

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Inn at Watervale, Inc.,
Petitioner,

v

MTT Docket No. 327733

Township of Blaine,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

INTRODUCTION

At issue is the true cash value for 11 parcels that contain three easements AND property that can be developed. Therefore the True Cash Value and allocation of values by the assessor may be somewhat incorrect.

Petitioner, Inn at Watervale, Inc., (also “Watervale”), appeals ad valorem property tax assessments levied by Respondent Township of Blaine (also “Township”), against the real property owned by Petitioner for the 2006 tax year. Peter Doren, attorney, appeared on behalf of Petitioner. Julie Krombeen, Township assessor, appeared on behalf of Respondent. Witnesses appeared on behalf of both parties. They include: Petitioner’s valuation expert, John C. Burns, certified appraiser, and Dorothy Turner, President of the Corporation; Respondent’s assessment expert, Julie Krombeen, assessor for Blaine Township.

The proceedings were brought to this Tribunal on November 12, 2008, to resolve the real property assessment dispute. Subject parcels contain three separate conservation, preservation and historic easements that limit the use, thus limiting the value of the subject properties. Both Petitioner and Respondent requested the 11 property descriptions be combined into one parcel identification number. Petitioner's expert witness testified that he appraised it as a whole because of the restrictions. Petitioner requested that the parcels be combined and Respondent agreed that it would be better to have all of the parcels combined and assessed as one parcel. Petitioner, however, did not want the combination to affect the taxable value of the subject properties. Petitioner did not want the aggregate taxable value to exceed \$766,495. Petitioner did not want the aggregate value of the eleven parcels to exceed the amount in contention.

At issue before the Tribunal is the determination of true cash value of Petitioner's real property for the 2006 tax year. The pertinent information to the contested assessments is as follows:

Subject to 1995 Conservation Easement						
Parcel No.	Class	2006 SEV	2006 TV	P's TCV 06	P's SEV 06	P's TV 06
10-03-001-249-00	V Res	\$952,500	\$41,586	\$555,148	\$277,574	\$41,586
10-03-001-258-00	V Res	\$537,800	\$29,501	\$313,447	\$156,724	\$29,501
10-03-001-260-00	Res	\$643,200	\$166,363	\$374,878	\$187,439	\$166,363
10-03-001-261-00	Res	\$95,500	\$44,454	\$55,661	\$27,831	\$27,830
10-03-001-287-00	V Res	\$519,800	\$32,032	\$302,956	\$151,478	\$32,032
Subject to 2002 Conservation Easement						
10-03-001-278-00	V Res	\$46,900	\$14,050	\$27,335	\$13,668	\$13,667
10-03-001-286-00	V Res	\$82,800	\$18,741	\$48,259	\$24,130	\$18,741
10-03-001-288-01	Res	\$143,500	\$80,115	\$83,637	\$41,819	\$41,818
Subject to Historic Preservation						
10-03-001-280-00	Comm	\$1,098,800	\$460,097	\$640,417	\$320,209	\$320,208
10-03-001-285-00	Res	\$66,200	\$51,241	\$38,584	\$19,292	\$19,292
10-03-001-285-01	Res	\$190,300	\$65,654	\$110,913	\$55,457	\$55,457
Totals		\$4,377,300	\$1,003,834	\$2,551,235	\$1,275,618	\$766,495

The interested school districts are Frankfort-Elberta Public Schools and the Traverse Bay Intermediate School District. Petitioner’s contention of value is \$2,551,235 True Cash Value (“TCV”), \$1,275,618 State Equalized Value (“SEV”) and \$766,495 Taxable Value (“TV”). Respondent has a TCV of \$8,754,600, SEV is \$4,377,300 and TV is \$1,003,834.

Based upon its examination of the evidence received at the hearing conducted in this matter, the Tribunal affirms the true cash value, state equalized value, assessed value and taxable value of the subject property in its entirety for the 2006 tax year are as follows:

Parcel identification number to be determined.

2006 TRUE CASH VALUE	2006 SEV	2006 TV
\$8,754,600	\$4,377,300	\$1,003,834

Background and Introduction

The subject properties are located within the Township of Blaine, Benzie County, Michigan. The subject properties are referred to as Watervale and have been owned by the descendants of Oscar Kraft since 1917. Subject was built as a company town for the Leo Hale Lumber Company in 1892. The entire town was purchased by Oscar Kraft, a Chicago ophthalmologist, as a summer retreat for himself and his seven brothers and sisters. Watervale is on the State Register of Historic Sites pursuant to MCL 399.151 *et seq.* The property has a 1995 conservation easement, and a 2002 conservation easement within the meaning of MCL 324.2140(a) and Section 170(h) of the Internal Revenue Code. The property also has a 2003 historic preservation easement within the meaning of

MCL 324.2140(b). In addition, approximately 81.8 acres of land is included in the Barrier Dune Act 222 of 1976.

Petitioner finds that the SEV is important in a situation where the property ownership should change and the value uncaps. Petitioner requests that an uncapping and TCV should resemble market value.

Subject properties contain approximately 206.46 acres total. The Lake Michigan frontage is approximately 5,510 feet; the Lower Herring Lake frontage is 6,622 feet.

Petitioner's Arguments

Petitioner argues that Watervale is a family-owned resort consisting of historic buildings and water front on both Lake Michigan and Lower Herring Lake. Subject property has three easements, a 1995 conservation easement, a 2002 conservation easement that is referred to as the "forest easement," and a 2003 historic preservation easement. The property cannot be divided and motorized vehicles are barred from the majority of the property. The conservation easements do not allow for trees to be cut. The historic easements prohibit new construction and dictate how the historic buildings are preserved and insured. The property (with the exception of several parcels that are not included in the easements) contains severe restrictions. Petitioner does not believe that the Township has taken into consideration the restrictions placed upon the property.

Petitioner states that the appraisal states that the property has to be assessed as a whole because of the restrictions.

Petitioner's first witness was Dori Turner, President of the Corporation and Innkeeper at Watervale. She testified that she is the chief manager of the business for the sub Chapter S Corporation. She, and her brother and sister own stock in the corporation, their spouses each have a small portion of the ownership.

Turner testified that the business typically runs around the first week in June until Labor Day. After that the weekends are occupied. Her mother was a niece of Oscar Kraft, and her parents purchased the property in the winter of 1959. She described the property as being built as a lumber town, with the boardinghouse now used as the inn. The entrance is a country road, with 14 cottages. Included are the Ursula Irish and Annex, which are rooms with private bath and the inn, which has a shared bath down the hall.

The 1995 conservation easement is described by Turner as the peninsula property, the land that lies between Lake Michigan and Lower Herring Lake. That easement allows walking, hiking and swimming. No buildings are allowed to be constructed on the easement. It is only good for passive recreation.

The 2002 conservation easement is considered forest preservation because this land is on the interior with no Lake Frontage and abundant trees. This parcel has a 3-acre envelope excluded from the easement for future construction of a spa used for yoga or meditation.

The potential building has size limitations. This easement is for hiking and two-track trails, with no motorized vehicles allowed.

Petitioner also has a 2003 historic preservation easement that she described as everything built along the south shore of Lower Herring Lake. All of the existing buildings have to be maintained as they originally were, except on the interior bathrooms can be added.

Some of the buildings required that the entire building be raised and a basement be constructed to house the heating, plumbing and new wiring.

Turner testified that the reason an appraisal was prepared by Burns was because the original conservation easement required a before and after appraisal, as did all of the easements. Burn was then hired to do an appraisal for the tax appeal.

Burns testified on cross that there was a lot of pressure to sell parts of Watervale and develop it, as a protective measure to forestall development. The easements run to perpetuity. The property can be sold, but not in a “piece meal fashion.” It is Petitioner’s understanding that the property has to be sold in its entirety.

Petitioner’s next witness was John C. Burns, MAI, who prepared an appraisal¹ (P-1) with an effective date of September 3, 2003. Burns is an expert witness and testified that he has prepared appraisals for Watervale since the 1980s. Burns also prepared P-12, an amendment, to bring the valuation to current date for the 2006 tax year based on information effective as of December 31, 2005.

¹ Burns prepared an after easement appraisal for the historical preservation easement as the basis for P-12, the appraisal amended for 2006.

Burns testified that he used primarily the income approach with a market value for the excess land. The property is so severely restricted as to the highest and best use that the only legal use is that of the ongoing resort.

Burns states:

The present use as an operating resort was not the highest and best use of the property before the Conservation Easements and Historic Easement because the economic return is infinitesimal in relationship to the underlying land value of the property for residential development.

The subject property represents a very unusual parcel of land in that it consists of extensive frontage on both Lake Michigan and Lower Herring Lake, and yet is restricted for development by conservation easements and a historic easement, physical boundaries, zoning and environmental concerns. In 1995 and 2002 conservation Easements were impressed upon the Lake Michigan waterfront and Lower Herring Lake waterfront portions of the property. These easements impacted value because they greatly reduced the development potential of the property. On September 10, 2003 the Historic Preservation Easement was impressed upon the portion of land north of Watervale Road. This easement had a significant impact upon value because it prohibits change, development, and division of the property. P-1, p 43.

The subject property has two buildings, Gull Dune and Bay Down, and a few “excess” parcels that are not covered under any easement. Burns used the income generated by Watervale, but excluded Gull Dune and Bay Down because they could be sold and have a much higher use for residential purposes than their contributory income to Watervale. The financial statements prepared by Dennis, Gartland & Niegarth, CPA, in Traverse City were used to determine income and expenses for subject. After the appropriate income, an adjustment was made for the additional expense of replacement of the improvements. Income imputable to personal property, furniture, fixtures and equipment

and the business enterprise were included. Burns adjusted the net operating income to exclude income from Gull Dune and Bay Down. (P-12).

Burns in P-12 p3 made adjustments for insurance, asset sale, interest, depreciation and expenses for Bay Down and Gull Dune. He testified that this is the type of information that an investor would consider. Burns has experience having constructed three hotels, and appraising numerous hotels and resort properties in Northern Michigan.

Burns did add to the capitalization rate the effective tax rate because the actual taxes were not included as an expense. This was done to determine what the appropriate value is as a basis for property taxation. The overall rate he determined is 16.472. The criteria used to build-up the rate is mortgage constant of 50% at 5 % over prime rate and an equity constant at 15% return. The mortgage constant is 7.3%, the equity constant is 7.25, and the property tax constant was 1.922. He double checked the overall capitalization rate with Realty Rates. He discussed some of the issues with resort property and the lending institutions because the occupancy rates in Northern Michigan vary from 30% to 85% depending upon the season. This swing of occupancy rates makes the lending institutions uncomfortable. Therefore, the lending institutions require more equity and a higher interest rate. Burns confirmed interest rates with two banks. He stated that the interest rates would be 3 to 5 points over prime. Burns, however, felt that subject property had a greater risk. The value for 2003 was \$700,000 and included the personal property. The interest rate was 4.75%. The interest rate increased to 7.75% in 2005. The 2005 value is

\$2,551,234². Then deductions are \$170,690 for personal property, \$1,570,800 for the excess property excluded from the easements for a value of the Watervale Inn of \$980,434 for 2005.

The following is the 2003 value for the “excess” property:

Gull Dune	\$ 750,000
Bay Down	\$ 400,000
Music House	\$ 120,000
Forest Retain Development	\$ 200,000
Two Acres	\$ 400,000
Total	\$1,870,000
30% Discount for Bulk	\$1,309,000

Burns adjusted the discounted market value from 2003, 20% to reflect the \$1,570,800 value as of December 31, 2005.

Burns discussed the sales that were used to determine the 2003 values. When asked if the properties actually were comparable he stated:

Comp 9-010: 2001 sale of 101 feet on Upper Herring Lake at \$1,475 per FF.
 Comp 9-011: 2003 sale of 74 feet on Upper Herring Lake at \$2,006 per FF.
 Comp 9-012: 2002 sale of 80 feet on Upper Herring Lake at \$1,487 per FF.
 Comp 9-013: 2003 sale of 213 feet on Lower Herring Lake at \$2,911 per FF.
 Comp 9-014: 2001 sale of 100 feet on Arcadia Lake at \$2,000 per FF.
 Comp 9-015: 2003 sale of 80 feet on Lower Herring Lake at \$3,312 FF.*³
 Comp 9-016: 2002 sale of 80 feet on Upper Herring Lake at \$4,400 FF.*
 Comp 9-020: 2004 sale of 126 feet on Lake Michigan at \$5,151 FF.*
 Comp 9-021: 2003 sale of 210 feet on Lake Michigan at \$3,095 FF.*
 Comp 9-022: 2004 sale of 150 feet on Lake Michigan at \$6,667 FF.*
 Comp 9-030: 1998 sale of 16 feet of shared easement Lake Michigan at \$3,562 FF.

Burns for the 2006 appraisal used the following additional sales:
 MLS 1612592 2003 sale of 126 feet on Pearl Lake for \$1,262 FF.
 MLS 1644362 2003 sale of 126 feet on Pearl Lake for \$1,267 FF.
 MLS 1644362 resold 2005 for \$1,508 FF.
 MLS 1611075 2003 sale of 85 feet on Crystal Lake for \$4,906 FF.
 MLS 16211009 2004 sale of 100 feet on Crystal Lake for \$4,950 FF.

² P-12 p 7.

³ * These are properties that sold with existing houses on the lot.

A calculation that this parcel also sold in 2003 for a .43% a month increase.
MLS 1632002 2004 sale of 125 feet on Pearl Lake for \$1,794 FF.
MLS 1643492 2005 sale of 125 feet on Pearl Lake for \$1,954 FF.

Burns used the additional sales to do a paired sales analysis to determine an increase of 10% a year for a time adjustment.

Burns testified that without any easements subject property would be one of the most prime development properties in northwestern Michigan. He did not have an estimate of the amount of loss the property has due to the easements. He did a before easement appraisal for each of the three easements that he did not provide to the Tribunal.

Burns testified that after the parties prepared an overlay on P-2⁴ he would allocated the value differently. For example, parcel 288-00 has two acres not encumbered with an easement, and part includes the forest conservation easement, and part of the parcel is designated as the historic preservation easement.

Respondent's Arguments

Respondent Ms. Julie Krombeen, assessor, represented herself, and went through each of her exhibits. Respondent's first exhibit R-1, section A, is an income approach that was developed to determine the maximum income that the subject property would produce.

The number of weeks that Watervale was open was the source for gross income. The

⁴ The Tribunal requested the parties to draw the approximate lot lines with parcel numbers on P-2. P-2 is a map with various colors depicting the three easements and the property not encumbered by easements. The parcel numbers include property with and without easements. The issue was one of the proper allocations of value for each of the eleven parcel numbers.

rates used came from the website for Watervale. Respondent did not confirm the information with any source. An 11% cap rate was used as an estimate. Grand Traverse County had an appraisal by G.R. Gotschall Associates, Incorporated that was used for an appraisal of the Holiday Inn, Grand Beach Resort, and the Beach Motel. The average of the sales was 11.25%, two years ago. Respondent believes that the equalization department uses the cap rate.

R-E is a copy of the internet rates. Respondent testified that rates did not include food. The internet states that it's an additional \$22 per day for meals. That was added into the income, as well as how many guests per day would occupy the cottages.

Krombeen testified that R-G is a listing of properties that have sold with easements on them. The sale price per acre with an easement was compared to what the assessment was at the time of sale to determine the percentage discount to apply to properties with easements. It shows the level of assessment at the time of sale. Respondent took the per acre value on the assessment roll and looked at what the sale was with an easement to come up with an adjustment to apply to acreages that have easements. The end result is a 50% discount for properties encumbered with easements. The exhibit is a cooperative effort on the parts of assessors in the county.

Respondent's last exhibit, R-H, is copies of the property record cards. Krombeen testified that the Lake Michigan frontage has a \$4,500 front foot value and Lower Herring Lake has a front foot value of \$3,000. She uses the same front foot value but

discounts the land value for the easement. An example is parcel 258-00, is adjusted to 10% of the true cash value or a 90% discount for the easement on Lake Michigan. Each of the eleven parcels has a separate discount based upon location and the easement.

Parcel 260-00 has a 90% discount; 260-10 has no discount; 261-00 has a 90% discount; 278-00 is acreage valued at 75% of the rate; 280-00 is the Inn with ten buildings and an 80% discount on the first 150 feet and a 60% adjustment on the next 1,335 feet. Parcel 286-00 is 37 acres with a 75% adjustment for the conservation easement; 287-00 is discounted 90% for the 2,310 front feet; 288-00 is an acreage parcel with a 75% discount.

Krombeen testified that the historical discounts remained the same with the actual land values increasing based on sales.

Petitioner argues that Respondent ignored the actual income, that actual expenses went to a hypothetical income approach based on faulty assumptions, and that Respondent ignored actual occupancy rates.

Tribunal's Finding's of Fact

The Tribunal finds that, based upon testimony from both parties, the subject properties function as they are appraised that is as one parcel not the eleven separate parcel identification numbers. Petitioner objected to the combination of the eleven separate parcel numbers into one parcel, IF the taxable value does not decrease as requested. This is moot, Petitioner appraised the property in its entirety and its expert witness testified

that the property would not sell in individual parcels but as one entity. Therefore, the Tribunal finds that the subject parcels are to be combined into one parcel identification number with one true cash value and the taxable value will be reflective of the combination.

Petitioner's expert witness submitted the original "after" appraisal for the historic preservation easement. This report has an effective date of September 10, 2003. Burns utilized sales that ranged from 1998 to 2004. The cover letter dated February 22, 2007, states that the valuation is for an appeal of the tax assessment. The market value of the fee simple estate as of September 10, 2003 was \$2,009,000. Burns on November 7, 2008 prepared an Amendment to Watervale Appraisal (P-12).

Burns states in the amendment that the \$2,009,000 value is allocated as follows:

The Inn	\$ 700,000
Gull Dune	\$ 750,000
Bay Down	\$ 400,000
Music House	\$ 120,000
Forest Retain Development	\$ 200,000
Two Acres	\$ 400,000
30% Discount for Bulk	(\$ 561,000)
Total	\$2,009,000

Burns believes that the only highest and best use for the Inn is as a continuing resort operation with the three easements. The only applicable approach is the income approach. "This requires the estimation of the likely income attributable to the operating entity and applying a capitalization rate that reflects the risk and likely return necessary to

attract an owner/investor.” P-12, p2. Burns did a reconstructed income and expense statement.

The Tribunal finds that the 30% discount for a bulk sale has no basis and deletes that from the equation. The real estate taxes were left in as an expense and also in the capitalization rate. The expenses are also adjusted to reflect appropriate expenses for the income approach. The Tribunal reconstructs the income and expenses as follows:

Gross Income	\$1,128,981		
Gull/Bay	\$91,233		
Gross Income Inn	\$1,037,748		
		Expenses	\$1,096,519
		Deductions from	Expenses
		Gull/Bay -8%	\$87,722
		RE Tax	\$37,036
		Interest	\$29,147
		Depreciation	\$100,859
		Gain/loss	\$3,452
		SBT	\$9,418
		Total Deductions	<u>\$267,634</u>
			\$828,885
	Expenses	\$828,885	
NOI		\$208,863	
overall rate/expenses			
0.16472	\$1,267,985		
Deductions			
Personal Property	\$170,000		
Value	\$1,097,985		
Excess Property*			
2003 value	\$1,870,000		
20% market increase	\$2,244,000		
Watervale Inn Value	\$1,097,985		
Total Inn/Excess	\$3,341,985		

The Tribunal finds that based on the information provided by Petitioner the value indicated by the income approach is \$3,341,985. The Tribunal further finds that using

only income and expenses from the subject property and not considering what the typical income and expenses are for this type of property is not persuasive.

The sales comparison approach used by Burns was to determine the value of the “excess” property. This includes Gull Dune, Bay Down, Music House, Forest Retained Development Rights, and two acres. The excess property is able to be developed and has a value in addition to the remainder of the property that has one of the conservation easements or the historical easement. The wide span of sale dates and small size of the actual lots that have sold compared to the larger acreage subjects leave the validity of the sales in doubt.

Respondent’s testimony on how the original assessments and reductions in values were calculated was helpful. However, the remainder of the calculations for the income approach has no credibility. The information used was not appropriate for the subject property. The capitalization rate that came from another appraisal that was given to the Equalization Department and not confirmed did not assist the Tribunal. Respondent did not confirm with any authority the information that was taken from the internet.

Respondent’s accumulative conservation easement sales on R-7 started with sales of property that had easements. The sales were compared not with other similar properties without easements but with the true cash value as determined by the various assessors. There were not sufficient details to the spreadsheet to give it any weight in the Tribunal’s final analysis.

The property is subject to two Conservation Easements as provided for in MCL 399.251-257. Generally, a Conservation Easement is an interest in land or body of water which restricts the use of the land or body of water in a manner consistent in maintaining the land predominantly in its natural, scenic or open condition.

The property is also subject to a historical preservation easement as provided for in MCL 324.2140(b). Generally, its purpose is to assure that the architectural, historic, cultural, and associated open spaces of Watervale will be retained and maintained forever substantially in their current condition for conservation and preservation purposes, and to prevent any use or change of Watervale that will significantly impair or interfere with Watervale's conservation and preservation values.

The Tribunal does not have a copy of the before easement values, only the after appraisal, therefore, the value of the easements are unknown. The remaining value is the basis for the appeal.

Petitioner testified that the value allocation per parcel number disregards the actual value of each individual parcel number. This disregards the indication that the property that can be developed is on the same parcel identification that includes an easement.

Petitioner's allocation of taxable value purports to have a decrease. The Tribunal finds that the allocation for the individual parcels by Petitioner is inappropriate. The property was appraised in its entirety and will be combined as one parcel. Burns testified that the

subject property cannot be split and sold as a separate entity. Parts of the property are able to be developed, and should carry a higher value.

Based upon its examination of the evidence received at the hearing conducted in this matter, the Tribunal affirms the true cash value, state equalized value, assessed value and taxable value of the subject property in its entirety for the 2006 tax year are as follows:

Parcel identification number to be determined.

2006 TRUE CASH VALUE	2006 SEV	2006 TV
\$8,754,600	\$4,377,300	\$1,003,834

Conclusions of Law

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value. 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 the assessment, being the price which could be obtained for the property at private sale, and not forced or auction sale. See MCL 211.27(1). The Michigan Supreme Court in *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450 (1974), has also held that true cash value is synonymous with fair market value.

In that regard, the Tribunal is charged in such cases with finding a property’s true cash value to determine the property’s lawful assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767 (1981). The determination of the lawful assessment will, in turn, facilitate the calculation of the property’s taxable value as provided by MCL 211.27a.

The petitioner does, however, have the burden of establishing the property's true cash value. See MCL 205.737(3) and *Kern v Pontiac Twp*, 93 Mich App 612 (1974).

The Tribunal may not automatically adopt a respondent's assessment but must make its own findings of fact and arrive at a legally supportable true cash value. *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208,220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979). 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*, at 485-486; *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980). A similar position is stated in *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982): The Tax Tribunal is not required to accept the valuation figure advanced by the taxpayer, the valuation figure advanced by the assessing unit, or some figure in between these two. It may reject both the taxpayer's and assessing unit's approaches.

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 Limited Dividend Housing Assn v City of Holland*, 437, 484-485; 473 NW2d 636 (1991); *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (1966); 380 Mich 390; 157 NW2d 293 (1968); *Antisdale v City of Galesburg*, 420 Mich 265, 276; 362 NW2d 632 (1984). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in the marketplace. *Antisdale* at 276, n 1. 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*, at 277.

In MTT Docket Nos. 157543, 205036, *Indian Garden Group v Resort Township*, pp 2-3, the Tribunal determined the applicable appraisal methodology:

The appraisal problem requires a determination of the True Cash Value of the land after specified property rights embodied in a conservation easement have been granted in perpetuity to a qualified Conservancy. The appropriate valuation methodology employs valuation concepts found in a process generally known as a “Before and After” appraisal.

The terminology applicable to this process is:

1. Before Value (BV) is the True Cash Value of the real property before the granting of rights;
2. After Value (AV) is the True Cash Value of the property after the rights have been granted;
3. Difference (Diff) is the amount of True Cash Value Difference between the Before Value and the After Value, being the value of those real property rights which have been granted.

Stated in the simple terms of a formula: (1) If the Difference is to be determined, then the After Value is subtracted from the Before Value, or $BV - AV = \text{Diff}$; (b) If the After Value is to be determined, then the Difference is subtracted from the Before Value, or $BV - \text{Diff} = AV$; (c) If a comparison of the Difference is required, then BV vs. AV is examined for the merits of the Diff.

The valuation principle involved in this simple concept is found in several familiar applications. In eminent domain, the Before and After method uses the $BV - AV = \text{Diff}$ formula as the compensation basis for easement or fee simple taking of property. In taxation work involving real property special assessments, the Before and After method uses BV vs. AV to examine the merits of proportionality when the Difference is compared with the cost of the special assessment.

In the matter at hand, the appraisal purpose is to estimate the True Cash

Value of the real property after granting of the easement and the specified rights. The appropriate “Before and After” method is $BV - Diff = AV$. This process is explained in [IRS Revenue Ruling 73-339](#), which pertains to the calculation of the value of a charitable contribution for conservancy easements. Quoting from a portion of the ruling (the term “fair market value” has the same meaning as True Cash Value):

Open space easements in perpetuity may be valued separately and distinctly. However, more often than not open space easements in perpetuity are granted by deed of gift so that there is usually no substantial record of market place sales to use as a meaningful or valid comparison. As a consequence, the valuation of an open space easement in perpetuity is generally made on the basis of the “Before and After” approach. Thus, the difference between the fair market value of the total property before the granting of the easement and the fair market value of the property after the grant is the fair market value of the easement given up.

The Tribunal was only given the after historic easement approach but not the before historic easement appraisal by Petitioner. Because only the after value of the appraisal was submitted, which is a portion of the appraisal, it lacks credibility. The original appraisal in 2003 was done for a completely different purpose. The original appraisal was dated September 30, 2003, as an after historic easement value. The before easement value was not presented to the Tribunal. The after easement report appears to have been repurposed for the tax appeal. P-12 “amends” the original appraisal for the current tax year. However, the Tribunal finds it curious that the amended appraisal (P-12) starts with the September 10, 2003, after historic easement value as a basis for the market value for tax year 2006. The September 10, 2003, appraisal was not done for market value purposes; it was done as a requirement to determine the loss in value due to the historical preservation easement. The Tribunal finds that the valuation disclosure(s) provided by Petitioner lacks the specificity required to determine the before and after value as described in *Indian Garden Group v Resort Township*. Burns testified that Petitioner

was required to have a before and after appraisal for each easement and that he prepared the appraisals. The Tribunal finds that he has failed to provide evidence of market value in an appraisal for the tax year at issue. Without providing an appropriate appraisal that determines market value as of the tax date at issue the Tribunal finds Petitioner's appraisals inadequate, inappropriate and misleading. Therefore, no credibility is given to Petitioner's valuation disclosures for this property. Having said that, Respondent's only valuation evidence is the property record cards. Respondent did not present the sales upon which the vacant land values are predicated, therefore, the Tribunal is left with affirming the assessments. The eleven parcels are, however, to be combined into one parcel identification number.

JUDGMENT

IT IS ORDERED that the properties' state equalized, assessed and taxable values for the subject property shall be those set forth in the "Findings of Fact" portion of this Opinion and Judgment.

IT IS FURTHER ORDERED that the eleven parcel identification numbers identified in the introduction are combined to result in one parcel identification number to be determined by the proper assessing authority.

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 "Finding's of Fact" section of this Opinion and Judgment, subject to the processes of equalization, within 20 days of the 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 Final Opinion and Judgment within 90 days of the 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 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, 2001, at the rate of 5.56% for calendar year 2002; (ii) after December 31, 2002 at the rate of 2.78% for calendar year 2003; (iii) after December 31, 2003, at the rate of 2.16% for calendar year 2004; (iv) after December 31, 2004, at the rate of 2.07% for calendar year 2005; (v) after December 31, 2005, at the rate of 3.66% for calendar

year 2006; (vi) after December 31, 2006, at the rate of 5.42% for calendar year 2007; and (vii) after December 31, 2007, at the rate of 5.81% for calendar year 2008.

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

MICHIGAN TAX TRIBUNAL

Entered: December 18, 2008

Victoria L. Enyart