

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

Eight-Haggerty Properties II, L.P.,
Petitioner,

v

MTT Docket No. 371620

City of Novi,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Eight-Haggerty Properties II, L.P., appeals ad valorem property tax assessments levied by Respondent, City of Novi, against Parcel No. 50-22-36-200-038 for the 2009, 2010, and 2011 tax years. George A. Drosis, attorney, represented Petitioner, and Stephanie Simon Morita, attorney, represented Respondent.

A contemporaneous hearing regarding this matter and MTT Docket No. 371622¹ was held on August 7, August 8, and August 9, 2012. Petitioner's sole witness was John R. Widmer, Jr., MAI. Respondent's witnesses were Eugene Szkilnyk, review appraiser; Charles Boulard, community development director, City of Novi; and D. Glenn Lemmon, assessor, City of Novi.

Based on the evidence, testimony, and case file, the Tribunal finds that Petitioner has generally failed to meet its burden of proof in establishing the subject property's true cash value, and further finds the true cash values ("TCV"), state equalized values ("SEV"), and taxable values ("TV") of the subject property for the years under appeal are as follows:

¹ The subject appeal and the appeal by Eight-Haggerty Properties, L.P.(Docket No. 371622) are similar appeals of vacant parcels located in the same area by Petitioner's with the same ownership. Further, Petitioner's appraisal included both parcels in a single valuation.

| PARCEL NUMBER | YEAR | TCV | SEV | TV |
|------------------|------|-------------|-------------|-------------|
| 50-22-36-200-038 | 2009 | \$4,576,000 | \$2,288,000 | \$1,663,270 |
| 50-22-36-200-038 | 2010 | \$4,164,100 | \$2,082,050 | \$1,658,280 |
| 50-22-36-200-038 | 2011 | \$3,743,100 | \$1,871,550 | \$1,686,470 |

PETITIONER’S CONTENTIONS

Petitioner contends that the evidence presented in this case strongly supports a determination that the true cash value of the subject property as determined by Respondent is substantially overstated. Petitioner further contends that the subject property has never been developed and the subject property is generally commercial space that is oddly shaped and faces unique geographic challenges. Petitioner relies on its appraiser’s sales comparison approach to support its contention of the true cash values of the subject property for the tax years at issue, stating that its appraiser (i) analyzed sales of vacant parcels comparable to the subject, (ii) made appropriate market adjustments to reflect the differences between the subject property and the comparable properties, (iii) determined that a substantive portion of the subject property had no value because of its topography, and (iv) further adjusted his value conclusions downward to reflect his opinion that the property would not be immediately developed by a prospective purchaser. Petitioner further contends that Respondent’s assessor did not provide a credible, independent determination of the true cash value of the subject property and Respondent’s review appraiser failed to adequately support his critique of Mr. Widmer’s appraisal methodology. (Transcript, pp. 522 – 536)

As determined by Petitioner’s appraiser, the TCV, SEV, and TV for the subject property for the tax years at issue should be:

| PARCEL NUMBER | YEAR | TCV | SEV | TV |
|------------------|------|-------------|-----------|-----------|
| 50-22-36-200-038 | 2009 | \$1,680,000 | \$840,000 | \$840,000 |
| 50-22-36-200-038 | 2010 | \$1,530,000 | \$765,000 | \$765,000 |

| | | | | |
|------------------|------|-------------|-----------|-----------|
| 50-22-36-200-038 | 2011 | \$1,375,000 | \$687,500 | \$687,500 |
|------------------|------|-------------|-----------|-----------|

PETITIONER’S ADMITTED EXHIBITS

P-1 Appraisal of the subject property prepared by John R. Widmer, Jr., dated April 13, 2012.

PETITIONER’S WITNESS

John R. Widmer, Jr.

John Widmer, MAI, is a commercial and industrial real estate appraiser licensed in the State of Michigan. Mr. Widmer testified that he prepared an appraisal in conformance with the Uniform Standards of Professional Appraisal Practice (“USPAP”) for the parcel that is the subject of this appeal for the 2009, 2010, and 2011 tax years. Mr. Widmer further testified that (i) the subject parcel is approximately 21 acres, is irregularly shaped with a portion of the parcel fronting on Haggerty Road, and adjoins an existing hotel property, (ii) his appraisal contained no hypothetical conditions, but did contain extraordinary assumptions for environmental conditions and his retrospective valuation of the subject property, (iii) the value of the subject property is adversely impacted by the existence of regulated woodlands on the parcel, (iv) his determination that only 7.9 acres was usable of the total 21 acres was based primarily on his physical observations of the site that identified dense vegetation, potential wetlands, and other topographical and woodlands issues, (v) topographical maps, if any, were not included in his appraisal, (vi) market rents for office space in the area have declined by approximately ten percent over the period at issue, which has led to a significant amount of available commercial space within the market area, (vii) the highest and best use of the subject property is “speculative investment to hold for future development,” (Transcript, p. 41) (viii) although his highest and best use determination was based on his understanding that the subject property was zoned OSC,

his highest and best use determination would not change if some of the subject parcel was zoned OS-1 and not OSC, (ix) his determination of the value of the subject parcel would decrease to the extent that some of the portion of the subject parcel he deemed “useable” was zoned OS-1 rather than OSC, (x) he relied solely on the sales comparison approach to determine the true cash value of the subject property, (xi) he identified nine comparable sales for the tax years at issue based primarily on geographical proximity and adjusted these comparable sales for differences between the comparable sales and the subject property, such as property rights conveyed, conditions of sale, market conditions, location, financing, expenditures after sale, and physical characteristics to determine a market rate per square foot for Parcel No. 50-22-36-200-035 and then adjusted that value upward by 15% to reflect the subject parcel’s location and visibility, (xii) he applied his calculated market rate per square foot to the portion of the subject parcel he determined to be “useable” to calculate its initial true cash value, (xiii) he then adjusted this initial true cash value to reflect his conclusion that it was “unlikely that there would be any near-term development potential for this parcel,” (Transcript, pp. 54, 55) (xiv) based on an assumption that development of the subject property would occur over a two-year period and that each of the comparable sales “were acquired for immediate development,” he applied a condensed discounted cash flow methodology based on a subdivision development model to determine a “development probability adjustment” to value and then averaged the value determined with no “development probability adjustment” and the value determined with a “development probability adjustment” to determine the true cash values of the subject property for the tax years at issue. (Transcript, pp. 7 – 189; 506 - 520)

RESPONDENT’S CONTENTIONS

Respondent contends that the true cash, assessed, and taxable values it determined for the

subject property for the tax years at issue should remain unchanged based on the value conclusions made by its assessor, which are primarily based on market information provided by Oakland County Equalization Department and the State Tax Commission. Respondent further contends that Petitioner has failed to meet its burden of proof in this matter, primarily because Petitioner’s appraisal is substantially flawed. Specifically, Respondent contends that Petitioner’s appraiser erred by (i) failing to follow USPAP disclosure rules, (ii) incorrectly determining that 60% of the subject property has no value based primarily on topographical issues, (iii) using comparable sales that are dissimilar to the subject property, (iv) making unsupported market adjustments to his comparable sales, and (v) making below-the-line adjustments for development probability based on a discounted cash flow methodology, which is contrary to recognized appraisal practice. (Transcript, pp. 189-192; pp. 536-549)

As determined by Respondent’s assessor, the TCV, SEV, and TV for the subject property for the tax years at issue should be:

| PARCEL NUMBER | YEAR | TCV | SEV | TV |
|------------------|------|-------------|-------------|-------------|
| 50-22-36-200-038 | 2009 | \$5,201,800 | \$2,600,900 | \$1,663,270 |
| 50-22-36-200-038 | 2010 | \$4,577,600 | \$2,288,800 | \$1,658,280 |
| 50-22-36-200-038 | 2011 | \$4,161,400 | \$2,080,700 | \$1,686,470 |

RESPONDENT’S ADMITTED EXHIBITS

R-1 Respondent’s valuation disclosure for Docket No. 371620 (except pages 11, 12, and 14).

R-2 Respondent’s valuation disclosure for Docket No. 371622 (except pages 10, 11, and 13).

R-4 Comparable Information (except pages 1-9, 18-21, 36-44, 47-50, 51, 79, 80).

R-5 Appraisal Review.

R-9 City of Novi Zoning Map.

R-11 Regulated Wetlands Map.

R-12 Regulated Woodlands Map.

R-13 Wetlands Ordinance.

R-14 Woodlands Ordinance.

RESPONDENT'S WITNESSES

Eugene Szkilnyk

Mr. Szkilnyk is a commercial real estate appraiser licensed in the State of Michigan. Mr. Szkilnyk prepared a Desk Review Report of Petitioner's appraisal and testified that (i) Petitioner's appraisal was not prepared in accordance with USPAP for several reasons including his failure to disclose his extraordinary assumptions that a significant portion of the subject property had no value and that land improvements on the subject property are currently assessed to another parcel, (ii) Petitioner's appraiser's determination that in excess of 50% of the subject property has no value was not supported, as his appraisal failed to include credible supporting topographical, wetlands, or woodlands information, (iii) Petitioner's appraiser's lump-sum deduction for development potential was already reflected in the prices paid for the comparable sold properties, (iv) Petitioner's appraiser's discounted cash flow methodology is more appropriately applied to subdivision development, (v) Petitioner's appraiser provides no basis for many of his adjustments to his comparable sales, including adjustments for location and zoning, (vi) Petitioner's appraiser fails to make appropriate adjustments to his comparable sales for woodlands, wetlands, and topography consistent with his analysis of the subject property, and (vii) Petitioner's appraiser erred in mixing the cost and sales comparison approaches as all approaches to value must be independent of one another. (Transcript, pp. 211 – 260; pp. 267 – 316)

D. Glenn Lemmon

Mr. Lemmon is a Michigan Master Assessing Officer (Level IV assessor) licensed in the

State of Michigan and has been the assessor for the City of Novi since 1996. Mr. Lemmon testified that (i) vacant land values in the city were initially determined as part of a reappraisal of the city during the period 1996 – 1998, (ii) during that period the portion of vacant land parcels with more than one zoning classification, such as the subject, that portion determined to be “secondary” zoning (generally based on location) was discounted because “secondary zoning would have a lesser impact on the value than the primary zoning,” (Transcript, p. 430) (iii) the subject property is zoned both OSC and OS-1, (iv) the portion of the subject property zoned OS-1 was determined to be “secondary” and was given a 20% discount in valuing the property for the tax years at issue, (v) he does not prepare sales studies for commercial or industrial property, but instead relies on market information and direction provided by Oakland County, (vi) there were no comparable sales in the City of Novi of vacant land parcels in the range of seven to twenty acres, (vii) his input into county sales studies is limited, (viii) because “all land has value,” he values all wetlands as having “contributory value,” (Transcript, p. 466 - 468), (ix) the subject property does not include wetlands, (x) he does not discount the value of regulated woodlands because the City’s woodlands map is “fairly vague” and because the impact of the regulated woodlands on the value of a parcel cannot be properly determined until a site plan has been submitted, (Transcript, p. 419) (xi) he does not review site plans, and (xii) the value of all commercial properties located in the City were reduced approximately 8% for 2010, 12% - 15% for 2011, and 10% for 2012. (Transcript, pp. 395 – 505)

Charles Boulard

Mr. Boulard has been the Community Development Director for the City of Novi for the past three years. Mr. Boulard testified that (i) he oversees all planning and development services for the City of Novi (excluding engineering), including planning, building review and inspection, and ordinance enforcement, (ii) the City has identified wetlands and enacted ordinances for their regulation, (iii) the City has generally identified woodland areas that it regulates through ordinances that allow development with consideration given to the effective use of, removal of,

and planting of, trees, (iv) current wetlands and woodlands ordinances have been in effect since 2009, (v) development of the subject property would require a survey and a site plan, (vi) he is not aware of anything in the wetlands, woodlands, or other township ordinances that would preclude development of the subject property, (vii) land containing regulated woodlands is allowed to be developed “all the time in Novi” and woodland use permits are “very common,” (Transcript, pp. 367, 368) and (viii) current zoning for the subject parcel allows, among other things, office buildings, medical offices, banks and other financial institutions, personal services, and churches. (Transcript, pp. 318 - 386)

FINDINGS OF FACT

1. The subject property consists of one unimproved parcel located in the City of Novi, Oakland County, Michigan.
2. The subject property has an irregular shape, is approximately 21.01 acres (915,195 square feet), and its east side fronts on Haggerty Rd.
3. The City of Novi conducted a reappraisal during the period 1996 - 1998 that included the subject parcel and the assessment of the subject land for subsequent years has only changed based on adjustments per Oakland County’s sales studies and by the rate of inflation.
4. The City of Novi does not conduct its own sales studies with respect to commercial and industrial property.
5. Wetlands are not present on the subject property.
6. No site plan for the subject property has ever been submitted to Respondent.
7. Respondent made no value adjustments to the subject property because of its topography or because of the presence of regulated woodlands.
8. The subject property was assessed for the tax years at issue as follows:

| PARCEL NUMBER | YEAR | TCV | SEV | TV |
|---------------|------|-----|-----|----|
|---------------|------|-----|-----|----|

| PARCEL NUMBER | YEAR | TCV | SEV | TV |
|------------------|------|-------------|-------------|-------------|
| 50-22-36-200-038 | 2009 | \$5,201,800 | \$2,600,900 | \$1,663,270 |
| 50-22-36-200-038 | 2010 | \$4,577,600 | \$2,288,800 | \$1,658,200 |
| 50-22-36-200-038 | 2011 | \$4,161,400 | \$2,080,700 | \$1,686,470 |

9. The subject property is primarily zoned OSC based on location, and secondarily zoned OS-1.
10. The portion of the property that is zoned OS-1 consists of 414,537 square feet and the portion that is zoned OSC consists of 500,658 square feet.
11. Respondent discounted the true cash value of the portion of the subject property zoned OS-1 by 20% from the value per square foot determined for the portion of the subject property zoned OSC.
12. Respondent determined an effective true cash value for the subject parcel of \$5.68, \$5.00, and \$4.55 per square foot for the 2009, 2010, and 2011 tax years, respectively.
13. Petitioner's appraiser relied solely upon the sales comparison approach to value for the tax years at issue.
14. The highest and best use of the subject property, as vacant, is speculative investment to hold for future development.
15. In applying the sales comparison approach for the three tax years at issue, Petitioner's appraiser identified a total of nine comparable sales, with dates of sale ranging from August 29, 2007, to November 10, 2011.
16. Petitioner's comparable #1 was sold as vacant land and has since been developed as a satellite campus for Davenport University. The property consists of 172,062 square feet (3.950 acres) located along the I-275 freeway in Livonia, Michigan, has an irregular configuration, has no wetlands, has availability to all utilities, has a paved road surface, is zoned PO (High-rise office), and sold on August 29, 2007, for \$1,547,774 (\$9.00 per square foot).

17. Petitioner's comparable #2 was sold as vacant land with the intent of developing a medical office building. The property consists of 139,899 square feet (3.212 acres), is only a few hundred feet to the west of the subject parcel, has a mostly rectangular configuration, has no wetlands, has availability to all utilities, has a paved road surface, is zoned OST (Office-Service-Tech), and sold on September 11, 2008, for \$852,000 (\$6.09 per square foot).
18. Petitioner's comparable #3 was sold as vacant land with the intent of developing two medical office buildings. The property consists of 133,143 square feet (3.057 acres), is located in Novi, Michigan, has a mostly rectangular configuration, has no wetlands, has availability to all utilities, has a paved road surface, is zoned OST (Office-Service-Tech), and sold on September 26, 2008, for \$460,000 (\$3.45 per square foot).
19. Petitioner's comparable #4 was sold as vacant land as a result of the seller's lender calling on the note and accelerating the seller's payments. The property consists of 72,413 square feet (1.662 acres), is located west of Haggerty Road in Novi, Michigan, has a trapezoidal configuration, has approximately 0.50 acres in the southeast and southwest corners that are impacted by wetlands, has availability to all utilities, has a paved road surface, is zoned OST (Office-Service-Tech), and sold on November 24, 2008, for \$250,000 (\$3.45 square foot).
20. Petitioner's comparable #5 was sold as vacant land with the intent of developing a headquarters building. The property consists of 459,852 square feet (10.557 acres), is located in Farmington Hills, Michigan, has an irregular configuration, has approximately two acres of wetlands, has availability to all utilities, has a paved road surface, is zoned OS-4 (Office Research), and sold on December 18, 2009, for \$3,700,000 (\$8.05 square feet).
21. Petitioner's comparable #6 was sold as vacant land with the intent of using it for future parking/development. "It's [sic] highest and best use given zoning would have been

assemblage with an adjoining site.” (Petitioner’s Appraisal, p. 40) The property consists of 85,484 square feet (1.962 acres) located in Novi, Michigan, has a rectangular configuration, is minimally impacted by wetlands, has availability to all utilities, has a paved road surface, is zoned OST (Office-Service-Tech), contains topographical challenges, and sold on June 30, 2010, for \$375,000 (\$4.39 square feet).

22. Petitioner’s comparable #7 was a foreclosure sale of vacant land with the intent of using it for mixed-use development. The property consists of 307,534 square feet (7.06 acres), is part of the Mainstreet Novi development, located in Novi, Michigan, has an irregular configuration, has no wetlands, has availability to all utilities, has a paved road surface, is zoned TC-1 (Town Center District), and sold on December 29, 2010, for \$750,000 (\$2.44 per square foot).

23. Petitioner’s comparable #8 was sold as vacant land with the intent to develop a DFCU Financial branch facility. The property consists of 103,903 square feet (2.385 acres), is located in Novi, Michigan, has an irregular configuration, has no wetlands, has availability to all utilities, has a paved road surface, is zoned OS-2 (Office-Service), and sold on March 24, 2011, for \$650,000 (\$6.26 per square foot).

24. Petitioner’s comparable #9 was sold as vacant land with the intent of developing a future headquarters building for Infineon Technologies. The property consists of 454,331 square feet (10.430 acres), is located in Livonia, Michigan along the I-275 freeway, has a mostly rectangular configuration, has no wetlands, has availability to all utilities, has a paved road surface, is zoned OS (Office-Service), and sold on November 10, 2011, for \$2,475,000 (\$5.45 per square foot).

25. Petitioner’s appraiser adjusted each comparable sale for sequential adjustments (conditions of sale, expenditures after sale, and market conditions) and cumulative adjustments (location, including use, zoning and external influences, and overall utility).

26. For Parcel No. 50-22-36-200-035, for the 2009 tax year, Petitioner’s appraiser

determined an adjusted value per square foot of four comparable sales (Comparables #1, #2, #3, and #4) in the range of \$5.25 to \$6.36 per square foot. Using this range, Petitioner's appraiser determined a value of \$5.50 per square foot was appropriate for the subject property. Petitioner's appraiser then applied an upward adjustment of 15% to this value to determine the per square foot value for the useable portion of the subject property.

27. For Parcel No. 50-22-36-200-035, for the 2010 tax year, Petitioner's appraiser determined an adjusted value per square foot of four comparable sales (Comparables #3, #4, #5, and #6) in the range of \$4.43 to \$5.97 per square foot. Using this range, Petitioner's appraiser determined a value of \$5.00 per square foot was appropriate for the subject property. Petitioner's appraiser then applied an upward adjustment of 15% to this value to determine the per square foot value for the useable portion of the subject property.

28. For Parcel No. 50-22-36-200-035, for the 2011 tax year, Petitioner's appraiser determined an adjusted value per square foot of four comparable sales (Comparables #6, #7, #8, and #9) in the range of \$3.07 to \$4.84 per square foot. Using this range, Petitioner's appraiser determined a value of \$4.50 per square foot was appropriate. Petitioner's appraiser then applied an upward adjustment of 15% to this value to determine the per square foot value for the useable portion of the subject property.

29. Petitioner's appraiser applied a 15% upward adjustment to the per square foot values determined for Parcel No. 50-22-36-200-035 to reflect the subject parcel's frontage on Haggerty Road and its slightly larger parcel size.

30. In determining the true cash values of the subject property, Petitioner's appraiser included only the portion of the subject property that he deemed usable (342,796 square feet (7.9 acres)).

31. For each of the tax years at issue, Petitioner's appraiser used a discounted cash flow

method to determine the impact of a two-year time period for the development of the subject property, effectively adjusting downward its value per square foot by 23%.

32. Petitioner's appraiser provided no documents or other credible evidentiary support for his conclusion that a substantial portion of the subject property has no value because of topographical impediment, or the existence of wetlands or woodlands.

33. Petitioner's appraiser was not aware that the subject property was zoned both OSC and OS-1; however, if he had been aware of the subject property's zoning, he would have discounted the value of "usable" property zoned OS-1. (Transcript, p. 171)

CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value.

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%.... 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); MSA 7.27(1).

The Michigan Supreme Court has determined that "true cash value" is synonymous with "fair market value." See *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450; 221 NW2d 588 (1974).

Under MCL 205.737(1); MSA 7.650(37)(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal is not bound

to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 377 NW2d 908 (1985). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. *Meadowlanes Limited Dividend Housing Association 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 205.735(1); MSA 7.650(35)(1). The Tribunal's factual findings are to be supported by competent, material, and substantial evidence. *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v 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 and Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

“The petitioner has the burden of 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 and Laughlin*, at 354-355. However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessment 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 205.735(3).

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. *Meadowlanes*, at 484-485; *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. *Antisdale*, at 278. The Tribunal is under a duty to apply its own expertise to the facts of

the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances.

Antisdale, at 277. In this regard, the Tribunal must determine whether Respondent's annual adjustments to land values determined by a reappraisal in 1996 – 1998 based on county land sales studies and/or Petitioner's sales comparison approach to value vacant land are valid approaches to value given the facts of this case. The Tribunal finds that the sales comparison approach is the appropriate method to use in determining the subject vacant land values for the tax years at issue. The Tribunal further finds that neither the income approach nor the cost less depreciation approach are appropriate in this case because neither party relied on either of these approaches to support their contentions as to the true cash value of the subject property and because neither the evidence nor the testimony in this case provided the Tribunal with a basis for applying these approaches.

The Tribunal finds that the sales comparison approach is the appropriate methodology to use in valuing the subject vacant land for the tax years at issue. The Tribunal, however, does not agree with Respondent's overall mass appraisal approach which essentially relies on a reappraisal of the City during 1996 – 1998, with annual adjustments based on Oakland County's sales studies and inflation factors, with no independent market analysis. The Tribunal finds that the per square foot values of \$6.25 for 2009, \$5.50 for 2010, and \$5.00 for 2011 used by Respondent to determine the true cash values of the land prior to adjustments have not been adequately supported.

The Tribunal has reviewed the nine comparable sales identified by Petitioner's appraiser and finds that although the comparable sales may differ from the subject with respect to size and location, Comparables #2 and #3 for the 2009 tax year, Comparables #3 and #5 for the 2010 tax year, and Comparables #8 and #9 for the 2011 tax year are the most reliable indicators of the true cash value of the subject property. The Tribunal has given little or no weight to (i) Comparable #1 because it is located outside of Novi and was sold 16 months prior to the December 31, 2008,

assessment date, (ii) Comparable #4 because of its size and the financial circumstances of the sale, (iii) Comparable #6 because of its small size, which “does not offer development potential as a stand-alone site,” (Respondent’s appraisal, p. 40) and (iv) Comparable #7 because of the financial circumstances of the sale. Further, the Tribunal generally finds Petitioner’s appraiser’s adjustments to his comparable sales to be reasonable and supported, with the exception of the 5.4% adjustment to Comparable #3 for “expenditures after sale,” which was related to a negative impact “given setback and tree inventory issues,” which were not adequately substantiated or applied uniformly. (Respondent’s appraisal, pp. 40, 41) Although the Tribunal has essentially disregarded certain of the comparable sales identified by Petitioner’s appraiser, as well as one of his adjustments, the Tribunal concludes that his determination of a base rate per square foot of \$5.50 for 2009, \$5.00 for 2010, and \$4.50 for 2011 is supported by the remaining comparable sales, as adjusted.

Having generally accepted Petitioner’s base price per square foot for the subject vacant land, the Tribunal further finds that this base price should be adjusted to reflect the differences in the zoning of the land. Respondent’s assessor concludes that a 20% downward adjustment should be made to the portion of the land zoned OS-1 because sales studies typically show that where a parcel has multiple zoning, the secondarily zoned area should be discounted. (Transcript, pp. 415, 416, 423) Further, although he was unaware of the multiple zoning of the subject parcel, Petitioner’s appraiser concurs that if multiple zoning does exist, the total value of the subject property would decrease. The Tribunal finds that a 20% downward adjustment should be made to the 414,537 square feet of the subject parcel zoned OS-1, yielding an effective square foot rate of \$5.00 for 2009, \$4.55 for 2010, and \$4.09 for 2011. The Tribunal further finds that the 15% upward adjustment made by Petitioner’s appraiser to the subject parcel based on the per square foot rate determined for Parcel No. 50-22-36-200-035 has not been appropriately supported by the evidence or testimony provided by Petitioner’s appraiser. Instead, Petitioner’s appraiser simply concludes that such adjustment is appropriate given its frontage on Haggerty

Road and its slightly larger size.

Although the Tribunal generally accepts Petitioner's appraiser's sales comparison approach, the Tribunal finds no reasonable basis for his conclusion that more than 50% of the subject property is unusable and has no value. Petitioner's appraiser contends that

. . . since unit pricing will initially be established for the North parcel, there needs to be a consistent measure of usable or effective site area for the South parcel. As described previously, this section of the site is impacted by a combination of wetlands, drainage easements and topographical challenges. While brokerage and ownership sources have offered evidence drainage easements do produce challenges to development of the uplands segment of this site, they have been deemed to be workable, albeit at a somewhat greater cost than what would be required for a 'clean' site. Correspondingly, the usable or effective site area established for this parcel has been reconciled at + or - 7.87 acres. (Petitioner's Appraisal, p. 45)

Thus, Petitioner's appraiser concludes that approximately 62.5% of the subject parcel simply has no value.

"The economic concept of land as a source of wealth and an object of value is central to appraisal theory." *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p. 4. To conclude that more than one-half of the subject land has no value is contrary to basic appraisal theory, and is not supported or substantiated by Petitioner's appraiser. In his appraisal, Petitioner's appraiser simply concludes that only 7.87 acres of a 21 acre parcel are usable and therefore have value because the site "is impacted by a combination of wetlands, drainage easements and topographical challenges." (Petitioner's appraisal, p. 45). Petitioner's appraiser testified that

. . . the usable portion of the south parcel excludes everything that lies outside of that rectangle.² Whether it's regulated wetlands or not, I'm not concerned with it. My determination of that was predicated solely on my observations. That is pretty obvious when there's a 20, 30-foot drop. I'm not a surveyor; I've already testified to that. Those are not usable land areas, whether it's because of wetlands, whether it's because of woodlands or whether it's because of topographic changes. That is why that was excluded in the valuation. (Transcript, pp. 134, 135)

² Petitioner's Appraisal, p. 20.

As discussed previously, Petitioner's appraiser failed to include in his appraisal or testimony any documentation or other substantiation to support such general conclusions of value impediments. Simply, Petitioner's appraiser seems to think that broad contentions regarding topographical issues such as woodlands, wetlands, and slope, based on nothing more than a visual inspection sufficiently support a conclusion that a substantial portion of the subject property has no value – not reduced value, or even nominal value – but no value. (Transcript, p. 176) Further, Petitioner's appraiser failed to refute the testimony of Mr. Lemmon and Mr. Boulard that the impact of regulated woodlands on the value of a parcel cannot be properly determined until a site plan has been submitted and that, to their knowledge, nothing in the current Novi wetlands, woodlands, or other township ordinances would preclude development of the subject property to the west of the parking lot.

The Tribunal further finds that Petitioner's appraiser's application of a discounted cash flow method to "account for the potentially extended holding period for this property" (Petitioner's appraisal, p. 48) is unsubstantiated and without merit. The Tribunal finds that this methodology was developed to value vacant land that has the potential for *subdivision development*. "The land *must* support a highest and best use *for immediate development purposes at the time of appraisal or have short-term market demand to support financially feasible subdivision development*." (*The Appraisal of Real Estate*, p. 370) [Emphasis Added] The Tribunal agrees with Respondent's witness, Mr. Szkilnyk, that the methodology applied by Petitioner's appraiser is an attempt to apply

an adjustment based on a calculated carry cost, which includes an annual expense and annual profit that a typical market participant would incur during the carry period. However, the vacant land comparable sales the appraiser selected and utilized in his analysis most likely reflects market perception on development

potential for vacant land and their selling prices may already reflect the lack of immediate development potential. Therefore, the appraiser most likely has reflected this development potential timing twice; once in the unadjusted unit sale price and again with his unique lump-sum adjustment. (Exhibit R-5, pp. 9, 10)

The Tribunal finds Petitioner's appraiser's use of such method is improper because he determined the highest and best use of the subject property is "speculative investment to hold for future development," (Transcript, p. 41) he failed to provide any evidence that the subject property could be subdivided into smaller parcels, and he further failed to provide analysis needed to utilize the discounted cash flow method (i.e., the timing and cost for approval and development, forecast of a realistic lot price or schedule of values over the absorption rate, management supervision or administrative costs as part of development expenses, etc.). Petitioner's appraiser merely utilized one aspect of this approach in his attempt to support his unsubstantiated assertions that the discounted cash flow method supports a 50% reduction for a proposed two-year carryover period.

Therefore, the Tribunal concludes that (i) values per square foot of \$5.00, \$4.55, and \$4.09 are appropriate for the subject land for the 2009, 2010, and 2011 tax years, respectively, (ii) that these per square foot rates should be applied to the total 21.01 acres (915,195 square feet) as usable land, and (iii) a future development discounted cash flow adjustment is not supported and is inappropriate.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner failed to prove by a preponderance of the evidence that the subject property is assessed in excess of 50% of market value. The subject property's true cash values (TCV), state equalized values (SEV), and taxable values (TV) are as stated in the Introduction section above.

JUDGMENT

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

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 90 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 this Order within 28 days of the entry of this Order. 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 the Tribunal's order. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 2008, at the rate of 3.31% for calendar year 2009, (ii) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (iii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iv) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09% for calendar year 2012, and (v) after June 30, 2012 and prior to January 1, 2013, at the rate of 4.25%.

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

MICHIGAN TAX TRIBUNAL

Steven H. Lasher

Entered: September 21, 2012