Six Rivers Land Conservancy

CONSERVING, SUSTAINING, AND CONNECTING NATURAL AREAS, LANDS, AND WATERS THAT MAKE THE PLACES WE LIVE SPECIAL.

Capping the "pop-up" tax with Conservation Easements

What Does Public Act 446 Do?
Under Michigan law, the taxable value of a parcel of property may not increase from one year to the next by more than 5% or the increase in the consumer price index, whichever is lower, until there is a transfer of ownership. When the property is sold or transferred, the assessment is "uncapped" and the parcel is taxed upon its state equalized value (SEV: 50% of its true cash value). This reassessment upon transfer creates a "pop-up" property tax. P.A. 446 eliminates the "pop-up" property tax on the transfer of lands enrolled in a voluntary conservation agreement (also known as "conservation easement")*.

How Does This Benefit Private Landowners?
The Act prevents the taxable value of conservation property from "popping-up" to the state equalized value when it is transferred. This means a potential direct tax savings of hundreds or thousands of dollars per year for new owners of the land.

Example
An 80-acre non-farm property with a current taxable value of $43,000 and a state equalized value of $252,000 would have been subject to $4,395 in annual property tax payments after transfer. Under the new law, if the 80 acres are all enrolled in a conservation agreement, annual property taxes will remain at their current level after transfer -- $750 per year. This means an annual savings of $3,645. Over a 50-year span, the new landowner will realize an estimated $149,131 in value from the change.

How Does This Benefit Conservation?
Until PA 446 became law, property taxes on conservation lands, like developed lands, jumped dramatically upon their sale or transfer. Property taxes on conservation lands rose significantly even though their development is permanently limited.
The elimination of the pop-up tax on conservation lands means that both current and future landowners have a strong incentive to keep the affected lands intact with habitat, environmental and scenic benefits. This law gives protected conservation property the same tax treatment as protected farmland.

* Residences and buildings on the lands are still subject to reassessment to the current SEV.

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855 (Rev. 1-03)

STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

JAY B. RISING
STATE TREASURER

DATE: **March 22, 2006**

TO: **Assessors**
Equalization Directors

FROM: **State Tax Commission (STC)**

RE: **Conservation Easements**

The purpose of this letter is to provide guidance on proper assessment practice for lands under conservation easement. Michigan statutes recognize conservation easements as voluntary restrictions that a landowner may put on property. MCL 324.2140 defines conservation easements as:

> (a) "Conservation easement" means 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.

These easements are very common in Michigan. These easements must be recorded with the register of deeds, run with the land, and may be done "in the form of restriction, easement, covenant, or condition in a deed, will, or other instrument."

Under Michigan law, these easements may be granted to "a governmental entity or to a charitable or education association, corporation, trust or other legal entity." Most common in Michigan is private landowners putting conservation easements on their property to restrict development in perpetuity. These easements are often donated or sold to charitable land trusts for long-term enforcement and management.

Assessment of property containing valid easements must recognize that development restrictions affect valuation. The Michigan Tax Tribunal in *Indian Garden Group v. Resort Township* (1995) employs the "Before-After" methodology for their decision.

The before value (BV) represents the true cash value of the property without the easement and the after value (AV) represents the true cash value of the property after the granting of the easement and the highest and best use of the property under the easement.

The Tribunal gives the following guidance:

1. The appraiser should "examine the conservation easement document, and enumerate the easement property rights which have been granted."

2. Based on the property rights granted, the appraiser should look to market data, which reflect the similar loss of property rights or utility.

3. The after value is determined by either:
   a) Applying the percentage of loss to the before value, **or**
   b) Subtracting the dollar amount from the before value.

The after value is not an exemption; rather, can be determined on a year-to-year basis, incorporating new evidence and market data.

Assessors should be employing the Before-After methodology on lands with conservation easements.

precedent-setting decision from the Michigan Tax Tribunal regarding conservation easement lands & lowered property taxes.

STATE OF MICHIGAN

MICHIGAN TAX TRIBUNAL

SMALL CLAIMS DIVISION

DESIGNATED FOR PUBLICATION

INDIAN GARDEN GROUP,
Petitioner,

v

RESORT TOWNSHIP,
Respondent.

MTT Docket No. 157543
No. 205036

OPINION AND JUDGMENT

Tribunal Judge Presiding: Norman D. Shinkle
Location of Hearing: Traverse City, Michigan
Date of Hearing: July 5, 1994

The issue presented in this case is one of first impression. Pursuant to MCL 205.765; MSA 7.650, the Michigan Tax Tribunal declares this decision **precedential.**

FINDINGS OF FACT

The property is located in Emmet County, State of Michigan.

MTT No. 205036 represents the same issues on the same property for tax year 1994, thus is consolidated with MTT No. 157543.

This is a rehearing. The original hearing took place on June 24, 1993 in Pestosky, Michigan. An Opinion and Judgment was entered, which is hereby vacated.

The assessments in issue cover the years 1991, 1992, 1993 and 1994. The following is information pertinent to the contested assessments:

TAX CODE	YEAR	RATIO	AV	SEV	PET'S TCV	RESP'S TCV*
24-22-06-300-018	1991	55.35%	$25,000	$22,384	$5,360	$44,800
Same	1992	50.00%	$22,384	$22,384	$5,360	$44,800
Same	1993	50.00%	$25,000	$25,000	$5,985	$50,000
Same	1994	39.14%	$25,000	$31,935	$6,450	$63,870

TAX CODE	YEAR	RATIO	AV	SEV	PET'S TCV	RESP'S TCV*
24-21-01-400-001	1991	55.85%	$20,000	$17,907	$21,240	$35,800
Same	1992	50.00%	$17,907	$17,907	$21,240	$35,800
Same	1993	50.00%	$20,000	$20,000	$23,715	$40,000
Same	1994	39.14%	$20,000	$25,549	$25,550	$51,098

*In this proceeding, AV refers to assessed value, SEV to state equalized value, and TCV to true cash value.

The property is classified for taxation purposes as Residential real property.

The average levels of assessment in effect for this property's classification for the years in issue are 55.85% for 1991 and 50% for 1992 and 1993 and 39.14% for 1994.

The interested school districts are Petoskey Public and Charlevoix-Emmet Intermediate.

The subject properties consist of:

#018 -- a vacant 20 acre parcel of land

#001 -- a vacant 79.8 acre parcel of land

The two parcels of vacant land are contiguous and contain approximately 100 acres of vacant land which is high rolling and forested. A stream appears on the property but then disappears before leaving the subject property. The subject property is somewhat rectangular in nature.

Petitioner granted a Conservation Easement to Walloon Conservancy, a non-profit corporation, incorporated under the laws of the State of Michigan. The Walloon Conservancy has as one of its purposes the preservation and conservation of natural areas for aesthetic, charitable and educational purposes. The easement is managed by the Little Traverse Conservancy.

This topic was thoughtfully explored in "'Conservation Easements: Michigan's Land Preservation Tool Of The 1990s" by Thomas Grier, found in the University of Detroit Law Review, Volume Sixty-eight, Issue Two, Winter 1991.

The property is subject to this Conservation Easement 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 also qualifies under Section 170(h) of the Internal Revenue Code which requires that

a conservation easement contribution be of a qualified real property interest, to be given to a qualified donee organization, and be contributed in furtherance of a conservation purpose.

The Tribunal finds the following facts: 1) None of the Grantors of the easement are a part of the Grantee Conservancy; 2) The easement is irrevocable - it runs with the land; 3) The Grantor may not subdivide the property; 4) No motorized recreational vehicles may be used on the subject property; 5) No real property improvements are allowed to the subject property except for a garage or storage building that could be built on the parcel bordering Indian Garden Road; 6) The Grantee may view the property at any time and enter the property at all reasonable times for inspections, observations, and to conduct studies; 7) The Grantor shall not remove rock, topsoil or similar materials; 8) The Grantor shall not place or use the property for advertising such as billboards; 9) The Grantor shall not remove any live trees unless dangerous; 10) The Grantor must pay all real estate taxes and assessments levied by authorities on the property; 11) The Grantor is responsible for the maintenance of the property.

The Tribunal finds that because of the Conservation Easement on the land, the highest and best use is as a nature preserve. The Tribunal further finds that the proper method to value property subject to a conservation easement is the "Before and After" market test. The following is a discussion of the appropriate methodology as developed with the consultation of Tribunal Judge R. Conrad Morrow.

DISCUSSION OF 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 = Diff**; (b) If the After Value is to be determined, then the Difference is subtracted from the Before Value, or BV - 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 = 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.

Adopting these valuation principles, and adapting them to the valuation of real property which is subject to a conservation easement, THE TRIBUNAL FINDS that the appraisal of the True Cash Value of the property will involve application of these steps as of each relevant tax date in contention:

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.

DISCUSSION OF VALUATION PROOFS PRESENTED AT HEARING

Petitioner's witness, Robert Frame, testified that he used comparables that could be developed, as opposed to property that is undevelopable. Mr. Frame testified that there were no reliable sales of property subject to conservation easements. Petitioner relied on an appropriate market approach. Mr. Frame used five comparables initially, but disregarded two due to large required adjustments. After applying appropriate adjustments, Mr. Frame concluded a per acre True Cash Value of $760.00 prior to factoring in the Conservation Easement effect. This would equal a True Cash Value of $76,000.00 for the two subject parcels combined.

A conservation easement adjustment was then calculated by creating a fraction; the numerator of which is the average per acre price of unbuildable wetland river front lots and the denominator of which is the average price of the buildable river front lots. By doing this Mr. Frame estimated that the percentage of value loss by Petitioner due to the Conservation Easement is approximately equal to the diminishment in value of river front lots due to the inability to develop the riverfront lots with typical real property improvements.

Mr. Frame used seven sales of unbuildable wetland river front lots and three sales of buildable river front lots. This fraction was $55.00 over $155.00 or 35% rounded. This percentage applied to the previous True Cash Value prior to the conservation easement adjustment of $76,000.00 equals $26,600.00 as of December 31, 1990. Petitioner argues that this value should be frozen for tax year 1992 and increased to $29,700 for 1993 and $32,200 for 1994.

Respondent agreed at hearing that the easement had a negative effect on the property value. Respondent appeared to agree with most of Petitioner's assertions, but for the tax year 1994 value.

Respondent testified that Agricultural properties increased approximately 8% for 1994 and Residential property increased approximately 28% for 1994.

CONCLUSIONS OF LAW

The Tribunal Referee, in the initial hearing, found that because the restrictive easement was voluntary, it could not be compared to wetlands. This fact, coupled with the provision that the Grantor remained responsible for maintenance and taxes, led the Referee to conclude the easement did not require a "division determination" and had no negative impact on the land value.

The issue of the valuation impact from a conservation easement has not been before the Michigan Court of Appeals nor a Tribunal Judge prior to this case. A similar issue was dealt with in Lochmoor Club v Grosse Pointe Woods, 10 Mich App 394-398, (1968), where a private club voluntarily placed permanent restrictive covenants limiting building on an otherwise buildable adjacent parcel. The court held that "[l]and restricted in its use, such as in the instant case, cannot be compared in valuation to subdivision lots in the same general area which may be utilized for the erection of homes. To ignore such a restriction constitutes fraud on the taxpayer...." Id. at 398.

The Tribunal finds that the restrictive easement does affect value because it was created in accordance with State and Federal law with the express intent of placing permanent limitations upon the property that negatively affect the market value.

The Tribunal adopts the "Before and After" market methodology discussed above and agrees with Petitioner's calculations to determine the True Cash Value. Petitioner has reasonably measured the percentage loss of rights in the subject property. Some of these rights given up are contained in the "Finding of Facts" section of this opinion.

The Tribunal finds the value given up by Petitioner as a result of the Conservation Easement is 65% of what the True Cash Value would otherwise be. Thus, the correct percentage to be applied to Petitioner's True Cash Value is 35%.

The Tribunal agrees with Petitioner's percentage increases of 11.65% for 1993 and 8.35% for 1994. The Tribunal notes that the subject property should increase in value approximately equal to undevelopable land in the area.

From its examination of the evidence received at the hearing in this matter, the Tribunal concludes that the true cash values and revised assessments of the subject property are as follows:

TAX CODE	YEAR	RATIO	REVISED AV	SEV	TCV
24-22-06-300-018	1991	55.85%	$2,994	$2,680	$5,360
Same	1992	50.00%	$2,680	$2,680	$5,360
Same	1993	50.00%	$3,000	$3,000	$6,000
Same	1994	39.14%	$2,544	$3,250	$6,500

TAX CODE	YEAR	RATIO	REVISED AV	SEV	TCV
24-21-01-400-001	1991	55.85%	$11,863	$10,620	$21,240
Same	1992	50.00%	$10,620	$10,620	$21,240
Same	1993	50.00%	$11,850	$11,850	$23,700
Same	1994	39.14%	$10,059	$12,850	$25,700

JUDGMENT

IT IS HEREBY ORDERED that the true cash values and lawful revised assessments for the subject property shall be those specified in the "conclusions of law" portion of this opinion.

IT IS FURTHER ORDERED that the persons having responsibility for the assessment rolls, tax rolls and tax bills, for the years in issue, correct the rolls and bills to reflect the lawful assessments as shown, subject to the processes of equalization, within 20 days of the date this judgment is entered. The resulting assessments as equalized shall not exceed 50% of the true cash values for the property determined by the Tribunal.

IT IS FURTHER ORDERED that, as dictated by the Tribunal's ruling in this matter, the person in possession of the tax roll shall collect taxes, any applicable interest, or issue a refund within 20 days after entry of the 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. Interest shall accrue from the date of payment of tax to April 1, 1994 at the rate of 9% per year. After March 31, 1994, 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%.

IT IS FURTHER ORDERED that the true cash value of the property for 1994 is the amount in this Opinion and Judgment and that such true cash value is subject to the application of the level of assessment for 1994 as finally determined and at that time the assessor is to correct or cause the assessment roll for 1994 to be corrected to reflect an assessment as finally determined subject to the processes of equalization. The resulting assessment, as equalized, shall equal but shall not exceed 50% of the true cash value.

MICHIGAN TAX TRIBUNAL

Entered: FEB 17 1998

By

Supported reduction in value for Easement, but Tribunal created their own method of establishing value.

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
MICHIGAN TAX TRIBUNAL
SMALL CLAIMS DIVISION

PATRICK & CHRISTINE KELLEY Petitioners	)	
v	)	MTT Docket No. 281903
NORMAN TOWNSHIP Respondent	)	

OPINION AND JUDGMENT

Personnel Presiding: Danny L. Hulbert, Hearing Referee
Location of Hearing: Baldwin, Michigan
Date of Hearing: September 10, 2001

FINDINGS OF FACT

The properties are located in Manistee County, State of Michigan.

The assessments at issue cover the tax year 2001.

Information pertinent to the contested assessments:

TAX CODE	ACRES	AV/SEV	TV	PET'S TCV	RESP'S TCV*
51-10-032-100-01	80	$129,700	$92,250	$222,000**	$517,000***
51-10-032-400-01	5	$ 6,700	$ 5,263		
51-10-032-400-02	5	$ 6,700	$ 5,263		
51-10-032-400-03	5	$ 6,700	$ 4,334		
51-10-033-225-01	20	$ 22,000	$10,216		
51-10-033-250-01	40	$ 43,400	$28,999		
51-10-033-325-01	40	$ 34,000	$20,948		

*In this proceeding, AV refers to Assessed Value, SEV to State Equalized Value, TV to Taxable Value and TCV to True Cash Value.
**Petitioners' True Cash Value contention is $222,000 for 185 acres of the 195 acres of land.
***Respondent's True Cash Value contention is $517,000 for all 195 acres.

The properties are classified for taxation purposes as Residential Real properties.

The Homestead Exemption status of subjects is 100% homestead.

The average level of assessment in effect for these properties' classification is 50% for the tax years at issue.

The interested school districts are Kaleva-Norman-Dickson Public, Manistee Intermediate and Westshore Community College.

Petitioners contend that the assessments unlawfully exceed 50% of the subject properties' True Cash Values and the Conservancy Easement has not been considered.

Petitioners presented the following evidence at the Hearing: Testimony of Petitioners and Michael Tarnow, and an appraisal prepared by Michael Tarnow, MAI, and Diane Hubert.

The Conservancy was represented by L. Kehr.

Respondents contend that the assessments are not unlawfully excessive.

Respondent presented the following evidence at the Hearing: Testimony of assessing personnel, Bruce Brown, and an appraisal of subject property prepared by Bruce Brown.

CONCLUSIONS OF LAW

From its examination of the evidence received at the Hearing in this matter, the Tribunal concludes that the true cash values, state equalized values, revised assessments and taxable values of the subject properties are as follows:

Tax Code	TCV	Rev'd Assessmt	SEV	Rev'd Tax.Value
51-10-032-100-01	$248,712	$124,356	$124,356	$92,250-No Rev.
51-10-032-400-01	$ 7,700	$ 3,850	$ 3,850	$ 3,850
51-10-032-400-02	$ 7,700	$ 3,850	$ 3,850	$ 3,850
51-10-032-400-03	$ 7,700	$ 3,850	$ 3,850	$ 3,850
51-10-033-250-01	$ 76,100	$ 38,050	$ 38,050	$28,999-No Rev.
51-10-033-325-01	$ 61,640	$ 30,820	$ 30,820	$20,949-No Rev.
51-10-033-225-01	$ 30,820	$ 15,410	$ 15,410	$10,216-No Rev.

Valuation method most indicative of the subject properties' True Cash Values for the tax years in question:

The Tribunal recognizes portions of both Petitioners' and Respondent's cost-less-depreciation and market methodologies to be the most accurate and thus the best indication of properties' True Cash Values.

Reason for selection of valuation method:

Subject properties consist of seven individual parcels which combined are 195 acres with a 30-acre lake located in the center. The improvements on subjects consist of a 528 square foot cabin, a 1,240 square foot home, a 722 square foot shed, a 1,200 square foot shed, a 2,880 square foot shed, a 36 square foot shed, a well and septic system and a 1,440 lineal-foot drive that is 12 feet wide.

On December 28, 2000, a perpetual conservation easement over the property was granted to the Points Betsie to Sable Conservancy. The conservation easement assures that the properties will be perpetually preserved in their predominate condition (natural, scenic, historic, agricultural, forested and open space). Any use of the properties which may impair or interfere with the conservation values is expressly prohibited except as otherwise permitted in the easement.

Petitioners' contend that the "before and after" appraisal prepared by Mr. Tarnow and Ms. Hubert, determined the value of the land, after the granting of the conservation easement, to be $222,000. The Tribunal notes Mr. Tarnow has calculated the "before" value of 195 acres to be $517,000 and the "after" value of 185 acres to be $222,000. Adding for the 10-acre home site at $2,650 per acre, would result in an adjusted "after" value of $248,500.

At the Hearing, Petitioners stated they have no dispute with the Respondent's valuation of the improvements.

Mr. Brown contends that the granting of the conservation easement causes for no diminution in value as Petitioners now have a 195-acre site with two home sites, complete with a private 30-acre lake, a 1,440 foot paved access drive, sheds, large equipment pole barn, and liberal use of the properties as provided by the conservation easement. Mr. Brown submitted sales of properties which have conservation easements in place or which have development-rights restrictions.

An analysis of the testimony and documentation received from Parties reveals the following:

1) Regarding the appraisal by Mr. Tarnow and Ms. Hubert-- The "after" value was determined by a comparison to properties which have developmental deficiencies, adjusting for differences in amenities.

   The Tribunal notes comparable #103 is also encumbered by a conservation easement. The Tribunal notes the

appraiser did not provide a comparison of the restrictions and permitted uses of this comparable to those of subject. It also appears to the Tribunal that the indicated price per acre would be $1,541, as there is a minus adjustment for superior location and a plus adjustment for "water".

Looking to Comparable #103 as the most comparable parcel, it's noted that it too is encumbered by a conservation easement, and giving recognition to the adjusted indication of value per acre of $1,541, results in a value of $284,900 for the 185 acres. The diminution of True Cash Value due to the conservation easement computes to be approximately forty-two percent (42%).

2) Regarding the appraisal prepared by Mr. Brown: Mr. Brown submitted a listing of sales depicting sales values with development rights easements--and without development rights easements, concluding that there is no diminution in value due to the development rights easements.

The Tribunal notes a substantial variation in the data and lacking sufficient documentation as to the individual easements, the Tribunal finds these sales insufficient to conclude there is no diminution in True Cash Value due to the granting of a development rights easement.

3) A review of the permitted uses indicates Petitioners may: 1) maintain, renovate and replace the existing structure, 2) add one single-family residence situated on the west side of the lake and add a driveway to serve this residence, 3) add a pole barn within 500 feet of this residence, 4) construct a garden shed, 5) have the right to maintain managed woodland areas, 6) have the right to maintain existing trails, to construct a trail around the lake, to construct a trail around the perimeter of the property, and 5 new connector trails, and 7) have the right to store a bulldozer, bulldozer trailer, and dump truck within 500 feet of the residence.

Based on the above permitted uses, the Tribunal finds Petitioners have substantial use and enjoyment of subject properties.

4) As to a finding of True Cash Value, the Tribunal finds the land value to be determined by Mr. Tarnow's Comparable #103, as adjusted to the indicated value of

$1,541 per acre. This value reflects both the restrictions to the development rights to subject properties and the permitted uses which Petitioners have maintained. Therefore, the value of the 185 acres is computed to be $285,085 (185 acres x $1,541/acre = $285,085). The 10-acre residential site is computed at $2,650 per acre, for a value of $26,500.

As Petitioners did not dispute Respondent's improvements' value, the Tribunal finds the improvements' value, as submitted by Mr. Brown, to be $128,817.

Therefore, based on the above testimony and evidence, the Tribunal finds the True Cash Value of subject properties is determined to be $440,402, say $440,400. The value of the properties is allocated to the seven parcels as follows:

Parcel #	Acres	Acreage Value	Improvements	Total
51-10-032-100-01	70	$107,870		
	10	$ 26,500		
		$134,370	$114,342	$248,712
51-10-032-400-01	5	$ 7,705	--	$ 7,705
51-10-032-400-02	5	$ 7,705	--	$ 7,705
51-10-032-400-03	5	$ 7,705	--	$ 7,705
51-10-033-250-01	20	$ 30,820	--	$ 30,820
51-10-033-250-01	40	$ 61,640	$ 14,475 (say)	$ 76,116
51-10-033-325-01	40	$ 61,640	--	$ 61,640

JUDGMENT

IT IS ORDERED that the subject properties' true cash, assessed, and taxable values shall be revised for the 2001 tax year as provided in the "Conclusions of Law" section of this Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with keeping the assessment rolls for the tax year at issue shall correct or cause the assessment rolls to be corrected to reflect the properties' revised assessed and taxable values, as provided in the "Conclusions of Law" section of this Opinion and Judgment, within 20 days of the entry of this Order.

IT IS FURTHER ORDERED that the persons having responsibility for the tax rolls and tax bills for the tax year at issue shall correct or cause the rolls and bills to be corrected to reflect the property's revised assessed and taxable values as provided in the "Conclusions of Law" section of this Opinion and Judgment, within 20 days of the date this judgment is entered.

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 20 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. 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. As provided in 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 January 1, 1996 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, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998, at a rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at a rate of 5.49% for calendar year 2000, and (vi) after December 31, 2000, at a rate of 6.56% for the calendar year 2001.

MICHIGAN TAX TRIBUNAL

BY Nancy L. Halbert

ENTERED: OCT 17 2001