibit, R-1)
10. The subject unit was rented in October of 2009 for \$1,360 per month (TR, pp 148, 163)
11. Both parties furnished valuation disclosures for the subject property. Both parties' valuation experts considered all three approaches to value, but developed only the sales comparison approach.

12. Petitioner's valuation disclosure was developed by Mr. Stanley Lenk as an appraisal report.
13. Mr. Lenk inspected the subject unit on October 20, 2008, for the 2009 valuation. During this inspection, Mr. Lenk took photographs and interior measurements of the subject. Mr. Lenk's measurements indicated that the subject property is 2,204 square feet in size. The date of signature and date of report is April 9, 2012.
14. Mr. Lenk's Sales Comparison approach for the 2009 valuation consists of four comparable sales (43100 Twelve Oaks Crescent (Unit 2), 43000 Twelve Oaks Crescent (Unit 47), 28322 Carlton Way Drive, and 28346 Carlton Way Drive). Mr. Lenk made adjustments for concessions, common elements, view, age, and condition, among various other elements of comparison.
15. Mr. Lenk's cost estimates and adjustments for the 2009 valuation were based on the Marshall & Swift 2005 cost manual. (TR, p 124)
16. In the "Comments on Sales Comparison" in Mr. Lenk's 2009 valuation report, 24 properties were listed for sale in the subject complex between \$99,000 and \$265,000. (Petitioner's Exhibit, P-1)
17. For the 2009 valuation, Mr. Lenk provides a "Supplemental Sales Analysis Summary," which shows a market decline of -4.9% for condominium sales within a 1.5 mile radius of the subject. A second summary shows a market decline of 16.7% for all condominium sales in Novi.
18. Mr. Lenk did not inspect the interior of the subject unit for the 2010 valuation. (TR, p 39) The date of signature and date of report is April 9, 2012. Mr. Lenk's 2010 appraisal report denotes he made an interior and exterior inspection of the subject unit. (Petitioner's Exhibit, P-1)
19. Mr. Lenk's Sales Comparison approach for the 2010 valuation consists of three comparable sales (43100 Twelve Oaks Crescent (Unit 5), 43050 Twelve Oaks Crescent (Unit 79), and 29304 Douglas Drive). No adjustments were made to Comparables 1 and 2. Comparable 3 was adjusted for common elements, age, and size, among various other elements of comparison.
20. For the 2010 valuation, Mr. Lenk provides a "Supplemental Sales Analysis Summary," which shows a market increase of 23.2% for condominium sales within

a 1.5 mile radius of the subject. A second summary shows a market increase of 22.8% for all condominium sales in Novi.

21. Mr. Lenk's source for the definition of market value in both the 2009 and 2010 valuations is the 12<sup>th</sup> edition of "The Appraisal of Real Estate." (TR, pp 105-106)
22. Respondent's valuation disclosure was developed by Mr. D. Glenn Lemmon.
23. Mr. Lemmon has been employed by the City of Novi as city assessor for the past 18 years. (TR, p 199)
24. Mr. Lemmon's certification states, "I have no bias with respect to the property that is the subject of this report." (Respondent's Exhibit, R-1, p 33)
25. Mr. Lemmon developed his valuation disclosure based on appraisal standards and ethics. More specifically, Mr. Lemmon developed his valuation disclosure as a "restricted" report with a departure from appraisal standards and ethics.
26. Mr. Lemmon did not inspect the subject unit in the completion of his valuation disclosure. (TR, p 231)
27. Mr. Lemmon's Sales Comparison approach for the 2009 valuation consists of three comparable sales (43100 Twelve Oaks Crescent (Unit 2), 43100 Twelve Oaks Crescent (Unit 20), and 43000 Twelve Oaks Crescent (Unit 47)). Mr. Lemmon made adjustments for date of sale, building location, floor location, unit type, and primary parking.
28. Mr. Lemmon's Sales Comparison approach for the 2010 valuation consists of four comparable sales (43000 Twelve Oaks Crescent (Unit 53), 43100 Twelve Oaks Crescent (Unit 5), 43050 Twelve Oaks Crescent (Unit 79), and 43100 Twelve Oaks Crescent (Unit 30)). Mr. Lemmon made adjustments for date of sale, building location, floor location, unit type, and primary parking.
29. Mr. Lemmon's Sales Comparison approach for the 2011 valuation consists of four comparable sales (43100 Twelve Oaks Crescent (Unit 23), 43100 Twelve Oaks Crescent (Unit 6), 43100 Twelve Oaks Crescent (Unit 27), and 43100 Twelve Oaks Crescent (Unit 4)). Mr. Lemmon made adjustments for date of sale, building location, floor location, unit type, and primary parking.

30. Mr. Lemmon's Sales Comparison approach for the 2012 valuation consists of four comparable sales (43050 Twelve Oaks Crescent (Unit 61), 43000 Twelve Oaks Crescent (Unit 40), 43000 Twelve Oaks Crescent (Unit 48), and 43050 Twelve Oaks Crescent (Unit 86)). Mr. Lemmon made adjustments for date of sale, building location, floor location, unit type, and primary parking.
31. Mr. Lemmon did not research the days on market for any of his comparable sales data. He researched only sales within the Enclave development; he did not research any residential condominium sales outside of the subject development. (TR, pp 235-238)
32. Mr. Lemmon cites the 3<sup>rd</sup> edition of *The Dictionary of Real Estate Appraisal* (1993). (Respondent's Exhibit, R-1, p 5) Mr. Lemmon also cites the 11<sup>th</sup> edition of *The Appraisal of Real Estate* (1996). (Respondent's Exhibit, R-1, p 18)

#### APPLICABLE LAW

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50 % of its true cash value. The Michigan Legislature defined "true cash value" as "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 which could be obtained for the property at private sale, and not at forced or auction sale." See MCL 211.27(1). The Michigan Supreme Court, in *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450; 221 NW2d 588 (1974), held that "true cash value" is synonymous with "fair market value."

The Tribunal is charged with finding a property's true cash value to determine the property's lawful assessment. *Alhi Development Co v Orion Twp*, 110, Mich App 764, 767; 314 NW2d 479 (1981). The determination of the lawful assessment will, in turn, facilitate the calculation of the property's taxable value as

provided by MCL 211.27a. True cash value is properly determined using one of three widely accepted appraisal methods: cost less depreciation, sales comparison and capitalization of income. See *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991); *Antisdale v City of Galesburg*, 420 Mich 265, at 276-277; 362 NW2d 632 (1984). Fundamental to the determination of a property's true cash value is the concept of "highest and best use." It recognizes that the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay. *Rose Bldg Co v Independence Twp*, 436 Mich 620, 623; 426 NW2d 325 (1990).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735(1). The Tribunal's factual findings must 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 Department 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. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

MCL 205.737 provides that "[t]he petitioner has the burden of proof in establishing the property's true cash value." The Michigan Court of Appeals has held that "[t]his burden encompasses two separate concepts: (1) the burden of

persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party.” *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 355-356; 483 NW2d 416 (1992). Nonetheless, the Tribunal *must* make an independent determination of true cash value. *Id* at 355. The Tribunal is also obligated to select the valuation methodology that is accurate and bears a reasonable relation to the property’s true cash value. *Safran Printing Co v Detroit*, 88 Mich App 376; 276 NW2d 602 (1979), *lv den* 411 Mich 880 (1981). The Tribunal is not, however, “bound to accept either of the parties’ theories of valuation. It may accept one theory and reject the other, it may reject both theories, or...utilize a combination of both in arriving at its determination.” *Jones, supra* at 356. Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject property would sell. *Meadowlanes Ltd Dividend Housing Ass’n v City of Holland*, 437 Mich 473; 473 NW2d 636 (1991).

### CONCLUSIONS OF LAW

The parties’ experts were charged with developing and communicating valuations of the subject property to assist the Tribunal in a determination of its lawful true cash, assessed, and taxable values for each of the tax years at issue in this appeal. Both parties considered all three approaches to value, but developed only the sales comparison approach. The income approach was not developed by

either expert, despite the subject being an income-producing property. Having considered all of the testimonial and documentary evidence provided, the Tribunal concludes that neither party's valuation offers a fully supportable indicator of true cash value. Nonetheless, there is sufficient evidence on the record to allow the Tribunal to make an independent determination of value for each year.

As a preliminary matter, the Tribunal notes Respondent's objections to Mr. Lenk's failure to value the property according to the statutory definition of true cash value. Respondent argued that while the definition of true cash value is generally thought of as being synonymous with fair market value (as defined in standard appraisal practice) there are differences in what has to be considered in each type of valuation. (TR, p 44) Respondent also objected to Mr. Lenk's reliance on outdated sources, including the 12<sup>th</sup> edition of The Appraisal Institute's The Appraisal of Real Estate. (TR, pp 105-106)

Mr. Lenk did acknowledge that he has never actually read the statutory definition of true cash value and that the definition of fair market value utilized in his appraisals may have been out-of-date. (TR, pp 41-42) Ironically, however, Mr. Lemmon also cites several outdated sources, including an even older version of The Appraisal of Real Estate. (TR, p 238; R-1) Consequently, both parties' valuation experts have demonstrated a failure to stay current in valuation concepts as mandated by industry standards. Further, as will be explained in greater detail

below, both experts have likewise demonstrated a lack of competency in applying proper techniques and methodologies, which impacts the reliability of their respective valuations and final value conclusions. Moreover, the Tribunal is not persuaded by Mr. Lemmon's declaration that he is unbiased and impartial in his valuation of the subject property. His attempt to add credibility to his valuation by invoking appraisal standards and ethics in which he has no certification or licensing must fail. In that regard, the Tribunal notes Mr. Lemmon's longstanding employment with the City of Novi and the fiduciary relationship that accompanies his position as its assessing officer.

With respect to the evidence provided, the Tribunal notes that Petitioner's 2009 sales comparison analysis examines four sales of residential condominium units, two of which are located in the subject development. Respondent objected to the inclusion of Comparables 3 and 4, both of which are located in Carlton Forest. The objections were related to the age and location of the properties and more specifically, the comparability of that development. (TR, pp 226-227) Mr. Lenk acknowledged that the two sales in the subject development would be the best sales for comparison, but indicated that he needed more than just a few sales to render an opinion of value. (TR, p 69)

The Tribunal finds that the inclusion of the Carlton Forest comparables is not improper. The same is true of the Meadowbrook sale utilized in Mr. Lenk's

appraisal for the 2010 tax year. To the contrary, the Tribunal finds Respondent's failure to consider sales outside of the subject development problematic for several reasons. First, Mr. Lemmon indicated that he did not look at any outside sales to verify that properties in other developments are not sufficiently similar to or competitive with the subject to properly be considered comparable as he contends. (TR, p 233) More importantly, the only other relevant sale that occurred in the subject development for the 2009 tax year (besides that of the subject property itself) was a transaction involving related parties.

In that regard, Mr. Lemmon acknowledged that both parties to that transaction had the same last name, one which he testified was not particularly common in his experience. Further, Mr. Lemmon admittedly failed to do any research to confirm that the parties were not related, and when asked whether he thought they were, he indicated that he did not know. (TR, pp 235-236) The fact that the property allegedly had "a higher than normal sale price" is not sufficient to support Respondent's contention that the parties to that sale were not related, but instead "simply had the same last name." Mr. Lemmon also testified that he did not verify that any of his comparables had been listed or otherwise exposed to the open market. (TR, p 237)

Nonetheless, the Tribunal finds numerous issues with Petitioner's adjustments for the various elements of comparison, and is not persuaded that all

are reasonably analyzed and supported overall. First and foremost, Mr. Lenk's condition adjustments for the 2009 valuation were derived from a cost manual as opposed to the market, despite his acknowledgement that cost does not equal an adjustment in standard appraisal practice. Further, the utilized cost estimates were derived from considerably outdated source materials and the \$30,000 adjustment applied to the comparables does not coincide with the actual costs incurred by Mr. Lynch, which, pursuant to the testimony provided, were approximately \$21,572, not inclusive of the furnace, air conditioner, and hot water tank. Moreover, the Tribunal questions not only Mr. Lenk's assertions with respect to his inability to determine a proper, more accurate adjustment from the market, but also whether a condition adjustment in any amount is necessary or even warranted on the record.

In that regard, Mr. Lenk inspected the subject property on only one occasion, in October of 2008, prior to Petitioner's purchase of the same. He admittedly had no actual knowledge of the property's condition as of the relevant valuation dates for the 2009 or 2010 tax years. Both of his valuations provide a retrospective analysis and are based on the extraordinary assumption that the condition of the property was in the same or similar condition on the tax dates. Additional consideration was given to a verbal description of the improvements made to the property in 2009 for the 2010 valuation. Respondent's valuation is based on a similar assumption; however, Mr. Lemmon testified in that regard that neither he

nor any of his employees had made a physical inspection of the property since Mr. Lynch acquired ownership. (TR, p 231) Both parties' experts acknowledged that if these assumptions were incorrect, it would impact their final value conclusions.

Further, much of the information contained in the admitted documentary evidence contradicts the testimony provided by both Mr. Lenk and Mr. Lynch with respect to the condition of the property. Notably, each of Mr. Lenk's appraisal reports indicates an effective age of only ten years for the subject property. This does not coincide with the subject's actual age or conversion date, and suggests that the condition and utility of the unit is better than that asserted. Additionally, while the Addendum to the 2009 report notes that the carpeting was in need of replacement and that several fixtures (cabinets, countertops, and appliances) were missing, the report also indicates that the property is comprised of "average to good" quality material and workmanship. This determination is reiterated in the general description of the subject's interior found on page 1 of 4 of the report. The condition of the property is also indicated as being "average but incomplete" in the sales grid contained on page 2 of 4 of the report.

Similarly, in a questionnaire sent to Mr. Lynch by the City on October 29, 2009, he described the condition of the unit as "good." In further explanation, he stated that "several kitchen cabinets were missing along with a countertop." Mr. Lynch also indicated, however, that there were no other physical problems with the

property and that he received only a \$2,000 credit for seller's concessions. (TR, pp 172-173) Further, in his testimony before the Tribunal, Mr. Lynch acknowledged that his petition to Respondent's March Board of Review did not make any claim regarding missing cabinets, countertops, etc. (TR, p 175)

As for the remainder of the adjustments, Mr. Lenk testified that his concession adjustments were based on the information provided by the listing tickets. (TR, p 71) Conflicting testimony was provided on the common elements and square footage adjustments. Mr. Lenk initially testified that these adjustments were derived from paired sales analyses, but later stated that there was insufficient sales data available to do such analyses in this case. Mr. Lenk went on to state that both adjustments were, in fact, based on his own personal "knowledge" of the impact of such differences, which he obtained through prior valuations of other similarly situated properties within the City of Novi.

Given the absence of any supporting documentation on the record for these adjustments, the Tribunal has no way of determining the reliability of the same, or whether they are even relevant and applicable to the tax years at issue in this appeal. Moreover, the Tribunal finds that Mr. Lenk's assertions regarding the sufficiency of the sales data without merit. His analysis completely overlooks a relevant paired sale between two Enclave properties identified as Petitioner's Comparables 1 and 2 for each of the tax years at issue. Moreover, the "Comments

on Sales Comparison” section of Mr. Lenk’s 2009 appraisal report indicates that there was a total of 24 properties listed for sale in the subject development ranging in price from \$99,000 to \$265,000. Analysis and consideration of these listings was both warranted and appropriate given the very limited availability of relevant sales data.

Mr. Lenk indicated that his 2009 sales comparison analysis did not require time adjustments because all of his selected comparables sold in the 2008 calendar year. In testimony, however, Mr. Lenk acknowledged that he did, in fact, make a single adjustment for this element to Comparable 4, and that this adjustment was inconsistent with the way that he treated the other three comparables. He testified that the adjustment was made in error, and consequently, the final adjusted sale price for comparable 4 should be \$3,200 higher. (TR, p 81) The Tribunal finds, however, that Mr. Lenk’s failure to make adjustments for date of sale and market conditions is entirely inconsistent with the supplemental sales data provided in his appraisals, which shows a market decline of -4.9% for condominium sales within a 1.5 mile radius of the subject and -16.7% for all condominium sales in the City of Novi for the 2009 tax year.

Mr. Lemmon similarly determined an adjustment for this element of comparison to be appropriate. The testimonial and documentary evidence on record on the basis of Respondent’s time adjustments is vague, however, and also

somewhat contradictory. Further, Mr. Lemmon acknowledged that Mr. Lenk's supplemental sales analyses had more samples than his own and indicated that he would therefore be likely to defer to his conclusions on the impact of the same. (TR, p 217) As such, the Tribunal concludes that the 4.9% annual decline indicated by Petitioner's supplemental sales data is better supported overall.

The Tribunal is satisfied, however, that Respondent's building and floor differentials are sufficiently explained and supported on the record. This is true notwithstanding Mr. Lemmon's acknowledgement that the four sales that occurred in the subject development in 2008 would not be sufficient to develop a proper differential, and his admitted failure to look at any sales that occurred prior to 2008. (TR, p 239) In that regard, the Tribunal notes that the 5% building differential coincides quite closely with Petitioner's \$5,000 view adjustment and finds that the underlying basis of these adjustments is likely one and the same. The Tribunal is not persuaded, however, that the indicated sampling of sales is sufficient to support the asserted "unit type" differential.

Despite the above-noted deficiencies, the Tribunal finds that Petitioner has succeeded in meeting its burden of going forward with evidence on the issue of true cash value for the 2009 tax year. The Tribunal finds that this evidence, when viewed in conjunction with all of the other testimonial and documentary evidence

on record, supports a finding that the subject property was assessed in excess of 50% of its true cash value.

More specifically, the Tribunal finds that the comparables located at 43100 Twelve Oaks (Unit 2) and 43000 Twelve Oaks (Unit 47), which were also relied upon by Respondent, provide the most reliable indicators of value and should be given the greatest weight in the Tribunal's final value conclusions. A summary of these sales and appropriate adjustments, as determined by the Tribunal and proper appraisal standards, are as follows:

Sale #	Subject	1	Adj	2	Adj
Location	43100 Twelve Oaks Apt 3066	43100 Twelve Oaks Apt 2022		43000 Twelve Oaks Apt 4055	
Sale Price	\$80,000	\$140,000		\$164,400	
Sale Date	Oct-08	Feb-08	-6,860	Mar-08	-8,055
Age	1984	1984		1984	
Condition					
Building View	Forest Park/Pond	Forest Park/Pond		Landings Park/Lake	-5,000
Floor	3 <sup>rd</sup>	2 <sup>nd</sup>	2,800	4 <sup>th</sup>	-3,280
Quality/Const	Good	Good		Good	
Size	2,204	2,204		2,204	
Room Count	6-2-2	6-2-2		6-2-2	
Heating/Cooling	GFA/C-A	GFA/C-A		GFA/C-A	
Misc.		Updated Bath	-5,000		
Adj Sale Price	N/A		\$130,940		\$148,065

Respondent argued that Petitioner was attempting to “double-dip” by making a substantial downward adjustment for condition, while at the same time concluding to a value at the lower end of the adjusted sales range because of the subject's condition. (TR, p 79) Respondent's arguments are without merit,

however, as standard appraisal practice and theory recognizes this distinction. The range of adjusted sales prices must result in a reconciled value conclusion:

In reconciling value indications in the sales comparison approach, the appraiser evaluates the number and magnitude of adjustments and the importance of the individual elements of comparison in the market to judge the relative weight a particular comparable sale should have in the comparative analysis. *Appraisal Institute: The Appraisal of Real Estate* (Chicago, Appraisal Institute, 13<sup>th</sup> ed, 2008), p 312.

Further, although the Tribunal concludes that the testimonial and documentary evidence provided does not warrant a condition adjustment, it also concludes that the specific facts and circumstances presented do support a finding that the condition of the property as of the relevant valuation date is a factor to be taken into consideration. The Tribunal is persuaded that Mr. Lenk's determination that the lower end of the value range should be given the greatest weight due to the subject's less marketable condition is a reasonable and supported approach for such considerations. (TR, p 79; P-1) Accordingly, the Tribunal finds that a true cash value of \$135,000 is supported for the 2009 tax year.

With respect to subsequent tax years, the Tribunal notes that Petitioner's counsel indicated that there was no dispute of the subject property's assessments as confirmed by Respondent's March Boards of Review for these years, as its own valuations admittedly supported the indicated values. (TR, p 6) The Tribunal agrees and finds that both parties' market-based evidence supports the \$123,000 true cash value indicated by Respondent's assessment for that year. Petitioner did

not offer for admission into evidence any valuation of the subject property relating to the 2011 tax year, and was precluded from offering any such evidence for the 2012 tax year by prior order of the Tribunal. Despite Petitioner's failure to meet its burden of going forward with the evidence in these years (and the presence of the same deficiencies noted above), the Tribunal finds Respondent's sales analyses sufficiently support the \$118,000 and \$110,000 true cash values indicated by its assessments for the 2011 and 2012 tax years, respectively.

### JUDGMENT

IT IS ORDERED that the subject property's true cash, assessed, and taxable values are those shown in the Summary of Judgment section of this 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 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 Final

Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09% for calendar year 2012 and (iv) after June 30, 2012 and prior to January 1, 2013, at the rate of 4.25%.

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

MICHIGAN TAX TRIBUNAL

Entered: 11/15/12

By: Marcus L. Abood