



STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

GRETCHEN WHITMER
GOVERNOR

ORLENE HAWKS
DIRECTOR

David and Julie Deleeuw Trust,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 19-000981

Lincoln Township,
Respondent.

Presiding Judge
Christine Schauer

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, David and Julie Deleeuw Trust, appeals ad valorem property tax assessments levied by Respondent, Lincoln Township, against parcel number 18-010-289-007-00 for the 2019 tax year. Peter Ellensen, Attorney, represented Petitioner, and Tara Hovey, Attorney, represented Respondent.

A hearing on this matter was held on October 1, 2020. Petitioner’s witnesses were Randall Davis, appraiser, and David Deleeuw, Trustee of Petitioner. Respondent’s sole witness was Rebecca Taylor, assessor.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash value (TCV), state equalized value (SEV), and taxable value (TV) of the subject property for the 2019 tax year are as follows:

Parcel Number: 18-010-289-007-00

Year	TCV	SEV	TV
2019	\$350,000	\$175,000	\$175,000

PETITIONER’S CONTENTIONS

Petitioner contends that, based on the sales comparison approach contained in its appraisal, the 2019 TCV of the subject property is \$330,000 with an SEV/Assessed Value (AV) of \$165,000 and a TV of \$165,000. Petitioner alleges that the subject property has a custom-built home with features that are considered super-adequate for the market on Lake George and similar all-sports lakes in the area. As a result, Petitioner claims the subject property is overvalued pursuant to the cost-less-depreciation approach to value used by Respondent. Petitioner further claims that a comparable sales approach is more appropriate, and its appraiser chose comparable sales according to accepted appraisal practices.

PETITIONER'S ADMITTED EXHIBITS

P1 – Appraisal of subject property as of December 31, 2018, prepared and signed by Randal Davis on January 21, 2020

P2 – Appraisal of subject property as of August 27, 2018, prepared and signed by Richard Peterson on August 27, 2018

P5 – Lists of lakefront sales in region of subject property prepared by Randall Davis

P6 – Excerpts on the cost approach from *The Appraisal of Real Estate, 14th Edition*

P13 – Revised Appraisal of subject property as of December 31, 2018, prepared and signed by Randall Davis on September 17, 2020, and including data and adjustments related to comparable #5 at 888 Forest

P16 – Updated Adjustments for comparable #5

PETITIONER'S WITNESSES

Randall Davis

Petitioner presented testimony from its Certified General Appraiser, Randall Davis. Based on his experience and training, the Tribunal accepted Mr. Davis as an expert in real estate appraisal. Mr. Davis prepared an appraisal of the subject property as of December 31, 2018, and testified that he used the comparable sales approach to valuation in concluding the TCV of the subject property.

Mr. Davis testified that the subject property is a 2,022 square foot ranch style house on a 2,106 square foot, walk-out, finished basement, noting that the basement is larger than the main house because it extends beneath the front porch. The property is located on Lake George, has 100 feet of water frontage, and the house was built in 2013. Mr. Davis testified that the subject property has some custom-built, unique features such as the in-floor heat. Most of the properties on Lake George and similar lakes in the area have small cabins or cottages that were built between the 1930s and the 1950s. In recent years, some of the small cabins and cottages are being replaced with higher quality structures. Mr. Davis testified that these newer, larger, nicer houses may be considered overbuilt or functionally super-adequate, but that does not preclude them from being utilized in the comparable sales approach. Specifically, Mr. Davis testified during direct examination as follows:

Q. For a superadequate or overbuilt property, does that prevent you from using the sales approach and valuing the property?

A. No. That's the only practical way of doing it.

Q. And in short, what do you do if you have a property like the subject which is newer and bigger than most of the surrounding properties? What do you do to find comparables in which to evaluate the subject, with which to value the subject?

A. . . . Your research starts with looking for homes in the immediate area that are similar in size on the lake, on Lake George. You then -- if they're not there, you spread yourself out. . . . you increase your area of

coverage, you expand from the point of start which would be the subject, and you expand yourself throughout the county and that's what we had to do because of the uniqueness of -- of the -- the subject and the inavailability (sic) of similar homes on Lake George. At least that's what we initially thought.¹

Mr. Davis went on to testify that he found four appropriate comparable sales on other lakes similar to Lake George within Clare County and he used these in his comparable sales analysis. Mr. Davis further testified that he excluded the use of the cost approach because estimating depreciation is a key factor and that the greatest utility of the cost approach is for a new home and that depreciation after that is subjective and difficult to get right. Mr. Davis testified that obsolescence is another factor, and specifically functional obsolescence or functional super-adequacy in the case of the subject property. The subject property is of a quality and has features which are atypical things that a normal house would not have and the market in the area would not value, such as in-floor heat, a full-house generator, oversize garage, and the types of finishes in the basement. "Again, . . . the presence of granite countertops would be an atypical feature in most of the cottages and homes in the market area."² Mr. Davis testified that the cost approach looks at reproduction or replacement costs and that a typical buyer may not value some of the costly features of the subject property while, "the whole premise of the sales approach is what other people would be willing to pay for reasonably similar structures and that's the key to the whole thing."³

Mr. Davis testified that he searched the multi-listing service (MLS) for the area looking for waterfront properties and found four that he utilized as comparable sales in

¹ Transcript (Tr.) at 27-28.

² Tr. at 35.

³ Tr. at 43.

his appraisal that was admitted as P-1. Subsequent to completing his appraisal, he found a fifth sale that did not appear as a waterfront property on the MLS because it was listed as a beachfront property rather than waterfront; however, it is on Lake George, the same lake as the subject property. Mr. Davis testified that it was important to use it as a comparable sale.

Regarding his comparable sale one, Mr. Davis testified that it is a much larger (1,200 square feet larger), 2-story home with fewer bathrooms but was similar in terms the amount of water frontage, the site size, and it also features a walk-out basement. Comparable sale one is in Hayes Township on Arnold Lake and is about 12 miles from the subject property. Mr. Davis testified that both Lake Arnold and Lake George are in the same market and feature similar types of houses. The date of sale for comparable one was August 23, 2018, after being on the market for 596 days, and the sale price was \$345,000. Adjustment to the frontage feet was made at \$500 per frontage foot based on a study of 26 sales of vacant lakefront properties on similar lakes in a two-year time frame. Mr. Davis testified that he only found one vacant land sale on Lake George, “[b]ut I found 19 sales using the Clare/Gladwin board and then I found another seven sales using the Northern Great Lakes board.”⁴ Mr. Davis claimed that these were all vacant lakefront properties.

Q. And these sales you're referencing are vacant lakefront land sales?

A. Yes; yes; yes.

Q. Okay.

A. And the seven sales I found from the Northern Great Lakes which were all small lakes came out to \$625 a front foot versus the -- I'm sorry. That was the seven from the Clare/Gladwin board. The Northern Great Lakes had 19 sales and they came out to \$625 a front foot.

Q. Okay. Northern Great Lakes is 625 and what was Clare then?

⁴ Tr. at 62.

A. 376 on an average price per front foot. And this is lakes, not rivers, not ponds. Okay? These are similar lakes with a two-year time frame. So I -- I -- I took and rationalized it to be \$500 a front foot as being a reasonable considering that we had, you know, the sales that we had, the 26 sales.⁵

Mr. Davis went on to testify that the site size adjustment of 50 cents per square foot was also based on the same 26 sales.

Q. So in developing that adjustment, you again did a search for sales?
A. Well, we -- it was the same sales I had. The same sales, the 26 sales that I utilized.⁶

An adjustment for design and appeal was applied to comparable one to account for, "the fact that a one-story home can be utilized by buyers of just about any age, whereas a two-story requiring stairs . . . that it would reduce the desirability because of the fact of stairways to the bedrooms on the second floor."⁷ Mr. Davis testified that adjustments were made for the variance in square footage of \$28 per square foot of finished living space, based on his experience that the range is usually between 15% and 35% of average sale prices and so he used 20% of the average sale prices of the comparable sales. Adjustments for the number of bathrooms, the number of bedrooms, the size of the basement, and the amount of finished space in the basement were made to comparable one. Energy efficiency adjustments were made for the radiant heat and back-up generator, and adjustments were made for the garage size, porch/patio/decks, fireplaces, and extensive landscaping at comparable sale one which features a

⁵ Tr. at 62-63.

⁶ Tr. at 63.

⁷ Tr. at 66.

waterfall. Mr. Davis testified that the adjusted sale price for comparable sale one was \$323,700.

Regarding his comparable sale two, Mr. Davis testified that it is also on Arnold Lake, had a sale date of August 3, 2018, and was on the market for 122 days. Comparable two has 100 frontage feet, the same as the subject property, and a similar size site that required only a small size adjustment. Mr. Davis testified that he made various adjustments as was done with comparable number one plus an adjustment for “features” as comparable number two also has an additional off-water lot, which was included in the sale.

Regarding comparable sale three, Mr. Davis testified that it is located on Five Lakes, which is an all-sports lake that resulted from five small ponds that existed prior to the damming at the exit. Comparable sale three sold for \$295,000 on June 28, 2018, after being listed for 49 days. Mr. Davis testified that he made an adjustment for sale or financing concessions because the seller paid \$2,000 in closing costs for the buyer. Other adjustments were made for amount of water frontage, lot size, design and appeal, quality of construction, living area size, basement size, no finished basement, number of bedrooms, energy efficient items, garage size, porch/patio/decks, and for the off-water lots included in the sale. Mr. Davis testified that the adjusted sale price was \$321,100 and that he put a reasonable amount of weight on this sale but not as much as sale one. Based on these three comparable sales, Mr. Davis concluded to a TCV for the subject of \$325,000, as of December 31, 2018. In relation to his comparable sale four, Mr. Davis testified that he put it in but was not really happy about it as a comparable even though it was on a comparable lake. Mr. Davis testified that he made an error in

adjusting the waterfront difference which should have been \$8,000 rather than \$3,200 and it had a pole barn but no garage.

Mr. Davis testified that it is common for a built-to-suit house to sell for less than the cost to build the house and acquire the land because custom features added by the original owner don't necessarily appeal to other buyers, such as the waterfall in comparable sale one. In relation to the subject property, Mr. Davis testified that Petitioner desired and built very particular types of features.

In continuing testimony, Mr. Davis claimed that he learned of another sale, comparable number five, after preparing his original appraisal. This sale was on Lake George, the same lake as the subject property. Mr. Davis testified that he researched and went through the process of adjusting this comparable sale and prepared a revised appraisal based on his analysis of comparable five which concluded a 2019 TCV for the subject property of \$330,000. Comparable sale five sold on June 1, 2018, after being listed for 51 days. It was adjusted for the amount of water frontage, a larger site, and several of the features adjusted for in the other comparable sales resulting in an adjusted sale price of \$330,900. Mr. Davis testified that comparable number five was listed for sale in 2016 and then again in 2017 and 2018, but that each time it was re-listed the price was dropped from \$20,000 to \$30,000.

On cross examination, Mr. Davis testified that it is not appropriate to use a cost approach just because you cannot find comparable sales on the same lake, but that you should instead expand your search to other nearby lakes. Mr. Davis testified that he did not speak with the realtors who sold any of his comparable sales except for comparable number five nor did he inspect the comparable properties. He also did not speak to

Clare County Equalization or the Lincoln County Assessor because he did not see any reason to. Mr. Davis testified that he tape-measured and laser-measured both the inside and the outside of the subject property as he does with every property he appraises. When asked if he considered the class of any of the comparable homes, Mr. Davis testified that he considered quality but not specific classes of construction, such as C or B/C. Mr. Davis testified that he found his comparable sale five was most similar to the subject property because it is on the same lake. No adjustment was made to comparable five for age because Mr. Davis claims to have had a conversation with the homeowner about the updates and overall condition of comparable number five.

When asked if most of the appraisals he does are for bank financing purposes, Mr. Davis testified that about 95% were for lending institutions that have strict criteria for the use of market data and arm's-length sales. Mr. Davis went on to testify that he only uses the sale-approach even for new construction.

Because you -- you meet the definition of market value where a willing buyer and willing seller come into play. And in a -- in a -- in a new construction you may have that, but if you were looking at an existing house and you were putting the cost approach on it, it's got nothing to do with the willing buyer and willing seller and number because all it is is a very subjective number created by depreciation with the cost new.⁸

Mr. Davis further testified that he has appraised about 50 houses in and around the Lake George area and has appraised homes on every one of the lakes that he used as comparable sales in this case.

On redirect, Mr. Davis testified that it not a usual practice for appraisers to visit and inspect the properties used as comparable sales and that he would only contact an

⁸ Tr. at 121.

assessor or equalization director if he needed some information about the size or features of a property. Mr. Davis further testified that it was not only a common practice of appraisers but also was correct practice to expand out as necessary from the area of the subject property to find appropriate comparable sales and then take into consideration the differences from one lake to another when making your conclusions. Mr. Davis testified that he has 40 years of experience as an appraiser, has supervised multiple other appraisers, and reviewed thousands of appraisals, and none of them relied on a cost approach to value for a house that is five years old or older.

On continued redirect examination, Mr. Davis testified that the method used in Respondent's determination of the land values of the subject property was flawed because it did not use any vacant property sales. Mr. Davis testified as follows.

Q. Absent sales of vacant land on a subject lake, you have to do something else; right?

A. Go to a different lake.

Q. And you say the best method is to find vacant land sales from nearby lakes?

A. Correct.

Q. And that's what you did; right?

A. Correct.

Q. And with your testimo- -- if I remember your testimony, [] you had -- what was your sample size, do you remember, of vacant land sales?

A. Twenty-six.

Q. Okay. And what was -- what was the time frame during which those were sold?

A. One year.⁹

On further redirect testimony, Mr. Davis testified that in relation to his comparable sale five, he spoke with the sales agent and both the seller and buyer involved in the sale of this comparable property and determined:

⁹ Tr. at 232-233.

[T]here was absolutely no coercion at all, one way or the other, yes, no, or up and down regarding the influence being made upon the seller to sell that house. And it was a -- strictly a decision that was made by the seller to come up with the sales price agreed with by the buyer. And that was -- it was a cash deal.¹⁰

When asked, "In short, was there anything in your -- in your investigation was there anything about the transaction that causes you any concern about relying on that transaction in your report?"¹¹, Mr. Davis responded, "Not an iota. Nothing. Zero."¹²

On recross examination, Mr. Davis testified that as an appraiser, he does not work with the same system that assessors do for valuing property, but alleges that assessors can change their values "when they are exposed to true sales data."¹³

David Deleeuw

Petitioner presented testimony from Mr. Deleeuw who is a beneficiary and trustee of Petitioner and resides at the subject property. Mr. Deleeuw testified that Petitioner had also appealed the 2018 tax year to the Tribunal and an appraisal was prepared for Respondent by Richard Peterson as a part of the litigation during which the subject property was inspected with Mr. Deleeuw's permission.

Mr. Deleeuw testified that there are features at the subject property that were built for his and his wife's own purposes, such as small custom sized bedrooms in the basement to accommodate their grandchildren, full brick construction, a design and layout that most people don't need or have, custom heating and cooling system, and radiant floor heating, which might be considered super-adequate.

¹⁰ Tr. at 234.

¹¹ Tr. at 236.

¹² Id.

¹³ Tr. at 239.

RESPONDENT'S CONTENTIONS

Respondent contends, based on the cost-less-depreciation approach in its property record card and valuation report, that the 2019 TCV of the subject property is \$514,600 with an SEV/AV of \$257,300 and a TV of \$192,453. Respondent alleges that a sales comparison approach to value is not applicable for determining the value of the subject property due to its uniqueness and because there were not comparable sales available on Lake George where the subject property is located. Respondent claims that a cost-less-depreciation approach, with an adjustment for functional obsolescence, is the correct method for valuing the subject property.

RESPONDENT'S ADMITTED EXHIBITS

R1 – 2019 Property Record Card and Valuation Report

R2 – 2019 Land Development Record

R3 – 2019 Lincoln Township Economic Condition Factors

RESPONDENT'S WITNESS

Rebecca Taylor

Respondent presented testimony from its Assessor, Rebecca Taylor, Michigan certified advanced assessing officer. The Tribunal accepted Ms. Taylor as an expert in assessing properties. Ms. Taylor testified that she went to work for Respondent in June 2018 and found that she needed to correct several things in regard to the assessment roll, including inaccurate property record cards, houses that were not on the tax roll, and updating land developments with plats. Ms. Taylor testified that, "An assessor's job is a constant thing of correcting. It's a constant thing of looking at sales, researching sales,

and I've been doing a pretty good job of correcting this roll as I go along.”¹⁴ Ms. Taylor testified that Respondent’s prior assessor had put the subject property on the roll and prepared the 2018 property record card for the subject property. When she started as assessor, she discovered the pending 2018 appeal to the Tribunal for the subject property and reviewed the property record card which did not seem complete to her. Ms. Taylor testified that she engaged Richard (Dick) Peterson to do an appraisal of the subject property, getting the measurements inside and out, because she had not been able to find any comparable sales on Lake George of a B or B/C class with the custom built-ins of the subject property. Ms. Taylor also testified that she visited the subject property herself after the 2018 appraisal by Peterson and found some differences from what was on the property record card which she corrected. Ms. Taylor testified that she herself measured from the ground level using a tape and the subject property is on the record at 2,099 square feet.

In developing the 2019 tax year assessment, Ms. Taylor testified that she first ran a land sales study (land development) that showed Lake George lakefront for \$839 a front foot. She described a land development as, “[t]he land development is I go into my base in BS&A and I run sales from my sales study period which ends on March 31st every year and it starts on 4/1 two years prior to that.”¹⁵ Ms. Taylor testified that the State Tax Commission (STC) sets the time frame for sales to use which for 2019 tax year was April 1, 2016, through March 31, 2018. Ms. Taylor described the parcels contained in the sales study and contained in exhibit R-2 and testified that all the

¹⁴ Tr. at 145-146.

¹⁵ Tr. at 149.

properties were on Lake George. Ms. Taylor testified that each separate lake has its own market and so different front footage rates are developed. Ms. Taylor testified that an economic condition factor (ECF) is, "a ratio pursuant to building values,"¹⁶ and identified exhibit R-3 as the work she completed and that the values contained therein were used for the subject property. Ms. Taylor testified that the same time frame was used for sales used for the ECF as in the land development but that they were not necessarily the same property sales in both. Ms. Taylor testified that the ECF used for the subject property was 1.04.

Ms. Taylor testified that prior to completing the assessment, the Clare County Equalization Department provides the results of its study and she plugs the numbers into her computer that lets her know where she has to move assessments to get between 49 and 50 percent. Ms. Taylor testified that after this adjustment, she puts in any additions of new property, corrections, and losses.

Ms. Taylor testified that she determined the class of the subject property was B/C residential improved, which was as it already was designated on the roll. When asked whether she used the sales comparison approach or cost approach to value the subject property, Ms. Taylor testified:

A. We only use the cost approach less depreciation.

Q. When you say "we," is that Lincoln Township?

A. The entire -- the entire property tax administration. Everybody in all their townships in the entire state does that. Everybody has to.

Q. Okay. So to assess the property you have to use this --

A. Cost approach.

Q. -- the cost approach?

A. Uh-huh; yes.

Q. Okay. And with regard to that, ma'am, did you then do that in regard to the subject property?

¹⁶ Tr. at 153.

A. Yes.¹⁷

Ms. Taylor testified that she made the appropriate corrections to the 2019 property record card based on the Peterson appraisal and her visit to the subject property. When she provided the 2019 property record card and valuation report for the instant case (exhibit R-1), she thought it was accurate. Ms. Taylor went on to testify that she now knows that there were additional updates needed to the property record card such as changing it from two wells and septic to one well and one septic tank, and that Petitioner and Respondent stipulated to those updates. Further, Ms. Taylor testified “I’m going to do them at the December board of review as a mutual mistake of fact because that is when I can do updates for current and prior years.”¹⁸

Ms. Taylor testified that she had some concerns about the comparable sales used by Petitioner’s appraiser and most specifically about comparable sale five. Ms. Taylor testified that this comparable is a C class house, the finishes are not as nice, there are not built-ins like the subject, and while it was considered an arm’s-length transaction, she testified that there were issues with the sale itself.

And it was a sale that I called the actual sale agent that sold it and the house wasn’t even on the market at the time that the buyer purchased the property. And she called the owners who were living in Florida at the time and the house was vacant. They had taken it off the market over the wintertime. And she more or less told me she talked them into selling it.¹⁹

Ms. Taylor testified that she questioned some of the adjustments made in Petitioner’s other four comparable sales which were from 20 percent to 48.5 percent.

¹⁷ Tr. at 158.

¹⁸ Tr. at 165.

¹⁹ Tr. at 166.

Specifically, Ms. Taylor testified in regard to Petitioner's adjustments for land value as follows:

So when I see adjustments that high on comps being used, it questions the -- the -- can't say the word -- the amount of the adjustments being made. And when I see lakes that are being used that are not in my neighborhood for Lake George, it questions the land development that is being used to come up with a per front foot rate. When I viewed this, I read the entire appraisal and I searched through the land development that was being made on other waterfront development found in Clare County, but each lake has its own market. 500 per front foot is not the market historically for Lake George. Historically it's like 850 a front foot give or take or -- you know, 10 or 5 feet of front foot based on sales. And I have enough sales to support the land value for Lake George and all the other lakes in my township.²⁰

Ms. Taylor testified that a couple of the comparable sales used in Petitioner's appraisal were used for the Peterson appraisal and that this shows the lack of sales that are comparable to this house. Further, Ms. Taylor testified that the sales approach was not the correct valuation approach to use for the subject property.

Q. If there's not enough sales, what does that mean?

A. That means that the sales comparison approach in my opinion is not the approach to use. Cost approach is the approach that I feel in this subject property is the only approach to use.²¹

Ms. Taylor testified that she applied a 20% reduction factor in her cost approach for the super-adequacy due to the subject property being overbuilt for the area.

In regard to the Tribunal decision for the 2018 tax year, Ms. Taylor testified that she adjusted the 2018 property record card to reflect the values ordered in the Tribunal's FOJ which she received in February 2019 but that the omitted property was

²⁰ Tr. at 169.

²¹ Tr. at 171.

not added until the 2019 tax year. Ms. Taylor testified as follows in relation to the 2018 and 2019 property record cards:

Q. And you adjusted the true cash value?

A. I adjusted through the MTT adjustment, yes.

Q. And after that or at the same time, ma'am, did you have to do anything else with regard to this record card?

A. No, not at that time, no.

Q. Okay. Was there any omitted property that had been added?

A. Omitted property? Yeah. There was the square footage of the house, the radiant in-floor heat, the concrete out in front of the driveway, and the back patio, and I think the bathroom -- I think there was only, if I recall, only two bathrooms on the roll at the time. Some of the built-ins in the bathroom being an extra sink, ceramic tile.

Q. And those were added to the tax roll then in 2019?

A. Yes.²²

Ms. Taylor further testified that the 2019 TV increased both by the inflation multiplier and the omitted property that was added in 2019 but she started with the base of the 2018 TV set by the Tribunal in its 2019 tax year decision.

On cross examination, Ms. Taylor testified that although she testified on direct examination that the Tribunal set the 2018 TCV at \$495,000, she misspoke and that she actually set it to \$374,700, as was ordered by the Tribunal.

Ms. Taylor testified that there are additional updates that she was made aware of by Mr. Deleeuw that she considers to be mutual mistakes of fact and is planning to bring to the December 2020 board of review for correction but that she does not know what the new TV will be once these stipulated corrections are made and that it may only affect the assessed value since the TV is lower.

Ms. Taylor testified to her training as an assessor and that she is trained in the cost approach, the sales comparison approach, and the income approach but that 99%

²² Tr. at 173-174.

of the time, she uses the mass appraisal cost approach in completing assessments. When questioned about the land sales studies, Ms. Taylor testified that such studies are part of the mass-appraisal technique and that cost manuals determine the cost of the property improvements. Ms. Taylor testified that she thinks that the cost approach alone, or some combination of the cost approach and an appraisal using a sales approach, is the best way to value individual properties and that she has never developed a sales comparison approach to value a property for a Tribunal appeal in her 10 years as an assessor. In regard to the subject property, Ms. Taylor testified as follows:

Q. Doesn't your job entail coming to the correct value rather than simply defending everything your mass appraisal cost approach tells you?

A. And the correct value for the most part in my opinion is the mass appraisal process with the cost approach to value. Land value first, then building values minus depreciation.

Q. Okay. So what we've seen in pleadings filed by Ms. Hovey on your behalf, statements to the effect of for this property the sales approach isn't the best approach either because it's unique or because there's a lack of sales on Lake George?

A. Uh-huh (affirmative).

Q. You agree with that statement?

A. I do.²³

Ms. Taylor testified that her method of reaching a conclusion of estimated land value for Lake George properties was that she used property sales in a designated two-year period and then removed the building values which resulted in a land residual amount. The land residual was then used to calculate the value per frontage foot of property on Lake George to be \$839 per frontage foot which, along with a depth factor, is used to calculate the 2019 tax year land value of \$93,095 for the subject property.

²³ Tr. at 194-195.

Ms. Taylor further testified that the building value was based on the cost of all the features of the subject property that are in the computer and then the value is based on the STC manual costs with a depreciation factor then applied based on the percent good of the property. The next step testified to by Ms. Taylor is the application of the ECF which for the subject property was 1.04. Ms. Taylor again testified that for the subject property, she also applied a 20% obsolescence factor to the 2019 building TCV to account for the super-adequacy present.

FINDINGS OF FACT

The Tribunal's Findings of Fact concern only evidence and inferences found to be significantly relevant to the legal issues involved. The Tribunal has not addressed every piece of evidence or every inference that might lead to conflicting conclusion and has rejected evidence contrary to those findings.

1. The subject property is located at 671 Arbor Drive in Clare County.
2. The parcel number of the subject property is 18-010-289-007-00.
3. The subject property is classified as residential and has a custom-built home and 100 feet of frontage on Lake George.
4. Both parties presented the Tribunal with valuation disclosures which concluded in each valuation expert's determination of the fair market value of the subject properties as of December 31, 2018, for the 2019 tax year.
5. Petitioner presented the Tribunal with an appraisal as of December 31, 2018, that introduced five comparable sales adjusted to be consistent with the characteristics of the subject property.

6. Respondent presented the Tribunal with a cost-less-depreciation approach contained in the 2019 property record card, valuation report, and underlying land value and ECF studies.
7. The 2019 Property Record Card and Valuation Report submitted to the Tribunal by Respondent contains errors and Petitioner and Respondent have stipulated to the updates that are needed to correct the 2019 property record card.

STIPULATIONS OF FACT SUBMITTED

1. The parties agreed that “[a]t the December Board of Review the Lincoln Township Assessor will make . . . updates to the property record card for parcel # 18-010-289-007-00[.] These updates will be for 2019 and 2020 tax years.”²⁴

CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its TCV.²⁵

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not exceed 50 percent.²⁶

The Michigan Legislature has defined TCV to mean:

The usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.²⁷

²⁴ Stipulated Facts, filed on September 30, 2020.

²⁵ See MCL 211.27a.

²⁶ Const 1963, art 9, sec 3.

²⁷ MCL 211.27(1).

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”²⁸

“By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment.”²⁹ The Tribunal is not bound to accept either of the parties' theories of valuation.³⁰ “It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case.”³¹ In that regard, the Tribunal “may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination.”³²

A proceeding before the Tax Tribunal is original, independent, and de novo.³³ The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”³⁴ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”³⁵

“The petitioner has the burden of proof in establishing the true cash value of the property.”³⁶ “This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of

²⁸ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

²⁹ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

³⁰ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

³¹ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

³² *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

³³ MCL 205.735a(2).

³⁴ *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

³⁵ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

³⁶ MCL 205.737(3).

going forward with the evidence, which may shift to the opposing party.”³⁷ However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.”³⁸

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.³⁹ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”⁴⁰ 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 TCV of the property, utilizing an approach that provides the most accurate valuation under the circumstances.⁴¹ Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁴²

The subject property is a residential lakefront property with a custom-built house that Petitioner built to its specifications including the installation of in-floor radiant heating, high-end finishes, a unique layout, and a whole-house back-up generator. Petitioner claimed that these features make the subject property unique and unlike most of the properties sold on Lake George and other similar lakes in the area which are

³⁷ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

³⁸ MCL 205.737(3).

³⁹ *Meadowlanes*, *supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff'd* 380 Mich 390 (1968).

⁴⁰ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

⁴¹ *Antisdale*, *supra* at 277.

⁴² See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

typically small cottages and cabins. However, Petitioner argued that there are sufficient sales of similar enough properties to effectively utilize the sales comparison approach to find the fair market value of the subject property. Further, Petitioner argued that the cost approach is not the best way to value a house that is over five years old when suitable comparable sales are available in the market. Respondent argued the opposite, asserting that because the house is unique with super-adequacy present and because there are no comparable sales similar to it on Lake George, the cost-less-depreciation approach is the superior technique to value the subject property.

Both parties agree that super-adequacy is present at the subject property which is a form of functional obsolescence. "In some cases, a developer or property owner creates functional obsolescence by incorporating special features at the request of the occupant that would not appeal to the market in general."⁴³ However, the parties have reached very different contentions of value while both considering the unique features of the subject property with Petitioner relying on the sales comparison approach of its licensed appraiser and Respondent relying on the cost-less-depreciation mass appraisal approach prepared by its assessor. In relation to which valuation approach is appropriate for the subject property, the Tribunal notes that the sales comparison approach is typically the most reliable in most situations.

The sales comparison approach is applicable to most types of real property interests where there are sufficient recent, reliable transactions to indicate value patterns or trends in the market. For property types that are bought and sold regularly, the sales comparison approach often provides a credible indication of market value. When data is available, sales

⁴³ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p 623.

comparison can be the most straightforward and simple way to explain and support an opinion of market value.⁴⁴

However, the Tribunal also notes that the cost approach is at its best in valuing new construction because of the lack of depreciation associated with a new build. It is also deployed in valuing special purpose property, for which a market cannot be found without great modifications.⁴⁵ In the instant case, Respondent contends that because of the super-adequacy present at the subject property, there are no comparable sales that can be found whereas Petitioner argues the opposite.

A variation of the cost approach is used by Michigan assessors in determining TCV using mass appraisal. Under the mass appraisal approach, mandated by the STC, an assessor determines a land value for the property. The assessor also determines the cost new of the improvements using STC multipliers, which are based upon an earlier version of Marshall Valuation. That number may be inflated or deflated by use of the county multiplier and the ECF, which are calculated through sales studies showing the relationship between TCV and actual sales during a certain window. The county multiplier is calculated by the STC and the ECF is calculated by the local unit.⁴⁶ The STC also sets forth various other procedures which assessors are required to follow such as the application of depreciation factors. While a mass appraisal approach seems simple, there are a number of moving parts. Without adequate support for a land value, county multiplier, ECF, and the calculation of depreciation, this approach loses reliability. In the instant case, Respondent's assessor, Ms. Taylor, followed these steps

⁴⁴ *Id* at 380.

⁴⁵ See *Detroit Lions Inc v City of Dearborn*, 302 Mich App 676; 840 NW2d 168 (2013) which affirmed the Tribunal's use of the cost approach in valuing the Lion's practice facility in Dearborn, which included a full-sized, indoor football field.

⁴⁶ See MCL 211.27(3) and (4).

and explained them during her testimony; however, there is a glaring problem with the cost approach as presented by Respondent. Both Respondent and Petitioner have indicated through testimony and a written stipulation that the 2019 property record card and valuation report submitted to the Tribunal do not accurately depict the features of the subject property. This is further verified by Ms. Taylor's testimony that she is planning to go before the December Board of Review to claim a mutual mistake of fact to a stipulated list of updates that are needed to make the subject property record accurate. While Ms. Taylor is aware of the mistakes and is planning to present them to Respondent's December Board of Review as a mutual mistake of fact, she was unable to quantify their impact on the final 2019 TCV and AV of the subject property but claims that the TV would not likely be affected.

Q. And the -- do you know now what the taxable value will be once these updates are made? The updates in our stipulation?

A. No, because I haven't done that analysis as far putting them in. But the capped value, it's all in the capped value calculation. And these -- I already ran some smaller numbers to see what it would come out to and it's only going to affect the assessed because the capped value is that much lower than the assessed on the property.⁴⁷

Therefore, the Tribunal finds that Respondent's cost approach, as submitted, is unreliable as evidence of the TCV of the land improvements and house at the subject property as of December 31, 2018, and gives it no weight in determining the TCV of these aspects of the subject property. However, the land sales and ECF studies submitted by Respondent are credible and correctly developed.

The foregoing notwithstanding, Respondent's December 2020 Board of Review has no authority to make any changes to the value of the subject property for the 2019

⁴⁷ Tr. at 188.

tax year at issue here because the Tribunal's jurisdiction is "original and exclusive" once invoked for a particular property tax year.⁴⁸ Respondent's Board of Review likewise has no authority to change the 2018 values as set by the Tribunal in docket number 18-002253. Respondent may correct the features of the subject property in its records but cannot make any changes to values set forth in this final opinion and judgment which are inclusive of all the features present at the subject property on December 31, 2019, as stipulated to by the parties.

The sales comparison approach presented by Petitioner utilized five comparable sales, one on the same lake as the subject property, Lake George, and four on other similar lakes within the same county. While Respondent argued that only comparable sales on Lake George would be appropriate to use because it is a different market than the other lakes, Petitioner argued that according to common appraisal practice, if there are not enough appropriate comparable properties in the same immediate area as the subject property, the search for comparable sales should be geographically expanded. "As explained in Guide Note 11 of the Appraisal Institute's Standards of Professional Practice, it may be necessary to expand the geographic area of research for comparable sales in markets where there have been few sales."⁴⁹ It is for this reason that the Tribunal finds that Petitioner's appraiser, Mr. Davis, followed accepted appraisal practice and his use of comparable sales of similar properties on lakes nearby with similar characteristics provides reliable evidence in determining the TCV of the subject property.

⁴⁸ See MCL 205.731.

⁴⁹ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p 383.

Mr. Davis, Petitioner's appraiser, applied various adjustments to each of his comparable sales to account for their differences from the subject property. Respondent alleges that Mr. Davis used a flawed method to determine his adjustment for the amount of lake frontage of the comparable properties at \$500 per front foot. Mr. Davis claims to have used a blended rate based on the sales of vacant land on lakes, both Lake George which only had one vacant land sale in the last two years at \$343 per front foot, and other similar lakes in the county with average price per frontage foot of from \$376 to \$625 per front foot.⁵⁰ From this range of values, he concluded an adjustment of \$500 per front foot was appropriate to use for the comparable sales. Mr. Davis claimed that these values were derived from 26 sales of vacant land over a two-year period; however, he provided no documentation to support this claim. Respondent claims that the land value of the subject property is properly valued for the 2019 tax year at \$839 per front foot as evidenced by its land sales study contained in its exhibit R2, titled 2019 Land Development Record, thereby making Mr. Davis' adjustment on his comparable sales too low.

As previously stated in this document, the Tribunal found Respondent's land sales study is credible evidence as to the value per front foot for Lake George properties. As such, the Tribunal finds that Petitioner's appraiser should have more appropriately used the value per front foot provided by Respondent's land study while making his adjustments to his comparable sales rather than the \$500 per front foot used in his sales comparison approach which the Tribunal finds was not clearly substantiated by any documentary evidence. Given this, the Tribunal finds that Mr. Davis' comparable

⁵⁰ Tr. at 61-63.

sales must be correctly adjusted using \$839 per front foot rather than \$500 per front foot as presented in order to reliably indicate the TCV of the subject property.

Regarding the other adjustments made to the comparable sales by Mr. Davis, the Tribunal finds that they are reasonable and appropriate. However, not all comparable sales presented are reliable indicators of value for the subject property. Specifically, comparable sale four is given no weight by the Tribunal as it had gross adjustments of 48.5% which indicates that it is really not similar to the subject property. Comparable sales number two and five are closest in square footage to the subject property and had gross adjustments of 16.2% and 25.6%, respectively. Comparable number one is significantly larger and comparable sale three is significantly smaller. While adjustments were applied for these size variances, the Tribunal gives more weight to comparable sales number two and five because comparable two has the lowest gross adjustments and number five is on the same lake as the subject property. Comparable sales number one and three are therefore given less weight.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner's sales comparison approach with a modified front footage adjustment is more reliable than Respondent's cost approach. Therefore, Petitioner has met its burden of proof to show that the subject property is assessed too high by Respondent for the 2019 tax year. The Tribunal finds that the 2019 TCV of the subject property is \$350,000 resulting in a 2019 SEV of \$175,000. In regard to the 2019 TV of the subject property, MCL 211.27a provides that a property's TV is the lesser of the property's state equalized or capped TV, and a property's capped TV is, absent a transfer of ownership, determined mathematically by taking into consideration the prior

tax year's TV, physical losses to the property, the lesser of the rate of inflation or 5%, and physical additions to the property, including omitted property (i.e., property not previously assessed). Applying the inflation formula to the capped 2018 TV of the subject property would result in a TV higher than the SEV set for the subject property. Therefore, since the SEV is lower than the calculated capped TV, the Tribunal finds that the 2019 TV of the subject property is \$175,000, equal to its SEV.

The subject property's TCV, SEV, and TV for the tax year at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's SEV and TV for the tax year at issue are MODIFIED as set forth in the Introduction section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (xi) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (xii) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, and (xiii) after June 30 2020, through December 31, 2020, at the rate of 5.63%.

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

APPEAL RIGHTS

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

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.⁵¹ Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.⁵² A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.⁵³ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.⁵⁴

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is

⁵¹ See TTR 261 and 257.

⁵² See TTR 217 and 267.

⁵³ See TTR 261 and 225.

⁵⁴ See TTR 261 and 257.

filed more than 21 days after the entry of the final decision, it is an “appeal by leave.”⁵⁵

A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.⁵⁶ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.⁵⁷

By 

Entered: November 24, 2020

⁵⁵ See MCL 205.753 and MCR 7.204.

⁵⁶ See TTR 213.

⁵⁷ See TTR 217 and 267.