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

3637 S Shaffer LLC,
Petitioner,

v

MTT Docket No. 15-004221

City of Kentwood,
Respondent.

Tribunal Judge Presiding
David B. Marmon

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, 3637 S. Shaffer LLC, appeals ad valorem property tax assessments levied by Respondent, City of Kentwood, against Parcel No. 41-18-22-201-001 for the 2015 tax year. Terry L. Zabel, Attorney, represented Petitioner, and Crystal Morgan, Attorney, represented Respondent.

A hearing on this matter was held on April 6, 2017. Petitioner's sole witness was Todd Schaal. Respondent's witnesses were John Cross and Evan Johnson.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values ("TCV"), state equalized values ("SEV"), and taxable values ("TV") of the subject property for the 2015 tax year are as follows:

Parcel No.	Year	TCV	SEV	TV
41-18-22-201-001	2015	$881,000	$440,500	$440,500

JOINT EXHIBITS

At the start of the hearing, the parties submitted a stipulation of facts as to the property, the zoning, the tax sale in which Petitioner acquired the subject, and an agreement of admissibility of joint exhibits. Those exhibits are as follows:

J1 Aerial map/photograph of the subject

J2 Planned Unit Development District Ordinance

J3 Two-Family and Multiple Family Residential Districts Ordinance

J4 Notice of Judgment of Foreclosure dated April 21, 2014

J5 Quit Claim Deed from Kent County Treasurer to Petitioner dated October 3, 2013

J6 Transfer Affidavit dated December 8, 2014

J7 Record card for subject printed in 2015

J8 2015 BOR decision

J9 Special Assessment District Proposed Principal & Interest payments

PETITIONER'S CONTENTIONS

Petitioner contends that the subject's true cash value, state equalized value and taxable value are as follows:

Parcel No.	Year	TCV	SEV	TV
41-18-22-201-001	2015	$410,000	$205,000	$205,000

In support of this contention, Petitioner relies upon an appraisal prepared by Great Lakes Appraisal Co., which was co-signed and present by Todd Schaal. Schaal determined that the subject's 73.60+/- acres only had a net land area of 54.61+/-, with the balance being regulated wetlands in a 100 year floodplain. Schaal then determined a price per acre using four sales comparables, which he adjusted, and applied it to the net acreage.

PETITIONER'S ADMITTED EXHIBITS

P9 Appraisal Report by Great Lakes Appraisal Co

P10 Photographs of subject property

P11 School District Ratings by GreatSchools.org

PETITIONER'S WITNESS

Petitioner's sole witness was Todd Schaal, a Certified General Appraiser who is an owner of Estes Realty Services, as well as CEO of Great Lakes Appraisal. He also has an additional side business called Prosperity Partners, which "educated doctors and dentists on real estate matters, including real estate development."[1] He also belongs to several realtor associations.

[1] Tr. 13-14.

Over Respondent's objection that the appraisal was authored by Matthew Johnson, Schaal's associate, Schaal was accepted as an expert.[2]

Schaal testified that his first comparable, ("P-1") located in Byron Township was a superior location, primarily because of its school system. As to how he determined his adjustment or school district, he stated:

> We've, as I testified earlier, we've been -- my company has been appraising plats and residential development property for three decades. I live in the community, I serve in the community. At one time we were involved in extensive research on property values connected with school systems, and I do not believe I started a new involved research, particularly for this because we already knew that certain school systems are superior to other school systems. And so it is some years of knowledge, not to mention research.[3]

On cue from counsel, Schaal then testified that his evaluations of school districts were consistent with the information found at GreatSchools.org.[4] On cross examination, Schaal tied the desirability of a location to school district quality, rather than to other amenities of a city, such as police and fire.[5]

On direct examination, Schaal testified that comparable P-1, as a smaller parcel, (44.58 acres), was also deemed superior to the subject, because smaller parcels tend to sell for more per acre than larger parcels.[6] When asked why he made no adjustment for water frontage, Schaal testified that there was none. He testified that he took the two photos of the subject,[7] which purport to show a dry creek bed, and a muddy creek bed after a rain. He testified as follows:

> Q And can you describe what the photographs show?
>
> A Pictures of the ditch, the County Drain that I referenced earlier, where the water comes from that creates the wetlands in that low area, primarily mucky and wet. And in the second photo, page two, that is the wettest area, and that is after I took the photos, I think a day after a heavy rain when it was running faster; the first time we were out there it was dry.[8]

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[2] Tr. 24-25. Per TTR 255(2), Schaal would not be precluded from testifying because he testified that he was extremely knowledgeable about the report's contents, and by signing the report, adopted its conclusions and basis for its conclusions.
[3] Tr. 31.
[4] Tr. 31-32, Exhibit P11.
[5] Tr. 53-54.
[6] Tr. 26.
[7] Exhibit P10.
[8] Tr. 27.

Petitioner's counsel next inquired regarding the adjustments to Schaal's second comparable in Caledonia Twp., ("P-2"). Regarding the basis for a positive 5% adjustment for utilities, Schaal testified that the "comparable sale had some utilities run into it that likely were in a place that would be potentially detrimental for development of that property."[9] In seeming contradiction to that statement, Schaal then testified that wells and septic systems were not a barrier for buyers looking for a home in a suburban environment.[10]

Schaal was then asked about the effect on the subject property's fair market value of nearly $400,000 owed in special assessments. He opined:

> I believe, at first blush, people would say yes because here is acreage that has assessments on it versus acreage that doesn't. But to somebody that's sophisticated looking to develop a piece of property, it's kind of a bit of a shoulder shrug, well, I would have to install these utilities type thing anyway. So it could influence the value and/or the marketability, or it might not.[11]

To the degree that the special assessments might influence the price or marketability, he indicated that the effect would be negative.

Schaal was next asked how he determined the size of the subject property. He testified that he relied upon an engineering survey to determine both gross and usable land.[12] On cross examination, Schaal was shown that the engineering survey was dated 2003; that the parcel number on the document differs from the parcel under appeal, and that a split of the parcel had occurred. Schaal agreed that the map he relied upon on p. 67 of his report does not depict the entire subject property.[13]

On direct examination, Schaal was also asked as to what amount of trees would be needed before it was considered a negative and required an adjustment. His answer indicated that a negative adjustment of a comparable sale could be warranted if the comparable had enough trees, or unusual trees that they could be harvested.[14] Interestingly, he did not touch upon the added expense a developer might occur in clearing a heavily forested parcel for development.

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[9] Tr. 29.
[10] Tr. 29.
[11] Tr. 35.
[12] Tr. 35-36. The survey is on p. 67 of the Appraisal, Exhibit P9.
[13] Tr. 40-41.
[14] Tr. 36-37.

As a veiled critique of Respondent's valuation, Schaal was asked if there is usually a pattern as to whether the range of adjusted prices is typically narrower than the range of unadjusted prices. Schaal responded as follows:

> Yes. Well, absolutely it's the top line, or the preadjusted is basically the mouth of the funnel, so to speak, and the preadjusted, or the adjusted price is after the appraiser's done his work, considered all the differences, and come down to conclusions about adjusted numbers, and it should tighten up. If it doesn't tighten up, there's no reason for an appraiser to make all these considerations doing the adjustment. I mean, there's no value in the appraiser considering the stuff if the range stays the same or gets wider; it's inconsistent with how it's supposed to be done. And to your simple question, yes, the methodology is it should tighten up after adjustments.[15]

On cross examination, Schaal was asked about assigning a value of zero to the 19 acres of wetlands on the subject. His answer was, "[u]nless somebody is big into walking through muck up to their ankles, yes, that is my testimony."[16] He elaborated that he found that it added nothing to aesthetics, and that the wetlands were "an open ditch" rather than "a water amenity."[17]

Schaal was also interrogated about listings of the subject property. He dismissed any listing of the property as irrelevant to his value conclusion, as he also dismissed the recent sale price at auction of the subject for $44,000.[18] He was also asked about the need for green space under the PUD. He responded that "the PUD development for this property has long expired."[19] Schaal claimed to have seen a letter from the City to that effect, but conceded that he did not have the letter. He did concede that the applicable zoning regulations required some open space.[20] He minimized the value of the wetlands regarding the meeting of zoning requirements as follows:

> [T]here would be a rear yard requirement for a house to be built that might be 100 feet, those wetlands could qualify for part of that feet; we considered that. The flip side is what's down the wetlands is muck and a mess, and we said, you know what, having a little bit of a rear yard setback here that might work for putting a house there would be, in our opinion, more than outweighed by somebody

[15] Tr. 38-39
[16] Tr. 43.
[17] Tr. 44.
[18] Tr. 44.
[19] Tr. 47.
[20] Tr. 47-48.

> needing to put a fence there if they don't want their dogs and kids down in the muck all the time.[21]

Schaal was also asked about his lack of adjustment for 1,000 feet of frontage the subject has with Schaffer Ave. He testified that in hindsight, he "should have beaten the subject up more," for this feature because presumably, homes placed on the frontage would need a larger set-back.[22]

Schaal was also queried about sales comparable P-2 in Caledonia, which is reported in his grid as having sold on June 10, 2014 for $540,000 cash. He was asked if he was aware that the property sold in December of 2013 on a land contract for that same amount, to which he answered he was unaware, and that he did not personally review the assessment records.[23]

Comparable P-3 located at 4624 Walma Ave. in Kentwood was the next subject of cross examination. Specifically he was asked if he was aware that there are wetlands on this property as well. He responded that he was "aware that there was a small amount of nonregulated wetland area that could be suitable for storm water retention."[24] He distinguished between P-3, where he valued the gross acreage and the subject where he used net acreage on the basis that the wetland in P-3 was unregulated, whereas the wetland on the subject was highly regulated.[25]

Respondent's counsel also asked Schaal if it was appropriate not to make time adjustments for P-3, which sold in August of 2013, and P-4, which sold in April of 2012. His response was that the lack of an adjustment was not an oversight because of the deep recession in 2011.[26] Schaal also explained the seeming contradiction of the rate of increase in new dwelling units cited on p. 53 of his appraisal with his comment on p. 11 that growth is expected to be minimal, by noting that the higher figure referred to western Michigan, while the lower figure referred to the neighborhood.[27] (Schaal did not mention that his appraisal looked at Grand

[21] Tr. 48.
[22] Tr. 51.
[23] Tr. 57-58
[24] Tr. 58-59.
[25] Tr. 60.
[26] Tr. 61-62.
[27] Tr. 64-65.

Rapids-Wyoming and noted a 35% increase in dwelling units.)[28] He based his conclusion of low growth in residential dwellings on his professional opinion.[29]

RESPONDENT'S CONTENTIONS

The assessment currently on the roll is as follows:

Parcel No.	Year	TCV	SEV	TV
41-18-22-201-001	2015	$1,059,800	$529,900	$529,900

Respondent contends that the subject's true cash value, state equalized value and taxable value should be as follows:

Parcel No.	Year	TCV	SEV	TV
41-18-22-201-001	2015	$1,400,462	$700,231	$700,231

Respondent bases its contention upon the valuation prepared by its assessor, Evan A. Johnson, who used nine sale comparables. Respondent also contends that its true cash value figure is supported by listing and option agreements on the subject property.

RESPONDENT'S ADMITTED EXHIBITS

R1 Respondent's valuation disclosure
R2 Site plan of subject
R3 Keller-Williams listing
R4 Equity harbor listing
R5 Listing of subject
R8 Listing Agreement dated 3/26/2015
R9 Water Distribution map for Caledonia Twp
R11 Tax record for 7153 Whitneyville Ave SE
R13 Great Lakes Appraisal work file for subject
R14 Wetland evaluation for 4624 Walma Ave SE
R15 Greatschools.org rankings for 2 school districts
R16 Terms of use for Greatschools.org.

[28] Exhibit P9, p. 54.
[29] Tr. 65.

RESPONDENT'S WITNESSES

Respondent's first witness was John Cross, a real estate developer and broker, associated with Equity Harbor.[30] Cross testified that he has visited the subject and he currently has it listed for sale. The listing was entered into evidence over objection from Petitioner.[31] Cross then testified that he had entered into an option to purchase the subject (from Mark VanderPloeg) for $1,250,000. Again, this option was entered into in 2017.[32]

Cross also testified regarding the topography of the subject, as follows:

> It's called Ravines North; there's sharp ravines on the property that finger into the property. There's a crick that runs on the property in the northeast corner that comes back in from the north and out to the west on the very north end of the property. We had looked at it when I talked to Mark [VanderPloeg]. They originally had it laid out as just single family home sites, just small homes on it, not really taking advantage of getting on the ravines. Across the road they've allowed Holland Home, you know, they have a three and a half story maximum on height; they've actually elevated the front of the property, and there was a retaining wall. So, actually, there's four stories on the front of their building, and seven stories on the back of it. So we were looking at density, we were trying to get 300 units on the property on the Ravines, to take advantage of the views and elevations; therefore, as a developer, it's an [sic] unit cost for land. So if I can get it down to four or $5,000 per unit for what my cost is for multi-family stuff, that's where I was trying to take the property to.
>
> ***
>
> Q Do you agree with that description of that wetland, or
>
> A Well, it's definitely in the floodplains; you're definitely not going to build down there, but this property does have strong topography, and you do have elevations where you can look across it. So it is privacy, it's woods, a wooded

[30] Tr. 73.
[31] Tr. 77. The listing (Exhibit R-5) was objected to on the grounds that the person who entered into it on behalf of Petitioner, (Mark VanderPloeg), did not have proper authority to bind Petitioner to the agreement. The Tribunal admitted the exhibit "for what it, (the exhibit) is worth." Petitioner's counsel represented to the Tribunal that his office prepared the LLC documents for Petitioner, and that he had knowledge that VanderPloeg did not have authority to sell the subject. Technically, however, counsel's statements are not to be taken as evidence; nor was Zabel put under oath to testify. Complicating this matter further, Respondent had attempted to subpoena Mr. VanderPloeg, who was unavailable. The Tribunal notes that R-5 was entered into in 2017, and as such, even if it was not disputed as to whether it bound Petitioner, is likely too far removed from the date of valuation to be determinative of the subject's value. Additionally, as discussed below, a listing might provide the ceiling for a property's worth, but not the floor. In any case, Cross testified regarding the listing that "no, phone is ringing off the hook. Nope."
[32] Tr. 77-78.

> area in the middle of a city, so you do get quite a private environment in the middle of the city, because of the elevations.
>
> Q So do you think that that wetland property, then, or the areas that you're describing with the ravines, that that actually has some contribution to value on this parcel?
>
> A Yes, I do. As a developer, I do.[33]

Respondent's second and final witness was Evan Johnson, MMAO, Respondent's assessor, who was qualified as an expert in valuation.[34] Johnson testified that the PUD for the subject property,[35] was in effect as of the valuation and presumably, still in effect.[36] Johnson also agreed that the acreage for the subject, per its legal description totals 71.11 (sic) acres.[37] He testified that he recently visited the subject from the road and from the golf course across the street, and stated that the wetlands on the subject were a continuation of Plaster Creek, which on the golf course side of the road, was flowing.[38]

In choosing comparable sales, Johnson started with size as a determining factor.[39] As to adjustments, he looked at utility availability, as well as water frontage. Johnson determined that a winding creek through the subject was a positive attribute for a homeowner, and that a positive adjustment should be applied to properties lacking this amenity.[40] Similarly, as a homeowner, he would want some woods to remain.[41] After discussing various adjustments, Johnson stated that he relied upon his comparables 2, 4 and 7 because they have the least amount of net adjustment.[42]

As to his location adjustment, Johnson testified as follows:

> One, which we've talked about extensively today is school district. Two is proximity to other services, proximity to retail, proximity to commercial properties or employment, proximity to malls, proximity to banking. Whether

[33] Tr. 83-85.
[34] Tr. 92-93.
[35] Exhibit R-2.
[36] Tr. 98-99.
[37] Tr. 99. Johnson likely meant 74.11 acres, per his Appraisal, Exhibit R1, p. 5, and subsequent testimony, Tr.110.
[38] Tr. 100.
[39] Tr. 104.
[40] Tr. 108.
[41] Tr. 109.
[42] Tr. 112.

> they are serviced by municipal services, police and fire; proximity to airports, proximity to highways.[43]

Johnson then detailed the benefits of the City of Kentwood:

> We have a full-time police staff, full-time fire staff, Parks and Rec Department, DPW. We have, obviously, the support activities, like my office clerk; municipal water, municipal sewer, although, it's not our own water system; we buy water from another jurisdiction,
>
> ***
>
> Woodland Mall is located at 28th and East Beltline; it's probably a straight line from the subject property, less than two miles. It is on the corner of what's been called, I don't know if it's still, but the busiest intersection in the state as far as retail activity, and Woodland Mall is enjoying phenomenal success.
>
> ***
>
> CenterPoint Mall right across the street, as well as the entire 28th Street corridor, which is a very booming retail length.
>
> ***
>
> We have -- the subject is in the Kentwood school district; Kentwood has four school districts that are inside the border that are public schools, but there are also charter schools available, and as well as charter academies; the Airport has the Aviation Academy, stuff like that. There are other options available.[44]

On cross examination, Johnson was asked as to how he arrived at a 20% adjustment for location on comparable R-1. He responded that "the 20 percent is relied upon by my years of experience as an assessor."[45] He was also asked about how he took into account the rental property on R-1, along with the stream of income. Johnson "took a lump sum value for the improvements." [46] As to how he arrived at a value of $50,000 for the improvements, he replied that he did not take into account an income stream.[47] He was also vague as to how he came up with a 20% adjustment for utilities. Johnson also testified that although he made adjustments for the availability of utilities, he could not testify as to what was covered by the special assessments.[48] He also testified that he gave some of his comparables a positive 5% adjustment for "water front", even though he had earlier testified that he had never walked the subject

[43] Tr. 106.
[44] Tr. 106-107.
[45] Tr. 131.
[46] Tr. 132.
[47] Tr. 132-133.
[48] Tr. 134-136.

property.[49] Similarly, he made no adjustment for water on comparable R-2, which had private frontage on a spring fed pond, which flows into Bear Lake by a waterfall,[50] or for comparable R-4 which has private frontage on a trout stream.[51] He also adjusted the comparables by +10% for the presence of woods on the subject.[52]

STIPULATION OF FACTS

The following facts were stipulated to by the parties prior to hearing:

1. The subject property is located at 3637 Shaffer Ave. SE, Kentwood, Michigan 49512, and is further identified as PPN: 41-18-22-201-001 ("Property").

2. The Property is classified as residential vacant real property.

3. The Property is outlined in blue in the aerial photograph attached as Exhibit J-1.

4. The City of Kentwood Zoning Ordinance ("Zoning Ordinance") includes Chapter 12 - Planned Unit Development Districts, which is attached as Exhibit J-2.

5. This Property is zoned R-PUD-1, High Density Residential Planned Unit Development (PUD).

6. The City of Kentwood Zoning Ordinance includes Chapter 6 - Two-Family and Multi-Family Residential Districts, which is attached as Exhibit J-3.

7. The Kent County Treasurer issued a Notice of Judgement of Foreclosure concerning the Property on April 21, 2014. Attached Exhibit J-4 is a copy of the Notice of Judgement of Foreclosure.

8. Following a tax sale held on or about September 22, 2014, Petitioner purchased the Property from the Kent County Treasurer for $48,790.00, which was broken down as follows:

Bid	$ 44,500.00
Deed Processing Fee	$ 20.00
13% Buyer's Premium	$ 5,785.00
Less 3% Discount	$ (1,335.00)
	$ 48,790.00

9. On October 3, 2014, the Kent County Treasurer conveyed the Property to Petitioner via Quit Claim Deed, which is attached as Exhibit J-5.

[49] Tr. 136-137.
[50] Tr. 140.
[51] Tr. 144.
[52] Tr. 137.

10. The Property Transfer Affidavit filed by Petitioner on or about December 11, 2014 is attached as Exhibit J-6.

11. The former City of Kentwood ("City") Assessor prepared the 2015 ad valorem tax roll. Attached as Exhibit J-7 is a copy of the 2015 property record card.

12. Petitioner protested the 2015 assessment to the City's March Board of Review. A copy of the Board of Review Decision is attached as Exhibit J-8.

13. The Property is subject to a special assessment district obligation and the payment schedule for the assessment levied against the Property (which is also referenced to as the Ravines PUD Neighborhood B3-B) is attached as Exhibit J-9.

FINDINGS OF FACT

1. The subject, per its legal description and the assessment records, is 74.11 acres of vacant land, classified as residential.
2. The subject is zoned with a Planned Unit Development ordinance in place that requires development to take into account wetlands and other topography included in the property.
3. A preliminary site plan for The Ravines[53] was approved by Respondent which includes the subject property, and incorporates the wetlands on the property into its design.
4. Per Johnson's testimony, said site plan was still in effect as of the valuation date, and currently.
5. While Schaal claimed that the site plan had expired, he based that claim on a letter which he did not have in his possession, and which is not in his work file.
6. On behalf of Petitioner, Great Lakes Appraisal prepared an appraisal of the subject.
7. In support of its valuation, Great Lakes Appraisal found four sales comparables, after various adjustments, determined a price per acre, and applied that price to 54.61 net acres.
8. In determining the subject's gross and net acreage, Great Lakes Appraisal relied upon an engineering site plan dated 2003,[54] which lists a parcel number different from the subject,

[53] Exhibit R2.
[54] Exhibit P9, p. 67.

and per Respondent's assessment records,[55] was drafted prior to a property split which occurred in March of 2005.

9. Great Lakes Appraisal chose four sales comparables to determine a price per acre.
10. Schaal testified that the adjustments he made were all based upon his experience.
11. Schaal made no time adjustments.
12. Sales comparable P-1 located at 4355 64th St SW, Byron Twp is 44.58 acres in size, and sold July 2, 2014 for $530,000, or $11,889 per acre.
13. Sales comparable P-2, (also Respondent's R-9) located at 7153 Whitneyville Ave SE, Caledonia, is 76.36 acres in size, transferred on June 10, 2014 for $540,000, or $7,072 per acre, but per Johnson's testimony, a land contract between the same parties conveyed the property for the same price on December 27, 2013.
14. Per the Caledonia Water Distribution System Map,[56] P-2 is not served by municipal water.
15. Sales comparable P-3 located at 4624 Walma Ave SE, Kentwood is 11.13 acres in size, and sold on August 15, 2013 for $120,000 or $10,782 per acre.
16. Per the Artemis Environmental Report,[57] approximately half of this parcel is covered in wetlands, yet Petitioner included the gross acreage in determining a price per acre, and adjusted price per acre.
17. Sales comparable P-4 located at 4333 Shaffer Ave SE, Kentwood, is 35.98 acres in size and sold in a bank sale on April 30, 2012 for $250,000 or $6,948.
18. Respondent's assessor Evan Johnson, who did not prepare the assessment, prepared the valuation for the subject property using nine sales comparables.
19. Johnson adjusted eight of his sales comparables by +20% because of Kentwood's services and amenities.
20. Johnson testified that he never actually walked through the subject.
21. Johnson positively adjusted seven of his comparables for "water frontage" on the subject property.

[55] Exhibit R7.
[56] Exhibit R9.
[57] Exhibit R14.

22. Johnson's gross adjustments ranged from 49.85% to 79.55%, and adjusted 8 of the 9 comparables' price per acre upward by percentages ranging from 18.68% to 46.86%.
23. R-1 located at 9928 Kalamazoo Ave SE, Gains Twp, is 40 acres in size, contains a house, garage and a barn, and sold on April 15, 2015 for $385,000 or $9,625 per acre, and was adjusted by Johnson 78.85% gross to a price of $12,623 per acre.
24. R-2 located at 6162 Cannonsburg NE, Belmont, is 42 acres in size, and sold on August 12, 2016 for $504,000 or $12,000 per acre, and was adjusted by Johnson 49.85% gross to a price of $14,418.08 per acre.
25. R-3 located at 9014 Homerich Ave SE, Byron Twp is 31 acres in size, contains a house, and a barn, marketed as containing "a farmhouse ready for renovation or remove the farmhouse to build yourself a dream home. Splits may be available,"[58] and sold on July 2, 2015 for $435,000 or $14,032.26 per acre, and was adjusted by Johnson 79.55% gross to a price of $18,305.07 per acre.
26. R-4 located at 3000 Egypt Valley Ave SW, Ada, is 35.6 acres in size, was marketed as having:

> Almost 100' of private footage on Egypt Creek (trout stream). Next to Egypt Valley Golf Course. Great opportunity for Exclusive Home Site or Site Condo. … Property has tremendous character and diversity in land type."[59]

The property sold on June 9, 2015 for $705,000 or $19,803.70 per acre, and was adjusted by Johnson 51.32% gross to a price of $23,503.62 per acre to a husband and wife as grantees.[60]

27. R-5 located at 2409 Knapp St NE, Grand Rapids, is 30.2 acres in size, contains three homes, was marketed as having 2 homes rented,[61] and sold on January 29, 2016 for $810,000 or $26,821.19 per acre, and was adjusted by Johnson 69.10% gross to a price of $19,015.54 per acre.

[58] Marketing sheet found in Respondent's appraisal, Exhibit R1, p. 68.
[59] Marketing sheet found in Respondent's appraisal, Exhibit R1, p. 72.
[60] Warranty deed, found in R1, p. 73.
[61] See R1, p. 74.

28. R-6 located at 245 Kinsey Ave SE, Caledonia, is 35 acres in size, is marketed as zoned for allowing 1 unit per acre,[62] and sold on March 30, 2012 in a bank sale for $250,000 or $7,142.86 per acre, and was adjusted by Johnson 68.27% gross to a price of $9,876.32 per acre.
29. R-7 located at 3871 Egypt Valley Ave NE, Ada, is 40 acres in size, contains a farm house, and additional buildings, and sold to a married couple, "as husband and wife",[63] on October 31, 2013 for $600,000 or $15,000 per acre, and was adjusted by Johnson 61.83% gross to a price of $18,775.21 per acre.
30. R-8 located at 9000 2 Mile Rd NE, Ada, is 42 acres in size, contains a house and was marketed as "42 serene and secluded acres … Property has a 30x40 pole barn, multiple pastures with water, electric and Horse run-in-sheds,"[64] and sold on June 12, 2012 for $625,000 or $14,880.95 per acre, and was adjusted by Johnson 68.46% gross to a price of $21,854.21 per acre.
31. R-9 is the same comparable as P-2, was adjusted by Johnson 54.03% gross to a price of $9,291.10 per acre.
32. The subject property was listed for sale by Keystone Realty Group on March 26, 2015 for $1,450,000,[65] and is currently listed for $1,600,000,[66] although Petitioner's counsel disputes that the signer has authority to list or convey the property.

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.[67]

> 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. . . .[68]

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[62] R1, p. 78.
[63] Warranty Deed, R1, p. 85.
[64] Marketing sheet found in R1, p. 87.
[65] Exhibit R8.
[66] Exhibit R5.
[67] See MCL 211.27a.
[68] 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.[69]

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."[70]

"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."[71] The Tribunal is not bound to accept either of the parties' theories of valuation.[72] "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."[73] 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."[74]

A proceeding before the Tax Tribunal is original, independent, and de novo.[75] The Tribunal's factual findings must be supported "by competent, material, and substantial evidence."[76] "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[77]

"The petitioner has the burden of proof in establishing the true cash value of the property."[78] "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."[79] However, "[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true

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[69] MCL 211.27(1).
[70] *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).
[71] *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).
[72] *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).
[73] *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).
[74] *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).
[75] MCL 205.735a(2).
[76] *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).
[77] *Jones & Laughlin Steel Corp, supra* at 352-353.
[78] MCL 205.737(3).
[79] *Jones & Laughlin Steel Corp, supra* at 354-355.

cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question."[80]

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.[81] "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading."[82] 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.[83]

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.[84]

Wetland

The subject property in this appeal is 74.11 acres of vacant land, classified as residential, with a part time creek/drain running through it. Petitioner's expert, Todd Schaal valued only 54.61 acres, having determined that the wet portion of the property has no value. In support of this determination, Petitioner testified that the wetland was regulated, and also within a 100 year flood plain. He characterized this feature as muddy, and testified that if a development were built, homeowners would likely fence this area outside of their yards. He also noted that this area is only wet part of the year.

Respondent counters that the wet area is a creek, a continuation of Plaster Creek, which runs through the neighboring Fellowship Greens golf course, and a desirable water feature. Additionally, Respondent introduced Exhibit R2, a site plan/PUD map, showing the wet area incorporated into the proposed development, and providing needed land for zoning purposes. Johnson also testified that the PUD continues to be in effect. Respondent also argued that Schaal used a 2003 engineering map using an obsolete parcel number prior to a split, in determining the

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[80] MCL 205.737(3).
[81] *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).
[82] *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).
[83] *Antisdale, supra* at 277.
[84] See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

amount of acreage to be treated as valueless. Finally, Respondent pointed out that at least one of Schaal's comparables was almost 50% wet.

The Tribunal concludes that Schaal should have valued the entire parcel, including the wetlands. The General Property Tax Act declares, "That all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation."[85] Petitioner has not established that the wetlands have a true cash value of zero. While it is per the zoning ordinance, and floodplain status illegal to build structures on the wet area, as well as impractical, the property is zoned PUD. Per the PUD Ordinance, §12.01, the objectives of this type of zoning are:

> A. Encourage use of land in accordance with its character and adaptability through allowance of innovative and creative design solutions not permitted under conventional zoning;
> B. Allow design flexibility that benefits the community and the environment and results in a better overall project than would be permitted under conventional zoning;
> C. Create a package of amenities not typically achieved with conventional zoning, such as usable open space, preservation of key natural or historic resources, improvements to public roads or facilities, pathways, natural stormwater systems, more extensive landscaping, consistent and coordinated site design details among various projects (lighting, signs, building design, etc.), and high quality architectural design or materials;
> D. Create a complementary mixture of housing types within a project that is consistent with the overall character of the area;
> E. Ensure compatibility of design and use between various uses within the PUD and with neighboring properties; and
> F. Encourage the use, redevelopment and improvement of existing sites.[86]

To meet the objectives of PUD zoning, wetlands are an integral part.

Moreover, the PUD preliminary plan map found in Exhibit R2 clearly shows the wetland integrated into a proposed community, to provide setbacks, scenery, (and perhaps some mosquitoes), which are part and parcel of suburban life. Maps found in the exhibits further show that the PUD plan has already been partially implemented on neighboring parcels. All of this shows that the wetlands in this setting, under this zoning have some value.

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[85] MCL 211.1.
[86] Exhibit J2, p. 2.

In any case, Schaal valued wet property, per Exhibit R14 when determining the price per acre. Comparable P-3 has a significant amount of wet land, yet Schaal valued the gross land in using this parcel in part to determine his price per acre. To simply remove the wet acreage from his calculation of value, while using another comparable with wetlands and no adjustment within to develop a price per acre is error, and magnifies the effect of swampy water on the property. Accordingly, the Tribunal rejects Schaal's determination that the wet area has no value, and will use a price per acre that includes the wet, along with other portions of the parcel.

Respondent also exaggerates the effect of wetness on the subject property. Johnson positively adjusted dry parcels because they lacked water frontage. He did so, despite admitting that he had never walked the subject property to observe whether or not Plaster Creek was a healthy creek, or a mere drainage ditch. His explanation that the Creek was a water feature on the neighboring golf course across Schaffer road is unconvincing, as it is not a direct observation of a feature that by its very nature, is changeable over its course. Accordingly, the Tribunal finds Johnson's comparison of this feature to a trout creek with a waterfall to be baseless.

Listing of subject property

Respondent subpoenaed three witnesses, and successfully compelled the attendance of one witness, John Cross, to demonstrate that the property has been, and is currently the subject of a listing for $1,450,000 in 2015 and $1,600,000 currently. Cross also testified that he had an option to purchase the property in 2017 for $1,250,000.[87] The first problem the Tribunal has with accepting a listing as evidence of value is a listing is not a sale. If a sale is a meeting of the minds, a listing is the equivalent of half a hand-shake. This is consistent with other Tribunal decisions. In one decision, we opined, "[w]hile an offered property is an indication of market intentions, its impact does not take the place of a closed sale of a property."[88] In another decision, we opined:

> The probative value underlying the results achieved after consideration of actual closed sale transactions far exceeds any inference that may be drawn from a mere offer to sell that may at best mirror the seller's unguided guess as to the value of its property.
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> While we would grant Petitioner here that, under the prevailing market conditions during the relevant time period, a listing price likely represents a "ceiling" on value, meaning that a potential buyer would not likely be willing to pay more than

[87] Tr.78.
[88] *WCY Realty v Fairhaven Twp* 21 MTT 563, 571 (2012).

> the listing price for the property, it is not, standing alone, a conclusive indicator of the Subject's market value for several reasons.[89]
>
> Finally, while it is widely accepted that the price for which a given property actually sells is a probative index of the property's true cash value, it is not, by itself determinative. See *Antisdale v Galesburg*, 420 Mich 265; 362 NW2d 632 (1984); *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 405; 576 NW2d 667 (1998); *Samonek v Norvell Twp*, 208 Mich App 80, 85; 527 NW2d 24 (1994). If the actual selling price of a parcel of property is not accorded conclusive probative value, it is difficult to see why such weight should be accorded the list price which reflects the seller's unsuccessful marketing efforts.[90]

"[M]arket listings lack a 'meeting of the minds' of buyer and seller and should be utilized only as ancillary data to consummated transactions."[91]

USPAP requires the disclosure of a listing,[92] as it also requires a three year sales history. While an asking price is indicative of a price ceiling, it is not very good evidence of a floor for the price of real estate. As Cross testified, the phone has not been ringing off the hook for the subject property while it has been listed.[93] Nor did Cross indicate that he would exercise his option to purchase the property at $1,250,000. Even if he was so willing, that option was given to him in 2017, which is not necessarily indicative of the market for this property in 2014; especially as the subject had been purchased at auction 3 months before the 2015 valuation date for a mere $48,790.[94]

These problems in using a listing to determine a value are compounded in the present case by Petitioner's contention that the person signing on behalf of the Petitioner had no authority to do so. While attorney's arguments are not evidence, Petitioner's counsel made an affirmative representation to the Tribunal in response to a question from the bench that his office prepared the documents creating Petitioner, and that he was in position to know that the signor, Mark VanderPloeg had no authority. The Tribunal has no reason to believe that Petitioner's counsel would deliberately mislead the Tribunal, and expose himself to possible sanctions by

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[89] *Roger J Christel Liv Trust v City of Centerline* 23 MTT 202, 210 (2012).
[90] *Id*., 210.
[91] *Lowes Home Centers Inc v City of Grandville* 23 MTT 543, 557(2013).
[92] Standards Rule 1-5(a).
[93] Tr.77.
[94] Joint Stipulation of Fact #8. As pointed out in *Christel*, the Tribunal is not required to accept the actual sales price as determinative of the subject's TCV. See MCL 211.27(6). As the subject sold at public auction, the sales price will not be considered the subject's "usual selling price." See MCL 211.27(1).

making false statements in this regard. Accordingly, this evidence of a half a hand-shake offered by Respondent is even less convincing or reliable in the present case for determining the subject's true cash value for tax year 2015.

Special Assessments

Petitioner's opening statement sets forth that the subject was subject to two special assessments in excess of $400,000, and Exhibit J9 shows one of these special assessments to be in the amount of $50,000 annually to cover $396,795.51 in principal, plus interest, commencing in 2014, and running until September 2024. This raises the issue as to whether the special assessments have an effect on true cash value.

In *Hartland Glen Development LLC v Hartland Twp*,[95] the Michigan Court of Appeals reversed the Tribunal's decision that a special assessment was akin to an outstanding mortgage and had no effect on true cash value, and remanded the case to determine its effect. However, unlike the present case, the special assessment itself in *Hartland Glen* was under appeal in a separate case, presumably under the theory that the benefit was not proportional to the tax on the property. The property, a golf course, was assigned 144 Residential Equivalent Units, based upon its size, for residential unit sewer taps. Further, the township's appraiser in *Hartland Glen* conceded that the special assessment might lower the true cash value.

In the present case, Schaal opined for the Petitioner that the special assessment had a neutral effect on value, because "these type of costs are inherent in doing development, infrastructure, so you're going to pay them sometime…".[96] This situation contrasts with *Hartland Glen*, where the subject in that case was a golf course, rather than a residential development property, and thus not in need of 144 hook-ups for water taps. While Respondent cross examined Schaal as to whether he was even aware of the special assessments, and whether the assessments might be for landscaping rather than water and sewer infrastructure, the answers suggested a neutral impact on true cash value.[97] Having no evidence to the contrary, the Tribunal accepts Schaal's testimony that the special assessments were a neutral factor as to true cash

[95] *Hartland Glen Development LLC v Hartland Twp* unpublished opinion per curiam of the Court of Appeals, issued February 19, 2016 (Docket No. 318843).
[96] Tr. 33.
[97] Curiously, Respondent's questions implied that perhaps Schaal over-valued the subject. In any case, no credible evidence was introduced, and no evidence was admitted as to the actual nature of the improvements to be funded by the special assessment district. Respondent's witness was unable to testify as to the nature of the improvements to be funded by the assessment.

value. A developer would have to pay at some time to bring infrastructure to the vacant parcel. As the special assessment was already in place, for land zoned PUD for residential development, (as opposed to a golf course), it is a question of paying now, or paying later.

Price per Acre

Both valuation experts determined a price per acre, which was applied to the acreage of the subject property. As stated above, the Tribunal finds that the preferable methodology presented in this case is to determine the price per acre for the gross acreage.[98] There is a dispute as to the size of the subject. Petitioner's appraisal shows the gross area of the subject to be 73.60 acres. Respondent demonstrated that Petitioner relied upon a 2003 engineering drawing, which, after the property was sold and split in 2005, did not accurately reflect the current dimensions or acreage of the subject. Accordingly, the Tribunal finds that Respondent's determination of 74.11 acres to be the correct measurement of the subject as it is currently configured. However, this slight difference in size will not significantly affect the value.

Reliability of adjustments

Both valuation experts used quantitative adjustments to their comparables. Johnson's adjustments were uniformly large for each of his nine comparables. The purpose of performing adjustments is succinctly stated in the treatise, *Appraising Residential Properties*:[99]

> **Purpose of Adjustment**
> A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property. As the comparable is made more like the subject its price is brought closer to the subject's unknown value.

Theoretically, in a perfect market, ideal adjustments would lead to the exact value of the subject. In the real world, proper adjustments should lead to a narrower range of values than unadjusted purchase prices. What stands out in Respondent's valuation is that eight of nine comparables are upwardly adjusted. If R-5 (which is almost $7,000 per acre higher than the next highest

[98] Perhaps a better unit of comparison for this type of property is to determine the number of units that could be developed on the property. Cross indicated that he looked at that number in deciding upon a list price. However, the Tribunal must weigh the evidence it has, rather than evidence it would prefer to have. As neither party presented a valuation including this unit of comparison, nor could affirmatively state how many units could be developed, the Tribunal will use price per acre.

[99] Appraisal Institute, *Appraising Residential Properties* (Chicago: Appraisal Institute, 4th ed, 2007), 334.

comparable and contains two actively rented homes plus a third home) is removed from the data set, the spread of values for the remaining eight comparables broadens, rather than narrows.[100]

It is also noteworthy that with the exception of R-5, each adjusted value is significantly increased over the actual purchase price. The net increases of adjusted price over purchase price for the remaining eight comparables range from 18.68% net for R-4 to 46.86% for R-8. Johnson's upward adjustments also fail to bracket the subject. Bracketing, as stated in *The Appraisal of Real Estate* is extremely helpful in reaching a reliable result. The treatise states:

> Reliable results can usually be obtained by bracketing the subject between comparable properties that are superior and inferior to it. If the comparable properties are either all superior or all inferior, however, only an upper or lower limit of values is set and no range (or bracket) of possible values for the subject can be defined. For example, if all the comparable properties are inferior in terms of qualitative factors, the only conclusion the appraiser can draw is that the value of the subject property is higher than the highest value indication for the comparable properties. The appraiser must search the market diligently to obtain and analyze sufficient pertinent data to bracket the value of the subject property. If the available comparable sales do not bracket the subject's value, the appraiser should consider employing other analytical techniques to establish such a bracket. Quantitative adjustments to the comparable sales can often serve this purpose.[101]

Here, Johnson boosted each sale by a significant amount, and with the exception of R-5, had no comparable as an upper limit on value, based upon his adjustments.

Johnson used quantitative adjustments. As to specific adjustments, Johnson adjusted 8 of his 9 comparables by 20% for location. In his explanation of this adjustment, he talked about city services, and the presence of two major shopping malls and charter schools.[102] He also testified that the 20% figure came about in reliance upon his years of experience as an assessor.[103] Likewise he made a significant adjustment between 10-20% for the presence of utilities. Seven of his comparables were adjusted +5% for the absence of "water front".

In making quantitative adjustments, *The Appraisal of Real Estate* recommends using the following techniques:

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[100] The range of unadjusted prices not including R-5 ranges from $6,856.27 per acre for R-9 to $19,803.37 per acre for R-4, a range of $12,947.10 per acre. Using Johnson's adjustments these comparables now range from $9,291.10 for R-9 to $23,503.62 for R-4; a range of $14,212.52 per acre.
[101] Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), 404.
[102] Tr. 106-107.
[103] Tr. 131.

> In applying quantitative adjustments, quantitative analysis, or both, appraisers must ensure that their reasoning is clear and adequately explained in the appraisal report. The extent of narrative explanation required also depends on the complexity of the property being appraised. The more complex the property, the more factors that must be considered in the ana1ysis and then explained to the intended users of the appraisal.
>
> **Quantitative Adjustments**
> Several techniques are available to quantify adjustments to the sale prices of comparable properties:
> • data analysis techniques such as paired data analysis, grouped data analysis, and secondary data analysis
> • statistical analysis, including graphic analysis and scenario analysis
> • cost-related adjustments (cost to cure, depreciated cost)
> • capitalization of income differences
>
> Appraisers can usually find some logic to support most quantitative adjustments given the number of tools available to them.[104]

Rather than using any type of data, or statistical analysis to determine the amount of his adjustments, Johnson instead relied upon his experience as an assessor. As he has only worked as an assessor for the City of Kentwood, it is unclear how that experience would give him insight into other communities he has neither appraised nor assessed.

In defending his location adjustment, Johnson substituted a litany of praise for Kentwood, worthy of a Fourth of July speech by a city council candidate, in place of data. While civic pride has its place, boosterism is a poor substitute for statistics and analysis. Accordingly, the Tribunal finds the location adjustment to be unreliable. Similarly unreliable is Johnson's 5% adjustment for waterfront. Johnson testified that he never set foot on the subject. Yet, he is comparing it to a trout stream, and offers no data in support of this adjustment. As for his "wooded" adjustment, where he adjusts non-wooded parcels upward to reflect his personal preference for a wooded development, there is no discussion, or any consideration of additional costs a developer would incur to clear the property in order to build upon it. Even his utility adjustment, which might in theory, be the most defensible, is not supported by anything more than Johnson's judgment. Johnson also made adjustments for size and time. While the Tribunal agrees that adjustments were warranted, the Tribunal was not given any basis to determine

[104] Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), 398.

whether the amount of the adjustments were verifiable. Again, the Tribunal was left to trust Johnson's judgment.

As to whether Johnson's adjustments should be taken on faith, what he failed to adjust for is also telling. None of his comparables were adjusted for zoning, even though per the marketing descriptions provided in his valuation, some parcels were available for development, while others needed permission from local government. Some of the comparables were being marketed as a single family estate.[105] None of Johnson's comparables appeared to be subject to a PUD. Yet, zoning was not taken into consideration as a factor. The adjustments made by Johnson appear to reflect a result oriented valuation, rather than an objective one. Accordingly, the Tribunal will ignore all of Johnson's adjustments as unreliable.

Petitioner's appraisal was much more sparing in adjustments. However, Schaal also testified that the quantitative adjustments were based upon his experience and judgment, rather than data. The location adjustment was mainly based, per Schaal's testimony, on the quality of the school system. Until prompted by counsel, Schaal started to testify that his school rankings were based upon his three decades of experience. After prompting, he testified that he relied upon an internet site which provided a ranking.[106] Respondent brought forth evidence that the internet site relied upon periodically changed its rankings of schools. In any case, there was no data quantifying the difference that the specific school district makes in terms of price per acre. Nor did Great Lakes Appraisal disclose any data used to quantify its size adjustment. No such information was provided either in the appraisal, or in the work file.[107]Again, the Tribunal is left with someone's judgment over data.

Also telling is the fact that the appraisal relied upon by Petitioner made no adjustments for time, even though comparable sale P-3 sold in 2013 and comparable sale P-4 sold in 2012. When asked whether this was an oversight, he began to talk about the economic downturn in 2011, causing people to meet in the capital regarding the world economy crashing.[108] After his rendition of recent history, he stated:

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[105] Whether these comparables have the same highest and best use and are appropriate will be discussed below.
[106] Tr. 31-32.
[107] The work file was admitted into evidence as Exhibit R13.
[108] Tr. 61-62. The deep recession he referred to, resulting in meetings in the capital actually commenced in late 2008.

> So, yes, you asked me if it's oversight. No, it's not oversight; it's fully considered. The reason we didn't make a time adjustment is because of those, what was going on during those years that we're talking about. There was absolutely no appreciation, in fact, was unsure where the bottom of the market was.[109]

While Schaal's statement may have been true in 2011, or possibly true as of the valuation date in 2014, his company's appraisal assignment was for a retrospective appraisal, which he provided on June 30, 2015.[110] By that date, it should have been clear to Schaal and his associates that the extremes of the economic crisis had passed for this region of Michigan, and values were starting to trend up. The fact that his two oldest comparables were his lowest comparables after the adjustments he did apply, is evidence in and of itself that a time adjustment would have been helpful. The Tribunal finds this lack of adjustment indicative of a result oriented valuation, rather than an objective one. While Schaal adjusted for size, the Tribunal was left to trust his judgment, rather than any data that determined the amount of his adjustments. Accordingly, the Tribunal will also disregard adjustments found in Petitioner's appraisal.

Selection of Comps

Both valuations found that the highest and best use of the subject is for residential development.[111] As set forth in *Appraising Residential Real Estate*, "[i]n the sales comparison approach, highest and best use analysis serves as a test in the selection of comparables."[112]

Respondent's valuation used nine sales comparables. R-3, which sold for $14,032.26 per acre was marketed as a single family residence, with the comments stating, "a farmhouse ready for renovation or remove the farmhouse to build yourself a dream home. Splits may be available," While development of R-3's 31 acres might be a possibility, it is questionable as to whether this meets the highest and best use of the subject. R-4 was clearly not sold as a spot for residential development. Its marketing line was "Great opportunity for Exclusive Home Site or Site Condo." In fact, the property was purchased, per the deed as "husband and wife," rather than as an LLC, thus suggesting that this sale was not for development. As it has a different highest and best use, the Tribunal holds that its sales price is not indicative of the true cash value of the subject. R-6 also has issues with the subject's highest and best use, as its marketing

[109] Tr. 62.
[110] Exhibit R9, p. 2.
[111] See Exhibit P9, p. 23, Exhibit R1, p. 18.
[112] Appraisal Institute, *Appraising Residential Properties* (Chicago: Appraisal Institute, 4th ed, 2007), p. 223.

indicated that it is zoned to allow only 1 unit per acre, which is wholly inconsistent for the use of the subject, which per Respondent, has a PUD site plan in place allowing much more density. As mentioned above, there was no adjustment for zoning. Similarly, R-7 and R-8 were touted as containing a house. R-7 was also sold to a husband and wife, suggesting that it was bought as a residence, rather than as a site for developing a subdivision or condominium. R-8 was marketed as a horse farm with "42 serene and secluded acres." Again, this appears to have a different highest and best use. Finally, R-5 had three homes on it, two of which were rented. Again, this appears to be a different highest and best use, and may account for its outlier price of $26,821 per acre.

Along with issues as to whether the above-noted comparables had the same highest and best use as the subject, Johnson also had two comparables from 2012, and two from 2013. R-6 sold on March 30, 2012, and R-8 sold on June 12, 2012. R-7 sold on October 31, 2013, while R-9, per Johnson's testimony, was sold in 2014 pursuant to a land contact entered into in 2013. As the valuation date for the 2015 tax year is December 31, 2014, the Tribunal finds that these sales are stale, and do not reliably indicate the market as of the date of valuation. Respondent uses several sales comparables which sold after the date of valuation, for which he was criticized. However, the Michigan Court of Appeals has long held that sales after the date of valuation should be considered.[113] Similarly, R-2 and R-5 which sold in 2016 are somewhat remote from the date of sale. However, the Tribunal will consider R-2 which is similar in size and use. The Tribunal will also consider R-3 because it was sold with splits available, it might be used for development. The Tribunal will also consider R-1, even though it was the most heavily adjusted comparable by Johnson, and R-9 because it was used by both experts.

As for Petitioner's comparables, the Tribunal rejects P3 as a comparable because it only has 11.13 acres, and half of that acreage, per Exhibit R14 is wet. The Tribunal also rejects P-4 as a valid comparable to the subject. Not only is P-4 a stale sale, having sold April 30, 2012, it was a bank sale. The Tribunal will consider P-1 and P-2. It is notable that each expert has ascribed a different amount of acreage to this comparable. Petitioner lists its size as 76.36, while

[113] *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353; 483 NW2d 416 (1992).

Respondent lists its size as 78.76. The Tribunal will use Respondent's size and price per acre, as it matches the marketing statement.[114]

The comparables left for consideration, in order of unadjusted sales price are as follows:

P-2/R-9	$6,856 per acre	78.76 acres	sold 12/27/13 on l/c
R-1	$9,625 per acre	40 acres	sold 4/15/15
P-1	$11,889 per acre	44.58 acres	sold July 2, 2014
R-2	$12,000 per acre	42 acres	sold 8/12/16
R-3	$14,032 per acre	31 acres	sold 7/2/15

In reconciling these comparables, the Tribunal notes that P-2 is most similar in size. However, its sale date is more remote because of the land contract entered into earlier. P-1 sold in July of 2014, and is close to the valuation date. R-1 also sold close to the valuation date, but has a house and barn. R-2 is the most recent sale, and did not have improvements on the land. R-3 which has the highest sales price is apparently not yet zoned for the same use as the subject. Each of the comparables accepted have their flaws.

P-2/R-9 is most similar in size, and is larger than the gross area of the subject, and is the only sale both valuation experts had in common, but is the oldest sale. P-1 is smaller than the subject, but closest in size of the remaining 4 comparables, and is relatively close to the valuation date. R-2 is much more recent, but is close in size and in price per acre of P-1. As with P-1 and the subject, there were no improvements on the land. Accordingly, the Tribunal finds that P-1 is most similar to the subject, and the best indicator of value at $11,889 per acre. Multiplying that price by 74.11 acres produces a total of $881,093.79. Rounding that figure, the Tribunal holds that the subject's true cash value is $881,000. The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject property's TCV, SEV, and TV for the tax year(s) at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's 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.

[114] Exhibit R1, p. 92.

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 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, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, and (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%.

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

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[115] Because the final decision closes the case, the

[115] See TTR 261 and 257.

motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.[116] A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.[117] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[118]

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[119] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[120] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[121]

By_____David B. Marmon_____

Entered: May 11, 2017

[116] See TTR 217 and 267.
[117] See TTR 261 and 225.
[118] See TTR 261 and 257.
[119] See MCL 205.753 and MCR 7.204.
[120] See TTR 213.
[121] See TTR 217 and 267.