



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

Eleticia Qualls,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 20-004085

Goodland Township,
Respondent.

Presiding Judge
Victoria L. Enyart

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Eleticia Qualls, appeals ad valorem property tax assessments levied by Respondent, Goodland Township, against parcel number 44-009-007-022-00 for the 2020 and 2021 tax years. A hearing was held in this matter on November 21 and November 23, 2022.¹ Petitioner’s husband, Glen Qualls, appeared on her behalf as the representative. Ronald Cischke, Assessor, appeared on behalf of Respondent.

The Tribunal notes that Petitioner’s 2022 Petition was severed. The Tribunal has tax years 2020 and 2021 for this specific appeal. Video hearings were attempted and failed. The hearing proceeded in person.

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 are as follows:

Parcel Number: 44-009-007-022-00

Year	TCV	SEV	TV
2020	\$304,800	\$152,400	\$65,642
2021	\$328,400	\$164,200	\$77,861

¹ The Tribunal notes the Court Reporter Transcripts arrived February 28, 2023, and March 27, 2023.

PETITIONER'S CONTENTIONS

Petitioner's contentions of TCV, SEV, and TV are as follows:

Parcel Number: 44-009-007-022-00

Year	TCV	SEV	TV
2020	\$180,000	\$90,000	\$43,066
2021 ²			

Petitioner's Opening Statement

Mr. Qualls, Petitioner's representative and husband, contends that the appeal revolves around rehabilitating the home and residential facilities that started in 2015. Petitioner appealed in the Small Claims venue in 2017. The 2017 values were as follows: TCV: \$192,880, SEV: \$96,440, and TV: \$40,424. The mobile home was in two parts and the foundation was not completed. The mobile home in 2017 was not affixed to the real property pursuant to MTT Docket 17-000671.

After the 2017 Small Claims appeal, Petitioner asserts that the mobile home was placed on a foundation and then extremely high value was placed on the property. Petitioner testified that \$6,000 was paid for the mobile home. The remaining issue is the 2018 stipulated value and increase in TV. Petitioner's position is that the 2019 TV was conceded and there have been no changes to the property.

Mr. Qualls states that for the 2020 roll, the original farm building was taken off. The two parties had an agreement to this affect. However, in 2020 the value increased, and again in 2021. The notation on the property record card states the house was 60% complete in 2020. The construction then increased to 75% complete, working its way up to 100%. However, Mr. Qualls questions the basis for an increase in value to a double wide on a foundation.

For 2020, Mr. Qualls contends that an issue was a new 3,000 square foot (sf) farm building, which increased the value by \$33,000. However, there was no 3,000 sf structure on the property. The 2021 Board of Review (BOR) determined that the improvements were three shipping containers. The BOR found that the containers were not real property and removed them from the assessment.³ Mr. Qualls testified, "The Township had abandoned that issue of the shipping containers until this Tribunal suggested, well, this could be taxable."⁴

² Petitioner's Motion to Amend for tax year 2021 did not include any value contention.

³ Petitioner began testifying in reference to tax year 2022. This year was severed and is not before this Tribunal.

⁴ Tr. 1 at p. 10-11.

PETITIONER'S ADMITTED EXHIBITS

- P-2 2019 Valuation Report
- P-4 2020 Valuation Report
- P-5 2020 Petition to BOR
- P-6 2021 Change of Assessment
- P-7 2021 Valuation Report
- P-8 2021 BOR Petition
- P-10 2022 Valuation Report
- P-18 April 2017 Google Maps Storage Cars
- P-21 Page 1592 Michigan Real Property Law Principles and Commentary Third Edition.
- P-22 March 27, 2015, Email for \$1,700 40-foot-high cube container. Andrew Hoang, Carson, California
- P-24 March 27, 2015, Email for third container \$1,700 40-foot-high cube container.
- P-27 2016 Photo of subject property on blocks.
- P-28 2016 Bill of sale for subject property.
- P-29 Certificate of 1991 Mobile home ownership.
- P-35 Respondent's July 7, 2022, Letter to the Tribunal.
- P-36 Respondent's 2021 TV Worksheet.
- P-38 Property information for Neighbor's Property.
- P-41 Petitioner's measurement of container in the dark.
- P-43 Shipping Containers at 2204 North Blacks Corners Road, Imlay City.
- P-44 Google Earth Measurements Subject Property.
- P-45 Google Earth Photos April 2017-July 2022.

Evidence excluded or not admitted.

Exhibit P-30, a blank copy of Affidavit of Affixture of Mobile Home was not admitted. A blank copy of the State of Michigan form that if a person chooses to have their mobile home legally affixed to real property. Respondent objected as it wasn't filled out and there wasn't a building permit on it.

Mr. Qualls requested that exhibit P-31, a 2006 appraisal for the prior owners, be admitted showing the history of how mobile homes are appraised. Respondent objected that it is too old, and it was located in a trailer park, not set up on a footing. The 2006 appraisal of the purchased trailer was determined to be not relevant and not admitted.

Exhibit P-32 contains four 2016 mobile home listings. They were to establish the market value of double wide mobile homes similar to the subject property. Respondent objected as they are too far removed from December 31, 2019, and December 31, 2020, tax dates at issue. The Tribunal finds that the listings were not similar to the subject and not of assistance for the tax years at issue.

Exhibit P-40 is excluded because it was one page of a Wikipedia intermodal container definition. There is no authentication or author. Respondent objected.

Exhibit P-42 was considered, however, the measurements were not clear, as Petitioner measured in the dark. Respondent objected.

PETITIONER'S WITNESS

Petitioner's husband, Mr. Qualls, began with an objection to the Tribunal's procedures. A hearing on Zoom was requested. Further, another request for the hearing to be adjourned was submitted on November 18, 2022, for the November 21, 2022 hearing to be rescheduled. Mr. Qualls protested that the township was required to answer the Amended Complaint paragraph by paragraph to help shorten the procedure. He argues that for two years the Township has refused to provide a valid answer to comply with the Tribunal rules. "And, so, we have a Petitioner that's just being ignored, and, I think, wrongfully ignored."⁵

Petitioner's Representative testified that the 2021 BOR ruled that the shipping containers were not real property.⁶ Petitioner tried to include tax year 2022 to the hearing, however, it was severed.

Respondent's assessor, Mr. Cischke, was Petitioner's only witness. He has been the Township Supervisor and certified assessor for Goodland Township for 52 years (since 1969). Regarding his background and expertise, he testified that he had taken classes to become an assessor and continues to take annual educational classes to maintain his certification.

In addition to properties identified on the assessment roll, Mr. Cischke researches additional properties, drives around the township, reviews zoning permits, and uses Google Earth as resources.

Petitioner's exhibit P-1 was not recognized as an accurate depiction of 3075 North Blacks Corners; and was not admitted into evidence. Petitioner's exhibit P-2 was the 2019 valuation report for the subject property, but it was objected to because it was 2018-2019. Nevertheless, Petitioner's exhibit P-2 was admitted into evidence. Mr. Cischke confirmed that the document did not include a low cost shed item. The 2019 TV was confirmed at \$59,478.

Petitioner's exhibit P-3, the 2020 Notice of Assessment, the change from prior year to current year was not readable for tax year 2020. The 2019 and 2020 TVs and assessed values (AV) were readable. The 2019 TV was \$59,478 and increased to \$76,308 for 2020. The 2019 AV was \$146,300 and increased to \$163,100 for 2020. The 2020 Valuation Report reflected the residence was 60% completed with an Economic Condition Factor (ECF) of 0.770. The Total TCV is \$326,264.⁷

⁵ Tr. 1 at p. 13.

⁶ Tr. 1 at p. 9.

⁷ Exhibit P-4. The Tribunal notes for the reader the Land Improvements included \$11.40/sf for 3,000 sf at 92% good at a TCV of \$31,434 for tax year 2020.

Petitioner's exhibit P-17 is a copy of the 2015 Google Map showing the original old pole barn and two cube containers. Mr. Qualls testified with reference to the shipping containers, "That's one of the deciding factors, as I understand it is, are they easily movable to determine whether an issue it's real property or personal property, is it readily movable."⁸ Respondent objected to the exhibit and statement. Mr. Qualls explained that Respondent's contemporaneous record had nothing to do with the value of the cube containers and whether they are real or personal. Petitioner finds that the containers are readily movable.

When questioned on their weight, Mr. Qualls testified "About 8 to 9,000 pounds". He further explained that.

I've moved them myself with just simply jacking them up and putting a roller under it and rolling it. So, it just depends on how far you're moving it and where. If you're going to go miles, then you would probably put it in a truck, load it onto a truck or a trailer or a dolly. So, I made a dolly for them so I could jack it up, slide the dolly under it and just roll it around.⁹

Petitioner's exhibit P-18 is an April 2017 Google Map that indicates a third cube container was added to the property. The photograph also shows that the mobile home is two sections. The old house in the photograph is a pile of rubble and was demolished. Petitioner explained that the photograph also shows that the cube shipping containers had been moved and the new foundation is started. Respondent did not object to this exhibit because it shows that, contrary to testimony, that the house was not built as the new foundation in 2016-2017 was not completed.

Respondent was questioned on the size of the cube containers (as shown on the 2020 subject property record), "Because they're individually 1,000 square feet."¹⁰ Petitioner challenged Mr. Cischke about the measurements of 8 feet x 50 feet at 400 sf each. However, Mr. Cischke testified, "We treat them as 1,000 square feet."¹¹ Mr. Cischke explained that these are fairly new and not in the assessor's cost manual, so, 1,000 sf, low-cost shed was utilized for the cost approach. This was the closest category that Mr. Cischke could find for valuation. In turn, the 2020 BOR determined no change. "No changes due to law interpretation recommended Tribunal."¹²

Mr. Qualls testified that exhibit P-21 indicated that the owner of a building is not the owner of the land and is not obligated to pay the real property taxes. His wife, Eleticia Qualls, owns the land and does not live at the property. He believes that this should make all of the improvements personal property.

⁸ Tr. 1 at p. 117.

⁹ Tr. 1 at p. 119.

¹⁰ Tr. 1 at p. 37.

¹¹ Tr. 1 at p. 39.

¹² Tr. 1 at p. 43.

Exhibit P-22 from March 2015 is a copy of an email for a 40-foot-high cube container for a cost of \$1,700. Exhibit P-24 is the 2015 estimate of a shipping container. Respondent objected because the sale prices are too remote from the tax dates at issue. Petitioner argued that it was his purchase price, and that the current cost is not relevant and that Mr. Cischke should go back to what Petitioner paid for the containers. That is the essence of the appeal. Mr. Qualls' 2015 purchase was admitted as it is Petitioner's only valuation evidence.

Mr. Qualls argues that 2022 is relevant to the tax dates at issue. Petitioner had a discussion with Respondent, and the Valuation Report was then changed. The Tribunal reminded the parties multiple times that the 2022 tax year was severed with a separate docket number.

The subject's 2021 Notice of Assessment included a TV increase of \$12,368 to \$88,676. The reason for the change was the percentage complete for new construction. The mobile home was placed on the property in 2017. However, the dwelling sat on the property in two sections on the property for several years before it was set on a footing.

Regarding the Valuation Report for 2021, Petitioner argues that the assessment continues with low-cost sheds and a notation of 75% good on the residence. However, the document at the end it shows a 71% physical depreciation. The ECF is 0.746 with a 75% dwelling completion, which is different than depreciation. Petitioner questions Mr. Cischke about the actual completion of manufactured homes shipped from the factory. Mr. Cischke responded that they are considered completed construction at the factory. On the other hand, Respondent remarked that once the construction is placed on the foundation, the dwelling is not considered 100% complete.

The 2021 values were appealed to the BOR. The BOR reduced the AV from \$174,900 to \$163,600 and the TV from \$88,676 to \$66,076. As noted, "Due to Portable Sheds are actually Portable containers." "Taxable Value change because Portable containers aren't a building." ¹³

Mr. Cischke believes that there are approximately 12-15 shipping containers in the township. He states, "January 1st is Tax Day in our Township and across the State of Michigan. I haven't got them all down yet, but I'm expecting to see 12 to 15."¹⁴ Respondent asserts that there are other properties with shipping containers that have been assessed.

Mr. Qualls' closing statement points to two primary issues for the 3,000 sf low cost shed in 2020. He questions Respondent's initial reference was for an old shed that was torn down, not the shipping containers, then the 2019 aerials show the shed was a pile of rubble.

¹³ Exhibit P-8 at p. 2.

¹⁴Tr. 1 at p. 20.

Mr. Qualls assumed it was the shipping containers. They do not fit the description. Respondent's 3,000 sf description does not make sense.

RESPONDENT'S CONTENTIONS

The property's TCV, SEV, and TV, as confirmed by the BOR, are as follows:

Parcel Number: 44-009-007-022-00

Year	TCV	SEV	TV
2020	\$326,200	\$163,100	\$76,308
2021	\$327,200	\$163,600	\$77,376

Respondent contends that this hearing involves a 2021 tax year. He wants to make this point clear. Respondent is able to answer any questions that the Tribunal may want to ask him. Respondent then agreed and clarified that this appeal hearing is for the 2020 and 2021 years.

Respondent further states that he has been assessing for over 50-years and it is the first time that he had a three-ring binder full of material. Respondent notes that Mr. Qualls has been involved in multiple Tribunal hearings. On those occasions, Respondent has tried to come to a resolution with Petitioner. The 2020 amounts in dispute are SEV \$73,100, and TV \$34,308; the 2021 differences are SEV \$73,100, TV \$35,376 respectively.

Respondent contends that the only issue are the three storage units on the subject property. Respondent states, "The only issue today is those three storage units. If we got to add those on I need direction from you in your final decision. \$5,000 a piece."¹⁵

RESPONDENT'S ADMITTED EXHIBITS

- R-1 2019-2021 Valuation Reports
- R-2 2021 BOR Petition
- R-3 2021 BOR Appeal Letter from Eleticia Qualls
- R-4 2021 TV Calculation Worksheet.
- R-5 Letter to LARA
 - a. Photos of storage containers
 - b. Photos of mobile home
 - c. Valuation Reports 2020 & 2021

RESPONDENT'S WITNESS

Respondent began with the cross examination of Mr. Qualls once it was understood that Petitioner had concluded direct examination of Mr. Cischke. Respondent then began

¹⁵ Tr. 1 at p. 151.

with the cross examination for the Township's case. Respondent's case-in-chief was based on the cross examination of Mr. Qualls.

Respondent questioned Mr. Qualls about his understanding of property taxes, assessments, and the difference between personal and real property. Mr. Qualls testified that Eleticia Qualls owns the subject property and pays the property taxes. Mr. Qualls owns the mobile home and shipping containers. After the Tribunal explained the process of cross-examination, Mr. Cischke had no further questions.

Mr. Cischke asked Mr. Qualls what is the issue in today's hearing. Mr. Qualls responded, "the assessment change, the taxable value change alleging a new farm building that later you said had to do with an old shed..." Mr. Qualls further asked, how Mr. Cischke could "declare a new building and have taxes."¹⁶

Mr. Cischke explained that exhibit R-1 included the valuation reports for 2019 and 2020. He then went through each line-item on the pages and documents. The assessor's 2019 Valuation shows Eleticia Qualls, located 3075 North Blacks Corners Road, as the owner. The 80-acre parcel is classified as agricultural with 20 acres tillable, 44 acres of high untillable, 15 acres of woods and one acre of road right of way. The land is valued at \$200,800. The Class C shows 1,848 sf single-family ranch, built in 2017, as 72% physically good. The well, septic, and bath are also included. The \$161,024 cost is the total real property with 60% depreciation, with an ECF of .950 for \$91,784. The land and improvements together equals a TCV of \$292,584, a SEV \$146,300, and a TV \$59,478.

The 2020 Valuation Report (exhibit R-1) shows the land value increased to \$219,500. The land improvements include low-cost sheds of 3,000 sf at \$11.40/sf, (at 92% physically good) with a value of \$31,464.

The dwelling was 14% physically good as 60% completed construction for a total cost of \$75,300, with an ECF of 0.770 which equals a TCV \$326,264, a SEV \$163,100, and a TV \$76,308.

The 2021 assessor's Valuation Report indicated that the land value increased to \$222,700, and the sheds remained unchanged at \$31,464. In addition, the dwelling was noted as 71% good (a.k.a. depreciated) and 75% completed construction at \$95,547, with an ECF of 0.746. The TCV was \$349,711, and AV at \$174,900; the BOR lowered the SEV to \$163,600, and the TV to \$77,376.

Eleticia Qualls sent a letter of protest (exhibit R-3) to the 2021 BOR. At this hearing, Respondent requested that the 2021 Petition to BOR be admitted (exhibit R-2). Mr. Qualls objected stating that the Assessor falsely and fraudulently classifies other owner's similar property as personal property but classified Petitioner's (mobile home and shipping containers) ...On March 10, 2022, the BOR decreased the assessed and

¹⁶ Tr. 1 at p. 142-143.

taxable values stating, “Due to Portable Sheds are actually Portable containers.” Further “Taxable Value change because Portable containers aren’t a building.” Exhibit R-5 outlines Mr. Cischke’s visit to the subject property on July 1, 2022, which included photographs. He explained all 15 pages. Mr. Qualls then cross-examined Mr. Cischke with reference to exhibit R-1, page 1 and questioned what is meant by the phrase “being built in 2017”. Mr. Cischke explained that this was the year he observed the subject property which included two modular sections on wheels. He explained there is a difference between placing sections on the property versus the completed sections put on a foundation and ready for occupancy.

Petitioner then asked Mr. Cischke about the MTT small claims decision in MTT Docket 17-000671 (Small Claims case), where the mobile home was on wheels (as personal property). Petitioner’s description was not Mr. Cischke’s understanding.¹⁷ Mr. Cischke explained that whatever is on the property as of Tax Day is added regardless of the condition. Also, the percentage of completion is taken into consideration.

Petitioner then asked Mr. Cischke if he assessed the low cost shed of 3,000 sf at a rate of \$11.40/sf multiplied by the amount of square feet. Mr. Cischke responded that was correct. The value increased to \$15,700. The Township’s zoning ordinance 100-7 requires a permit for a shipping container.

The subject dwelling was assessed with a partial basement. When questioned on how the depreciation for water and sewer was calculated, Mr. Cischke’s response was same as the house. Petitioner than asked about the age of the well/septic systems, “the well has been in for 50 years but the house was put in three years, you would change the depreciation to what the new house depreciation would be?” Respondent’s answer was “Yes”.¹⁸

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 conclusions and has rejected evidence contrary to those findings.

1. The subject property is located at 3075 North Blacks Corners Road, Imlay City, Lapeer County.
2. The subject property is located in Goodland Township.
3. The subject has 80 acres described as follows:
 - a. 20 acres high tillable,
 - b. 44 acres high untillable,
 - c. 15 acres wooded,

¹⁷ Tr. 2 at p. 197 Petitioner was arguing with the Tribunal regarding a 2017 Small Claims Decision prior to the mobile home being placed on a foundation.

¹⁸ Tr. 2 at p. 208-209.

- d. 1 acre road right of way.
4. The site improvements include:
 - a. Low Cost Shed,
 - b. One-story ranch, average quality, built 2017,
 - c. Partial basement and crawl space,
 - d. One-bath,
 - e. One fireplace
 - f. 1,000-gallon Septic,
 - g. 200 feet Water Well.
5. Respondent's evidence includes photographs that portray the subject property.
6. Each cargo container weighs 8,000-pounds or four-tons.
7. Each four-ton cargo container is not "portable" without special equipment.
8. Petitioner's submitted valuation evidence in the form of an email dated March 2015 for a 40 ft high cargo container.
9. Petitioner's evidence also included Respondent's Valuation Reports and BOR Decisions.

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.¹⁹

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.²⁰

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.²¹

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."²²

"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

¹⁹ See MCL 211.27a.

²⁰ Const 1963, art 9, sec 3.

²¹ MCL 211.27(1).

²² *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

assessment.”²³ The Tribunal is not bound to accept either of the parties’ theories of valuation.²⁴ “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.”²⁵ 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.”²⁶

A proceeding before the Tax Tribunal is original, independent, and de novo.²⁷ The Tribunal’s factual findings must be supported “by competent, material, and substantial evidence.”²⁸ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”²⁹

“The petitioner has the burden of proof in establishing the true cash value of the property.”³⁰ “This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party.”³¹ 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.”³²

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.³³ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”³⁴ 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.³⁵ Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.³⁶

²³ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

²⁴ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

²⁵ *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

²⁶ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

²⁷ MCL 205.735a(2).

²⁸ *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

²⁹ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

³⁰ MCL 205.737(3).

³¹ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

³² MCL 205.737(3).

³³ *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).

³⁴ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

³⁵ *Antisdale*, *supra* at 277.

³⁶ See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

Personal Property or Fixtures?

Mr. Qualls argues that the home and the three 8,000-pound (4 Ton) cargo containers are portable and should not be assessed. He argues they should be exempt from real taxes because Mrs. Qualls owns the land, while Mr. Qualls owns the home and cargo containers. Petitioner essentially argues that they should not be assessed based on marital status and in the alternative, should not be taxed because they are portable. These will be addressed in turn.

First, Mr. Quall's argument these properties should be taxed based on "spousal ownership" is unpersuasive because he ignores the concept of "marital property," which is determined by law. "Generally, marital property is that which is acquired or earned during the marriage, whereas separate property is that which is obtained or earned before the marriage."³⁷ Further,

The categorization of Property as marital or separate, however, is not always easily achieved. While income earned by one spouse during the duration of the marriage is generally presumed to be marital property . . . there are occasions when property earned or acquired during the marriage may be deemed separate property. . . . Moreover, separate assets may lose their character as separate property and transform into marital property if they are commingled with marital assets and "treated by the parties as marital property." The mere fact that property may be held jointly or individually is not necessarily dispositive of whether the property is classified as separate or marital. [internal citations omitted]³⁸

Where the property was acquired after their marriage it would be considered marital. Even if the home and land were considered separate properties, placing the home on a foundation and the cargo containers on the land would be considered co-mingling. Mr. and Mrs. Qualls' manner of ownership of the property does not make any of the property not taxable.

Next, structures like mobile homes and cargo containers can be annexed to real property. For instance, the Court of Appeals has found mobile homes that were placed on a concrete slab foundation are annexed to the land.³⁹

The mobile home was annexed by way of a concrete slab foundation. It has all the attributes of a conventional, permanent dwelling, including a porch, as well as connections to gas, electric, sewer, and water lines. In every respect, the mobile home was integrated with and adapted to the *652 use of the real property, which property was zoned for single-family residential use. Notwithstanding the fact that the home could be eventually moved from

³⁷ *Cunningham v Cunningham*, 289 Mich App 195, 201-02; 795 NW2d 826, 830 (2010) citing MCL 552.19.

³⁸ *Id.*

³⁹ *Ottaco, Inc v Gauze*, 226 Mich App 646, 651-52; 574 NW2d 393, 396 (1997).

its foundation to another location, the objective facts manifest the Gauzes' intent to make the mobile home a permanent accession to the realty.⁴⁰

Whether the cargo containers are personal property or fixtures depends on caselaw. "[T]he term 'fixture' necessarily implies something having a possible existence apart from realty, but which may, by annexation, be assimilated into realty."⁴¹ The Tribunal is required to follow a well-established three-part test to determine if the containers should be taxed as fixtures to the property.

[First], annexation to the realty, either actual or constructive; second, adaptation or application to the use or purpose to which that part of the realty to which it is connected is appropriated; and third, intention to make the article a permanent accession to the freehold.⁴²

"The focus is on the intention of the annexor as manifested by the objective, visible facts, rather than the annexor's subjective intent. *Id.* "Intent may be inferred from the nature of the article affixed, the purpose for which it was affixed, and the manner of annexation."⁴³

Limited testimony and evidence were presented with whether the containers should be treated as fixtures. The Township requires a building permit for the cargo containers. Respondent's cost is \$11,400 per container. Mr. Qualls argued throughout the hearing that the three 8 x 40 cargo containers are "portable" and should not be assessed as real property. They have existed at the property for several years, meaning they have been annexed to the property, either actually or effectively. They cannot be moved or relocated absent specialized equipment. Regarding the permanency of the containers, Petitioner's representative stated there is no desire for the containers to be permanently affixed to the property, but neither was there any immediate plans to move them, and they remained at the subject property at the time of the hearing, which was more than three years after the first Tax Day at issue. The containers are used for storage, and although it is unclear from the record precisely what is stored in the containers, the Tribunal finds that Petitioner's representative using the containers as storage is a compatible adaptation of their use on the subject property. The Tribunal therefore finds that the cargo containers are fixtures and should be assessed as part of the real property.

For 2020, Petitioner's exhibit P-5 is the 2020 change of assessment notice which increased the SEV from \$146,300 to \$163,100 and the TV from \$59,478 to \$76,308. The hotly contested cargo containers were assessed as new on the 2020 roll for \$31,464 (TCV). Petitioner's BOR states:

⁴⁰ *Id.*

⁴¹ *Kent Storage Co v Grand Rapids Lumber Co*, 239 Mich 161, 164; 214 NW 111 (1927)

⁴² *Wayne Co v Britton Trust*, 454 Mich 608, 615; 563 NW2d 674 (1997) quoting *Morris v Alexander*, 208 Mich 387, 390–391; 175 N.W. 264 (1919).

⁴³ *Ottaco, Inc. v Gauze*, 226 Mich. App. 646, 651, 574 N.W.2d 393, 396 (1997) citing *Britton Trust, supra*, at 619, 563 N.W.2d 674.

So -called 'Land Improvements', (purportedly shipping containers mischaracterized as "Low-Cost Sheds") and 'Res. Bldg: 1 Single Family Ranch' are without legal basis nor actual value. I do not own either the shipping containers nor the mobile home. These are not my real property but personal property belonging to another. Valuation is fantasy.⁴⁴

The 2020 BOR states "No change due to law interpretation recommend Tribunal." The decision in the 2017 Small Claims appeal (Docket No. 17-000671) took the value of the mobile home off of the roll as it was not on the foundation at that time.

Respondent's 2020 Valuation Report indicates that \$32,464 of the TCV, or \$15,700 SEV was added as "new". The SEV increased to \$163,100 and the TV to \$76,308 (from \$59,478).

Respondent's 2021 Valuation Report (exhibit R-5) indicates that the \$174,900 assessment was reduced to \$163,600 by the 2021 March BOR. The 2021 BOR removed \$11,300 for the containers. The March 10, 2021 BOR comments "Due to Portable Sheds are actually Portable containers." The reduction in TV states "Taxable Value change because Portable containers aren't a building."

Respondent's July 7, 2022 evidence (exhibit R-5) was beneficial after both parties were at the subject property. The property was measured, photos were taken, and the evidence was submitted and admitted. Respondent's 2020 and 2021 Valuation Report, which includes the house on foundation and the three cargo containers, (valued as low quality) is considered.

The Tribunal finds that the double wide home that was place on a permanent foundation with a partial basement is real property affixed to the ground and is properly assessed as real property.

The incorrect depreciation was utilized by Respondent in calculating the septic and well which are older that the residential home. The Tribunal finds that Respondent should consider the actual age of the septic and well when calculating value.

The Tribunal finds that the only valuation evidence presented are Respondent's Valuation Reports, that contain land value, square footage, cost new, and depreciation for the real property items, and ECF. The Tribunal finds that Petitioner's evidence is not accepted as market information. Petitioner did not provide any current market evidence of the value of the subject property. The 2015 sale price of the cargo containers is insufficient. The price does not include the transportation or setting the cargo containers on the property. TCV is what the property is valued at for a willing buyer and a willing seller considering the subject property would bring on the open market.⁴⁵ The

⁴⁴ Petitioner's March 9, 2020 BOR Statement.

⁴⁵ MCL 211.27(1).

Consumer Price Index has been increasing in the last few years, affecting the value of real property.

Petitioner's exhibit P-22 indicates that a 40' HC (High Container) was \$1,700 in 2015. It does not contain the transportation or cost to set it on the property. Petitioner only provided the price paid in 2015. He testified that the value should be the price paid and not increase. However, the Tribunal finds that some property does appreciate, and the actual price paid does not always reflect market value. Although the cargo containers have been moved, the Tribunal finds that they are not considered "portable" at 4 tons each and require special equipment to move. They have not been moved for several years.

Respondent struggled with finding the value for the cargo containers utilizing the State Tax Commission (STC) Cost Manual. The cargo containers are identified on the Valuation Reports as "low cost shed" before depreciation are valued at \$34,000 total. The section of the cost manual was not disclosed.

Respondent's evidence of the value for the three cargo containers was taken from the STC Cost Manual. However, Respondent testified "The only issue today is the three storage Units. If we got to add those on then I need direction from you in your final decision. \$5,000 a piece."⁴⁶ The Tribunal finds that Respondent failed to elaborate the basis for the \$5,000 estimate.

When a real property valuation case is under the jurisdiction of the Tax Tribunal, the local BOR has no authority because the Tribunal's jurisdiction is "exclusive."⁴⁷ The Tribunal reverses the 2021 BOR decision and adds the cargo containers back on to the ad valorem roll as real property. In this regard, the only value that the Tribunal has is \$31,464, found on the assessor's valuation report. Petitioner's 2015 sale price is unacceptable and unpersuasive as the market value of the cargo containers. The sale was five years prior to Tax Day, and did not include transportation, or any other associated costs as of December 31, 2019, Tax Day for 2020 or December 31, 2020, Tax Day for 2021.

Petitioner's evidence was based on outdated information, Valuation Reports from the assessor, and BOR determinations. Petitioner presented no independent current evidence of value for the subject property. Petitioner's \$1,700 sale price (\$5.31 sf) may not have included all the costs to deliver, set up and move the storage containers. Respondent's \$11.40 sf was multiplied by 3,000 sf. The Tribunal finds that the correct square footage of 320 sf for each cargo container should have been utilized. Respondent's TCV of \$31,464 for the cargo containers is replaced with \$10,068 (\$10.49 sf) for the three cargo containers for both years under appeal. The 2021 value for the additional completion of the dwelling remains unchanged. The Tribunal finds that

⁴⁶ Tr. 1 at 151.

⁴⁷ MCL 205.731.

although a reduction in TCV, AV, and TV, Petitioner failed to provide sufficient evidence for his contentions.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner fails to meet the burden of proof. The subject property's TCV, SEV, and TV for the tax years at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's SEV and TV for the tax years 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, 2013, through June 30, 2016, at the rate of 4.25%, (ii) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (iii) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (iv) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (v) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (vi) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (vii) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (viii) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (ix) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (x) after June 30 2020, through December 31, 2020, at the rate of 5.63%, (xi) after December 31, 2020, through June 30, 2022, at the rate of 4.25%, (xii) after June 30, 2022, through December 31, 2022, at the rate of 4.27%, (xiii) after December 31, 2022, through June 30, 2023, at the rate of 5.65%, and (xiv) after June 30, 2023, through December 31, 2023, at the rate of 8.25%.

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 Tribunal with the required filing fee within 21 days from the date of entry of the final decision. 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. You are required to serve a copy of the motion 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. Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

A claim of appeal must be filed with the Michigan Court of Appeals 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 filed more than 21 days after the entry of the final decision, it is an "appeal by leave." You are required to file a copy of the claim of appeal with filing fee with the Tribunal in order to certify the record on appeal. The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.

By 

Entered: September 21, 2023

PROOF OF SERVICE

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provide by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk