



STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

GRETCHEN WHITMER  
GOVERNOR

MARLON I. BROWN, DPA  
DIRECTOR

Jason Jedele,  
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MTT Docket No. 22-002482

Bridgewater Township,  
Respondent.

Presiding Judge  
Joshua M. Wease

**ORDER SETTING ASIDE PETITIONER'S DEFAULT**

**FINAL OPINION AND JUDGMENT**

Petitioner, Jason Jedele, appeals ad valorem property tax assessments levied by Respondent, Bridgewater Township, against parcel number Q-17-11-200-010 for the 2022 tax year. On February 7, 2024, Petition was held in default for failing to file an exhibit list on the Tribunal's required form. On the same day Petitioner filed the required form, and the default has been timely cured. A hearing was held in this matter on February 12, 2024. Donna Tope, Attorney, appeared on behalf of Petitioner. Mary Selover-Rider, Respondent's assessor, appeared on behalf of Respondent. Petitioner's witness was Jason Jedele. Respondent's witness was Mary Selover-Rider.

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:** Q-17-11-200-010

| Year | TCV         | SEV       | TV        |
|------|-------------|-----------|-----------|
| 2022 | \$1,767,272 | \$883,636 | \$860,980 |

**PETITIONER'S CONTENTIONS**

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

**Parcel Number:** Q-17-11-200-010

| Year | TCV         | SEV       | TV        |
|------|-------------|-----------|-----------|
| 2022 | \$1,084,532 | \$542,266 | \$529,957 |

Petitioner contends that the property's TCV should be based on the cost to build the property. Jason Jedele testified on his own behalf as the owner of the property. Mr. Jedele is a building contractor and used his company to build the subject property

between 2018 and 2020. Additional improvements were made in 2021 after Petitioner received their certificate of occupancy in 2020. Mr. Jedele testified that he moved into the property shortly after completion in June 2020. It has been his principal residence ever since. Petitioner's admitted exhibits:

P-4 – Petitioner's valuation disclosure in the form of compiled receipts, estimates, quotes, and invoices<sup>1</sup>

### RESPONDENT'S CONTENTIONS

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

**Parcel Number:** Q-17-11-200-010

| Year | TCV         | SEV       | TV        |
|------|-------------|-----------|-----------|
| 2022 | \$1,759,000 | \$879,700 | \$856,277 |

Respondent contends that the property is correctly assessed for tax year 2022. The property was classified as agricultural in 2021 but reclassified as residential for 2022. The main house and garage were complete as of 2020. The amount of additions to the 2021 TV was \$343,600. In 2022, Petitioner added a concrete drive and brick path base. Respondent viewed these additions from aerial photographs because they were not allowed to inspect the property. Respondent also added the cook top, separate shower, ceramic tile, two extra sinks, and a concrete screen porch to the property record card (PRC). Respondent changed the property class from agricultural to residential because the majority of the value of the property now includes the house. The property had "Headlee" additions of \$61,900 and Headlee losses of \$35,000 in 2022. The BOR corrected the subject's well depth after the assessor contacted Washtenaw County for the well report, which was not filed correctly. Respondent's assessor removed the above garage storage, and changed the basement area under the trophy room to crawl space because Petitioner stated the space was about four feet high.

Respondent's Assessor, Mary Selover-Rider, was admitted as an expert in assessing<sup>2</sup> and testified regarding the mass appraisal, cost less depreciation approach. Respondent's admitted exhibits:

R-1 – Valuation Disclosure<sup>3</sup>  
R-2 – Address Updated<sup>4</sup>  
R-3 – Building Plans and Permits<sup>5</sup>

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<sup>1</sup> Tr. 24:22.

<sup>2</sup> Tr. at 64.

<sup>3</sup> Tr. 68:13.

<sup>4</sup> Tr. 69:2-3.

<sup>5</sup> Tr. 70:19.

## 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 is located at 9440 Schellenberger Road in Washtenaw County
2. Petitioner bought the 55.42 acre site in 2016 for \$230,000.<sup>6</sup>
3. The site was classified as agricultural in 2016.
4. The subject property's classification was changed to residential in 2022.
5. The subject dwelling is 5,917 SF.<sup>7</sup>
6. The subject dwelling was built between 2018 and 2020.
7. The subject dwelling was built by Wilderness Construction, Inc.<sup>8</sup>
8. Petitioner is the owner of Wilderness Construction, Inc.<sup>9</sup>
9. Petitioner has lived at the subject property as his principal residence since moving in June 2020 when they received their certificate of occupancy.<sup>10</sup>
10. Petitioner did not appeal the assessment change for the additions to the subject property for tax year 2021.
11. Petitioner asserted in their petition and in their August 23, 2023 valuation disclosure that the TCV for the subject year was \$1,055,427.65.<sup>11</sup>
12. Petitioner submitted a second version of his valuation disclosure at trial based on expenditures to build the house that concluded to a value for the improvements of \$1,030,696.07.<sup>12</sup>
  - a. This valuation disclosure contained 106 pages of receipts, invoices, quotes, and estimates for expenses involving 35 distinct building expenses.
  - b. Petitioner asserts material costs in 2020 totaled \$459,031.55.
  - c. Petitioner asserts contract labor costs in 2020 totaled \$596,396.10.
  - d. Expenditures on the improvements span from 2018 through 2021.
  - e. Receipts included the purchase of a Cummins generator that was made in 2021 for \$6,303.82.
  - f. Petitioner did not provide any depreciation calculations for the subject property.
  - g. Petitioner did not provide any inflation calculations for the cost of materials or labor for the subject property.
13. Respondent submitted a valuation disclosure based on the cost less depreciation method. This valuation disclosure included:
  - a. 2022 Property Record Card.

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<sup>6</sup> Tr. 53.

<sup>7</sup> Respondent's Exhibit R-1, p 2.

<sup>8</sup> Tr. 38:15-17.

<sup>9</sup> Tr. 38:20-22.

<sup>10</sup> Tr. 13: 15-22.

<sup>11</sup> Tr. 25: 13-21.

<sup>12</sup> Petitioner's Exhibit 4.

- b. 2022 Valuation Report.
- c. Property photos.
- d. 2022 Agricultural Land Value Analysis Grid.
- e. 2022 Residential and Agricultural economic condition factor (ECF) – ECF of .85.
- f. The improvement had a depreciation rate of 3%.<sup>13</sup>
- g. Land valued at a rate of \$4,350 per acre for tillable land, \$2,600 per acre for woods, and \$18,000 per acre of the homesite.
- h. The 2022 PRC did not include the whole-home generator.
- i. The 2022 PRC did not include the tile for the home’s master bathroom.

### 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.<sup>14</sup>

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.<sup>15</sup>

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.<sup>16</sup>

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”<sup>17</sup>

“By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment.”<sup>18</sup> The Tribunal is not bound to accept either of the parties' theories of valuation.<sup>19</sup> “It is the Tax Tribunal's duty to determine which approaches are useful in

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<sup>13</sup> Respondent’s Exhibit R-1, at 1-5.

<sup>14</sup> See MCL 211.27a.

<sup>15</sup> Const 1963, art 9, sec 3.

<sup>16</sup> MCL 211.27(1).

<sup>17</sup> *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

<sup>18</sup> *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

<sup>19</sup> *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

providing the most accurate valuation under the individual circumstances of each case.”<sup>20</sup> 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.”<sup>21</sup>

A proceeding before the Tax Tribunal is original, independent, and de novo.<sup>22</sup> The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”<sup>23</sup> “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”<sup>24</sup>

“The petitioner has the burden of proof in establishing the true cash value of the property.”<sup>25</sup> “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.”<sup>26</sup>

The “burden of production” of evidence (also referred to as the “burden of going forward with the evidence”) means that the petitioner must submit some evidence that support petitioner’s allegations.<sup>27</sup> For instance, in a valuation case, the petitioner must produce some kind of valuation evidence – which generally takes the form of a valuation disclosure or an appraisal report. The parties’ evidence may be presented in the form of testimony or documentary evidence. The burden of production is a “shifting burden” meaning that if the petitioner satisfies its burden of production, then the burden production shifts to the respondent, who in turn, must produce evidence that opposes the petitioner’s evidence.

Petitioner must satisfy the burden of persuasion by a “preponderance of the evidence.”<sup>28</sup> A preponderance of evidence means “the standard of proof in most civil cases in which the party bearing the burden of proof must present evidence which is more credible and convincing than that presented by the other party or which shows that the fact to be proven is more probable than not.”<sup>29</sup> The petitioner’s burden of persuasion always stays with petitioner and does not shift to the respondent. Further,

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<sup>20</sup> *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

<sup>21</sup> *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

<sup>22</sup> MCL 205.735a(2).

<sup>23</sup> *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

<sup>24</sup> *Jones & Laughlin Steel Corp*, 193 Mich App at 352-353.

<sup>25</sup> MCL 205.737(3).

<sup>26</sup> *Jones & Laughlin Steel Corp*, 193 Mich App at 354-355.

<sup>27</sup> *Id.*; *Great Lakes Div of Nat Steel Corp v City of Ecorse*, 227 Mich App 379, 408–10; 576 NW2d 667, 681 (1998).

<sup>28</sup> *Antisdale v City of Galesburg*, 420 Mich 265, 277, 362 NW2d 632 (1984); *Jones, supra*, at 353, 483 NW2d 416.

<sup>29</sup> Merriam-Webster Dictionary, at <https://www.merriam-webster.com/legal/preponderance%20of%20the%20evidence>. See also, *Martucci v Ballenger*, 322 Mich 270; 33 NW2d 789 (1948); *Hanna v McClave*, 273 Mich 571, 263 NW 742 (1935), *Hoffman v Loud*, 111 Mich 156; 69 NW 231 (1896).

the Tax Tribunal Act contains provisions concerning the burden of proof and the de novo nature of the Tax Tribunal proceedings.<sup>30</sup> The courts have construed these provisions as imposing the burden on the petitioner to establish true cash value while, at the same time, imposing a duty on the Tax Tribunal to make an independent determination of true cash value.<sup>31</sup> The courts have explained why the Tax Tribunal may not automatically accept respondent's assessment:

Recognition of a conclusive presumption of validity as being applicable to an assessment appeal would preclude meaningful review of the assessment. A conclusive presumption of validity is diametrically opposed to the concept of an original, independent, *de novo* proceeding at which the petitioner simply bears the burden of proof.... The Tax Tribunal Act does not adopt a presumption of validity as a standard of review. Rather, the standard of review to be applied is whether in the proceeding before the Tax Tribunal, petitioner has proved, by the greater weight of evidence, that one or more of the assessments in question were too high based upon the Tax Tribunal's findings as to the true cash value.<sup>32</sup>

The parties' evidence may be presented in the form of testimony and documentary evidence. Documentary evidence that is generally relevant to the true cash value of a property includes (but is not limited to) appraisals that consider sales, cost, and income data; photos detailing property condition, and legal documents that detail the legal rights involved in the transaction. However, no single document is conclusive.<sup>33</sup> These items are evidence to be considered by the Tribunal and the weight given to these documents is within the Tribunal's discretion.<sup>34</sup> The Tribunal has a duty to make its own, independent determination of true cash value.<sup>35</sup> The Tribunal is not bound to accept the parties' theories of valuation.<sup>36</sup> It 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 of true cash value.<sup>37</sup>

All evidence that was admitted at the hearing was considered in reaching a decision in this case. However, if specific evidence is not discussed in this section of the Opinion and Judgment, it has been determined that this evidence shall be given no weight or credibility. Only evidence determined to have relevance in reaching a decision in this case is discussed below.

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<sup>30</sup> See MCL § 205.735 and MCL § 205.737.

<sup>31</sup> See *Jones & Laughlin Steel Corp.*, 193 Mich App at 354–355; *Alhi Development Co v Orion Twp.*, 110 Mich App 764, 314 NW2d 479 (1981).

<sup>32</sup> *Great Lakes Div*, 227 Mich App at 408–10 citing *Alhi Development*, 110 Mich App at 768.

<sup>33</sup> See *Drew v Cass Co*, 299 Mich App 495; 830 NW2d 832 (2013).

<sup>34</sup> *Id* at 501.

<sup>35</sup> *Oldenburg v Dryden Twp*, 198 Mich App 696, 699; 499 NW2d 416 (1993); *Teledyne Continental Motors v Muskegon Twp*, 163 Mich App 188, 193; 413 NW2d 700 (1987).

<sup>36</sup> *Great Lakes Div*, 227 Mich App at 389–90.

<sup>37</sup> *Jones & Laughlin Steel Corp.*, 193 Mich App at 356.

The Tribunal evaluates valuation disclosures and more specifically appraisals for accuracy and credibility. For instance, an appraisal's evaluation date is different from the Tax Day(s) at issue in the case – if only by weeks or months – may drastically affect the appraisal's accuracy and credibility in its analysis and conclusions to value. The Tribunal will also consider (among other things) whether the appraisal: (1) provides complete and accurate documentation of the data that supports its analysis and conclusions; (2) provides explanation of any extraordinary assumptions; and (3) provides effective explanations for all analysis and reconciliation of value. The Tribunal must evaluate and weigh the parties' evidence to fulfill its statutory mandate to independently determine TCV.<sup>38</sup>

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.<sup>39</sup> “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”<sup>40</sup> 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.<sup>41</sup> Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.<sup>42</sup>

### *Highest and Best Use*

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.”<sup>43</sup> Neither party raised, by way of the testimony and evidence, an issue with the highest and best use of the property as a personal residence. The Tribunal finds that there is no dispute that its highest and best use is continued use as a residential home.

### *Income Approach*

“In the income capitalization approach, the present value of the anticipated future benefits of property ownership is measured. . . In direct capitalization, the relationship between one year's income and value is reflected in either a capitalization rate or an

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<sup>38</sup> See MCL 205.735.

<sup>39</sup> *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).

<sup>40</sup> *Jones & Laughlin Steel Corp*, 193 Mich App at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

<sup>41</sup> *Antisdale*, 420 Mich at 277.

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

<sup>43</sup> Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15<sup>th</sup> ed, 2020, at 305).

income multiplier.”<sup>44</sup> In this case, the income approach is inappropriate because the property is a personal residence and not held for income purposes.

### *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.”<sup>45</sup> The sales comparison approach was not considered appropriate by either party. Given that the property was completed two years before tax day, the cost approach will be the strongest indicator of value for the year at issue.

### *Cost Approach*

#### *1. Value of Land*

While not stipulated to in writing, the parties do not dispute the value of the land, which has a TCV of \$248,850 and an AV of \$124,400 for tax year 2022.<sup>46</sup> This is based on 43 acres of tillable land being valued at a rate of \$4,350 per acre; 9.92 acres of woods valued at \$2,600 per acre; 2.00 acres for the homesite valued at \$18,000 per acre; and .5 acres for the Road Right of Way valued at \$0 per acre. Respondent submitted its 2022 Agricultural Land Value Analysis Grid and 2022 Residential and Agricultural ECF. Petitioner admitted at trial that their valuation disclosure only calculated the cost to build the house and did not include the value of the land.<sup>47</sup> Further, Petitioner did not submit any evidence or testimony to discredit Respondent’s valuation of the land. Therefore, the Tribunal finds that Respondent’s evidence for valuing the land is credible, persuasive, and unopposed by Petitioner. Therefore, the TCV of the land for 2022 is \$248,850.

#### *2. Value of Improvements*

Both parties focused on the cost approach for evaluating the subject dwelling that Petitioner built between 2018 and 2020. Petitioner argues that the property’s TCV is the actual cost to build the dwelling. However, 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.<sup>48</sup> Respondent counters that Petitioner’s cost evidence is unreliable and that the property should be assessed using the mass appraisal cost approach applying the cost manual as dictated by the State Tax Commission.

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<sup>44</sup> *Id.*

<sup>45</sup> The Appraisal of Real Estate at 36.

<sup>46</sup> Respondent’s Exhibit 1, at 1.

<sup>47</sup> Tr. 45:6-13.

<sup>48</sup> 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.

The first challenge to the credibility of Petitioner's valuation evidence is the difference between their two different valuation disclosures.<sup>49</sup> During discovery and prehearing procedures, Petitioner offered a valuation disclosure (prehearing version) that stated the TCV for the year at issue was \$1,055,427.65. But at the day of trial, Petitioner introduced a valuation disclosure and supporting documentation (trial version) that totaled \$1,030,696.07.<sup>50</sup> While Respondent's assessor had questions about the valuation disclosure, they did not specifically object like they had with other trial exhibits.<sup>51</sup> Petitioner explained that the difference between the two versions was based on the amount of time he spent compiling the data.<sup>52</sup> Petitioner testified that he spent about two hours calculating the prehearing version.<sup>53</sup> He then testified that he spent approximately two days or about 16 hours of time compiling the documents for the trial version.<sup>54</sup> Petitioner further testified, "[f]or the exhibit book on the second go-around. The first one was kind of an initial spreadsheet, and after going through every receipt there were some deviations there which is why the numbers are slightly different."<sup>55</sup> Beyond the time spent compiling the information, Petitioner did not testify as to specifically what mistaken items cause the amounts to differ by approximately \$25,000. For instance, did Petitioner double count certain items. The original valuation disclosure was not submitted at the hearing, so the Tribunal has been denied the ability to make a direct comparison between the two separate calculations. Further, many of the receipts are quotes or estimates for a particular expense, rather than the actual final price paid. Petitioner provided credible testimony that in dealing with building contractors, it is common to only receive those kinds of statements. He further testified that there is no industry standard for issuing estimates, quotes, and/or invoices. With that said, the credibility of Petitioner's cost documents is diminished by the unexplained difference in calculations presented by Petitioner.

Petitioner testified that he had received discounts on some purchases, but only those that would be available to any purchaser.<sup>56</sup> Respondent effectively challenged this testimony. On cross-exam, Petitioner was asked whether he received special discounts because he was the builder.<sup>57</sup> Petitioner's response to this question was "I do not believe I was given special discounts."<sup>58</sup>

Q So do you receive discounts by doing various -- working with various different people with job things? So, like, I know a mechanical guy, I'll do this for you so I'll charge the cost because you're a builder and you'll give me another job or you get a discount on materials or things of that nature?

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<sup>49</sup> Tr. 26:15-27:12.

<sup>50</sup> Petitioner's Exhibit 4, at 2.

<sup>51</sup> Tr. 22:9-24:22.

<sup>52</sup> Tr. 26:15-27:12.

<sup>53</sup> Tr. 27: 4-7.

<sup>54</sup> Tr. 26:25-27:3.

<sup>55</sup> Tr. 26:21-24.

<sup>56</sup> Tr. 48:5-21.

<sup>57</sup> Tr. 29.

<sup>58</sup> Tr. 29:18.

- A I do not believe I was given any special discounts.
- Q So if I were to go to a quote on Page 26, your shower door, which is Section 26, and it says -- 26 Page 1 has a 10 percent discount, minus 10 percent. So when you go to Section 26, Page 1 of 1, you look at the bill. There it is.
- A Okay.
- Q So it says minus 10 percent. Why is there minus 10 percent?
- A They applied a discount to me.
- Q But why?
- A I'm not specifically sure on that one.<sup>59</sup>

Petitioner's testimony about whether he received discounts from vendors was not convincing. On direct exam, Petitioner only testified to whether he received discounts from retail stores like Menard's, but avoided discussing labor or material discounts he may have received from the contractors or trades he employed to build the house. On cross-exam he could not explain the discounts he received from vendors. Petitioner further testified that he had cost savings because he did some of the construction work himself.<sup>60</sup> Petitioner is a professional builder and owner of a business who negotiates directly with contractors. He is in a superior position to negotiate discounts that a regular market participant would not possess. On this point, the Tribunal finds that Petitioner's costs contain discounts that would not be available to a non-contractor market participant.

Respondent also challenged Petitioner's ability to avoid the entrepreneurial profit margin -- because he owns the building company -- that other market participants would have to pay.

- Q It says -- it says Wilderness Construction. So as a builder when you build things and your construction company gets charged something, is that the same amount that you charge the homeowner or whoever your client is?
- A We give them our pricing, yes.
- Q So when you quote out a roof or something, I don't know, anything, you give them the exact cost of what it costs you? You put that increase in your service or the time or something?
- A We charge for our cost on materials for bid jobs as well as when we give people material allowances, then they get our pricing. So, when customers ask for receipts, we're giving them the actual receipts of what was paid.<sup>61</sup>

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<sup>59</sup> Tr. 29:19-30:4.

<sup>60</sup> Tr. 58:20-59:9.

<sup>61</sup> Tr 29: 5-19.

However, Petitioner provided testimony that appeared to state that they charge their clients actual cost but avoided testifying on the company's markup or charges they make to the customer to profit from a project.

This argument has been considered by the courts before. Our Court of Appeals has stated, “[m]arket value may deviate from the cost of the project and this difference, described as entrepreneurial profit or loss, ought to be taken into account.”<sup>62</sup> However, the Court recognized the difficulty in quantifying entrepreneurial profit:

Entrepreneurial profit or loss is market driven and ought to be factored into property value only if the property is of a kind whose development is undertaken to realize a profit on the property. When the property being appraised was actually developed by a third party with a profit motive, it is self-evident that entrepreneurial profit ought to be considered. The question is more difficult to answer when the property is developed by the assessed party for its own use. Nonetheless, we reject petitioner's argument that entrepreneurial profit should not be considered merely because the property was self-developed.<sup>63</sup>

While Petitioner did not testify about his company's profit margin, or how much he avoided by being the “customer” in this case, Petitioner effectively excludes entrepreneurial profit by only basing his valuation on direct material costs and third-party labor. The Court of Appeals has held, “entrepreneurial profit should not be a mechanical calculation and should be added to the valuation only where: (1) the property in question is of a type that is developed to make a profit as a direct consequence of the development, and (2) there is some evidence that the market price will bear the inclusion of such a profit.”<sup>64</sup> On the first point, the property is a residential home, which is the type of property that is built to make a profit. In fact, Petitioner is the owner of a for-profit business that builds homes.<sup>65</sup> The subject is a residential home of a design and quality that Petitioner can easily sell should he decide to live elsewhere. However, on the second point, neither party offered market evidence that quantified how much entrepreneurial profit should be added to Petitioner's actual costs to reflect the amount of profit the market would bear. Therefore, Petitioner's actual costs to build the property, absent any evidence about entrepreneurial profit savings, represents at best the low end of what this property might have cost to build in the open market.

Beyond the credibility issues discussed above, Petitioner's actual costs do not account for inflation or depreciation. To accept Petitioner's argument that their actual costs for constructing the building from 2018 to 2020 reflects market value requires the assumption that the cost of materials, the cost of labor, and the residential housing market have not changed from 2018 through December 31, 2022. However, at trial,

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<sup>62</sup> *Meijer, Inc v City of Midland*, 240 Mich App. 1 10; 610 NW2d 242, 248 (2000).

<sup>63</sup> *Meijer, Inc v City of Midland*, 240 Mich App 1, 10; 610 NW2d 242, 248 (2000) (internal citations omitted).

<sup>64</sup> *Meijer, Inc v City of Midland*, 240 Mich App 1, 12–13; 610 NW2d 242, 249 (2000).

<sup>65</sup> Finding No. 8.

Petitioner admitted that the cost of materials would “at least follow inflation.”<sup>66</sup> Petitioner also testified that the cost of materials – including cabinetry, roofing, flooring, and fixtures -- increased by as much as 20% after their home was completed.<sup>67</sup> Petitioner’s argument also requires the assumption that the finished building has not depreciated between 2020 and 2022. Petitioner provided no evidence about depreciation of the building since it was constructed. Whereas Respondent applied a depreciation rate of 3%, which is reasonably supported by its cost evidence.<sup>68</sup>

Respondent calculated the subject property’s assessment using the mass appraisal, cost-less-depreciation approach to value, which includes market adjustments through the use of a county multiplier and an ECF. Ms. Selover-Rider testified that the cost was calculated using Marshall Swift. She determined that the cost for the house, as new, would be \$1,747,024. Taking into consideration depreciation, the depreciated cost is \$1,694,640. Last, taking into consideration the ECF for the area, the value for the building itself is \$1,440,444.<sup>69</sup> This comports with Respondent’s 2022 Residential and Agricultural ECF study that found an ECF of .85.<sup>70</sup> Given the available evidence, the Tribunal finds that this approach provides the best evidence of TCV or “usual selling price” within the meaning of MCL 211.27. The submitted PRC identifies the valued features and amenities, along with the associated replacement costs, and Petitioner has not demonstrated any error in the same. The depreciation,<sup>71</sup> land value,<sup>72</sup> land improvements,<sup>73</sup> ECF,<sup>74</sup> and other factors affecting the value are also supported on the record and have not been challenged by Petitioner.<sup>75</sup>

Respondent asserted at trial that there were two items that were not included in the PRC that she wanted added. First, a whole home generator was added to the property in March 2021 at a cost to Petitioner of \$6,303.82.<sup>76</sup> Respondent’s assessor testified that the depreciated cost of the generator would be \$4,100 for tax year 2022.<sup>77</sup> While MCL 211.27(2)(q) would exclude the “installing, replacing, or repairing a whole home generator,”<sup>78</sup> that provision was an amendment to the Mathieu-Gast Home Improvement Act that did not take effect until December 31, 2022. Therefore, the Tribunal finds that the depreciated cost of the generator should be added to the 2022 TCV and that the 2022 TV should be increased by \$2,050.

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<sup>66</sup> Tr. 59:24-60:7.

<sup>67</sup> Tr. 51.

<sup>68</sup> Finding No. 13f.

<sup>69</sup> Tr. 66: 3-9.

<sup>70</sup> Respondent’s Exhibit R-1, at 24.

<sup>71</sup> Respondent’s R-1, at 1-4.

<sup>72</sup> Respondent’s R-1, at 23.

<sup>73</sup> Respondent’s R-1, 4.

<sup>74</sup> Respondent’s R-1, at 24.

<sup>75</sup> Respondent’s R-1.

<sup>76</sup> Tr. 40:12-19; Petitioner’s Exhibit P-4, at 49; Finding No. 13h.

<sup>77</sup> Tr. 91:9-13.

<sup>78</sup> MCL 211.27(2)(q).

With that said, the master bathroom's tile floor was also excluded from the PRC.<sup>79</sup> The tile floor is included in a much larger invoice dated January 5, 2020, for tiling of two bathrooms, laundry room, and garage entry floor that totals \$11,675 for labor and materials.<sup>80</sup> This element was part of the original construction of the house in 2019. It would have qualified as "new construction" under MCL 211.34d, which states:

As used in this subparagraph, "new construction" means property not in existence on the immediately preceding tax day and not replacement construction. New construction includes the physical addition of equipment or furnishings, subject to the provisions set forth in section 27(2)(a) to (q). For purposes of determining the taxable value of property under section 27a, the value of new construction is the true cash value of the new construction multiplied by 0.50.<sup>81</sup>

Respondent testified that the depreciated value of the tile that was excluded from the PRC would be \$5,100 for 2022.<sup>82</sup> The addition of the tile took place during the construction of the home in 2020, so it would be considered part of the construction and would not be exempted by MCL 211.27(2). However, only 50% of the tile in the amount of \$2,550 should be added to the 2022 TV as omitted property under MCL 211.34d. Petitioner did not challenge the veracity of these calculations with any persuasive evidence.

Respondent's use of the assessor's manual is updated and represents the cost (less depreciation) to reproduce a property as of the tax day at issue is far more credible and persuasive than Petitioner's historical costs several years ago. Under the law, assessing officers, in preparing annual assessments, "shall use only the official assessor's manual or any manual approved by the state tax commission, consistent with the official assessor's manual, with their latest supplements, as prepared or approved by the state tax commission as a guide in preparing assessments."<sup>83</sup> By extension, the Tribunal may also rely on manuals prepared by the STC.<sup>84</sup>

### *Reconciliation of Value*

The Tribunal finds that Petitioner's physical evidence and testimony about the subject's costs lack credibility and is unpersuasive. While Petitioner produced some evidence regarding original costs to build several years before the year at issue, the Tribunal finds that the cost information is incomplete. Further, this subject was built by the owner, who is a professional builder and does not reflect what a typical market participant would pay to build a similar property (less depreciation) for the year at issue.

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<sup>79</sup> Tr. 42:25-43:8; Finding No. 13i.

<sup>80</sup> Petitioner's Exhibit, P-4, at 86.

<sup>81</sup> MCL 211.34d(1)(b)(iii).

<sup>82</sup> Tr. 91-93.

<sup>83</sup> MCL 211.10e; See also *President Inn Properties, LLC*, 291 Mich. App. at 637.

<sup>84</sup> *Sunnybrook Golf Bowl & Motel, Inc v City of Sterling Heights*, unpublished per curiam opinion (No. 332357), 2017 WL 6061056, at \*7 (Mich. Ct. App. Dec. 7, 2017).

The Tribunal gives Petitioner's evidence regarding actual costs to build the building no weight for 2022. Petitioner has not met their burden of proof. Respondent's valuation evidence is far more credible and persuasive than Petitioner's outdated and skewed cost to build data.

The Tribunal concludes that the 2022 original depreciated cost of \$1,694,640 should be increased by \$4,100 (generator) and \$5,100 (bathroom tile), which yields a depreciated cost of \$1,703,840. Applying the ECF of .85 yields a 2022 TCV for the building of \$1,448,264. Adding the value of the land of \$248,850 plus the value of the land improvements of \$70,158, yields a total 2022 TCV of \$1,767,272.

Last, the 2022 TV, as confirmed by the board of review (BOR), includes losses of \$35,000 (a result of correcting the PRC at the BOR),<sup>85</sup> and additions of \$61,900 for the concrete drive, the brick path, cook top, separate shower, ceramic tile (excluding master bathroom), and two extra sinks.<sup>86</sup> Petitioner did not challenge these calculations with credible or persuasive evidence. Further, Respondent testified they calculated the 2022 TV to account for these additions, losses, and the 2022 inflation rate multiplier of 1.033 yielded a 2022 TV of \$856,277. However, as a result of the evidence received at the hearing, the 2022 TV should be increased to account for the generator and master bathroom tile in the amount of \$4,600. The recalculated TV is as follows:

$$(\$804,100 - \$35,000 \text{ (losses)}) \times 1.033 + (\$61,900 + \$4,600 \text{ (additions)}) = \$860,980.$$

Therefore, the Tribunal concludes that the 2022 TV is \$860,980.

## JUDGMENT

IT IS ORDERED that the Petitioner's Default is SET ASIDE.

IT IS FURTHER ORDERED that the property's SEV and TV for the tax year at issue is 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.

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<sup>85</sup> Tr. 80:7, 90:20-91:5.

<sup>86</sup> Tr. 80:10-12.

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%, (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 that reads "Joshua M. Wease". The signature is written over a horizontal line.

Entered: February 6, 2025

**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 provided by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk