

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

Brent and Alpha Beshears,

Petitioners,

v

MTT Docket No. 415404

City of Novi,

Tribunal Judge Presiding
Paul V. McCord

Respondent.

_____ /

FINAL OPINION AND JUDGMENT

Jason S. Conti (P55617) and Aaron M. Fales (P72864), for Petitioners.
Stephanie Simon-Morita (P53864), for Respondent.

INTRODUCTION

This residential property tax appeal comes before the Tribunal for decision following a one-day evidentiary hearing in Dimondale, Michigan on June 25, 2013. Petitioner protested the original assessment to the 2011 March Board of Review. Following a denial, Petitioners timely commenced this case by filing a petition on May 19, 2011, appealing the true cash value (“TCV”) of their property,¹ located on East Lake Drive in the City of Novi. Petitioners allege that the true cash

¹ Petitioners’ property is comprised of two tax parcels, Parcel Nos. 50-22-02-328-021 (and individually referred to as the “Improved Parcel”) and 50-22-02-326-021 (individually referred to as the “Vacant Parcel”); collectively, the Improved Parcel and Vacant Parcel are referred to as the “Subject Properties.”

values of the Subject Properties for the 2011 tax year are \$434,000 for the Improved Parcel and \$10,000 for the Vacant Parcel, whereas Respondent contends that the Subject Properties were properly assessed at a true cash value of \$632,100 for the Improved Parcel and \$69,400 for the Vacant Parcel for the 2011 tax year. Following a timely Motion to Amend, the 2012 tax year is also placed at issue.² See MCL 205.735a and MCL 205.737.

The Tribunal is now charged with the responsibility of determining the true cash and taxable values of the Subject Properties for each of the tax years at issue (i.e., 2011 and 2012).³ More specifically, based on the pleadings, motions, testimony, and evidence, the Tribunal must decide the following two questions: (1) whether the Subject Properties should be valued as one unit of lakefront property, as proposed by Respondent; we hold that they should; and (2) what the “usual selling price” of the Subject Properties is for the 2011 and 2012 tax years. For the reasoning set forth below, we conclude that the true cash value of the Subject

² Petitioners filed a Motion on April 1, 2013, requesting that the Tribunal permit them to withdraw the Vacant Parcel from the above-captioned case. Following Respondent’s objection in its response, filed on April 8, 2013, the Tribunal entered its Summary of Prehearing Conference and Scheduling Order on May 9, 2013, wherein the Tribunal denied such request “[f]or the reasons more fully set forth in Respondent’s response” Thus, the true cash, state equalized, and taxable values of both the Improved Parcel and Vacant Parcel are at issue.

³ Petitioners also filed a timely Motion to Amend to include the 2013 tax year in this case, relative to the true cash and taxable values of the Improved Parcel only. The Tribunal granted Petitioners’ 2013 Motion to amend but ultimately severed the 2013 tax year for the Improved Parcel, in light of the scheduling order previously set in this case, and assigned it to MTT Docket No. 454409.

Properties, together with their state equalized value (“SEV”), and taxable value (“TV”), are as follows:

Parcel No. 50-22-02-328-021

Year	TCV	SEV	TV
2011	\$515,350	\$257,675	\$257,675
2012	\$520,500	\$260,250	\$260,250

Parcel No. 50-22-02-326-021

Year	TCV	SEV	TV
2011	\$57,260	\$28,630	\$28,630
2012	\$57,260	\$28,630	\$28,630

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.⁴ 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

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

⁴ 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.

main focus of the controversy is the valuation of the Subject Properties for each of the tax years at issue.

The Subject Properties

Petitioners purchased the Subject Properties, together, in an arms-length transaction for \$500,000 on October 21, 2003. Although purchased together, both parcels are independent of one another, not contiguous, and can be sold separately. The parcels are separated by East Lake Drive, which is a residential road with a speed limit of 25 mph.

Improved Parcel

The Improved Parcel is situated on approximately 0.27 acres of lake-view land (105.45' x 110') along Walled Lake, zoned R-4 (One-Family Residential District), and is located at 1395 East Lake Drive, Novi, Michigan. The improvements to the Improved Parcel consist of one residential two-story building, built in 1999, containing, among other amenities, 4,443 square feet, four bedrooms, 2.1 bathrooms, and a three-car attached garage.

Vacant Parcel

The Vacant Parcel contains approximately 0.24 acres of lakefront land (103.60' x 100') along Walled Lake, zoned R-4 (One-Family Residential District), and is located on East Lake Drive, Novi, Michigan. The Vacant Parcel is located across from the Improved Parcel, separated by East Lake Drive, but, given the setback requirements, is not buildable.

Market

The Subject Properties' neighborhood contains a mixture of residential homes, "[f]rom small cottages to newly constructed homes over 4,000 square feet" R-1 at 8; R-2 at 8.

Petitioners' appraisal describes the Subject Properties' market as follows:

The subject is located in the suburb of Novi of Metro-Detroit. This city is located approximately 30 miles northwest of the City of Detroit’s Central Business District. The neighborhood is comprised of homes that vary in age, style and construction. The purchasing of older residences which are subsequently razed and the site improved, usually with a larger new improvement, is the cause for such a large single family price range. Students in this section of Novi[] attend classes in the Walled Lake school system. The nearby city of Northville offers a “vintage central business district” and Twelve Oakes Mall, a regional shopping center is located approximately 3 [] miles from the subject and both are considered desirable features for the area. The area is automobile oriented and is well serviced by numerous and convenient arteries and Freeways including I-96 which is in close proximity. Employment centers regional and “strip” shopping centers are nearby. P-1 at 4.

Assessment

Improved Parcel

The Improved Parcel is identified on Respondent’s assessment roll by Parcel No. 50-22-02-328-021. The indicated TCV of the Improved Parcel, by method of mass appraisal using the cost-less-depreciation approach, 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:

Parcel No. 50-22-02-328-021

Year	TCV	SEV	TV
2011	\$632,100	\$316,050	\$316,050
2012	\$638,500	\$319,250	\$319,250

Vacant Parcel

The Vacant Parcel is identified on Respondent’s assessment roll by Parcel No. 50-22-02-326-021. The indicated TCV of the Vacant Parcel, 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:

Parcel No. 50-22-02-326-021

Year	TCV	SEV	TV
2011	\$69,400	\$34,700	\$34,700
2012	\$69,400	\$34,700	\$34,700

For the tax years at issue, the Subject Properties were classified, for ad valorem tax purposes, as residential real property.

Valuation Evidence

Both parties determined a value for the Subject Properties based on the sales comparison approach. However, Petitioners only developed a sales comparison approach for the Improved Parcel, whereas Respondent developed a sales comparison approach for the Subject Properties as a whole. With regard to the Vacant Parcel, Petitioners indicated that they stipulate to the true cash and taxable values of this parcel for the tax years at issue. Transcript at 306.

Respondent also determined the TCV of the Subject Properties based on the cost-less-depreciation approach; however, such evidence was not introduced and admitted at the hearing. The income approach was not developed by either party since the Subject Properties are not income-producing.

Petitioners’ Valuation Evidence

Petitioners’ appraiser, Howard A. Babcock, Certified General Real Estate Appraiser, opined that the TCV of the Improved Parcel, based on the direct sales method and his interior and exterior inspection of the Improved Parcel on April 25, 2013, was \$450,000 for the 2011 tax year and \$400,000 for the 2012 tax year.⁵

Mr. Babcock identified six comparable sales for the tax years at issue:

⁵ Petitioners’ appraisal only covered the Improved Parcel. Petitioners did not submit any valuation evidence relative to the Vacant Parcel.

	Subject	Comp #1	Comp #2	Comp #3	Comp #4	Comp #5	Comp #6
Location	Novi	Novi	Novi	Novi	Novi	Novi	Novi
Proximity to Subject		1.09 miles	0.06 miles	0.85 miles	1.73 miles	1.10 miles	1.37 miles
Sale Price		\$390,000	\$300,000	\$322,500	\$423,500	\$605,000	\$350,000
Closing Date		7/2011	1/2011	12/2011	9/2010	6/2010	5/2010
Days on Market		56	60	77	378	9	4
Price/SF		\$127	\$89	\$127	\$137	\$218	\$121
Site Size (SF)	11,600	10,454	12,632	5,227	19,602	6,970	14,375
Site View	Res/ Lkvw	Res/ Lkvw/ Wtlds	Res/ Lkft	Res/ Lkft	Res/ Wtlds	Res/ Lkft	Res/ Wtlds
Design and Appeal	Colonial	Colonial	Bi-Level	Colonial	Colonial	Colonial	Colonial
Quality of Construction	Brick/Vnyl/ Stone/Avg	Brick/Wood/ Avg	Vnyl/ Avg	Vnyl/ Avg	Brick/ Stone/Avg	Brick/Wood/ Avg	Brick/Wood/ Avg
Age	1999	2005	1997	1997	2001	2005	2004
Condition	Avg	Avg	Avg	Avg	Avg	Avg	Avg
Bedrooms	4	4	3	4	4	3	4
Bathrooms	2.1	3.1	2.1	3.0	3.1	2.1	3.1
GLA (SF)	4,426	3,061	3,388	2,540	3,091	2,770	2,900
Below Grade Area	No Bsmt	1,589 SF	No Bsmt	No Bsmt	1,700 SF	1,368 SF	1,850 SF
Below Grade Finish	n/a	W/O- unfd	n/a	n/a	W/O- FR, Br, Bath	W/O-FR, Br, Lav	W/O-FR, Bath
Garage	3 car att	2+ car att	2 car att	3 car att	4 car att	3 car att	3 car att
Fireplace	1	1	1	1	2	1	2
Kitchen	Modern Granite	Mod Corian	Mod	Mod Granite	Mod Granite	Mod Granite	Mod Granite
Gross Adj		26%	39%	54%	51%	57% ⁶	58%
Adjusted SP		\$402,200	\$306,000	\$383,300	\$411,500	\$551,200 ⁷	\$393,400

In his appraisal, Mr. Babcock stated, with regard to the comparables for the 2012 tax year (i.e., Comparable Nos. 1, 2, and 3), that “[c]onsideration was given to all the sales with most emphasis given to sale 1, as it was most similar.” P-1 at 6.

⁶ This number reflects the modified gross adjustment based on Mr. Babcock’s admission at the hearing that he erred with respect to the adjustment for gross living area for Comparable No. 5. Transcript at 56-57.

⁷ As modified by Mr. Babcock at the hearing. See Transcript at 56-57.

With respect to the comparables for the 2011 tax year (i.e., Comparable Nos. 4, 5, and 6), Mr. Babcock stated that “[e]qual weight was given to all the sales and most emphasis was given to sale 1, as it was most similar in total living area and a value at the middle of the range was considered.” P-1 at 7.

Mr. Babcock testified that he only selected comparables located on Walled Lake and that if he had selected comparables from other lakes, he would have adjusted for differences between lakes. Transcript at 38-39. Mr. Babcock further testified that his Comparable No. 2 had similar lake frontage as the Improved Parcel, as he “believe[d]” that a public road also split through that property. Transcript at 41. Although Mr. Babcock admitted that Comparable No. 2 was a short-sale, he testified that he included it in his sales comparison approach because “[i]t was in the neighborhood,” and “[i]t had a 60-day marketing time . . . ,” which he “felt . . . was exposure enough to qualify for a regular sale.” Transcript at 41. Mr. Babcock also “believe[d] sale three also had the road running though the lakefront site.” Transcript at 42. Mr. Babcock further testified that “[d]irect lakefront” is more desirable than merely having a view of the lake. Transcript at 44.

With respect to Comparable No. 2, Mr. Babcock acknowledged that the photo he took of Comparable No. 2 at the time he completed his appraisal, in April 2013, varied from the photo taken at the time the property was sold in January 2011, further acknowledging that Comparable No. 2 may have incurred substantial improvement costs after it was purchased. Transcript at 67-68. Mr. Babcock also confirmed that he used the square footage of Comparable No. 2 as of April 2013 (i.e., 3,388 square feet), as opposed to the square footage when the property sold (i.e., 3,445 square feet). Transcript at 69-70. Mr. Babcock testified that there is a difference between a tri-level or bi-level home as opposed to a colonial, and as such, Comparable No. 2 should have included an upward adjustment for this

difference, which it did not. Transcript at 80-81. Although Comparable No. 2 was a short sale, as indicated above, and although Mr. Babcock testified that he generally makes an adjustment for such a transaction, Mr. Babcock acknowledged that he did not make an upward adjustment to Comparable No. 2 for being a short sale. Transcript at 100.

With regard to his adjustment for site view, and specifically in regards to Comparable No. 5, Mr. Babcock testified that “the 150,000 is based on lakefront over lake view. That’s not adjusting for the size.” Transcript at 105. In regards to all of his comparables, Mr. Babcock testified that he inspected the exterior of these properties based on “what [he] could see from the road, which wasn’t much” Transcript at 109. In that regard, Mr. Babcock testified that he never confirmed that the applicable comparables actually have wetlands, and he did not confirm the same by reviewing wetland maps or city records. Transcript at 109-110.

Mr. Babcock testified that properties along Walled Lake, which have a have a vacant parcel and improved parcel situated across from each other with a street transecting them, sell together “[m]ost of the time.” Transcript at 111. Mr. Babcock further agreed that selling the Subject Properties together would “maximize” the value of the Improved Parcel. Transcript at 113.

Respondent’s Valuation Evidence

Respondent submitted an appraisal for the Subject Properties for each of the tax years at issue. See R-1 & R-2. The appraisals were prepared by Michael Taweel, state licensed appraiser. Based on the direct sales method and his interior and exterior inspection of the Subject Properties on February 26, 2013, Mr. Taweel concluded to a true cash value of \$700,000 for both parcels for the 2011 tax year and \$705,000 for both parcels for the 2012 tax year.

Mr. Taweel identified six comparable properties for the 2011 tax year:

	Subject	Comp #1	Comp #2	Comp #3	Comp #4	Comp #5	Comp #6
Location	Novi	Novi	Novi	Novi	Commerce Twp	White Lake Twp	Waterford Twp
Proximity		335 yards	1.12 miles	2.40 miles	6.56 miles	6.42 miles	9.00 miles
Sale Price		\$675,000	\$605,000	\$662,500	\$705,000	\$527,000	\$800,000
Price/SF		\$250.37	\$218.41	\$172.30	\$232.67	\$184.98	\$197.19
Days on Market		59	9	256	270	144	357
Date of Sale		7/2010	6/2010	12/2010	8/2010	10/2010	5/2010
Site Size (SF)	21,960	6,426	7,015	15,345	6,950	36,155	25,265
View	Lkft	Lkft	Lkft	Lkft	Lkft	Lkft	Lkft
Design	Colonial	Colonial	Colonial	Colonial	Colonial	Colonial	Colonial
Quality of Construction	Brick/Stone/Vnyl	Vnyl	Brick	Brick	Wood/Stone/Brick	Cedar/Stone	Cedar/Stone
Age	11	13	6	10	18	9	79/Remod
Condition	Avg	Avg	Avg	Avg	Avg	Avg	Avg
Bedrooms	4	4	3	4	3	3	4
Bathrooms	2.1	3.1	2.1	3.1	3.1	2.1	4.1
GLA (SF)	4,443	2,696	2,770	3,845	3,030	2,849	4,057
Basement	Crawl	Bsmt/WO Finished	Bsmt/WO Finished	Bsmt/WO Finished	Bsmt/WO Finished	Bsmt/Unfinished	Bsmt/WO Finished
Garage	3 car	2 car	3 car	2 car	2 car	4 car	4 car
Porch/Patio/Deck	Porch/Deck	Porch/Deck	Porch/Deck	Porch/Patio/Deck	Porch/Patio/Deck	Porch/Deck	Porch/Patio/Deck
Fireplace	1	2	1	1	2	2	1
Gross Adj		19.2%	20.4%	9.5%	17.7%	18.0%	11.8%
Adjusted SP		\$722,615	\$648,685	\$663,710	\$728,085	\$577,730	\$740,370

In his appraisal for the 2011 tax year, Mr. Taweel stated that he “place[d] primary emphasis on sales #1 and #2 due to their location in the subject’s neighborhood” with “[s]econdary support” from “sale #3-#6 due to proximity to the subject being outside the neighborhood but within the market area.” R-1at 4.

Mr. Taweel also identified six comparables for the 2012 tax year:

	Subject	Comp #1	Comp #2	Comp #3	Comp #4	Comp #5	Comp #6
Location	Novi	Commerce Twp	Commerce Twp	Waterford Twp	White Lake Twp	Commerce Twp	Waterford Twp
Proximity		4.82 miles	4.30 miles	12.40 miles	11.6 miles	4.47 miles	10.0 miles
Sale Price		\$655,000	\$750,000	\$650,000	\$649,200	\$850,000	\$660,000
Price/SF		\$195.99	\$173.49	\$216.23	\$228.59	\$196.76	\$116.88
Days on Market		24	114	256	164	48	118
Date of Sale		8/2011	5/2011	3/2011	12/2011	11/2011	11/2011
Site Size (SF)	21,960	11,144	26,572	19,994	20,000	26,360	25,265
View	Lkft	Lkft	Lkft	Lkft	Lkft	Lkft	Lkft
Design	Colonial	Colonial	Cape Cod	Cape Cod	Ranch	Colonial	Colonial
Quality of Construction	Brick/Stone/Vnyl	Vnyl/Stone	Brick	Brick/Wood/Stone	Brick/Wood	Brick	Brick/Wood
Age	12	16	13	10	14	8	9
Condition	Avg	Avg	Avg	Avg	Avg	Avg	Avg
Bedrooms	4	4	4	4	4	4	4
Bathrooms	2.1	2.1	3.1	2.1	2.1	4.2	4.1
GLA (SF)	4,443	3,342	4,323	3,006	2,840	4,320	5,647
Basement	Crawl	Bsmt/WO Finished	Crawl				
Garage	3 car	3 car	4 car	2 car	3 car	3 car	3 car
Porch/Patio/Deck	Porch/Deck	Porch/Patio/Deck	Porch/Patio/Deck	Porch/Patio/Deck	Porch/Patio/Deck	Porch/Patio/Deck	Porch/Deck
Fireplace	1	1	2	1	1	1	2
Gross Adj		13.8%	6.8%	16.9%	16.1%	4.5%	10.2%
Adjusted SP		\$685,645	\$732,900	\$699,665	\$689,125	\$823,035	\$592,920

In his appraisal for the 2012 tax year, Mr. Taweel stated that he “assign[ed] equal consideration to sales #1 thru #6 due to best representing overall market appeal in the market area.” R-2 at 4. Mr. Tawell further stated, in both appraisals:

It is difficult to quantify whether or not the local market recognizes a difference in values from a property with direct lake frontage compared to a site with the street separating the improvements from the lake. Especially considering no recent sales were discovered similar to the subject’s sites. The subject’s improvements do not feature direct lake frontage; however, its lake frontage parcel across the street is a benefit. The lake frontage site contains approximately 3.5 lots totaling 100 frontage feet along Walled Lake. This amount of

lake frontage is significant which enhances overall marketability. The limited inventory of Walled Lake frontage vacant sites coupled [with] the increased demand for this locale has benefited property values. Simply stated, although the subject's improved parcel lacks direct lake frontage, the vacant site across the street offsets this deficiency and is considered to be well positioned in the marketplace. R-1 at 8; R-2 at 8.

Mr. Taweel testified that his appraisals for the Subject Properties for the tax years at issue covered both parcels together. Transcript at 192, 193. Mr. Taweel further testified that the highest and best use of the Subject Properties is "residential use." Transcript at 194. Mr. Taweel stated that he did not value the Subject Properties separately "[b]ecause it's considered one property in the marketplace." Transcript at 194. Although he testified that the Subject Properties could be sold separately, Mr. Taweel stated that that would not be probable, reasoning that "[i]t wouldn't enhance the improved parcel to separate the two parcels. And it wouldn't do the lake parcel any justice to take [it] away from the improvements." Transcript at 194-195.

With regard to the comparables he selected in his appraisals, Mr. Taweel stated that he "was looking for comparables that had lake frontage . . . [b]ecause the subject in its entirety has lake frontage." Transcript at 196. Mr. Taweel further opined that it would be a mistake to utilize non lakefront properties to value the Subject Properties because "[s]omeone that's buying a lake-influenced property is looking for that feature. And the sale prices of non-lake frontage properties would more than likely transact at different prices." Transcript at 196-197.

With respect to his comparables for the 2011 tax year, Mr. Taweel testified that Comparable Nos. 1 and 2 are located on Walled Lake. Transcript at 198. Mr. Taweel further testified that he only made adjustments if an adjustment was warranted by the market's response to a certain amenity. For example, Mr. Taweel

testified that he did not make an adjustment to Comparable No. 1 for quality of construction because he “didn’t see the market responding to [the quality of construction for the subject properties (i.e., brick/stone/vinyl) versus the quality of construction for Comparable No. 1 (i.e., vinyl)].” Transcript at 201. Mr. Taweel further testified that his adjustments were based on “[a] paired sale analysis.” Transcript at 202. He also stated that while he looked at MLS listings for descriptions of his comparables, he did not “take the MLS as face value” and confirmed the descriptions with city or county records and the listing broker, if available. Transcript at 206.

Regarding his appraisal for the 2012 tax year, Mr. Taweel testified that he “picked these six comparables . . . because [he] felt they best represented . . . the lake influence that the subject offered.” Transcript at 210. Mr. Taweel further stated that he did not include any sales within the City of Novi because he “did not discover any sales with the similar lake influence in Novi during that year.” Transcript at 210.

Mr. Taweel testified that none of his comparables for either tax year were separated by a roadway and stated that “[t]here was no available sales during these two years that had a situation that was similar to the subject’s to deduce that [there is a value difference for lakefront properties that are separated by a roadway as opposed to properties which are not].” Transcript at 212. However, based on “conversations with real estate agents and . . . conversations with homeowners in that market[,] . . . there doesn’t seem to be a difference” between the values of a direct lake frontage property as opposed to one which is split by a road. Transcript at 225.

Mr. Taweel stated that he did not adjust make an adjustment between Walled Lake and the lakes that his comparables are located on “[b]ecause [he] felt that they all generally attract the similar buyer.” Transcript at 246.

Respondent's assessor, David Glenn Lemmon, Michigan Master Assessing Officer ("MMAO"), also testified at the hearing. Mr. Lemmon testified that the Subject Properties have separate parcel numbers "[b]ecause the road separates the parcels," and this is Oakland County's "preference." Transcript at 139, 155. Mr. Lemmon further testified that when Petitioners purchased the Subject Properties, the improvements on the Improved Parcel were "considered 70 percent finished." Transcript at 141. With regard to Petitioners' comparables, Mr. Lemmon testified that Petitioners' Comparable Nos. 1, 4, and 6 do not have wetlands. Transcript at 143, 144, 146. However, Mr. Lemmon testified that, in his opinion, Petitioners' Comparable Nos. 1, 4, and 6 are not comparable to the Subject Properties. Transcript at 151. Mr. Lemmon further testified that Petitioners' Comparable Nos. 2 and 3 are in the same situation as the Subject Properties, meaning that these comparables also have an improved and vacant parcel split by a road and are located along Walled Lake. Transcript at 144. He stated that this situation, "what we refer to them as the lake pads situation, is not an unusual thing around the east and south side of Walled Lake. In fact, there's about 122 situations where properties have part of their . . . site across the street." Transcript at 152. In furtherance of this statement, Mr. Lemmon testified:

There's been 96 transfers of these type of properties [since 1996] where they have one piece on one side of the lake – or one side of the highway and one piece on the other side of the highway.

In no situation out of the 96 did any property sell without the total property selling. By that I mean, there was no situation where anyone divided the properties between . . . the lake pad and sold off the house portion.

This is the way that those properties are bought and sold. They're bought and sold as a property, not as the individual parcels. Transcript at 153-154.

Mr. Lemmon further clarified that these 96 transfers included 52 of the 122 properties that are in a similar situation as the Subject Properties. Transcript at 154. “[W]hen those properties do sell, it’s looked at as the package selling and not just one or the other property.” Transcript at 156. With that being said, however, Mr. Lemmon testified that although they sell together, the Subject Properties are separately valued and assessed. Transcript at 161.

With respect to the Vacant Parcel, Mr. Lemmon testified that “[t]here’s not enough room” to build a house on it—that “[t]hose lots are only 40 feet deep;” therefore, “once you do setbacks, there wouldn’t be any place to put a house.” Transcript at 158. Mr. Lemmon further opined that the city would not give someone a permit to build a house on the Vacant Parcel. Transcript at 158. In assessing the Vacant Parcel, Mr. Lemmon testified that it was assessed “based on the front footage”—roughly \$775 per lineal foot. Transcript at 165.

Mr. Lemmon testified that Walled Lake “is probably the only . . . all-sports kind of motorized boat lake. The other very small lakes that are in Novi are paddle boats, electric motors, things like that.” Transcript at 176. In that regard, Mr. Lemmon testified that he did not believe different lakes would be assessed at the same rate per lineal foot, but testified that “the sales would [make] that [determination] for [him].” Transcript at 179.

With regard to the Improved Parcel, Mr. Lemmon testified that a cost and sales approach was used to determine the assessed value of it for the tax years at issue. Transcript at 181. More specifically, Mr. Lemmon testified:

[T]he house is measured, gone through, determination is made of the structure of the house, the quality of the construction, number of bathrooms, garage, you know, are there amenities that the house has.

* * *

When the homes sell within neighborhoods, the values are adjusted up or down based on what the tendency of those sales is when they're compared to the physical characteristics that are established for that parcel.

* * *

[I]n that particular area, [there are] three different neighborhoods for assessment purposes. . . . I look at parcels that are directly on the water as having potentially . . . one kind of an economic. I look at the ones like the subject that they've got lake pad situation, with the property across the road. And I look at those all as one neighborhood.

Something that is two blocks off of East Lake Drive, I look at as another . . . neighborhood, so that I'm not influencing the value, say, of the ones that are a block of East Lake Road and have no lake exposure.

So I'm looking at them based on their own characteristics that they enjoy and suffer from. And I look at the properties like the subject in a separate neighborhood and I look at ones that are directly on the water as a separate neighborhood. It doesn't mean they're different. It means it allows me the ability to look at each of them individually.

Transcript at 181-182.

Mr. Lemmon further testified that "[t]he property is lakefront; the parcel is not," and the Improved Parcel "probably could" be sold separately from the Vacant Parcel, but "[h]istory bears out that it's not going to happen." Transcript at 183.

APPLICABLE 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).

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, supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. *Antisdale, supra*. 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, supra* at 277.

CONCLUSIONS OF LAW

The Tribunal must first discern whether the Subject Properties should be valued as one unit of lakefront property, as proposed by Respondent, or as separate parcels, as asserted by Petitioners. More specifically, Respondent maintains that you have to view the Subject Properties based upon how they are traded, where in this case, Respondent has provided evidence to show that the Subject Properties are traded as one parcel. Petitioners, on the other hand, argue that, pursuant to *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620; 462 NW2d 325 (1990),

the Subject Properties have to be independently valued and assessed even though they are owned by the same owner.

Although the Michigan Supreme Court stated that “different parcels of land in the same ownership are to be regarded as separate units for tax purposes and, as such, must be separately valued and assessed,” the Court preceded this statement with “[a]s a general rule” *Edward Rose Bldg Co, supra* at 632. The Court further indicated that “[t]he Tax Tribunal is charged with the duty of accepting the approach which provides the most accurate valuation *under the circumstances of each case* and to review the *actual facts* in a case and *not possible or hypothetical sales* in evaluating TCV” *Edward Rose Bldg Co, supra* at 629. [Emphasis added.]

Here, Petitioners purchased the Subject Properties *together* in 2010, and Respondent’s assessor, Mr. Lemmon, testified:

There’s been 96 transfers of these type of properties [since 1996] where they have one piece on one side of the lake – or one side of the highway and one piece on the other side of the highway.

In no situation out of the 96 did any property sell without the total property selling. By that I mean, there was no situation where anyone divided the properties between . . . the lake pad and sold off the house portion.

This is the way that those properties are bought and sold. They’re bought and sold as a property, not as the individual parcels. Transcript at 153-154.

As a result, based upon the fact that the Tribunal finds the sales comparison approach to be the most reliable method in determining the true cash value of the Subject Properties, and notably the only method provided by each party, in conjunction with the fact that a sales comparison approach is premised on “[t]he principle of substitution [which] holds that the value of property tends to be set by

the price that would be paid to acquire a substitute property of similar utility and desirability within a reasonable amount of time,” *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 13th ed, 2008), p 298-299, valuing the Subject Properties together as one residential lakefront property would be a more accurate way of measuring the true cash value of these parcels because this is how the Subject Properties’ market treats these types of properties. To contradict what history has shown with regard to properties similarly situated would distort the true cash value of these properties and create a hypothetical sale, which Mr. Lemmon states is “not going to happen.” Transcript at 183. This conclusion is further supported by Respondent’s highest and best use of the Subject Properties (i.e., both parcels together as a residential lakefront property), which is a fundamental concept in determining true cash value.

The Tribunal further finds that this conclusion, which contradicts the general rule, as stated in *Edward Rose Bldg Co*, is also supported by the fact that the Vacant Parcel is unbuildable, given the setback requirements. The Tribunal also finds that it would be misleading to compare the Improved Parcel, which has historically sold together with the Vacant Parcel, with properties that are merely lake view versus lakefront. As such, although the general rule is that multiple parcels must be separately valued and assessed, even when owned by the same owner, the Tribunal finds that the situation presented in this case provides for an exception to that rule, as supported by the market, and therefore, values them as one residential lakefront property.

With that being said, as indicated above, both parties submitted a sales comparison approach to support their respective contentions of true cash value. Although the Tribunal finds that the Subject Properties shall be valued together as one residential lakefront property, while still separately assessed, and although Petitioners only submitted an appraisal with respect to the Improved Parcel only,

the Tribunal finds that a combination of both parties' sales comparison approaches assist it in determining the true cash value of the Subject Properties for the tax years at issue.

In that regard, Petitioners provided an appraisal utilizing six comparables. However, only three of Petitioners' comparables (Comparable Nos. 2, 3, and 5) are located directly along Walled Lake. The remaining comparables (Comparable Nos. 1, 4, and 6) are located in the subjects' neighborhood, but are not truly comparable to the Subject Properties since they are not located directly along Walled Lake. The Tribunal therefore finds Petitioners' Comparable Nos. 1, 4, and 6 to be unreliable and affords them no weight.

Petitioners' Comparable No. 2, located at 1375 E. Lake Drive, sold in January 2011. This comparable is located on the same lake (i.e., Walled Lake), within 0.06 miles from the Subject Properties. Petitioners' Comparable No. 3, located at 1101 S. Lake Drive, sold in December 2011. This comparable is also located on the same lake (i.e., Walled Lake), within 0.85 miles from the Subject Properties. Both comparables are similarly situated as compared to the Subject Properties, in that the improved portion is separated by a road from the vacant portion, which is located along Walled Lake. Although Comparable No. 2 was a short sale, Mr. Babcock testified that "there [were] a lot of properties being sold on short sales [in 2011], which brought down the market," Transcript at 79, and the comparable was on the market for 60 days, which the Tribunal finds is sufficient market exposure given the fact that Petitioners' appraisal indicates that the average days on the market for single-family homes in Novi with Walled Lake Schools is 63 days for 2011, and Respondent's appraisal indicates that the average marketing time is three to six months. Further, a review of the sale price for Comparable No. 2 shows that the price was not significantly affected by the fact that it was a short

sale since the sale price, as compared to the sale price of Comparable No. 3, is less than 10% different.

Petitioners' Comparable No. 5 (also Respondent's Comparable No. 2 (for the 2011 tax year)), located at 1947 W. Lake Drive, sold in June 2010. This comparable is located on the same lake (i.e., Walled Lake), within 1.10 miles from the Subject Properties. This comparable is not split by a road like the Subject Properties. Rather, the improvements to this comparable are located along the lake, with the back of the house and the walkout basement facing the lake.

While at first blush these comparables (Petitioners' Comparable Nos. 2, 3, and 5) appear to be reliable indicators of value since they are located on the same lake, are close in proximity to the Subject Properties, and sold during relevant time periods for the tax years at issue, the reliability of these comparables is negated based on the fact that the Tribunal finds, as indicated above, that the market supports valuing the Improved and Vacant Parcels together as one residential lakefront property, and Petitioners failed to value the properties together and only provided an appraisal for the Improved Parcel only.

With that being said, however, the Tribunal finds that Petitioners' comparables (Comparable Nos. 2, 3, and 5) do support a finding that properties that are not split, where the back of the homes face the lake, are more valuable than those that are split like the Subject Properties. More specifically, Petitioners' Comparable Nos. 2 and 3, which are split, sold for approximately \$300,000 less than Petitioners' Comparable No. 5, which is not split. As such, although such adjustment appears to be conservative, based on this observation, the Tribunal finds Petitioners' adjustment of \$150,000 for "Site Views/Appeal" to be supported and reliable.

Respondent, on the other hand, provided six comparables for the 2011 tax year and six comparables for the 2012 tax year. Of the comparables presented,

however, only three are located in Novi (Comparable Nos. 1, 2, and 3 for the 2011 tax year), and of those three, only two (Comparable Nos. 1 and 2 for the 2011 tax year) are located on Walled Lake.

Respondent's Comparable No. 1 (for the 2011 tax year), located at 1312 E. Lake Drive, sold in July 2010. This comparable is located on the same lake (i.e., Walled Lake), within 335 yards from the Subject Properties. Respondent's Comparable No. 2 is the same as Petitioners' Comparable No. 5, which is described in more detail above.

While the Tribunal finds Respondent's sales comparison approach to be more reliable than Petitioners', since Respondent provided two appraisals that valued the Subject Properties as one residential lakefront property, including the land value of the Vacant Parcel, the Tribunal only finds Respondent's Comparable No. 1 to be reliable. More specifically, as previously stated, the parties' appraisals indicate that the average marketing time, for 2011, ranges from two to six months. In that regard, because Respondent's Comparable No. 2 (also Petitioners' Comparable No. 5) was only on the market for nine days, combining the fact that it sold for \$24,900 less than its list price, suggests that this comparable was not adequately exposed to market conditions and pressures, and the seller may have been motivated to sell the property regardless of price. Respondent's Comparable No. 1, however, was on the market for 59 days, which closer resembles the average marketing time for the Subject Properties' neighborhood.

With that, since Respondent's Comparable No. 1 is not split like the Subject Properties, the Tribunal finds that an adjustment of \$150,000, as presented in Petitioners' appraisal for "Site Views/Appeal", is justified and therefore applies this adjustment to Respondent's adjusted sales price. As a result, the Tribunal finds that the true cash value of the Subject Properties, combined, is \$572,615 for the 2011 tax year, and by allocating this value, based on the proportion of the Subject

Properties, as assessed, the Tribunal finds that the true cash values for the 2011 tax year are \$515,350 (rounded) for the Improved Parcel and \$57,260 (rounded) for the Vacant Parcel.

Although both parties presented comparables for the 2012 tax year, the Tribunal finds that none of the comparables are reliable indicators of value. To reiterate, Petitioners only submitted an appraisal with regard to the Improved Parcel only, with no evidence of value with regard to the Vacant Parcel, and Respondent's comparables for the 2012 tax year are located in different jurisdictions. For these reasons, the Tribunal finds the Subject Properties' assessment histories to be the best indicator of value for the 2012 tax year and applies the rate of market change to determine the true cash value of the Subject Properties for the 2012 tax year. The rate of market change between the 2011 and 2012 tax years on the property record cards evidences a 1% increase for the Improved Parcel and a 0% change for the Vacant Parcel. As a result, applying these rates of change to the 2011 tax year supports a true cash value for the 2012 tax year of \$520,500 for the Improved Parcel and \$57,260 for the Vacant Parcel. Therefore,

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, 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 14, 2014