

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

Shady Trails Camp, LLC,
Petitioner,

v

MTT Docket No. 454149

Leelanau Township,
Respondent.

Tribunal Judge Presiding
Preeti P. Gadola

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Shady Trails Camp, LLC (“Shady Trails”), appeals the ad valorem property tax assessments levied by Respondent, Leelanau Township (“the Township”), against Parcel No. 008-123-012-00 for the 2013 tax year. The parcel consists of 29.23 acres of land with 1400 feet of Lake Frontage on Grand Traverse Bay.¹ There are 26 buildings on the property including cabins, bunk houses, a lodge and a mess hall, which are currently utilized in conjunction with a youth day camp.

A hearing on this matter was held on February 26, 2015. Stuart Goldstein and Diane Slinger, attorneys appeared on behalf of Petitioner, and Michael Homier and Leslie Dickinson, attorneys, appeared on behalf of Respondent. Petitioner’s witness was Michael Tarnow, appraiser, and Respondent’s witness was Katherine Wilson, Assessor, Leelanau Township.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash value (“TCV”), state equalized value (“SEV”), and taxable value (“TV”) of the subject property for the tax year at issue are as follows:

Parcel Number: 008-123-012-00

Year	TCV	AV	TV
2013	\$2,110,000	\$1,055,000	\$1,055,000

¹ Although the parties had slightly different contentions regarding the acreage and frontage of the subject property, at the request of the Tribunal, the parties stipulated to the acreage and frontage listed in the Introduction section of this Final Opinion and Judgment. Tr at 138.

PETITIONER’S CONTENTIONS

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: 008-123-012-00

	Petitioner		
Year	TCV	SEV	TV
2013	\$847,000	\$423,500	\$423,500

PETITIONER’S ADMITTED EXHIBITS

P-1: Appraisal Report prepared by Michael Turnow, MAI, SRA

PETITIONER’S WITNESS

Michael Tarnow

Petitioner presented testimony from its appraiser, Michael Tarnow. Based on his experience and training, the Tribunal accepted Mr. Tarnow as an expert in the valuation of real property. Mr. Tarnow prepared and communicated an appraisal of the subject property. The appraisal sets forth sales comparison and income approaches to value. The sales comparison approach was developed to estimate value for a typical single family division of the subject property. The sales approach did not value the property in its entirety as Mr. Tarnow concluded that there were no sales of thirty acre properties with extensive water frontage in the relevant time frame in the subject property area.

Mr. Tarnow originally determined that the property could be split and sold as five vacant residential sites, however, after a second consultation with Mr. Patmore, zoning administrator for Leelanau Township, by himself or his associate, he concluded in the certainty of eleven residential sites with 127 feet of frontage, each at a value of \$222,000. Mr. Tarnow researched his comparable sales through the “Traverse Area Association of Realtors Multiple Listing Service.” Comparable 101 is a two acre residential building site with 200 feet of frontage on West Grand Traverse Bay. It is 13 miles south of the subject property and sold on May 7, 2012 for \$270,000. Comparable 102 is a .82 acre residential building site with 134 feet of frontage on West Grand Traverse Bay. It sold on September 21, 2012 for \$234,000 and is 8.5 miles south of

the subject property. Comparable 103 is a .72 acre residential building site with 100 feet of frontage along the western side of the Leelanau Peninsula on Lake Michigan. It is located 4.5 miles northwest of the subject property and sold for \$210,000 on August 1, 2012. Comparable 104 is an active listing of a 10 acre residential building site with 200 feet of frontage on Lake Michigan. Is 6.5 miles north of the subject property, is listed at \$329,000 and has been on the market since May 9, 2013. Comparables 101 and 104 were adjusted downward by 10% for their 200 feet of Lake Frontage. Comparables 102 and 103 have 134 and 100 feet of Lake Frontage and are adjusted downward by 20%. Comparable 103 has a superior sandy beach and was adjusted downward by 20%. No other adjustments were made to the comparables and the conclusion of value for the subject waterfront lots was \$1,200 per front foot or originally, \$336,000 per building site.²

Mr. Tarnow admitted on the record that he viewed the zoning ordinance, but found it confusing and sought Mr. Patmore's opinion to understand the same. He also noted that the property was zoned "C-R" or commercial resort; therefore, it could have single-family, two-family and multi-family situated upon it including "townhouse, a rental cottage, a camping space, a recreational vehicle parking space, or a hotel lodge or a motel room."³ He also noted that by special use permit, the C-R zoning would permit restaurants and retail shops. He testified, however, that in his opinion, multi-family developments such as condominiums have not been economically successful other than at the base of the Leelanau peninsula in Traverse City or as far north as Sutton's Bay, both locations significantly south of the subject property. He testified that the highest and best use of the property is as eleven residential, water front sites. He did not account for any potential "back lot" or "view lot" parcels as he didn't think "it would be economical to make those lots the cost of bringing in utilities and selling the lots and in the future the lack of marketability of those lots and the negative effect they would have on the waterfront lots does not make them viable."⁴

² R-1 at 42-45

³ Tr at 74

⁴ Tr at 102

Mr. Tarnow developed an income approach to value the property under the discounted cash flow (“DCF”) method which he described as value determined by “discounting future sales to a present value, making deductions for profits and holding costs including real estate taxes and – and sales costs including commissions and transfer taxes and title work, that kind of thing.”⁵ Mr. Tarnow testified that the basis of DCF is the premise “that there are a large number of competing properties offered for sale and that it’s unlikely that they would all sell the first day they’re on the market, and there is a likely marketing time that is estimated at three years selling one lot the first year, two lots the second, and two lots in the third year.”⁶ He testified, “The next thing we needed to determine was [the] appropriate discount percentage rate for the analysis. The local market does not generally offer market data to choose a rate - - during especially during this time period when there were virtually no new developments.”⁷ In the alternative, Mr. Tarnow turned to Realtyrates.com company which develops analysis wherein “we divide the rate between one of profit - - and one of yield.”⁸ On page 52 of his appraisal report, Mr. Tarnow displayed his DCF analysis. He originally determined that the property could be split into five residential sites and concluded as described above, that one unit would sell in year one, two in year two and two in year three. He concluded in an average unit value of \$336,000⁹ for cumulative sales in year one of \$336,000, in year two of \$1,008,000 and in year three, \$1,680,000. He subtracted real estate taxes, entrepreneurial profit, and cost of sales for total expenses for year one of \$248,781, for year two of \$529,007 and for year three of \$539,693. The net income resulting was a total of \$1,317,482 which was discounted by a 10% rate for a total present value of the lot sales of \$1,068,840, rounded to \$1,070,000. Mr. Tarnow next subtracted demolition and grading costs¹⁰ and surveying and legal expenses for an “as is” value rounded to \$810,000.

⁵ Tr at 39

⁶ Tr at 40

⁷ Tr at 41.

⁸ Tr at 42

⁹ Which was later corrected to be \$222,000 for eleven sites.

¹⁰ Mr. Tarnow determined that the property would be sold as vacant, not with the 26 cabins thereupon: “we find it necessary to look at a value for land as if vacant when there are older improvements on it that are no longer the highest and best use.” Tr at 44.

As noted above, Mr. Tarnow concluded, after the completion of his appraisal, that the property could be split into eleven residential sites, rather than five residential sites, as “the density we were using was incorrect.”¹¹ With the correction, Mr. Tarnow testified at the hearing of this matter that his DCF analysis would go out “two more years, selling out all the lots, resulting in a present value after deducting development costs of \$847,000.”¹²

With regard to Ms. Wilson’s analysis concerning the value of the subject property, Mr. Tarnow testified about her comparable sales. He testified that comparable one was a Sheriff’s deed, therefore not a sale at all, and could not be utilized in the sales approach to value. He testified that a Sheriff’s deed is “a deed subsequent to a foreclosure where the property is deeded back to the - - people who had the mortgage instrument. Likely in lieu of nonpayment of the debt. So, in other words, it’s not an arm’s length transaction.”¹³

He testified that comparable two is made up of many different tax parcels under one ownership. “There is a large valuable main house and then another kind of cottage house out on the point. The property is encumbered by a conservation easement. And the motivation of a buyer buying the property that is not developable to its fullest extent is likely substantially different than our property that does not have that kind of restriction.”¹⁴ With regard to comparable three, he testified that it is a “single family residence of three platted lots, and there’s one single adjustment for the difference in frontage of more than the sale price of the property, and the explanation for that adjustment isn’t supported by other work by the assessor.”¹⁵ Mr. Tarnow testified that on the subject property record card, the property was assessed for 600 feet of frontage at \$2,200 and then for excess frontage of 520 feet at \$880, however, in her sales comparable approach for litigation, Ms. Wilson utilized \$2,200 for the entire frontage of comparable two. Mr. Tarnow also noted that in her valuation disclosure, Ms. Wilson wrote, “Comparison 3 is a residential property and cannot be developed for commercial use and, therefore, is the least reliable comparable.”¹⁶

¹¹ Tr at 46

¹² Tr at 51

¹³ Tr at 57

¹⁴ Tr at 58

¹⁵ Tr at 59

¹⁶ Tr at 60

With regard to Ms. Wilson's comparable four, Mr. Tarnow testified that it was a small site not on the Great Lakes, but on an inland lake, Lake Leelanau, and therefore not as valuable as the subject property. He noted that the property sold for \$650,000 in January, 2013 and that "one single adjustment for the difference in water frontage is roughly a million eight, almost three times the sale price. That's - - that's not a good comparable when you have to make an adjustment like that."¹⁷

RESPONDENT'S CONTENTIONS

Respondent contends that the subject property was properly assessed at 50% of its true cash value for the 2013 tax year. Respondent contends that Petitioner did not meet its burden of proof in establishing the true cash value of the subject property.

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: 008-123-012-00

Year	TCV	AV	TV
2013	\$2,541,240	\$1,270,620	\$1,270,620

RESPONDENT'S ADMITTED EXHIBITS

R-1 Respondent's Valuation Disclosure

R-2 Property Record Card for the subject property.

RESPONDENT'S WITNESS

Katherine Wilson

Respondent presented testimony from its assessor, Katherine Wilson. Based on her experience and training, the Tribunal accepted Ms. Wilson as an expert in the valuation of real property. Ms. Wilson prepared and communicated a valuation disclosure of the subject property. The valuation disclosure sets forth the sales comparison approach to value as well as the cost approach as presented on the property record card. Ms. Wilson testified that her sales approach supported the value on the roll of the subject property and she requested that such value be affirmed by the Tribunal.

¹⁷ Tr at 61

Ms. Wilson has viewed the subject property several times. She testified that it is “high in level at the road frontage and has beautiful views of the bay. Then the property drops down. The access to the buildings is on the south end of the property. It is a gravel road that accesses the buildings. The majority of the buildings are on the waterfront. There are four up on M-22, then there are nine that are actually on the waterfront; and then the remainder of the buildings are across the driveway from the waterfront.”¹⁸ Ms. Wilson testified that the buildings consist of rustic cabins, a mess hall and lodge that could be used as 15-week seasonal rentals as the subject area is a vacation spot. She noted that Sunrise Landing Motel and Cabins and Bay Point condominiums, which were cabins that were condominiumized and then sold in the marketplace, were within three miles of the subject property. She also testified that one property, within the three mile radius, put in RV hookups “to accommodate the marina that they have.”¹⁹ She testified that the rental cabins, condominiumized cabins, RV hookups and marina are all properties that are allowed in C-R zoning which is “one of the most flexible zoning districts we have.”²⁰ Ms. Wilson testified that one of the Bay Point condominiums sold for \$195,000 in 2012 and consisted of 800 square feet.²¹

Ms. Wilson chose four comparable sales in her market approach to value. She also noted, as did Mr. Tarnow, that she didn’t find 30-acre sites with 1400 feet of Lake Frontage and 26 buildings situated upon them. “They just - - they don’t exist. So you use what’s out there, you use the best information you can, and you try to use the market to make the adjustments in the best way you can”²² Comparable one was immediately north of the subject property and is zoned C-R. Ms. Wilson testified that she was aware the property was sold by Sherriff’s deed, but nevertheless, she “felt it was important in the sense that the property did go up for bids. It was exposed to the public, anyone could have - - could have purchased this property. The bank chose to pay \$4,000,000 to preserve this piece of property.”²³ She testified that the bank has sold

¹⁸ Tr at 150, 152

¹⁹ Tr at 171-172

²⁰ Tr at 154 The subject property is located off Michigan Highway 22.

²¹ Tr at 173

²² Tr at 165

²³ Tr at 161.

off “acreage that is across the road from the waterfront portion of this, and that is how I developed my per acre adjustment.”²⁴

With regard to comparable two, Ms. Wilson felt it was a good comparable as it was “a corporate compound, it is very similar to the subject in that it has resort structures on it. It is limited to nine building sites because of the conservation easement and of the density transfer that was done on this property.”²⁵ Ms. Wilson noted that the property was exposed to the market for many years and sold for \$5,050,000 and the initial list price was \$9,000,000. She also testified that she made some big adjustments because part of the comparable two frontage was on Lake Michigan and such frontage is worth more than frontage on Grand Traverse Bay.

Ms. Wilson utilized comparable three because Mr. Tarnow determined that the highest and best use of the property was residential. “I don’t necessarily agree with that. But I thought, if we’re going to say that the highest and best use of this is residential, then we need to look at residential properties.”²⁶ Ms. Wilson testified that the property is in the immediate vicinity of the subject and has a single residential dwelling on it. She noted that it sold for \$1,010,000. Ms. Wilson testified that comparable four is a resort such as the subject property was actually built to be, however it is much smaller.²⁷ She testified that there is 284 feet of frontage, instead of 1400 feet, and has only five units that can generate income. She testified that the “property sold for \$650,000 and we have an appraisal on the subject for \$810,000. That - - that just didn’t make sense to me.”²⁸ Ms. Wilson testified that comparable four was the only resort sale in the last four years and the cabins are not as well maintained as the subject. Ms. Wilson testified that she was using the four comparables to support her value on the roll.

Ms. Wilson testified that she had a long discussion with Mr. Patmore about the potential density of the subject property. She testified that it “appeared to be 34 units on this site[,]” as single-family residential.²⁹ She also noted that the 34 sites were consistent with the recommendation of the Township Sanitarian and included the correct depth to width ratio

²⁴ Tr at 163

²⁵ Tr at 164

²⁶ Tr at 166

²⁷ Ms. Wilson testified that the property was built by the University of Michigan for staff use as a vacation spot. Tr at 167.

²⁸ Tr at 166

²⁹ Tr at 156

required for the lots. As a check of her value on the roll, Ms. Wilson built some analysis based on Mr. Tarnow's presentation. She considered the sale of the Bay Point Condominium for \$195,000 in 2012 and concluded that the subject property with structures would sell for \$2,200,000. Ms. Wilson also prepared a DCF analysis using a seven year absorption period, \$1,200,000 in development costs and 34 lots and concluded in a value of \$2,000,000 for the 2013 tax year. She valued the waterfront lots at \$180,000, the view lots at \$150,000, and the back lots at \$50,000. Finally, she prepared an analysis using the rental rates from Bay Point Condominiums and Sunrise Landing over a 15 week seasonal income stream, "which is all you could use these cabins for because of the way they're built," and concluded in a 2013 value of \$2,112,927.³⁰

Ms. Wilson also prepared a cost approach to value which was presented on the subject property record card. The buildings situated on the property were built in 1945 and 1947, save one building that was built in the late 70s. Each residential building was considered 45% good, the mess hall was depreciated by 61% and the lodge by 60%. The buildings were valued under the State Tax Commission cost manual including all improvements such as well, septic, paving and structures attached to the land that are not buildings. Costs were measured through the marketplace with an economic condition factor. Land value was completed based on an analysis of vacant land sales that closed before tax day of December 31, 2012. Ms. Wilson's conclusion of value for the subject property under the cost approach was \$2,541,240.

FINDINGS OF FACT

1. The subject property is located at 6880 N. Shady Trails Road in Leelanau Township, Leelanau County, MI.
2. The property currently operates as a youth day camp. It has 26 buildings upon it, including cabins, bunk houses, a lodge and a mess hall, 1400 feet of Lake Frontage on Grand Traverse Bay and consists of 29.23 acres.
3. Mr. Tarnow presented the Tribunal with an appraisal of the subject property that put forth four comparable sales. The sales were adjusted to be consistent with the characteristics

³⁰ Tr at 173.

of the subject property and concluded in a \$1,200 per front foot value for the subject property.

4. Mr. Tarnow's highest and best use determination for the property in his appraisal was as five residential, lake front lots. At the hearing of this matter, Mr. Tarnow testified that he had the density allowances incorrect and revised his contention to the likelihood of eleven residential sites.
5. Mr. Tarnow completed a DCF analysis with an absorption rate of three years for five lots or five years for eleven lots and concluded in a true cash value for the subject property of \$810,000 for five lots or \$847,000 for eleven lots.
6. Ms. Wilson prepared a valuation disclosure that put forth her cost approach to value as well as a market approach to value. Under her market approach, Ms. Wilson presented four sales of properties in the subject property area with adjustments to make them consistent with the characteristics of the property. The sales had net adjustments as follows: comparable one, \$1,470,430, comparable two, \$2,346,840, comparable three, \$1,707,800 and comparable four, \$1,824,900. The sales had gross adjustments of comparable one, \$1,984,930, comparable two, \$2,376,840 and comparables three and four had the same net and gross adjustments. Ms. Wilson testified that her sales approach supported the value of the subject property on the tax roll.
7. Ms. Wilson presented her cost approach to value on the property record card and depreciated the residential buildings situated upon the subject property by 55%, the mess hall by 61% and the lodge by 60%.
8. Ms. Wilson concluded that the subject property would allow 34 residential sites including Lake Front, lake view and back lots. She prepared a DCF analysis utilizing a seven year absorption period and \$1,200,000 in development costs concluding in a market value of \$2,000,000 for the property. She also analyzed a 15 week income stream for the property as determined from considering rental rates from Sunrise Landing Motel and Bay Pointe Condominiums, both within a three-mile radius of the subject property, and concluded in a market value for the property of \$2,112,927. Finally, she considered the 2012 sale of a

condominiumized Bay Point cabin that sold for \$195,000 to conclude in a value for the subject property land and structures for \$2,200,000.

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. See MCL 211.27a.

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. 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 “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.” *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

“By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of 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). “It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case.” *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991). In that regard, 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.” *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735a(2). The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.” *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, supra* at 352-353.

“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 Steel Corp, 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, 176; 141 NW2d 699 (1966), *aff’d* 380 Mich 390 (1968). 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. While *Meadowlanes, supra*, does set forth the three “traditional methods” it also indicates that “[v]ariations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to the fair market value of the subject property.” *Meadowlanes, supra*, at 485.

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell. See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991). After considering all three approaches to value, the Tribunal finds that the income approach is the correct valuation

technique to be utilized in determining the true cash value of the subject property for the 2013 tax year.

Here, the parties' valuation experts were charged with developing and communicating valuation disclosures regarding the subject property to assist the Tribunal in making an independent determination of its true cash value for the year under appeal. Petitioner's appraiser, Mr. Tarnow, developed the sales approach to value as well as an income approach presented in a DCF analysis. Mr. Tarnow based his analysis on the premise that a likely purchaser of the property would demolish the structures, split the land into eleven residential sites and sell them within five years, however as noted in the appraisal and in his testimony above, Mr. Tarnow completed his written appraisal based on five residential sites to be absorbed into the market within three years. Respondent's assessor, Ms. Wilson, considered the cost approach to value, including valuing the existing buildings as is, and also the sales approach as a check of her assessment on the tax roll. Ms. Wilson also prepared a DCF analysis using thirty-four residential lot divisions based on Mr. Tarnow's conclusion of the highest and best use of the property to be single family residential. Ms. Wilson determined that the property cabins could be utilized as rental properties, as is, or any other permissible use under C-R zoning, therefore she analyzed a 15 week income stream for the property considering rental rates from Sunrise Landing Motel and Bay Pointe Condominiums, both within a three-mile radius of the subject property and considered the 2012 sale of a condominiumized Bay Point cabin for \$195,000 to conclude in a value for the property if its buildings were condominiumized and sold.

As noted above, the subject property is a youth day camp consisting of 29.23 acres of land, 1400 feet of Lake Frontage on Grand Traverse Bay and 26 buildings. It is a unique piece of property in the Leelanau Peninsula as both Mr. Tarnow and Ms. Wilson indicated in their testimony that there were no sales in Leelanau of almost thirty-acre lake front parcels with 1400 feet of frontage.

Mr. Tarnow prepared an appraisal of the subject property putting forth both the sales and income approaches to value. As noted above, Mr. Tarnow was unable to find comparable sales of large acreage parcels; therefore he presented four sales of single family residential lots. Mr. Tarnow presented four sales of properties in Leelanau County with adjustments to make

them consistent with the characteristics of the subject property. His conclusion of value for lake front sites was \$1,200 per front foot. As described in his testimony, above, Mr. Tarnow did not consider lake view or back lots because he didn't think "it would be economical to make those lots the cost of bringing in utilities and selling the lots and in the future the lack of marketability of those lots and the negative effect they would have on the waterfront lots does not make them viable."³¹ Further, Mr. Tarnow did not consider any other potential use of the property within its C-R zoning. C-R zoning permits single-family, two family, multi-family, including "townhouse, a rental cottage, a camping space, a recreational vehicle parking space, or a hotel lodge or a motel room."³² Ms. Wilson, on the other hand, considered rental use, condominiumized sales, and the absorption of 34 residential lots under a DCF analysis.

Mr. Tarnow concluded in the potential for the subject property to be split into five residential sites from an alleged discussion by himself **or** his associate, with Mr. Patmore, Zoning Administrator, Leelanau Township and he based his written appraisal of the property on this extraordinary assumption. At some time prior to the hearing of this matter, Mr. Tarnow, **or** his associate, had another alleged discussion with Mr. Patmore and concluded that the property would actually be split into eleven residential sites. It should be noted that Mr. Tarnow could not recall if he or his associate, Mr. Faucher, also a signatory to the appraisal, spoke with Mr. Patmore. Ms. Wilson testified that she recalled a long discussion and meeting with Mr. Patmore and they determined that the property could be split into 34 residential sites. The Tribunal finds Ms. Wilson's testimony to be persuasive and it finds that the property can be split into 34 residential building sites.

The Tribunal is not persuaded by Mr. Tarnow's appraisal. Again, it appears that he concluded in an incorrect building density for the property. Further, he only foresaw the possibility of lake front sites and based his sales and income approaches on the \$1,200 per front foot lake front lot value. In his DCF analysis, Mr. Tarnow used an average unit value of \$336,000 per unit. This number was determined by multiplying 1400 front feet by \$1,200 per front foot and then dividing the result by five lake front lots. Again, it cannot be emphasized enough, the premise of the analysis is incorrect based on the incorrect density calculation.

³¹ See footnote 8

³² See footnote 6 which information Mr. Tarnow read from the Leelanau County Zoning Ordinance.

Further, Mr. Tarnow acknowledged at the hearing of this matter that he viewed the zoning ordinance, but relied on conversations with Mr. Patmore. Also Mr. Tarnow did not consider alternative uses for the property allowed under its C-R zoning when a motel, condominized cabins, and marina with RV hookups were all within three miles of the subject property.

Ms. Wilson provided the Tribunal with a valuation disclosure that included the cost approach to value which she testified she supported with her sales approach. Ms. Wilson presented four sales in the subject property area with adjustments to make them consistent with the characteristics of the subject property. Comparable one was immediately north of the subject property and is zoned C-R. Ms. Wilson testified that she did know the property was sold by Sherriff's deed, but nevertheless, because the property went up for bids, it was exposed to the public and anyone could have purchased the property. With regard to comparable two, Ms. Wilson felt it was a good comparable as it has resort structures on it. It only has nine building sites because of a conservation easement, however, and she testified that she made some big adjustments because part of the comparable frontage was on Lake Michigan and such frontage is worth more than frontage on Grand Traverse Bay.

Ms. Wilson utilized comparable three because Mr. Tarnow determined that the highest and best use of the property was residential. Ms. Wilson testified that the property is in the immediate vicinity of the subject and has a single residential structure upon it. She noted that it sold for \$1,010,000. Ms. Wilson testified that comparable four is a resort such as the subject property was actually built to be, however it is much smaller. She testified it had 284 feet of frontage, instead of 1400 feet, and only five rentable buildings. Ms. Wilson testified that comparable four was the only resort sale in the last four years. Again, Ms. Wilson testified that she was using the four comparables to support her value on the roll.

As noted above, both Mr. Tarnow and Ms. Wilson determined there were no good sales to utilize in determining the true cash value of the subject property for the 2013 tax year. However, Ms. Wilson's use of sales with net adjustments of \$1,470,430, \$2,346,840, \$1,707,800 and \$1,824,900 and gross adjustments of \$1,984,930, \$2,376,840, \$1,707,800 and \$1,824,900, demonstrates that the sales are truly not comparable to the subject and not persuasive to the Tribunal. Comparable one sold for \$4,000,000 and had gross adjustments of almost \$2,000,000;

comparable two sold for \$5,050,000 and had gross adjustments of \$2,376,840. Comparable three sold for \$1,010,000 and had \$1,707,800 in net and gross adjustments or more than its actual sale price, and comparable four had gross and net adjustments of \$1,824,900 and a sale price of \$650,000. The adjustments to the sale price of comparable four were, incredibly, almost three times the actual sale price.

Further, the Tribunal is not persuaded by Ms. Wilson's cost approach to value because the age of the improvements makes depreciation difficult to measure. In the *Appraisal of Real Estate*, 14th edition it states,

Because cost and market value are usually more closely related when properties are new, the cost approach is important in estimating the market value of new or relatively new construction. The approach is especially persuasive when land value is well supported and the improvements are new or suffer only minor depreciation Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2014), p 566.

The Tribunal is not persuaded by Mr. Tarnow's appraisal, is not persuaded by Ms. Wilson's sales or cost approaches to value, but finds that Ms. Wilson's DCF and other related analyses to be the best evidence of the true cash value of the subject property for the 2013 tax year. The Tribunal is convinced that 34 residential sites is the correct allowable density on the subject property for residential properties. Ms. Wilson calculated a value for lake front, lake view and back lots and determined a seven year absorption period. Her conclusion of value for the property under the DCF approach was \$2,000,000. She also analyzed a 15 week income stream for the property as determined from considering rental rates from Sunrise Landing Motel and Bay Point Condominiums, both within a three-mile radius of the subject property, inferring a market value for the subject property of \$2,112,927. Finally, she considered the 2012 sale of a condominiumized Bay Point cabin for \$195,000 to conclude in a value for the subject property, if condominiumized, of \$2,200,000. Ms. Wilson properly considered a highest and best use of the property as vacant residential building sites as well as other permissible uses under the property C-R zoning. Based on her analysis, and its independent determination of value gleaned from the evidence presented at the hearing and testimony on the record, the Tribunal finds the true cash value of the subject property for the 2013 tax year to be \$2,110,000.

JUDGMENT

IT IS ORDERED that the properties' state equalized and taxable values for the tax year(s) 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 properties' true cash and taxable values as finally shown 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 within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and 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%; and (iv) after June 30, 2012, through June 30, 2015, at the rate of 4.25%.

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

By: Preeti P. Gadola

Entered: April 24, 2015