

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

Turnberry Investors, LLC,  
Petitioner,

v

MTT Docket No. 422485

West Bloomfield Township,  
Respondent.

Tribunal Judge Presiding  
Steven H. Lasher

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Turnberry Investors, LLC, appeals ad valorem property tax assessments levied by Respondent, West Bloomfield Township, against 37 vacant parcels for the 2011 tax year. Jerome Pesick and Jason C. Long, Attorneys, represented Petitioner, and Derk W. Beckerleg, Attorney, represented Respondent.

A hearing on this matter was held on November 5, 2013. Petitioner's witnesses were Randy Martinuzzi, Petitioner's Project Manager, and Jumana Judeh MAI, Michigan Certified General Real Estate Appraiser. Respondent's witness was Daniel Sears, Certified Master Assessing Evaluator and Michigan Advanced Assessment Officer.

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 properties for the 2011 tax year are as follows:

**Parcel Number:** 18-30-327-007

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-008

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-009

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-010

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-011

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-012

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-013

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-014

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-015

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-016

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-017

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-018

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-019

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-020

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-021

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-022

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-023

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-024

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-025

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-026

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-027

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-028

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-029

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-030

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-031

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-038

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-039

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-040

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-041

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-042

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-043

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-044

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-045

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-046

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-047

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-048

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

**Parcel Number:** 18-30-327-049

Year	TCV	AV	TV
2011	\$20,000	\$10,000	\$10,000

### PETITIONER'S CONTENTIONS

Petitioner contends that the evidence presented in this case strongly supports a determination that the true cash value of the subject properties on the assessment rolls is substantially overstated. Specifically, Petitioner contends that: (i) this appeal involves 37 vacant condo sites in a partially developed condominium project, (ii) the parcels are located at the intersection of a heavily trafficked area, with the main entrances located on main roads in close proximity to the intersection, (iii) the location of the parcels gives some undesirable residential views of Maple Road, a large shopping center, or a bank, (iv) the subject parcels were acquired in distress, during a down market, and this had some impact on the marketability as of December 31, 2010, (v) Respondent selected comparables in two luxury subdivisions, with no commercial views or traffic, that are not part of the same market as the subject parcels, and (vi) Respondent did not try to adjust the comparables to the subject parcels.

As determined by Petitioner's appraiser, the TCV, SEV, and TV for the subject properties for the tax years at issue should be as follows:

**Parcel Number:** 18-30-327-007

Year	TCV	AV	TV
2011	\$15,000	\$7,500	\$7,500

**Parcel Number:** 18-30-327-008

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-009

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**Parcel Number:** 18-30-327-015

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**Parcel Number:** 18-30-327-023

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-024

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-025

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-026

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-027

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-028

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-029

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**Parcel Number:** 18-30-327-031

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-038

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-039

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-040

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-043

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**Parcel Number:** 18-30-327-045

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**Parcel Number:** 18-30-327-046

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-047

Year	TCV	AV	TV
2011	\$15,000	\$7,500	\$7,500

**Parcel Number:** 18-30-327-048

Year	TCV	AV	TV
2011	\$15,000	\$7,500	\$7,500

**Parcel Number:** 18-30-327-049

Year	TCV	AV	TV
2011	\$15,000	\$7,500	\$7,500

PETITIONER'S ADMITTED EXHIBITS

P-1 Appraisal, Judeh & Associates, dated August 7, 2013.

P-4 Vacant land sales comparable detail sheets.

### PETITIONER'S WITNESSES

Randy Martinuzzi

Randy Martinuzzi is Petitioner's Project Manager. He testified that: (i) Petitioner acquired the subject property on July 13, 2010, which included all 49 condominium units, two buildings in different degrees of construction, the office parcel of 2.2 acres at the front end of the subject property and another parcel in Detroit, for a price of \$750,000, (ii) the amount of the purchase price allocated to the subject property was \$1,200 per unit to the subject 37 parcels, (iii) the subject site is about 13 acres, with 40% being buildable and 60% being wetlands or woodlands, (iv) Building 7 had a temporary certificate of occupancy at the time of purchase with various units in different development stages, with one unit that sold in 2007 and four other units at 90% - 95% complete and another unit at 30% complete, (v) Building 4 was about 25% complete, but there was a lawsuit by the township to condemn the building with a consent judgment entered to tear the building down, (vi) Petitioner acquired the property and was prepared to step into the defunct developer's shoes and go through what needed to be done on the property, (vii) the subject is planned for attached condos, not site condos, with 10 buildings of various sizes containing a total of 49 units, (viii) the floor plans for the individual units have sizes ranging from 1,600 square feet to 2,400 square feet, (ix) Petitioner built 4 units at 3,000 square feet, but has not been able to sell them, (x) Petitioner sold two units in 2010 for \$175,000 and \$230,000, (xi) the development plan for the property has changed from what is depicted on page 22 of P-1, with buildings 3, 5, and 6 being modified because they have not been able to sell those middle units, and (xii) 0.28 acres is what has been used by both Petitioner's

appraiser and Respondent as the size per lot, but he believes the actual size per acre of each lot is about 0.03 to 0.05 acres. [Transcript at 9 – 42.]

Jumana Judeh

Jumana Judeh, Michigan Certified Real Estate Appraiser, was admitted as Petitioner's valuation expert in this matter. She testified that: (i) the Maple/Haggerty intersection is a developed, highly-travelled intersection, especially during rush hour, and there is a tremendous amount of commercial development up and down Haggerty, (ii) the subject attached condo subdivision was designed to accommodate 49 units, with a large percentage of the site being unusable and unbuildable, (iii) Respondent allocated 0.28 acres per individual parcel, which is what she used in the appraisal, however, the true size of each unit is much smaller, consisting of the building footprint, driveway and small backyard, (iv) the parcels are zoned multi-family RM and that is her opinion of highest and best use, (v) the cost approach and income approach were not applicable in valuing the subject parcels, so only the sales comparison approach was developed, (vi) the difficulty in valuing the subject is finding vacant land sales that are true comparables to the subject given that the parcels are attached condos, (vii) comparable #1 sold for \$1.52 per square foot, not the \$1.97 value incorrectly listed in the appraisal, and is superior to the subject in that it has lake privileges and is smaller, and it also is on a subdivision and not near a main road, (viii) comparable #2 was incorrectly labeled in the appraisal as Hazel Trail, when it should say Hazel Terrace, and was 11,326 square feet, not the 11,340 listed in the appraisal, was not located near a major traffic artery and has lake privileges that were not adjusted for because it was also partially wooded, (ix) comparable #3 was also part of a failed subdivision, did not have lake privileges, and was a corner lot not located near a

major traffic artery, (x) comparable #4 was used because of its close proximity to a major traffic artery and abuts a commercial district like the subject, (xi) she placed greater weight on comparables #2 and #3 since they were located in the same school district as the subject, and selected the median value of \$1.25 per square foot to determine a value for the 37 parcels, (xii) she believes the two points of access to the subject from Maple and Haggerty has a negative impact on value because both roads are heavily travelled, (xiv) she also believes the wetlands on the property may have been a prohibitive factor to the development, but she was informed that the 37 parcels are buildable, (xv) she believes that the comparables she selected were all zoned single-family residential, (xvi) comparable #1 had lake privileges that were given a negative 10% adjustment, based on discussions with a listing agent, but she did not contact anybody to confirm what the privileges were, (xvii) comparable #2 was sold by a mortgage company, but was listed with an agent and marketed for 189 days which is a strong indication that it was an arms-length transaction, (xviii) comparable #3 was a bank sale, but she verified the details with the listing agent and was told that the purchase price was indicative of its true market value and was sufficiently marketed, (xix) the grantor for comparable #4 was a trust and the property was marketed for 174 days, and (xx) she considered making location adjustments to comparables #1 - #3, but it was difficult to extract and no adjustment was made, although it was taken into consideration in the appraisal. [Transcript at 43 – 131.]

#### RESPONDENT'S CONTENTIONS

Respondent contends that the true cash, assessed, and taxable values initially determined by Respondent for the 2011 tax year at issue should be affirmed. Specifically, Respondent contends that: (i) the sales comparison approach prepared

by Petitioner's appraiser used two bank sales that do not constitute the market for this kind of property, (ii) Petitioner's appraiser relied on a lot of secondhand knowledge in terms of wetlands and details of the purchase of the properties, with little or no verification with respect to the two comparables relied on, (iii) Petitioner's appraiser made very few adjustments to the comparables, and did not have information on the type of lake privileges available for the comparables, (iv) Petitioner's appraiser used two bank sales in her appraisal, but these types of sales are not okay to use<sup>1</sup>, and the MLS for comparable #2 stated it was a drastically reduced bank sale, (v) the assessments of the parcels not only are supported, but are actually lower than they ought to be, based on Respondent's valuation disclosure, (vi) Respondent is not asking that the Tribunal increase the values based on the valuation disclosure submitted, and (vii) the subject parcels are in an upscale subdivision, they are just attached condos.

As determined by Respondent's expert, the TCV, SEV, and TV for the subject property for the tax years at issue should remain at the values set by the March Board of Review, as listed under the Findings of Fact.

#### RESPONDENT'S ADMITTED EXHIBITS

R-1 Valuation Disclosure, dated July 17, 2013.

R-3 MLS Listing for Petitioner's Comparable #2.

R-4 MLS Listing for Petitioner's Comparable #3.

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<sup>1</sup> "We can all talk about the market in 2010 and how everybody realizes that yes, it's okay to use distress sales and foreclosure sales. It's not. And I don't think that's the law in the state of Michigan, and I don't think that's the law in this tribunal." [Transcript at 225.]

## RESPONDENT'S WITNESS

### Daniel Sears

Daniel Sears, Certified Master Assessing Evaluator and Michigan Advanced Assessment Officer, was admitted as Respondent's expert in assessing and property valuation. Mr. Sears testified that: (i) he appraised the subject properties as of December 31, 2010, (ii) he has inspected the subject properties five or six times as part of his responsibilities with new developments, (iii) he could not verify the actual purchase price of the subject parcels, as the recorded document reflects \$1 and was not able to find a transfer affidavit in the township records, (iv) the subject parcels are on the northeast corner of Maple and Haggerty Road with good access to major roads, (v) the parcels are zoned multi-family residential which is also the highest and best use, (vi) he used the modified cost approach and sales comparison approach to value the subject parcels, (vii) there were no distressed sales used in the sales comparison approach he prepared because based on his observations and review of sales in the area, there was a sufficient market of non-distressed sales, (viii) his sales comparison approach included three sales that occurred in late 2009 and two sales that occurred in 2010, (ix) all five comparables selected were located in the same school district as the subject parcels and were approximately the same size, (x) the comparables were from single-family subdivisions because he was unable to locate any comparable vacant condo site sales in the township, (xi) the price per square foot of the comparables was significantly higher than the true cash value per square foot of the subject parcels, (xii) the comparables selected were in upscale subdivisions, (xiii) under the cost approach, the original assessed value per parcel was \$20,000, that was reduced to \$15,000 by the March Board of Review, (xiv) the final conclusion of value in the valuation disclosure is \$30,000 true cash per parcel,

based on the modified cost approach and supported by the sales comparison approach, (xv) there is nothing in the valuation disclosure that is labeled as a cost approach, (xvi) the 0.28 acres attributed to each parcel is a result of dividing the total 13.65 acres by the 49 total parcels, although the 13.65 acres is believed to include the roads, open space, wetlands, detention basins, and other requirements of the condo site, (xvii) the \$40,000 true cash value under the cost approach was derived by allocation of the site, based on land to building ratios derived from working with developers to find out what they are charging for lot values, speaking with buyers and sellers, and recorded documents, (xviii) the valuation disclosure does not provide the detail of how the \$40,000 true cash value per lot was derived or how the \$30,000 per lot value determined by the March Board of Review was derived, (xix) he does not agree with the statement made in Petitioner's appraisal regarding the wetlands having a direct effect on the subject parcels' functional utility, as the nature preserves would be an enhancement to the property, (xx) he is not aware of any newer development just south of the subject as stated on page 39 of Petitioner's appraisal, (xxi) the township records reflect that comparable #1 had a certificate of forfeiture on April 1, 2009, comparables #2 and #3 were bank sales, and #4 was an estate sale, but were indicated in the appraisal as arms-length, and (xxii) in addition to the use of bank sales, he also disagrees with using comparables #1 and #2 which were a distance away when he was able to find comparables closer to the subject.

[Transcript at 131 – 207.]

#### FINDINGS OF FACT

1. The subject properties consist of 37 vacant condominium lots located in the Turnberry Park Subdivision, West Bloomfield Township, Michigan, Oakland County.



2. The subject properties were assessed for the tax years at issue as follows:

**Parcel Number:** 18-30-327-007

Year	TCV	AV	TV
2011	\$30,000	\$15,000	\$15,000

**Parcel Number:** 18-30-327-008

Year	TCV	AV	TV
2011	\$30,000	\$15,000	\$15,000

**Parcel Number:** 18-30-327-009

Year	TCV	AV	TV
2011	\$30,000	\$15,000	\$15,000

**Parcel Number:** 18-30-327-010

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-011

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-012

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-013

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-014

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-015

Year	TCV	AV	TV
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2011	\$30,000	\$15,000	\$15,000
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**Parcel Number:** 18-30-327-016

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-017

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-018

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**Parcel Number:** 18-30-327-022

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**Parcel Number:** 18-30-327-023

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-024

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-025

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-026

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-027

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-028

Year	TCV	AV	TV
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**Parcel Number:** 18-30-327-029

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Year	TCV	AV	TV
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3. The subject properties are zoned RM – Multiple Family Residential, which is also their highest and best use.
4. Turnberry Park Subdivision consists of a total of 49 lots, with a total size of 13.65 acres. Each lot size is allocated at 0.28 acres.
5. The Subdivision is located near the northeast corner of Maple and Haggerty Road.
6. There are woodlands/wetlands present within the Subdivision.
7. The subject parcels are planned for attached condos.
8. Petitioner’s appraiser prepared a sales comparison approach utilizing four sales (one from 2009 and three from 2010), and arrived at an adjusted value of \$1.25 per square foot, rounded to \$15,000 per parcel.
9. Petitioner’s comparable #2 was sold by a mortgage company, #3 was sold by a bank, and #4 was sold by a Trust.
10. Petitioner’s comparable #1 had unspecified lake privileges for which a 10% adjustment was made and #2 also had lake privileges but was not adjusted because it was partially wooded.
11. Petitioner’s appraiser placed most reliance on comparables #2 and #3 in arriving at the conclusion of value.

12. Respondent's original cost approach on the property record card assessed a true cash value of \$40,000 per parcel, which was reduced to \$30,000 by the March Board of Review.
13. Respondent submitted a sales comparison approach utilizing five sales (three from 2009 and two from 2010) located in upscale subdivisions, with no adjustments made for differences.
14. Respondent's sales comparables had unadjusted values of \$6.28 to \$14 per square foot.
15. Both parties selected sales comparables that were single-family residential lots.
16. Both parties relied on the 0.28 acres per parcel as reflected by Respondent's assessments.

#### 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. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50 percent . . . . Const 1963, art 9, sec 3.

The Michigan Legislature has defined "true cash value" to mean:

. . . the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale

except as otherwise provided in this section, or at forced sale. MCL 211.27(1).

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

Under MCL 205.737(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. See *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. See *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485-486; 473 NW2d 636 (1991).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735a(2). The Tribunal's factual findings are to be supported by competent, material, and substantial evidence. See *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990). “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.” *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

“The petitioner has the burden of proof in establishing the true cash value of the property.” MCL 205.737(3). “This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of

the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party.” *Jones & Laughlin* 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. See *Meadowlanes* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966), aff’d 380 Mich 390 (1968). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. See *Antisdale*. 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. See *Antisdale* at 277. In this regard, given that the subject Parcels are unimproved, the Tribunal finds that the cost and income approaches to value are not appropriate. The Tribunal further finds that the sales comparison approach is appropriate in determining the true cash value of the subject Parcels for the tax year at issue.

With respect to the use of the cost approach to value the vacant parcels under appeal, Respondent’s contention of value is based on what it terms the “modified” cost approach, Respondent is requesting that the 2011 March Board of Review determination of true cash value at \$30,000 be adopted by the Tribunal. The problem with Respondent’s position is that there has been no evidence put



forth by Respondent to support the asserted \$30,000 value, or the original \$40,000 true cash value assessed prior to any Board of Review action. While the 2011 property record cards were submitted with Respondent's valuation disclosure, Respondent did not submit evidence of the land value sales or other methodology used to set the original assessment or any evidence of the revised \$30,000 true cash value established by the March Board of Review. The Court of Appeals has stated that a "property's assessed valuation on the tax rolls carries no presumption of validity." *President Inn Props LLC v Grand Rapids*, 291 Mich App 625, 640; 806 NW2d 342, (2011). However, "the Tax Tribunal may adopt the assessed valuation on the tax rolls as its independent finding of TCV when competent and substantial evidence supports doing so." *Id.* In the present case, there is no competent or substantial evidence to support an independent determination by the Tribunal to adopt the original assessed valuation on the tax roll or the reduced March Board of Review value. Accordingly, the Tribunal must examine the only other evidence presented in this appeal, the parties' sales comparison approaches, to establish the correct valuation of the subject parcels for the 2011 tax year under appeal.

The Tribunal finds that both parties presented a flawed sales comparison approach. As an initial matter, both parties utilized the 0.28 acres per parcel contained in Respondent's assessment, although Petitioner asserted that the actual lot size available to each owner would be smaller. Petitioner did not, however, provide an estimate or evidence of what it believes was the correct lot size, and its appraiser utilized 0.28 acres in her analysis. Similarly, although the subject parcels are site planned as attached condos, both parties utilized single-family residential lots as comparables, with no adjustment made or suggested for any difference in value these types of lots may represent. There was also some dispute between the

parties with respect to the woodlands/wetlands present in the Subdivision, with Petitioner's appraiser contending that the woodlands/wetlands may have been a prohibitive factor to the development. Petitioner's appraiser, however, did not make any adjustment for the alleged negative impact of the woodlands/wetlands, and acknowledged in testimony that the 37 parcels under appeal are buildable. [Transcript at 93.]

Petitioner's appraiser selected four vacant, single-family lot comparables. One of Petitioner's contentions is that the subject parcels are located at the intersection of a heavily trafficked area, with the main entrances located on main roads in close proximity to the intersection, however, Petitioner's appraiser made no adjustments to the comparables for this heavy traffic. Instead, Petitioner's appraiser testified that "I took into consideration the issue of traffic and close proximity to a commercial decision . . . [and] that overall some home buyers may want that, the majority of home buyers won't. So it was difficult for me to extract and I didn't adjust . . . ." [Transcript at 128.] The Tribunal finds that Petitioner failed to adequately support the 10% adjustments made for "lake privileges" for comparable #1. Petitioner's appraiser testified that she did not confirm what the level of the lake privileges for the comparable were, but in conversation with a listing agent, the agent's opinion was that "somewhere around 10 percent will be the ultimate effect on the listing." [Transcript at 123 - 124.] Petitioner's appraiser did not conduct any independent market research or verification beyond this conversation and did not verify what type of lake privileges or lake access was available for this comparable. Lastly, Respondent pointed to the fact that two of Petitioner's comparables were sold by a mortgage company or bank. It is Respondent's contention that these were distressed sales that should not have been

used. However, the Court of Appeals has affirmed the Tribunal's use of distressed sales when they are properly verified as arms-length transactions in *Kassem Abbas v City of Dearborn*, unpublished opinion per curiam of the Court of Appeals, issued December 27, 2012 (Docket No. 307084). The Court of Appeals cited a prior decision, stating "the Tribunal may not summarily reject evidence solely because a bank-owned sale is involved, but instead must determine whether the sale was in fact a forced sale." *Samonek v Norvell Twp*, 208 Mich App 80; 527 NW2d 24 (1994). Here, Petitioner's appraiser testified that comparable #2 was sold by a mortgage company, but that it was listed with an agent and was on the market for 189 days, and that comparable #3 was a bank sale, but that it was an arm's-length transaction based on her conversation with the listing agent and that it went through a sufficient marketing period. The Tribunal finds that the comparables are vacant lots, so no consideration for the condition of any buildings at the time of sale is necessary. The Tribunal further finds that distressed sales cannot be (and have not been) automatically discredited by the Tribunal in making a determination of value. Further, while comparables #2 and #3 may have been bank sales, Petitioner's appraiser was able to credibly establish that they were sufficiently marketed and not transferred among related parties and may be considered in determining the value of the subject parcels.

Respondent's expert selected five comparables, all located within the subject school district. Respondent's expert did not make any adjustments to the comparables for any differences from the subject parcels, instead indicating that the conclusion of value based on the sale price per square foot supported the current value assessed for each parcel. Respondent's expert acknowledged that the comparables are located in "upscale" subdivisions but was not aware of the value

of condos built in the subject subdivision versus the value of homes being built in the comparable subdivisions, and further stated that he believed the subject subdivision to be upscale.

The Tribunal finds that the unadjusted sale price per square foot of Petitioner's comparables ranged from \$0.74 to \$1.64, and the unadjusted sale price per square foot of Respondent's comparables ranged from \$6.28 to \$14. The \$30,000 true cash value established by the March Board of Review results in a value of \$2.46 per square foot. Upon review of the evidence and testimony presented in this matter, the Tribunal finds that the value of the subject parcels should be set at \$1.64 per square foot, or \$20,000, established by Petitioner's comparable #3. While the Tribunal is not persuaded that the value is as low as Petitioner contends, the Tribunal is also not persuaded that the subject parcels are significantly undervalued in terms of the assessment and should be substantially increased, as reflected by Respondent's sales comparables. Although Respondent did not submit any evidence to support the \$30,000 determined by the March Board of Review, Respondent also does not believe that the value of the subject parcels should be increased. The \$20,000 value is supported by Petitioner's comparable #3 given its lot size of 0.28 acres and the proximity of the date of sale to the December 31, 2010 assessment date. Additionally, while no adjustment was made for the traffic or commercial views by either party, the Tribunal finds that the testimony and photographs presented reasonably establish that the subdivision in which the subject parcels are located is impacted to some extent by its location. The Tribunal's independent determination of value in this case at \$20,000 per parcel, falls "within the range of the evidence advanced by the parties." *Pontiac Country Club v Waterford Twp*, 299 Mich App 427; 830 NW2d 785(2013).

## JUDGMENT

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

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Order within 28 days of the entry of this Order. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of the Tribunal's order. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of

1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09% for calendar year 2012, (iv) after June 30, 2012, through December 31, 2013, at the rate of 4.25%, and (v) after December 31, 2013, and through June 30, 2014, at the rate of 4.25%.

This Opinion resolves the last pending claim and closes this case.

By: Steven H. Lasher

Entered:

klm