

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

Linda Noyes Qualified Personal Residence Trust,
Petitioner,

MTT Docket No. 324628

v

Township of Clark,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm¹

OPINION AND JUDGMENT

This case is an appeal of the 2006 and 2007 true cash values (TCV) and taxable values (TV) established by the Township of Clark (Respondent), for one parcel of real property (the subject property) owned by the Linda F. Noyes Qualified Personal Residence Trust² (Petitioner). The subject property is encumbered by a conservation easement granted by Petitioner to the Little Traverse Conservancy Conservation Trust. The subject property consists of 35.1177 acres of undeveloped land located on Boot Island in Lake Huron, in the county of Mackinac, Michigan, and is known as Parcel No. 49-003-101-073-10. For the reasons set forth below, the Tribunal finds that Petitioner met its burden of proof in establishing the subject property's true cash value without the conservation easement; however, Petitioner did not meet its burden of proof in establishing the subject property's true cash value as encumbered by the easement.

¹ The hearing in this case was conducted by Tribunal Judge Susan Grimes Width. Because Judge Width was unable to complete the decision in this case before her term expired, this Final Opinion and Judgment is being rendered by the above-noted Tribunal Judge, as provided by TTR 140.

² The original grantor was the Linda Noyes Revocable Trust. The subject property was transferred to the Linda Noyes Qualified Personal Residence Trust on September 14, 2005.

The subject property's 2006 and 2007 true cash values (TCV), state equalized/assessed values (SEV/AV), and taxable values (TV), as originally established by Respondent are:

Year	TCV	SEV/AV	TV
2006	\$1,093,000	\$546,500	\$404,521
2007	\$1,188,600	\$594,300	\$413,824

Petitioner's contentions of value are:

Year	TCV	SEV/AV	TV
2006	\$85,500	\$42,750	\$42,750
2007	\$85,500	\$42,750	\$42,750

FINAL VALUES

The subject property's 2006 and 2007 true cash values (TCV), state equalized/assessed values (SEV/AV), and taxable values (TV), as determined by the Tribunal are:

Year	TCV	SEV/AV	TV
2006	\$455,630	\$227,815	\$227,815
2007	\$455,630	\$227,815	\$227,815

PROPERTY DESCRIPTION

As described above, the subject property is located on Boot Island in Lake Huron. Boot Island is one of the islands in a chain of islands known as the Les Cheneaux Islands.

The Les Cheneaux Islands, usually referred to as "The Snows" are a group of 36 small islands some inhabited, along 12 miles of Lake Huron shoreline on the southeastern tip of the Upper Peninsula of Michigan. The name is French for channels, noting the many channels between the islands in the group. They are about 30 miles north and east of the Straits of Mackinac and about 35 miles south of Sault Ste. Marie. The islands are a popular resort and boating area. The largest is Marquette Island. Smaller ones include Boot Island and Government Island. A few of the islands are so tiny that they can only hold one summer cottage. All of these abodes, except Hill Island and Island No. 8 that are connected by bridge, must be reached by boat since no roads connect the islands with the mainland. (Petitioner's Appraisal, p13)

The subject property is vacant, unimproved, wooded land that occupies 35.1177 acres of

the central portion of the eastern part of Boot Island. The subject property:

. . .contains approximately 5,402.72 feet of shoreline with 2,335.83 feet along the north shore fronting upon Scammon Cove and 3,066.89 feet fronting upon the shore of Lake Huron to the south. . .The south shore along Lake Huron is an unprotected gravel and stone beach area with shallow water level. The north shore along Scammon Cove is a protected waterway, however with poor accessibility due to low water levels and wetland areas. (Petitioner's Appraisal, p1)

The subject property is "restricted by a Conservation Easement that was granted to the Little Traverse Conservancy Conservation Trust of Harbor Springs, Michigan, as of October 14, 1993," by Ms. Linda F. Noyes, Trustee of the Linda Noyes Revocable Trust. (Petitioner's Appraisal, transmittal letter, p1) The purpose of the Conservation Easement "is to assure that the Property will be retained forever in its predominately natural, scenic, and forested condition and to prevent any use of the Property that will significantly impair or interfere with the conservation value of the Property." (Petitioner's Appraisal, Addenda)

The subject parcel has minimal improvements that include and are limited to by Conservation Easement a right to use and maintain an existing foot path/trail within the interior and perimeter; and an existing underground utility right-of-way. There is no other known or allowed building or site improvements. (Petitioner's Appraisal, p2)

Ms. Noyes owns 10 acres of land on Boot Island, located adjacent to and west of the subject property. Ms. Noyes' personal residence is located on these 10 acres.

PETITIONER'S CASE

Petitioner argues that the subject property is over-assessed compared to other island properties that are encumbered by a conservation easement and that the subject property's true cash value, as determined by Respondent, exceeds the property's actual true cash value for the 2006 and 2007 tax years. Petitioner argues that the best evidence of the subject property's true cash value is the Summary Appraisal Report prepared by Mr. Joseph C. Stakoe of Northern

Appraisal.

Mr. Joseph C. Stakoe was called as Petitioner's first and only witness. Mr. Stakoe testified that he is certified by the State of Michigan as a General Real Estate Appraiser and that appraising is his primary profession. Mr. Stakoe is an associate member of the Appraisal Institute. Mr. Stakoe testified that he is also a level three assessor and that he is responsible for the assessment roll for the City of Mackinac Island, Michigan. Mr. Stakoe has an associate's degree in graphics and a bachelor's degree in Business Administration, with a major in accounting, from Eastern Michigan University. Mr. Stakoe testified that, in his role as a fee appraiser, he specializes in appraising "high value properties in the Northern Michigan Area." (Transcript³, p14) Due to his experience and education, Mr. Stakoe was qualified as an expert witness.

Mr. Stakoe inspected the subject property with the assistance of Ms. Noyes. Mr. Stakoe provided the following testimony as to his impression of the island.

Upon arrival to Boot Island, we did take a boat tour as far as we could on the northerly – along the northerly shore, but access from that end was difficult, if not impossible, because the water levels are very low, and boat access didn't appear possible at all from the north entry, even though it is very well-protected in a harbor-like situation.

Taking the tour around to the southern end of the island, it's basically the wayward side, and you're in Lake Huron. It's completely unprotected and where boat accessibility from that side of the island appeared to be not possible for any docking facility or protection that would allow boat access from the southerly section. (T, p23)

In his appraisal report, Mr. Stakoe discussed the island's accessibility.

It is judged that the subject 35.1177 acre parcel lacks adequate accessibility. The

³ Hereinafter references to the transcript will be denoted as a "T."

property has a measured [distance] of 2,335.83 feet along the northern shore which is a protected cove that provides safe haven for boaters; however low water levels and overgrown wetland areas extending northward render the northern shore inaccessible. The southern shore has measured distances of 3,066.89 feet along a gravelly rock beach and open exposure to the Lake Huron without harborage and little accessibility, if any. Both the east and west ends of the Subject parcel abut to private property that provide no means of ingress or egress. Hence, the parcel is considered to be comparable to land-locked parcels. (Petitioner's Appraisal, p38)

Because of this, Mr. Stakoe determined that the island's lack of accessibility is a significant problem.

As to the subject property's terrain and beach conditions, Mr. Stakoe testified that there is a maintained footpath and a natural trail around the perimeter of the island. The south-end beach, according to Mr. Stakoe, was a "very gravelly-type beach, stone, shallow waters; and again, it confirmed my view that access by boat wasn't viable from the southern end." (T, p24) Mr. Stakoe further testified that the property's "bottleneck section was more of an open area of the island with sandy [*sic*], and I could see that it had been used as a picnic area." (T, p24) As to the north side of the subject property, Mr. Stakoe testified that "I could see . . . the waters have receded in the Great Lakes over the last 20 years, that most of the northerly shoreline was more of a marsh land, weedy and not really accessible at all; it was basically a marsh." (T, pp24-25)

Mr. Stakoe testified that the subject property is encumbered by a Conservation Easement. Mr. Stakoe reviewed the restrictions contained within the Conservation Easement and opined that they resulted in the most severely restricted Conservation Easement that he had ever seen. The Conservation Easement states, in relevant part:

2.2 Right to Enter. The right to enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement, and to conduct such scientific investigations of the Property as are consistent with the analysis and preservation of the natural aspects of the Property; provided that such entry shall be upon prior

reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property. The Grantee shall not have the right to enter upon the Property, or to permit others to enter upon it, for any other purpose, expressly including public recreation.

- 3.0 PROHIBITED USES. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:
 - 3.1 Division. Any division of the Property is prohibited.
 - 3.2 Commercial Activities. Any commercial or industrial use of or activity on the Property is prohibited.
 - 3.3 Construction. The placement or construction of any building, structure, or other improvement of any kind including, without limitation, fences, roads, and docks is prohibited.
 - 3.4 Cutting Trees. Any cutting of trees is prohibited except as permitted in Section 4.2. and Section 4.4. of this Easement.
 - 3.5 Alterations of Land Surface. Any alteration of the surface of the land, including without limitation, the excavation or removal of soil, loam, peat, sand, gravel, rock, fuel and other minerals is prohibited except as may be required in the course of any activity permitted herein.
 - 3.6 Dumping. The dumping or accumulation of trash, garbage, waste and other unsightly or offensive materials on the property is prohibited.
 - 3.7 Alterations of Water Courses. The manipulation or alteration of natural water courses, lake shores, wetlands or other water bodies including activities conducted on the Property which would be detrimental to water purity or which could alter natural water level and/or flow is prohibited.
 - 3.8 Off-road Vehicles. The operation of off-road vehicles, including but not limited to All-Terrain Vehicles, (ATV's), golf carts, snowmobiles, [dune buggies] and motorcycles, is prohibited, except where specifically permitted. . . .
 - 3.9 Signs and Billboards. The placement of any signs or billboards on the Property is prohibited; however, signs are permitted if their placement, number, size, and design do not significantly diminish the scenic character of the Property. Such signs may be displayed to state the name and address of the Property and the

names of persons living on the Property, to identify areas of the Property as being protected by this Easement, and to post the Property to control unauthorized entry or use.

6.0 ACCESS. No right of access by the general public to any portion of the Property is conveyed by this Easement.

In his appraisal report, Mr. Stakoe stated that the subject property's highest and best use is its "[e]xisting use as recreational." (Petitioner's Appraisal, p2) However, Mr. Stakoe also stated that the property's highest and best use is its "existing use as a natural island preservation." (Petitioner's Appraisal, p19) The Tribunal interprets this inconsistency to mean that the property's highest and best use without the conservation easement is recreational and that with the conservation easement, the highest and best use is as a natural island preservation.

Because the property is encumbered by a conservation easement, Mr. Stakoe appraised the property with and without the easement. In doing so, Mr. Stakoe considered the three primary methods of valuing property: the income capitalization approach, the cost approach, and the sales comparison approach. However, because the subject property consists solely of undeveloped land, Mr. Stakoe only utilized the sales comparison approach.

In performing his sales comparison approach, Mr. Stakoe considered 12 sales of island property and ultimately relied on six of those sales. These six sales were "basically in the Les Cheneaux Island region," and were located on Shelter Island, Boulanger Island, Rutland Island, Butterfield Island, Strongs Island, and St. Helena Island. (T, p37) All of these islands, with the exception of St. Helena Island, are located in Lake Huron, with St. Helena Island being located in Lake Michigan. Mr. Stakoe indicated that none of these sales were encumbered by a conservation easement.

Each of the six comparable island sales considered in Mr. Stakoe's sales comparison

approach occurred within five years of the first tax day, being December 31, 2005, and ranged in size from 32 acres to 241 acres. According to Mr. Stakoe: “Since the subject and comparable properties are large acreage parcels with similar irregular shorelines, the sale price per acre is judged to be the most applicable unit of comparison for this appraisal analysis.” (Petitioner’s Appraisal, p24) After arriving at a sales price per acre for each of these sales, Mr. Stakoe adjusted the sales for market condition (time) and size. The market adjustment was a 4% annualized upward adjustment that Mr. Stakoe determined was necessary given “the current economic climate and reviewing the appreciation trends for vacant waterfront land in the Northern Michigan area.” (Petitioner’s Appraisal, p38) The adjustment for size was made because “[t]ypically smaller properties tend to sell for more on a per unit basis as they are more marketable than larger properties. A market adjustment of 1% per five acres was considered reasonable.” (Petitioner’s Appraisal, p38)

As previously discussed, Mr. Stakoe believes that the subject property’s lack of accessibility severely impacts the value of the property. Because Mr. Stakoe could not find sales of island property with similar access issues, he considered sales of seven landlocked properties and compared them to sales of similar properties that were not landlocked to arrive at an adjustment for lack of accessibility. (T, pp40-41) This analysis indicates that, on average, the value of landlocked property was 50% less than the value of land that was not landlocked. Mr. Stakoe made this adjustment and, after arriving at an adjusted value per acre for each of the six sales, Mr. Stakoe assigned each sale a weight factor. Mr. Stakoe stated that the Strongs Island property is most comparable to the subject property and, as such, assigned it a weight of 25% while all other sales were assigned a 15% weight.

Having completed this analysis, Mr. Stakoe concluded that the subject property’s value,

unencumbered by the conservation easement, is \$6,090 per acre. Given that the subject property contains 35.1177 acres, Mr. Stakoe concluded that the subject property's 2006 and 2007 true cash values, unencumbered by the conservation easement, is \$213,866.79.

Mr. Stakoe next reviewed sales of properties encumbered by conservation easements. Because the subject property's conservation easement is so severely restricted, it was important to select sales of properties encumbered by equally restrictive conservation easements. Mr. Stakoe described how different factors influence the impact that a conservation easement would have on the value of a parcel of property.

[A] review [of] sales of properties that have allowable divisions or building sites reflect less diminution as a result of the imposition of the easement. In a similar vein, those properties that have severe limitations for development, such as wetland properties, also reflect less diminution in value. Conversely, properties that are well located with significant appeal in the marketplace and that have no building sites retained reflects very high diminution factors. (Petitioner's Appraisal, p42)

Ultimately, Mr. Stakoe selected sales of nine waterfront properties with large acreage and restrictive easements. Having made this selection, Mr. Stakoe obtained information as to the sale price of these properties and then appraised them as if they were not encumbered by the conservation easement. The difference between the sales price and the appraised value determined by Mr. Stakoe is considered the property's "implied discount." The implied discounts ranged from 43% to 89%. Mr. Stakoe testified that the mean of these values is 69.7% and concluded that a 60% discount accurately reflects the influence that the subject property's restrictive conservation easement has on the value. (Transcript, p48) On cross-examination, Mr. Stakoe justified utilizing a discount rate less than the mean by arguing that the conservation easement and lack of accessibility are compound negative factors. (Transcript, p82) Taking the 60% conservation easement discount into consideration, Mr. Stakoe concluded that the subject

property's total true cash value for the 2006 and 2007 tax years is \$85,500.

The following exhibits submitted by Petitioner were admitted into evidence:

- P1: Curriculum Vitae for Joseph C. Stakoe;
- P2: Copy of the Letter of Transmission from Joseph C. Stakoe;
- P3: Summary Appraisal from Joseph Stakoe;
- P4: A copy of a plat map from Respondent relating to the subject property;
- P5: Pages 85 to 87 from The Appraisal of Real Estate (12th ed 2001), relating to conservation easements;
- P6: March 22, 2006 letter from the State Tax Commission relating to conservation easements;
- P8: Appraisal of a Conservation Easement, Boot Island, Cedarville, Michigan dated July 25, 1993 from Michigan Appraisal Company, Inc.
- P11: Respondent's tax year 2006 property record card, both before and after the Board of Review modifications;
- P12: Respondent's tax year 2007 property record card;
- P13: Petitioner's 2006 & 2007 tax years' Petitions to the Board of Review;
- P14: County tax records and bills relating to the subject property;
- P15: Recorded land records from the Mackinac County Register of Deeds; and
- P16: A copy of a 1993 survey map from Bischer Survey relating to the subject property.

RESPONDENT'S CASE

Ms. Polly Cairns, Respondent's assessor, stated in her opening argument that she had only been Respondent's assessor for a short period of time and that she did not establish the assessments at issue. Notwithstanding this fact, Ms. Cairns stated that she believes the previous assessor did a good job in assessing the subject property and that she concurs with the 2006 and

2007 assessments. Respondent had four exhibits admitted into evidence; however, Respondent did not call any witnesses to testify regarding these exhibits. For this reason, the Tribunal will not consider Respondent's exhibits.

FINDINGS OF FACT

The subject property, known as Parcel No. 49-003-101-073-10, is located on Boot Island in Clark Township, Mackinac County, Michigan. The Tribunal adopts the description of the subject property as set forth in the "Property Description" section of the Opinion and Judgment. Additionally, the Tribunal finds that, given Lake Huron's water levels in 2006 and 2007, and the subject property's shoreline, access to the property is limited.

The subject property is encumbered by a conservation easement granted by the Linda Noyes Revocable Trust to the Little Traverse Conservancy Conservation Trust, Inc., a Michigan non-profit corporation, on October 14, 1993. The Linda Noyes Revocable Trust transferred ownership of the subject property to the Linda Noyes Qualified Personal Residence Trust on September 14, 2005.

The Tribunal finds that the property's highest and best use without the conservation easement is recreational and that with the conservation easement, the highest and best use is as a natural island preservation.

The Tribunal adopts the quotations from the conservation easement included in the section of this Opinion and Judgment titled "Petitioner's Case" as findings of fact. Additionally, the Tribunal finds that the conservation easement conveys to the Conservation Trust the "right to preserve and protect the conservation values of the property in perpetuity." (Petitioner's Appraisal, Addenda) Petitioner reserved the right to use the property, and permit others to use the property, in all ways that are not prohibited or inconsistent with the easement, to convey the

property, to maintain the existing trails, to cut firewood from dead, fallen, diseased or dangerous trees, and to operate maintenance and utility vehicles. Finally, the Tribunal finds that Petitioner owns a developed parcel, not at issue in this appeal, to the west of the subject property, which is improved with a residence and to which there is sufficient access by means of a dock.

CONCLUSIONS OF LAW

In this case, the Tribunal is charged with determining the subject property's true cash value as encumbered by the conservation easement granted to the Little Traverse Conservancy Conservation Trust, Inc. on October 14, 1993. Pursuant to the Natural Resources and Environment Protection Act, being MCL 324.101 *et seq*, "conservation easement" is defined as:

. . .an interest in land that provides limitation on the use of land or a body of water or requires or prohibits certain acts on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will, or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition. (MCL 324.2140)

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

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50%. . . . Const 1963, art 9, sec 3.

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

[T]he usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in

this section, or at forced sale. MCL 211.27(1); MSA 7.27(1).

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

Under MCL 205.737(1); MSA 7.650(37)(1), the Tribunal must find a property’s true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). A proceeding before the Tax Tribunal is original, independent and de novo. MCL 205.735(1); MSA 7.650(35)(1). The Tribunal is not bound to accept either of the parties’ theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 377 NW2d 908 (1985). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. *Meadowlanes Limited Dividend Housing Association v City of Holland*, 437 Mich 473, 485-486; 473 NW2d 636 (1991).

The Tribunal’s factual findings must be supported by competent, material and substantial evidence. *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Department of Treasury*, 185 Mich App 458, 462-463; 452 NW2d 765 (1990). Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

“The petitioner has the burden of establishing the true cash value of the property. . . .” MCL 205.737(3). This burden encompasses two separate concepts: (1) the risk 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.

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. *Meadowlanes*, at 484-485; *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968). The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale*, p277.

To determine the subject property's true cash value as encumbered by the conservation easement, a "before" and "after" appraisal must be completed. This method for valuing property encumbered by a conservation easement was first established by the Tribunal in *Indian Garden Group v Resort Township*, (Docket No. 157543, February 17, 1995). In *Inn at Watervale, Inc v Township of Blaine*, (unpublished opinion of the Court of Appeals, decided May 20, 2010, (Docket No. 289869), the court reviewed this method.

In its opinion and order, the Tax Tribunal outlined the applicable appraisal methodology to be used in a situation where a conservation easement has been granted on property to be assessed as found in *Indian Garden Group*, 1995 WL 901434 (Mich. Tax Tribunal Nos. 157543, 205036, issued February 17, 1995), and found that petitioner did not provide the necessary evidence. The *Indian Garden Group* decision was declared precedential by the Tax Tribunal with respect to the valuation methodology of a property that is encumbered by an easement. For a contested assessment, that case mandated that a before- and after-easement appraisal be completed as of each relevant tax date in contention, using the following steps:

1. Determine the Highest and Best use of the property as though the Conservation Easement had not been granted (the Before Value property). The Highest and Best use of the property after the easement has been granted will most likely be as a nature preserve subject to the Conservation Easement (the After Value property).
2. Use comparable market sales data to determine the True Cash Value of the property in accord with the determined Highest and Best Use-as though the Conservation Easement had not been granted (the Before Value).

3. Examine the Conservation Easement document, and enumerate the easement property rights which have been granted (those contained in the Difference).
4. Evaluate the easement property rights granted, and determine the amount of value diminishment attributable to the granting of the Conservation Easement (the Difference), expressed either as (a) the percentage of loss from the Before Value, or (b) the dollar amount of that loss. Because it is unlikely sales data for actual conservation easement properties will be available, seek market data which possesses characteristics which most nearly approximate degree of loss of property rights and utility.
5. Determine the value of the real property as diminished by the granting of the easement (the After Value), by means of either applying the percentage loss to the Before Value, or deducting the dollar amount of loss (the Difference) from the Before Value.

The resulting After Value is the True Cash Value of the property for the relevant year. It is determined on a case-by-case basis. The value diminishment caused by the conservation easement is not an exemption. *The True Cash Value of the property is to be determined on a year-by-year basis according to the applicable and available market evidences.* [*Indian Garden Group v Resort Twp*, 1995 WL 901434 (Mich. Tax Tribunal Nos. 157543, 205036, issued February 17, 1995), pp 3-4 (emphasis added).]

In this case, Petitioner appraised the subject property in conformance with the procedures set forth by the Tribunal in *Indian Garden* and approved by the Court of Appeals in *Inn at Watervale*. A review of Petitioner's appraisal is now required.

The Tribunal agrees with Petitioner that the subject property's highest and best use without the conservation easement is recreational and that the highest and best use of the property with the conservation easement is as a natural island preservation. The Tribunal also agrees that, as undeveloped land, the sales comparison approach is the most appropriate approach to use in determining the subject property's true cash value under both scenarios.

Having said that, the Tribunal is concerned that, in developing its unadjusted sale price per acre, Petitioner utilized sales of two properties that included structures. While this, in and of

itself, is not an issue, the fact that Petitioner provided only a brief description of these improvements is an issue. In other words, each of these sales would have been appraised to determine the value of the structures as well as the land; however, none of this information was submitted for review. Instead, Petitioner merely stated that the price per acre was “X” and the value of a cabin, for example, was “Y.” This is insufficient. The Tribunal will not blindly accept a conclusory value without supporting evidence. For this reason, Petitioner’s comparable sales #2 and #5 will not be considered. Additionally, the Tribunal will not consider comparable sale # 6 as it occurred over five years prior to the first tax day, that being December 31, 2006. The three remaining sales are considered comparable in terms of size, being 42.5 acres, 74 acres, and 32 acres, and are utilized by the Tribunal in determining the subject property’s true cash value.

As previously discussed, Petitioner found that the subject property’s lack of accessibility severely impacted the property’s value. To determine the adjustment that should be made as a result, Petitioner completed an analysis comparing the values of landlocked property to property that was not landlocked. With this analysis, Petitioner determined that the value of the subject property should be adjusted by a -50% due to lack of accessibility. While the Tribunal agrees, based on Petitioner’s description, that lack of accessibility is an issue, the Tribunal does not agree as to Petitioner’s findings. The Tribunal accepts Petitioner’s methodology as to landlocked parcels compared to parcels within the same general area that are not landlocked. However, Petitioner has provided no evidence that the adjustment derived from this comparison is equally applicable to an island with accessibility issues located in one of Michigan’s Great Lakes. For this reason, the Tribunal finds that Petitioner has not met its burden of proof in establishing that the subject property’s true cash value should be reduced by 50% due to lack of accessibility. Because the Tribunal has no other evidence to consider, the Tribunal will not hazard a guess as to

what impact accessibility might have on the subject property's value. See *Country Meadows et al v Township of Macomb*, unpublished opinion per curiam of the Court of Appeals, decided April 1, 1997, (Docket No. 182305).

In reviewing the "Sales Comparison Grid" prepared by Petitioner's appraiser, the Tribunal finds that the adjusted price, the total adjustment factor, and the indicated adjusted sale price per acre cannot mathematically be recreated. (Petitioner's Appraisal, p25) For example, the adjustments for comparable #3 include a 1.08 adjustment for site size and a .50 adjustment for accessibility. The total adjustment factor listed in the grid was .54 and not .58. Unfortunately, the appraisal report does not provide an explanation as to why the numbers don't add up and testimony was not elicited as to the mathematical calculations. Another example can be found in the calculations for comparable sale #1. In that case, the unadjusted sale price per acre was \$8,588.24. The only adjustment made was one for market conditions, or time, of 1.17. With this, the adjusted price per acre was listed as \$10,008.47. The Tribunal cannot recreate this number. Because it appears that there were at least a couple of calculation errors in the analysis of every comparable sale, the Tribunal will not utilize the values concluded to by Petitioner.

Therefore, considering only comparable sales #1, 3 and 4 and giving them equal weight, and eliminating the adjustment for accessibility, the Tribunal concludes that the subject property's price per acre is \$12,974.36. Given that the subject property contains 35.1177 acres, the Tribunal finds that the subject property's 2006 true cash value, unencumbered by the conservation easement, is \$455,630. Petitioner asserted that the subject property's true cash value did not increase in 2007. Because there was no evidence provided to the contrary, the Tribunal finds that the subject property's 2007 true cash value, unencumbered by the conservation easement, is \$455,630.

To determine the “After Value” under *Indian Garden Group*, Petitioner next considered the diminishment in value attributable to the conservation easement. In doing so, Petitioner analyzed sales of nine properties that were encumbered by conservation easements. Petitioner’s appraisal contains a chart that lists these nine properties and various items of information, including the actual sale prices and an estimated value of each property if developable, or unencumbered by the conservation easement. (Petitioner’s Appraisal, p41)

When asked how he determined the estimated value of the property if developable, Petitioner’s appraiser explained that he performed an appraisal of each sale. When asked why information was not provided as to this analysis, Petitioner’s appraiser indicated that this was a Summary Appraisal Report and that he had “two banker boxes with that detail, and if I brought that, we’d be here for three weeks going over it all.” (T, p80) Unfortunately, given the fact that the Appraisal contained no information as to how the values of the property if developable were determined and that Petitioner’s appraiser’s testimony was not helpful in this regard, the Tribunal finds that it is unable to rely on Petitioner’s conclusions. The fact that several of these nine properties contained structures, valued by the appraiser with no documentary evidence or explanation, makes his conclusions unreliable.

Furthermore, almost no information was provided as to the conservation easements that encumbered these nine properties. Given that the appraiser stated that he analyzed these documents, including them in the appraisal would have been easy to do and would have helped to support his conclusions.

In cases such as this, the petitioner has the burden of proof to establish the property’s true cash value. The petitioner’s cannot expect to meet this burden of proof by merely providing charts and grids with no explanation and, more importantly, no supporting documentation. In

this case, because Petitioner failed to provide evidence to support its conclusions, the Tribunal cannot help but find that it did not meet its burden of proof in establishing the subject property's value encumbered by the conservation easement. Again, without any reliable data, the Tribunal will not guess as to the diminishment in the subject property's value attributable to the conservation easement.

Finally, in reviewing the subject property's property record card, it appears as though Respondent assessed the subject based on a front foot basis. Petitioner's appraisal valued the subject property on a per acre basis. While property located on a lake is typically valued on a front foot basis, the Tribunal has no evidence from which to determine whether, in the case of an island, determining the value on a front foot basis is more accurate than determining the value on a per acre basis. Because Respondent provided no testimony in this case, the Tribunal accepts Petitioner's contention that the appropriate unit of value is per acre.

In conclusion, the Tribunal finds that Petitioner met its burden of proof in establishing that the subject property was over assessed for the tax years at issue. Because Respondent's evidence was not considered, the Tribunal must rely solely on the information contained in Petitioner's appraisal to establish the subject property's true cash value. As indicated earlier, the Tribunal finds Petitioner's conclusion as to the reduction in value due to lack of accessibility was not credible and, as such, will not be utilized. Similarly, the Tribunal finds Petitioner's conclusion as to the impact of the conservation easement on the subject property's value unreliable and, as such, will not be utilized. The Tribunal finds Petitioner's analysis as to the subject property's price per acre, adjusted by date of sale and size, credible with the corrections to Petitioner's mathematical calculations. Therefore, Petitioner has met its burden of proof in that regard. The subject property's 2006 and 2007 true cash values, state equalized/assessed

values, and taxable values are those shown in the Final Values section of this Opinion and Judgment.

JUDGMENT

IT IS ORDERED that the subject properties' true cash, state equalized and taxable values shall be those set forth in the "Final Values" section of this 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 assessed and taxable values in the amounts as finally shown in the "Final Values" section of this Opinion and Judgment, subject to the processes of equalization, within 20 days of entry of this Order. 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 Opinion and Judgment within 28 days of the entry of this Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Opinion and Judgment. As provided by 1994 PA 254 and 1995 PA 232, being MCL

205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest shall accrue at an interest rate set monthly at a per annum rate based on the auction rate of the 91-day discount treasury bill rate for the first Monday in each month, plus 1%. After December 1, 1995, interest shall accrue at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue: (i) after December 31, 2005, at the rate of 3.66% for calendar year 2006; (ii) after December 31, 2006, at the rate of 5.42% for calendar year 2007; and (iii) after December 31, 2007, at the rate of 5.81% for calendar year 2008; (iv) after December 31, 2008, at the rate of 3.31% for calendar year 2009; (v) after December 31, 2009, at the rate of 1.23% for calendar year 2010; and (vi) after December 31, 2010, at the rate of 1.12% for calendar year 2011.

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

MICHIGAN TAX TRIBUNAL

Entered: June 10, 2011

By: Patricia L. Halm