



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

MARLON I. BROWN, DPA
DIRECTOR

David & Linda Wineman,
Petitioners,

MICHIGAN TAX TRIBUNAL

v

MTT Docket No. 22-001826

Fair Haven Township,
Respondent.

Presiding Judge
Jason C. Grinnell

FINAL OPINION AND JUDGMENT

INTRODUCTION

This case involves Petitioners, David and Linda Wineman's (collectively the Winemans) challenge to Respondent, Fair Haven Township's assessment of the Winemans' improved residential property for tax year 2022.

This case was tried before the Tribunal on January 9, 2024. At the conclusion of the hearing the Tribunal ordered the parties to file post-hearing briefs. The Tribunal has considered all of the testimony, the exhibits admitted into evidence, and the arguments by respective counsel. Furthermore, the Tribunal has weighed the evidence, judged the credibility of the witnesses, and applied the burden of proof, by a preponderance of the evidence, upon the Winemans to make an independent determination of the true cash value (TCV) of the subject property for tax year 2022.

Pursuant to R 792.10133, after hearing, the Tribunal must issue a final decision in writing. Additionally, "[a] written final decision shall include separate sections entitled "findings of fact" and "conclusions of law." Findings of fact "shall include a concise statement of the underlying supporting facts" that are "based exclusively on the evidence."¹ Accordingly, the Tribunal has not addressed every piece of evidence or every inference that might lead to a conflicting conclusion and has rejected evidence contrary to its findings. Furthermore, "[e]ach conclusion of law shall be supported by authority or reasoned opinion."² Accordingly, the Tribunal will begin by outlining the background of the case, finding of facts, followed by conclusions of law, and ultimately render judgment.

The Tribunal, having heard and considered the evidence adduced at hearing, the arguments of counsel, the case file, and for the reasons stated more fully below, the Tribunal finds the TCV, state equalized value (SEV), and taxable value (TV) for the subject property are as follows:

¹ See also MCR 2.517(A).

² *Id.*

Parcel Number: 3208-137-001-10

Year	TCV	SEV	TV
2022	\$152,640	\$76,320	\$76,320

BACKGROUND

In 2019, the Winemans purchased three parcels of vacant land located on a remote, off-grid island in Saginaw Bay, known as North Island for \$80,000. The three parcels were later combined into one parcel, identified as parcel number 3208-137-001-10, which is the subject property under appeal. The newly formed parcel encompasses 20.74 acres. The Winemans choose not to get a survey of the property prior to purchasing the property. In 2020, the Winemans began building a log cabin on the subject property in violation of Huron County's Zoning Ordinance. The Winemans contend that after constructing their new log cabin, the property is remarkably worth less than what they purchased the vacant parcels for two years ago.

The subject property is accessible only by boat or snowmobile and is off the grid. Further, the property consists of approximately 20.74 acres and has approximately 1,276 feet of waterfront. Also located on the property is a log cabin with covered porch. The foundation of the log cabin rests on cement piers. The subject property is situated in Huron County's R-1, single family residential zoning district, which requires a minimum dwelling square footage of 900/square foot (SF) and a minimum 10-foot side yard setback.³ Section 19.05(c), gives the Huron County Zoning Board of Appeals (ZBA) the power to grant variances to Huron County's Zoning Ordinance and outlines the standards for granting such.⁴

At hearing, Petitioner, David Wineman, testified concerning various issues with the property, the valuation disclosure he prepared and submitted as evidence, and his opinion of value as of the December 31, 2021 valuation date. Respondent, Fair Haven Township, offered testimony from Anthony Piazza and Valerie McCallum. Ms. McCallum is Fair Haven Township's assessor. Mr. Piazza is a Michigan certified general appraiser who prepared an appraisal report containing data and photographs of the subject property, expressing an opinion of value as of the December 31, 2021 valuation date.

PETITIONERS' CONTENTIONS

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

Parcel Number: 3208-137-001-10

Year	TCV	SEV	TV
2022	\$75,000	\$37,500	\$37,500

³ See Respondent's Exhibit 4 for relevant excerpts from the Zoning Ordinance of Huron County.

⁴ *Id.*

PETITIONERS' ADMITTED EXHIBITS

- P-1 Petitioners' valuation disclosure.
- P-2 Huron County ZBA Consideration of Zoning Decision.
- P-3 Certificate of Survey.
- P-4 Huron County GIS Parcel Report.

PETITIONERS' WITNESSES

David Wineman⁵

At trial, Petitioner, David Wineman testified concerning the purchase of the subject property, the legal issues, and his contention that the subject property is over assessed. At hearing, Mr. Wineman testified that he and his wife, Linda, purchased the subject property in May 2019 for \$80,000. The Winemans choose not to have the property surveyed prior to purchasing the property. Mr. Wineman testified that the property has no utilities, there are no access roads, there is no fire or police protection, and the only way to access the island is by boat or snowmobile. There is a community dock available for use by North Island residents, but it is unclear who owns the trail providing access from the dock to the Winemans' property.

In 2020, the Huron County Building and Zoning Department notified the Winemans that their 512/SF log cabin was below the minimum square footage allowable, and the setback on their property line was wrong. In September 2020, the Winemans appeared before the Huron ZBA seeking variances for the size of their log cabin and the side yard setback. Mr. Wineman testified that the Huron ZBA determined that the size of the log cabin was okay, but the Winemans would need to correct the boundary lines for the subject parcel and neighboring parcels. The Huron ZBA conditioned approval of the variances on the Winemans securing a lot line adjustment to fix the building encroachments and the filing of such with the Register of Deeds.⁶ Mr. Wineman testified that they hired a surveyor to complete a survey of the subject property and neighboring properties.⁷ After completion of the survey, the Winemans tracked down the neighboring property owners to notify them of the problem and to see if they would agree to the proposed lot line adjustment. Mr. Wineman testified that all but one of the neighboring property owners agreed to the proposed lot line adjustment.

Next, Mr. Wineman testified concerning the lack of a building permit. Mr. Wineman testified that they were told by a neighbor whose first name is Jack and the Huron County Building and Zoning Department, that they did not need a building permit and that there had never been a building permit issued on North Island. Mr. Wineman further testified that the Huron County Building and Zoning Department was closed in 2020 due to the COVID-19 pandemic. Mr. Wineman contends that because he did not obtain a

⁵ See Transcript from January 9, 2024 hearing, pages 14 through 67 for direct examination by Mr. Keating, and pages 67 through 83 for cross-examination by Mr. Gildner.

⁶ See Petitioners' Exhibit 2.

⁷ See Petitioners' Exhibit 3.

building permit and is in violation of the zoning ordinance, he cannot sell the subject property and is concerned that Huron County may institute enforcement proceedings.

The Winemans prepared a valuation disclosure in support of their contention that the subject property is over assessed. At hearing, Mr. Wineman testified that they calculated the TCV by adding the value of the building with the value that they could establish for the land. The Winemans used three different methods to calculate the value of the cabin. First, the value of the cabin was derived by using the actual cost to construct the log cabin outlined in their contract with Oasis Homes combined with the cost of the second-hand items the Winemans added themselves for improvement. Combining the two resulted in a TCV of \$42,371.53. Second, Mr. Wineman testified that they found a comparable property in Unionville, Michigan, located on the shoreline, with similar characteristics as the subject property. After adjusting for differences in square footage, amenities, and pro-rating the value of the improvement by seven-twelfths, they arrived at a TCV of \$11,136. Third, Mr. Wineman testified that they calculated the value of the cabin using the actual replacement cost relying on an invoice from builder Paul Miller and the additional amenities cost of \$4,201.53 for a total actual replacement cost of \$32,901.53. Mr. Wineman reconciled the three different values concluding a TCV for their log cabin of \$28,803. Mr. Wineman also testified at hearing that the log cabin was finished in 2020, and there was no work done on the cabin in 2021. Accordingly, Mr. Wineman contends that Respondent unlawfully increased the 2022 TV of the subject property in excess of the inflation rate multiplier, by \$2,837.

Next, Mr. Wineman testified concerning the land. Mr. Wineman contends there is a variance in the actual acreage he owns, and the acreage Respondent is taxing him for. Mr. Wineman testified that Respondent is taxing him for 23.86 acres, but he only owns 20.69 acres. Further, Mr. Wineman contends that the State of Michigan is claiming ownership of a quarry area consisting of approximately four acres. Lastly, Mr. Wineman testified at hearing that he believes approximately 16 of his 16.69 acres are regulated wetlands, which further reduces the value of the Winemans' property.

At hearing, Mr. Wineman provided testimony on how the Winemans calculated the land value using three variations. First, Mr. Wineman testified that he used the \$80,000 purchase price and then subtracted approximately four acres that he contends the Department of Natural Resources (DNR) owns. Mr. Wineman testified that after purchasing the property he was told that the DNR claims ownership of a quarry area located on the subject property consisting of approximately four acres. Accordingly, Mr. Wineman deducted the four acres owned by the DNR from the 20.69 total acreage, to conclude a land value of \$64,533.60. Next, Mr. Wineman testified that their property is unique, lacks amenities, and Respondent is taxing them as if they own 23.86 acres. For their second analysis, the Winemans contend that the approximately four acres owned by the DNR and the additional 3.17 acres Respondent is taxing the Winemans for should both be subtracted from the overall acreage to conclude a land value of \$58,549.67. Third, Mr. Wineman testified that they found a vacant land comparable on Rose Island. The Rose Island property is 47.28 acres in size and sold for \$157,000 in 2021 and again in 2022 for \$177,000. Mr. Wineman used the 2022 sale price to arrive

at a cost per acre of \$3,743.65. Applying the price per acre to the subject property, and after deducting the approximately four acres owned by the DNR, Mr. Wineman concluded a land value of \$62,481.51. Mr. Wineman testified that the average of the three was around \$60,000, but he felt discounting the land value to \$45,000 was appropriate because of the boundary issues and because he “hates the property.” Combining the value of the log cabin and land, the Winemans concluded a TCV of \$73,803.

Under cross-examination by Respondent’s counsel, Mr. Gildner, Mr. Wineman testified that he was never told that a building permit was needed, just that no building permit had ever been issued. Mr. Wineman also testified that he had not asked anyone at Huron County whether a building permit would be necessary prior to purchasing the property. Mr. Wineman further testified that he talked with several other people who have told him that he would not be able to sell the property due to the unresolved zoning issues and lack of building permit. However, under further cross-examination, Mr. Wineman admitted that he has not listed the property for sale and that he had not discussed the issues with anyone from Huron County, an appraiser, or a realtor. Mr. Wineman also testified that he received a letter from the Huron County Building and Zoning Office concerning enforcement action but admitted the letter was not provided as evidence and as of the hearing date, no enforcement action had been taken.

At hearing, Mr. Wineman admitted that he and his wife had visited North Island periodically prior to purchasing the subject property, and they were familiar with the lack of utilities, lack of running water, and accessibility issues. Mr. Wineman was also asked about the comparable sale he previously testified about on Rose Island. Specifically, during cross-examination, Mr. Wineman testified that the Rose Island comparable does not have lake frontage. Further, Mr. Wineman admitted that he is not a licensed or certified appraiser, and the valuation disclosure the Winemans submitted in this case is their first. Mr. Wineman also admitted that his adjustments were supported by his objective opinion, not appraisal techniques.

RESPONDENT’S CONTENTIONS

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

Parcel Number: 3208-137-001-10

Year	TCV	SEV	TV
2022	\$153,600	\$76,800	\$76,800

Respondent’s revised contentions of TCV, SEV and TV are as follows:

Parcel Number: 3208-137-001-10

Year	TCV	SEV	TV
2022	\$196,000	\$98,000	\$98,000

RESPONDENT'S ADMITTED EXHIBITS

- R-1 Appraisal Report by Michigan certified general appraiser, Anthony M. Piazza.
- R-2 2023 Property Record Card.
- R-4 Work file of Anthony M. Piazza.

RESPONDENT'S WITNESSES

Anthony Piazza⁸

Mr. Piazza is certified by the State of Michigan as a general appraiser with an MAI designation and holds a real estate broker's license. At hearing, Mr. Piazza testified that he has appraised over 200 residential properties. Mr. Piazza inspected the subject property on October 3, 2022. During his inspection, he observed service lines for plumbing in the open crawl space, a generator plug, and the interior of the cabin, which appeared to be partially finished. Mr. Piazza considered the three most recognized valuation approaches to value and analyzed the approaches in his valuation disclosure.⁹

Mr. Piazza testified that the cost of new construction is based on the market's perception of materials and labor, and therefore, the fact the Winemans re-purposed some of the building material was irrelevant to his appraisal. Mr. Piazza further testified that the comparable sale the Winemans used in Unionville as support for valuing their cabin, was located on the mainland, not similar in construction, and was marketed as U.S. Department of Housing and Urban Development (HUD) repossessed property. Mr. Piazza also testified that the purchase price the Winemans used for the Rose Island comparable was not accurate, considering the Rose Island parcel was more than 47 acres in size and sold for \$177,000. Mr. Piazza submits there are no restrictions in place by the DNR, instead, he believes there might be restrictions in place with the Department of Environmental Quality (DEQ). Lastly, Mr. Piazza contends that the Winemans' valuation methodology is incorrect because the comparables the Winemans used are dissimilar to the subject property, and their adjustments are not supported by evidence.

Mr. Piazza considered the cost and sales comparison approaches in preparing his valuation. First, the cost approach consisting of five vacant land sales, one of which was the subject property. Mr. Piazza testified that he calculated the land values using a per waterfront foot (WF) unit of value. Mr. Piazza concluded a \$85/WF which values the subject property's land at \$108,500. Mr. Piazza testified that he calculated the value of the log cabin using the CoreLogic-Swift Estimator which calculates the cost of the log cabin as new. Mr. Piazza determined a cost new for the log cabin as \$87,700. By adding the value of the land to the value of the log cabin, Mr. Piazza concluded a TCV of \$196,000.

⁸ See Transcript from January 9, 2024 hearing, pages 86 through 114 for direct examination by Mr. Gildner, and pages 114 through 164 for cross-examination by Mr. Keating.

⁹ See Respondent's Exhibit 1.

Under cross-examination, Mr. Piazza admitted that there are DEQ environmental restrictions on North Island but is not sure how much of the subject property's acreage is encumbered by the DEQ restrictions. Mr. Piazza testified that he did not adjust the land value due to the DEQ restrictions because the three North Island comparables he used in his land analysis were subject to the same DEQ restrictions. Mr. Piazza admitted that the two other comparable sales on Charity Island and Drummond Island do not have the same DEQ restrictions and were his two highest sales comparables. Further, the Charity Island property has a dock, much like a boat slip, that is superior to the subject property's dock. Mr. Piazza agrees that the subject property is 20.74 acres in size, not 23.86 acres. Mr. Piazza also agreed that there is no municipal service, no running water, and no sewer service. However, Mr. Piazza testified that he observed plumbing lines on the underside of the cabin which were not attached to the shared well at the time of inspection. Mr. Piazza was not sure whether there is water service to the cabin via the shared well.

Mr. Piazza confirmed that a portion of the subject's acreage is wetlands but did not know how many of the subject's acreage was covered by wetlands. Mr. Piazza testified that he used the assessment records to conclude the cabin was constructed in 2020 and 2021. Mr. Piazza testified that he is aware of the R-1 zoning of the subject property, requiring a minimum building size of 900/SF but contends the cabin in this case exceeds 900/SF if the 150/SF loft and 256/SF porch are included. Mr. Piazza testified that he had a phone conversation with Huron County Zoning Administrator, Jeff Smith, on November 29, 2022, who informed him that the Winemans' cabin exceeds the 900/SF requirement. Mr. Piazza confirmed that his discussion with Mr. Smith conflicts with the November 29, 2022 e-mail from Mr. Smith which is contained in his work file. Because of the conflicting documents, Mr. Piazza contacted Mr. Smith directly and was told that the Winemans did not need a variance because the size of their log cabin conformed to the zoning ordinance.

Under cross-examination, Mr. Piazza testified that he gave the most weight to land sale comparables 1 and 3, both of which were vacant parcels located on North Island that sold close to the December 31, 2021 tax day at issue in this case. Mr. Piazza confirmed that sales comparable 1 sold in November 2021 with an adjusted price of \$52/WF and sales comparable 3 sold in February 2021 for an adjusted price of \$38/WF. Mr. Piazza also confirmed that the subject sold in 2019 for \$66/WF. Mr. Piazza testified that the Charity Island property, sales comparable 2, had an adjusted sales price of \$219/WF, which he does not believe is an outlier compared to the other sales. Further, Mr. Piazza admitted that for sales comparable 1, he inadvertently listed the acreage as 3.04, instead of 3.4. Mr. Piazza concluded a value of \$85/WF.

Valerie McCallum¹⁰

Ms. McCallum has been Fairhaven Township's assessor for approximately 20 years, and a licensed level three assessor since 2011. Ms. McCallum testified regarding the 2023 property record card. Specifically, Ms. McCallum testified that the subject property is being assessed as 20.737 acres. The total acreage consists of two 10.2-acre parcels, and a smaller parcel which is .337 acres in size.

Ms. McCallum testified that for tax year 2021, the Winemans' cabin was partially assessed because it was not complete. Ms. McCallum testified that she personally inspected the Winemans' property in October 2020 and found that there were electrical wires hanging down into the open space under the cabin that were not connected and noticed a lot of construction debris lying around. Accordingly, Ms. McCallum assessed the cabin at 70% complete for tax year 2021. Ms. McCallum added the additional 30% the following year after she was advised by neighbors that construction on the Winemans' cabin was complete. Ms. McCallum further testified that she also inspected the subject property in 2022 and confirmed the Winemans' cabin was 100% complete.

Ms. McCallum further testified concerning the Rose Island sales comparable used by the Winemans. Ms. McCallum contends that the Rose Island property is not comparable to the subject property because it does not have any waterfront or water access.

Under cross-examination by Mr. Keating, Ms. McCallum confirmed the partial assessment for tax year 2021 but admitted that the 2021 record card was not admitted as an exhibit. Further, Ms. McCallum testified that she did not personally know whether any work was performed on the subject property in 2021, other than what she was told by neighbors. Ms. McCallum further testified that the increase in TV, beyond the inflation rate multiplier, was a result of additions, because the cabin was not assessed at 100% complete in tax year 2021.

Upon further cross-examination, Ms. McCallum confirmed that there is a 1,000-gallon septic tank listed on the property record card. However, Ms. McCallum testified that she could not see the septic tank because it was below ground. Ms. McCallum also testified that she was not aware of any inspection concerning a septic tank on the Winemans' property. Ms. McCallum confirmed there is a 200-foot deep well identified on the property record card that is used by four cottages. Ms. McCallum assumes that there is underground plumbing connected to the well and noted she found a covered motor and solar panel during her inspection of the property. Ms. McCallum testified that she has not personally witnessed running water flowing at the subject property but contends the Winemans must have running water because there are water hookups and a kitchen sink. Moreover, Ms. McCallum admitted the water hookups were not connected when she inspected the property in October because everything was closed down by that time.

¹⁰ See Transcript, from January 9, 2024 hearing, pages 166 through 171 for direct examination by Mr. Gildner, and pages 171 through 178 for cross-examination by Mr. Keating.

In closing, Ms. McCallum testified that based on her experience, a building constructed without a permit and in violation of the applicable zoning ordinance, does not negatively affect the value of a building.

FINDINGS OF FACT

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

1. The tax year at issue in this case is 2022.
2. The subject property is located on a remote, off-grid island in Saginaw Bay, known as North Island and is identified as parcel number 3208-137-001-10.
3. Petitioners purchased the subject property, which was vacant at the time, on May 31, 2019, for \$80,000, in an arm's length transaction.
4. Petitioners purchased the subject property as-is pursuant to paragraph 15 of the buy and sell agreement and chose not to get a survey prior to their purchase.
5. The subject property is classified as residential-improved and is zoned R-1, single family residential district.
6. R-1 zoning requires a minimum dwelling size of 900/SF.
7. Petitioners' cabin has 512/SF on the ground floor, a 150/SF loft, and a 256/SF porch.
8. The Winemans did not apply for or obtain a building permit prior to building their log cabin.
9. The property record card lists the parcel acreage as 20.737 acres in size, with 1,277/WF.
10. Huron County GIS records incorrectly describes the subject property as 23.86 acres in size.
11. Oasis Homes advertises the same Stowaway log cabin that Petitioners purchased, including delivery within a 90-mile radius, and installation, for \$62,100. The package does not include windows, doors, and various other interior elements.
12. Respondent's assessor, Valerie McCallum, personally inspected the Winemans' log cabin in October 2020 and determined the log cabin was not fully completed.
13. Respondent assessed the subject property at 70% complete for tax year 2021.
14. Respondent's appraiser, Anthony Piazza and Respondent's assessor, Valerie McCallum, personally inspected the subject property on October 3, 2022.
15. Respondent's expert, Mr. Piazza, prepared a written appraisal report valuing the subject property using the sales comparison approach and cost approach.
16. Mr. Piazza relied on his cost approach, concluding a rounded TCV of \$196,000 for tax year 2022. Mr. Piazza valued the land at \$108,500, and the log cabin at \$87,700.
17. The Winemans are not appraisers, have no appraisal experience, and their adjustments were opinion based.
18. The income approach is not relevant in this case to value the subject property.

CONCLUSIONS OF LAW

A. Valuation

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

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 [TCV] of such property; the proportion of [TCV] at which such property shall be uniformly assessed, which shall not exceed 50 percent.

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.

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

“By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of [TCV] in arriving at its determination of a lawful property assessment.” The Tribunal is not bound to accept either of the parties' theories of valuation. “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.” 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.”

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

“The petitioner has the burden of proof in establishing the [TCV] of the property.” “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.” However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to [TCV]s in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.”

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. “Variations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to the fair-market value of the subject property.”¹¹ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.” 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. Regardless of the valuation approach employed, the final value determined must represent the usual price for which the subject property would sell.

To properly determine the TCV of the subject property for the tax year at issue, the Tribunal must first determine the appropriate highest and best use of the subject property. A property’s highest and best use is the “reasonably probable use of the property that results in the highest value.”¹² The Winemans did not address the highest and best use of the property at trial. Respondent’s appraiser addressed the highest and best issue in his appraisal and concluded the highest and best use is “recreational land with a single unit residential structure to provide shelter for those who recreate the land.”¹³ Based on the evidence and testimony presented at trial, the Tribunal agrees that the highest and best use of the property is continued recreational use.

1. Income Approach

There was no evidence or testimony provided at trial concerning the income approach, and the Tribunal finds that the income approach is not applicable to this case.

2. Sales Comparison Approach

“The sales comparison approach is most useful when a number of similar properties have recently been sold or are currently for sale in the subject property’s market.”

“The sales-comparison approach indicates [TCV] by analyzing recent sales of similar properties, comparing them with the subject property, and adjusting the sales price of the comparable properties to reflect differences between the two properties.”¹⁴

Determining the TCV of a parcel of property is “not an exact science”; it involves examining and weighing the values provided by both parties with the goal of reaching a “well-supported conclusion that reflects the study of all factors that influence market value” of the property.¹⁵ The sales comparison method involves researching, analyzing, and adjusting sales of similar vacant parcels to render a value conclusion.

¹¹ See *Meadowlanes*, 437 Mich at 485.

¹² Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020, at 305).

¹³ See Respondent’s Exhibit 1, Appraisal, pages 11-14.

¹⁴ *Meadowlanes Ltd Dividend Housing Ass’n v City of Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

¹⁵ *Great Lakes Div. of Nat’l Steel Corp.*, 227 Mich App at 398-399; 576 NW2d 667.

Respondent's appraiser, Mr. Piazza, testified that he considered the sales comparison approach but concluded that there were not enough similar properties that sold close to the relevant tax date at issue in this case. Further, Mr. Piazza concluded that the few sales he did find would require significant adjustments, ultimately rendering his sales comparison approach less reliable. For those reasons, Mr. Piazza did not rely on a sales comparison approach.

In this case, the Tribunal acknowledges, as did the parties, that good sales comparables were difficult to find given the uniqueness of the subject property and minimal number of sales in the area for the tax year at issue. Due to the scarcity of comparable sales, the Tribunal finds that the sales comparison approach is not well supported in this case.

3. Cost Approach

The cost approach begins with the "reproduction or replacement cost of the improvements [on the land] developed by comparison with the cost of new improvements, based on current prices of labor and materials for construction of similar improvements."¹⁶ The cost approach "is particularly useful in valuing new or nearly new improvements and properties that are not frequently exchanged in the market." Further, it is more useful when "a lack of market activity limits the usefulness of the sales comparison approach" and it is "especially persuasive when land value is well supported, and the improvements are new or suffer only minor depreciation"

In this case, both parties submitted evidence using the cost approach to value the property. The Tribunal finds that the cost approach is the most appropriate method of valuation in this case given the Winemans' log cabin was recently constructed as of the tax year at issue. Further, the uniqueness of the Winemans' property and the lack of sales of improved property on or near North Island, likewise support a cost approach.

a. Winemans' Land Sales

Before the Tribunal analyzes the Winemans' three land value approaches, the Tribunal will in short order, address the Winemans' contention that they are being taxed for 23.86 acres or approximately 3.17 acres more than what they purchased. The Winemans have provided no credible evidence to support their argument that Respondent is valuing the land using 23.86 acres. As evidence, Respondent provided the subject property's record card which the Tribunal finds conclusively establishes that the Winemans' land value is calculated using \$5,000/acre multiplied by 20.737 acres, for a land value of \$103,685.¹⁷

Next, the Tribunal will address the Winemans' three land sales they provided as evidence in support of their case. The Winemans' first land value approach is derived by

¹⁶ *Id.*

¹⁷ See Respondent's Exhibit 2, Property Record Card.

dividing the \$80,000 purchase price by 20.69 acres, resulting in an initial price per acre of \$3,867. From there, the Winemans argue that approximately four of the 20.69 acres are owned by the (DNR) and should be deducted from the overall parcel acreage, concluding a land value of approximately \$64,533. For their second land value approach, the Winemans contend they are being taxed for 23.86 acres, and therefore their property value should be reduced by approximately the three acres they are wrongfully being assessed for in addition to the four acres owned by the DNR. Further, the Winemans contend a “time of year use” deduction factor of 5/12 should be applied since they can only use the property for seven out of 12 months, concluding a land value of approximately \$58,550 for their second approach.

The Winemans supplied a neighboring island vacant land sale for its third land value approach. The sale is located on nearby Rose Island, is 47.28 acres in size, has similar terrain and wetlands as the subject, and sold in 2021 for \$157,000 or approximately \$3,320/acre. The property sold again in January 2022 for \$177,000 or approximately \$3,744/acre. The Winemans submit that using the most recent sale price of \$3,744/acre would result in a land value of approximately \$77,460, less the four acres owned by the DNR, resulting in a final land value of approximately \$62,480. The Winemans considered and reconciled all three of their land sales after adjustments, concluding a land value range between \$58,550 and \$64,530. However, the Winemans further contend that “[t]he boundary dispute and cloud on the title removes the ability to sell the property further reducing the value. In our judgement [sic] the value of the land is \$45,000.”¹⁸

The Tribunal recognizes that there are “variations of the [traditional] approaches and entirely new methods may be useful if found to be accurate and reasonably related to the fair market value of the subject property.”¹⁹ At trial, Mr. Wineman admitted that he had no appraisal experience and that his adjustments were based on his subjective opinion, not appraisal techniques. The Tribunal finds that the Winemans’ evidence and opinion testimony by itself does not provide reliable or credible support for the adjustments made by the Winemans to support their contended values. Accordingly, the Tribunal finds the Winemans’ land value approaches unpersuasive, not supported by credible evidence, and gives them no weight.

b. Fair Haven Township’s Land Sales

Respondent’s appraiser, Mr. Piazza, valued the land using the subject property and four comparable vacant land sales that sold between December 2019 and November 2021. Three of the sales, including the subject property, were on North Island, one sale was on Standerson Island, and one sale on Charity Island.

Because there were two recent vacant land sales on North Island that are very close in proximity and share the same traits as the subject, the Tribunal excludes Respondent’s comparable sales 2 and 4 as unreliable and not the best evidence of value in this case.

¹⁸ See Petitioners’ Exhibit 1, page 12.

¹⁹ See *Meadowlanes*, 437 Mich at 485.

The unadjusted sales prices for the North Island sales comparables ranged from \$38,000 to \$80,000 and ranged in size from 3.4 acres to 20.74 acres.²⁰ Vacant land sale comparable 1 is 3.4 acres in size, with approximately 515/WF and sold in November 2021 for \$38,000 or \$74/WF. Vacant land sale comparable 3 is 5.03 acres in size, with approximately 940/WF, and sold in February 2021 for \$50,000 or \$53/WF. Vacant land sale comparable 5 is the subject property, which is approximately 20.74 acres in size, with approximately 1,277/WF, and sold in May 2019 for \$80,000 or \$63/WF. Mr. Piazza applied a downward adjustment of 30% to vacant land sale comparables 1 and 3 for size differences and an upward market condition adjustments of 1.67% to comparable 3 and 5.18% to comparable 5. After adjustments, Mr. Pizza concluded an adjusted WF range between \$38 and \$66. At hearing, the Winemans argued that Mr. Piazza should have adjusted comparables 1 and 3 downward even further to account for the subject's unusable land. The Tribunal finds that argument inconsequential, given comparables 1 and 3 are located on the same island and suffer the same problems.

Therefore, the Tribunal finds that Respondent's vacant land sales comparables 1 and 3 and the sale of the subject property are the best evidence of land value in this case. The Tribunal gives Respondent's comparables 1 and 3 each 25% weight, and the sale of the subject property 50% weight, to conclude a \$55/WF, and a rounded TCV for the land of \$70,240.

c. Winemans' Log Cabin Value

Next, both parties provided evidence of their contention of value for the Winemans' newly constructed log cabin. The first approach the Winemans provide is the alleged actual cost they paid to purchase the log cabin turnkey, with additions. In support of their contention, the Winemans provided a "Preconstruction Design Services Agreement" (the Oasis Agreement) with Oasis Homes.²¹ The Oasis Agreement provides in relevant part the following:

Estimated Budget Target Range: \$38,170

NOT INCLUDED –

Owner will directly pay for and enter into separate agreements with these outside consultants and services:

1. Arrange materials to island.
2. Arrange workers to island.

CONSTRUCTION CONTRACT

²⁰ At hearing, Respondent's expert admitted that comparable sale 1 is 3.4 acres not 3.04 acres.

²¹ See Petitioners' Exhibit 1, Valuation Disclosure, pages 19 through 25.

Construction Contracts – Owner and Contractor agree that separate contract(s) will be finalized after final review and execution of all construction documents and drawings with a fixed price for the Scope of Work provided to the Owner by the Contractor. These contracts are referred to as the *Home Purchase Contract* and the *Site Work Contract*.

At hearing, Mr. Wineman testified that the \$38,170 price stated in the Oasis Homes Agreement was the total cost they paid, including delivery and installation, for their log cabin. Moreover, Mr. Wineman testified that they used second-hand materials to furnish the interior of the cabin and provided a chart outlining the materials they purchased and one Home Depot receipt.²² The Tribunal finds that the contract the Winemans provided as evidence is explicitly labeled “Estimated Budget Target Range” and is not a finalized contract for the material and labor to construct and deliver the log cabin. The Oasis Homes Agreement itself specifically states that “separate contract(s) will be finalized...with a fixed price for the Scope of Work provided to the Owner by the Contractor. These contracts are referred to as the *Home Purchase Contract* and the *Site Work Contract*.” The Winemans did not provide as evidence the finalized “Home Purchase Contract and the Site Work Contract.”

Similar to the Winemans’ first approach, is the Winemans’ third approach. For their third approach, the Winemans provided a proposal from Miller Log Homes dated January 15, 2023.²³ The Winemans contend the proposal is evidence that they could build the exact same log cabin, two years later, for even less money, at a price of \$28,700. After adding the \$4,201.53 cost of additional materials, described above, the Winemans contend the actual replacement cost using Miller Log Homes is \$32,901.53. However, what the Winemans did not address is the language in the proposal which states, “price does not include: foundation, electrical, plumbing, mechanical, and delivery to island.”²⁴

Although the Winemans contend the Tribunal should consider their actual construction costs, the concept of cost, as used in the cost approach, is not the same as the actual costs experienced by a builder in a specific case, and the cost of construction must be checked against costs to build similar properties, as well as against other approaches to value.²⁵ The Supreme Court has recognized that “while actual and reproduction cost are some evidence of value, the constitutional and statutory standard is market-based.”²⁶ Moreover, the Winemans did not provide any credible or reasonable explanation for the \$24,000 difference the Winemans contend they paid to have the log cabin delivered and constructed versus the \$62,100 price Oasis Homes advertises. Accordingly, the Tribunal excludes the Winemans’ “actual cost” approach and “actual replacement cost – same builder” approach as unreliable and not supported by the

²² See Petitioners’ Exhibit 1, Valuation Disclosure, pages 6-7 and page 26. The Home Depot receipt is mostly illegible but for the May 25, 2022 purchase date.

²³ See Petitioners’ Exhibit 1, Miller Log Homes Proposal, page 17.

²⁴ *Id.*

²⁵ See *Cunningham v Cedar Creek Twp*, (MTT Docket No. 290524) issued July 7, 2004 and *All-Phase Real Estate Co v St. Joseph Charter Twp*, 7 MTT 529 (Docket No. 128484), issued March 16, 1993.

²⁶ *First Fed Sav & Loan Ass’n of Flint v City of Flint*, 415 Mich 702, 705; 329 NW2d 755, 757 (1982).

evidence.

For their second approach, the Winemans submitted one listing as evidence, suggesting the Tribunal give it consideration. The listing is located at 5784 Sunglow Drive in Unionville, Michigan. The listing evidence provided by the Winemans shows that the property was originally listed for \$50,000 on November 1, 2022. As of January 2023, the property was still listed for sale at a reduced price of \$29,000. For a multitude of reasons, not all of which the Tribunal will address, the Tribunal finds that the Unionville property is not comparable to the subject property, and the Winemans' adjustments are not supported by any credible market evidence. First, the Unionville property has not sold and is over two years removed from the relevant tax day at issue in this case. Further, the Winemans did not provide a description or photographic evidence of what the interior condition of the property is like. The evidence supplied by the Winemans shows that they simply divided the \$29,000 listing price by the 1,000/SF size of the property, to conclude a price of \$29/SF. The Winemans then made a downward adjustment of 25% to account for the lack of amenities the subject property has compared to the Unionville property to conclude a value for their log cabin of \$11,136. However, the Winemans completely disregarded the need to make any adjustments whatsoever for the differences between the Unionville property and the subject property and did not provide a credible explanation or market evidence in support of their additional 25% downward adjustment. In this regard, Respondent provided evidence which the Winemans conveniently left out, such as the property was foreclosed and is HUD owned, is advertised for sale as-is, has no waterfront, and Respondent provided pictures as evidence showing the property is outdated and in need of serious repair. Respondent's evidence directly contradicts the Winemans' lack of adjustments and further downward adjustment of 25%. Further, Respondent's evidence entirely discredits the use of the Unionville property as a reliable comparable given the significant differences that the Winemans failed to account for. Based on the evidence, lack of appropriate adjustments, and for the reasons outlined above, the Tribunal excludes the Winemans' Unionville listing as unreliable and not credible.

D. Fair Haven Township's Log Cabin Value

On the other hand, Respondent provided evidence from Oasis Homes' website, which undisputably shows that Oasis Homes advertises the same 512/SF log cabin the Winemans built, including installation, and delivery within 90-miles, for \$62,100.²⁷ Respondent also provided evidence that Oasis Homes' installation package includes framed and ready to accept exterior door and windows, meaning the package price does not include those material or installation costs.²⁸ Mr. Piazza also points out that the Oasis Homes cost does not include finish work, plumbing, fixtures, or electrical. Next, Respondent provided the 2023 property record card as evidence which provides a cost new for the log cabin at \$59,610, cost new of the porch at \$8,238, and \$9,600 cost for

²⁷ See Respondent's Exhibit 1, Oasis Homes installed price for Stowaway Recreation Cabin, page 64.

²⁸ *Id.* at pages 62 and 63.

the water well, for a combined total of \$77,448.²⁹ Remarkably, the cost advertised by Oasis Homes, without certain materials mentioned above, and the cost calculated in the property record card are very similar. Lastly, Respondent's appraiser developed a cost approach which calculates "the estimated cost to construct, as of the effective appraisal date, a substitute for the building being appraised using contemporary materials, standards, design, and layout."³⁰ Mr. Piazza testified that he calculated the value of the log cabin using the CoreLogic-Swift Estimator which calculates the cost of the log cabin as new. Mr. Piazza's calculations included the finished costs for a log cabin with a metal roof, three-piece bathroom and covered wood porch.³¹ Using the CoreLogic-Swift estimator, Mr. Pizza concluded a total replacement cost new of \$87,704. The Tribunal finds that Respondent's cost approach provides the best evidence of value in this case. Further, the Tribunal reconciles the cost calculated in the property record card with Mr. Piazza's cost approach detailed in his appraisal to arrive at a TCV for the log cabin of \$82,400. Combined with the land, the TCV of the subject property is \$152,640.

The Tribunal finds that the cost approach is the most appropriate method to determine the subject property's TCV, and Respondent's cost approach is the best evidence of value in this case.

Accordingly, the Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that a slight reduction of the subject property's 2022 TCV is warranted. The subject property's TCV, SEV, and TV for the tax year at issue is 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

²⁹ See Respondent's Exhibit 2, Property Record Card. The \$4,347 cost of the septic was removed because there was no evidence supporting septic at the property.

³⁰ See Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020, at 533).

³¹ See Respondent's Exhibit 1, Valuation Disclosure, pages 65 and 66.

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%, (xiv) after June 30, 2023, through December 31, 2023, at the rate of 8.25%, (xv) after December 31, 2023, through June 30, 2024, at the rate of 9.30%, (xvi) after June 30, 2024, through December 31, 2024, at the rate of 9.50%, and (xvii) after December 31, 2024, through June 30, 2025, at the rate of 9.47%.

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 or disabled veterans 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.

Alternatively, you may file a claim of appeal with the Michigan Court of Appeals. If the claim is filed within 21 days of the entry of the final decision, it is an “appeal of right.” If the claim is filed more than 21 days after the entry of the final decision, it is an “appeal by leave.” A copy of the claim of appeal must be filed with the Tribunal to certify the record on appeal. There is no certification fee.

By

A handwritten signature in blue ink, appearing to be 'A. S.', written over a horizontal line.

Entered: January 29, 2025
jcg

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