

STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Michael Lynch,
Petitioner,

v

MTT Docket No. 404321

City of Novi,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Introduction

Petitioner, Michael Lynch, appeals the ad valorem property tax assessment levied by Respondent, City of Novi, against the real property owned by Petitioner for the 2010 tax year. Joshua T. Shilliar, attorney, appeared on behalf of Petitioner. Stephanie Simon Morita, attorney, appeared on behalf of Respondent. Petitioner's valuation witness was Stan Lenk, State Certified Residential Appraiser; Respondent's witnesses were Michael Taweel, State Licensed Appraiser, and David Glenn Lemmon, Michigan Master Assessing Officer (4).

The proceedings were brought before this Tribunal on May 24, 2013, to resolve the real property dispute.

Summary of Judgment

Petitioner contends the values should be as follows:

Parcel No. 50-22-19-101-007

Petitioner			
Year	TCV	SEV	TV
2010	\$374,000	\$187,000	\$187,000

The City of Novi has assessed the property on the tax roll as follows:

Parcel No. 50-22-19-101-007

Respondent			
Year	TCV	SEV	TV
2010	\$398,400	\$199,200	\$199,200

The City of Novi's revised values:

Parcel No. 50-22-19-101-007

Respondent			
Year	TCV	SEV	TV
2010	\$395,000	\$197,500	\$197,500

The Tribunal finds the values shall be:

Parcel No. 50-22-19-101-007

Year	TCV	SEV	TV
2010	\$395,000	\$197,500	\$197,500

Background

At issue is the true cash value for the subject property located at 26026 Island Lake Drive, Novi. The subject property is a condo with 2,476 square feet, three-bedrooms, 2.1 bathrooms, a fireplace, a two-car garage, and elevator. The walk-out basement is finished. Both parties used three identical sales in the sales comparison approach.

Petitioner's Arguments

Petitioner believes that the true cash value of the subject property for the tax years at issue should be reduced based on Petitioner's appraisal.

Petitioner's Exhibits:

P-1 Appraisal of subject property as of December 31, 2009.

Petitioner's only witness was Stan Lenk, State Certified Residential Appraiser. He prepared an appraisal for Petitioner as of tax day for 2010. Lenk testified that he prepared the appraisal on a typical Fannie Mae form 1073, which is standard throughout the industry.

Lenk testified that he did an interior measurement of the second floor, which accounts for the slight difference in square footage between the parties. The owner of the subject property was the Vice President of the association board and had information pertaining to the complex. The subject property is a center unit. There are four units per building, with a total of 64 condo units. There are four different designs that can be varied with sun rooms, larger master bedrooms, and finished basements.

The six comparable sales were adjusted for differences in square footage, if it was a center or end unit, financing, as well as superior basement finish. Lenk testified that he had a list of over 100 sales from the original construction date to 2007. He used that information to determine that an end unit has more value than a center unit. This formed his basis for his negative \$15,000 adjustment for end units.

Lenk explained that differences of 100 square feet in size were adjusted \$30 per square foot. The subject property did not have a fireplace or full bath in the basement. Comparables (1, 2, and 3) were adjusted a negative \$6,000 because they included a full bath and fireplace. Comparables (4, 5, and 6) did not have a fireplace and received a \$3,000 negative adjustment. Sale 1 had two fireplaces and was adjusted downward by \$3,000.

The subject property has an elevator. Lenk did not make an adjustment because it was not clear in the market if there was a premium for an elevator or if it was a user value. Sale 5 has an elevator, but it was a distressed sale. Sales 4, 5, and 6 were distressed sales; Lenk used the sales for supporting data.

The distressed sales were described as influenced by undue stimulus, bank sales, and short sales. The distressed sales sold for a lower price than the arm's length transactions.

The sales comparison approach included the following:

	Subject	P 1	P 2	P 3	P 4	P 5	P 6
Address	26026 Island	24933 Reeds	25654 Island	24979 Reeds	24775 Reeds	25708 Island	25650 Island
Sale Price		\$445,000	\$380,000	\$380,000	\$327,000	\$375,000	\$265,900
Sale Date		12/09	12/09	11/09	03/09	04/09	04/09
SF	2,492	2,610	2,476	2,562	2,658	2,610	2,610
BR	3	3	3	3	3	3	4
Baths	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Basement	WO/Fin	WO/Fin	WO/Fin	WO/Fin	WO/Fin	WO/Fin	WO/Fin
Gar	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Unit	Center	End	Center	End	Center	End	End
FP	Yes	2-FP	Yes	Yes	Yes	Yes	Yes
ADJ SP		\$415,700	\$374,000	\$359,000	\$366,500	\$401,700	\$342,600
Notes				Short Sale	Bank Owned	Sheriff Deed	Sheriff Deed

Lenk placed the most weight on Sale 2. It sold closest to tax day and only required adjustments for a fireplace and bath. Sale 3 noted that it was a short sale, but it did not receive an adjustment.

Lenk testified on cross-examination that the distressed sales were adjusted. Sales 4 and 5 received a positive adjustment of \$50,000. Lenk stated that the adjustment was a condition of the sale adjustment, the

properties are distressed. Sale 6 received a \$100,000 adjustment as it was bank-owned at the time of sale.

Respondent's Arguments

Respondent believes that the assessment is proper and reflective of the market value of the subject property.

Respondent's admitted exhibits are:

R-1 Appraisal of subject property as of December 31, 2009.

R-3 Property record cards.

David Glenn Lemmon, Michigan Master Assessing Officer (4), testified that he was employed as the assessor for the City of Novi for 19 years. He is familiar with the condos. There are four buildings in a cluster. The exterior units are either a Grand Haven or Riverton model. The interior units are Annapolis or Venice model. Each of the 64 units in the North Bay Development have frontage on the water. The city has a similar development located eight-tenths of a mile away. The South Harbor development has 52 units, not on the water, but with duplicate models and four-units to a building.

Lemmon testified that in the sales studies, he did not find a value difference in the center and end units. He did not find a \$15,000 difference in the sale prices for the center and end units.

Lemmon explained that in the North Bay development, five units have elevators, and in the South Bay development three units have elevators. He did not have sufficient data to discern a difference in sale prices for units with elevators. He developed a value for the elevators through the cost approach, based on Marshall Valuation Services, and the number of stops and type of elevator. The cost new of the elevators (three floors) is \$40,000. This cost is prior to calculation of any adjustments or depreciation.

Respondent's valuation witness, Michael Taweel, State Licensed Appraiser, testified that he prepared the appraisal for the subject property. He is an analyst for Integra Realty Resources.

Taweel utilized three of the same sales that Lenk used (Petitioner's Sales 1, 2, and 3) in his determination of market value for the subject property.

Taweel testified that he made a positive \$8,000 adjustment for the lack of elevators in the three sales. "I felt that the elevator, I took the cost, then took some depreciation and some obsolescence possibly and how the market would respond to that particular amenity." Tr. P 96. On cross-examination, he explained, in detail, that the initial cost was \$15,000 to \$20,000, and he estimated 40% depreciation.

The \$6,000 adjustment for differences between end and center unit was discussed by Taweel. His adjustment was based on discussions with real estate agents, experience, and market for those types of units in the development. He testified on cross-examination that he did not base his \$6,000 adjustment on actual sales, but on his experience and knowledge of different types of units in a development.

Taweel did not make adjustments for the bathrooms and fireplaces in the basements because he stated that he didn't feel that fireplaces affected the sale prices.

Respondent's sales are:

	Subject	R 1 (P-2)	R 2 (P-3)	R 3 (P-1)
Address	26026 Island	25654 Island	24979 Reeds	24933 Reeds
Sale Price		\$380,000	\$380,000	\$445,000
Sale Date		12/09	11/09	12/09
SF	2,476	2,476	2,562	2,610
BR	3	3	3	3
Baths	2.1	2.1	2.1	2.1
Basement	WO/Fin	WO/Fin	WO/Fin	WO/Fin
Gar	Yes	Yes	Yes	Yes
Unit	Center	Center	End	End
Fireplace	Yes	Yes	Yes	2-FP
Elevator	Yes	No	No	No
ADJ SP		\$388,000	\$382,000	\$441,640
Notes			Short Sale	

Some of the adjustments made by Lenk were not mirrored by Taweel. He explained that the market was not stable. Buyers were not willing to pay as much for amenities as they might in a stable market. This led Taweel to more conservative adjustments or no adjustments. Taweel made no adjustments for the full bath or fireplaces located in the basement. Taweel considered the lower-level improvements as having less impact on the market value. If improvements were located in the upper floors they would impact a buyer's decision.

Tribunal's Findings of Fact

1. The subject property involves a residential condominium property.
2. The subject property is located at 26026 Island Lake Drive, Novi, Oakland County.
3. The parcel identification number is 50-22-19-101-007.

4. The Tribunal finds that the subject property has 2,476 square feet, 3-bedrooms, 2.1 baths, one fireplace, a finished walk-out basement with a half bath, two-car garage, and an elevator.
5. The highest and best use of the subject property as improved is the current use.
6. The parties both agreed that the subject property is in good condition.
7. Neither party testified to any functional obsolescence.
8. The subject property is located in a condominium development.
9. Petitioner presented an appraisal with adjustments for differences in amenities.
10. Respondent presented an appraisal also utilizing the sales comparison approach.
11. Respondent does not have the burden of proof, but the burden of defending the assessment and assuring that it does not exceed 50% of market value.

Applicable Law

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value. The Michigan Legislature has defined true cash value to mean “the usual selling price at the place where the property to which the term is applied is at the time of the assessment, being the price which could be at auction sale except as otherwise provide in this section, or at forced sale.” See MCL 211.27(1). The Michigan Supreme Court in *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2nd 588 (1974), has also held that true cash value is synonymous with fair market value.

In that regard, the Tribunal is charged in such cases with finding a

property's true cash value to determine the property's lawful assessment. See *Alhi Dev v Orion Twp*, 110 Mich App 764, 767; 314 NW 2nd 474 (1981). The determination of the lawful assessment will, in turn, facilitate the calculation of the property's taxable value as provided by MCL 211.27a. A petitioner does, however, have the burden of establishing the property's true cash value. See MCL 205.737(3) and *Kern v Pontiac Twp*, 93 Mich App 612; 287 NW2nd 603 (1979).

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law.... 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%... ; and for a system of equalization of assessments. For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value. Const 1963 Art IX, Sec 3.

The Michigan Supreme Court, in *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 484; 473 NW2d 636 (1991), acknowledged that the goal of the assessment process is to determine “the usual selling price for a given piece of property.... ” In determining a property's true cash

value or fair market value, Michigan courts and the Tribunal recognize the three traditional valuation approaches as reliable evidence of value. See *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984).

“The petitioner has the burden of proof in establishing the true cash value of the property.” MCL 205.737(3). “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.” *Jones & Laughlin Steel v City of Warren*, 193 Mich App 348, 354-355; 483 NW2d 416 (1992).

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. See *Meadowlanes, Supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966); *Antisdale, Supra* at 276. 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 true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale*,

Supra at 277. Petitioner utilized a sales comparison approach.

Respondent also used the sales comparison approach to value the subject property.

The Tribunal may not automatically accept a respondent's assessment but must make its own finding of fact and arrive at a legally supportable true cash value. *Pinelake Housing Co-op v Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp, Inc v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979). The Tribunal is not bound to accept either of the parties' theories of valuation. See *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985). 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. See *Meadowlanes, Supra* at 485-486; *Wolverine Tower Assoc v Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980); *Tatham v Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982).

Conclusions of Law

The Tribunal, having considered the testimony and evidence and applying sound appraisal theory and techniques, finds that the \$21,000 difference between the two appraisals resulted in a narrowing of the areas of

disagreement. It is highly unusual for both parties to find and use the same three sales. The manner in which each party made its adjustments was the crux of the arguments.

The two appraisers are licensed under LARA. Article 26 of Public Act 299 of 1980, as amended was created to license and regulate the services of real estate appraisers in Michigan. This law was enacted as the result of federal legislation, Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, which required states to license real estate appraisers.

Lenk is a certified residential appraiser. Taweel is a state licensed appraiser. The pertinent license description from LARA follows:

Certified Residential Appraisers may appraise 1 to 4 family residential real property of any type or value, including appraisals for federally related transactions.

State Licensed Appraisers: Licensees in this category may appraise real property involving any non-federally related transactions. They may also appraise federally related transactions involving non-complex 1 to 4 family residential properties with transaction values up to \$1,000,000; complex 1 to 4 family residential properties with values less than \$250,000, and all other types of property with values less than \$250,000. They may assist a certified residential or certified general appraiser in appraising residential properties over \$1,000,000 or complex or non-residential properties over \$250,000, but they may not sign the report. Their contribution must be acknowledged pursuant to Standard 2-3 of the Uniform Standards of Professional Appraisal Practice.

The four specific areas of disagreement between the two appraisers lie in the adjustments as follows:

1. Adjustment for additional fireplaces located in finished basement.
 - A. Petitioner adjusted a negative \$3,000.
 - B. Respondent made no adjustment.
2. Adjustment for full versus half bath in finished basement.
 - A. Petitioner adjusted a negative \$3,000.
 - B. Respondent made no adjustment.
3. Adjustment for the end versus center condo unit.
 - A. Petitioner adjusted a negative \$15,000.
 - B. Respondent adjusted a negative \$6,000.
4. Adjustment for elevator.
 - A. Petitioner made no adjustment.
 - B. Respondent made a positive \$8,000 adjustment.

The Tribunal first considers the lower-level adjustments. All of the comparable properties have finished walk-out basements with a full bath and fireplace. The subject property lacks a fireplace and full bath in its basement. Petitioner's appraisal considered \$3,000 as the appropriate adjustment for the lack of a fireplace, with an additional \$3,000 difference between a half and a full bath. Respondent made no adjustment, stating that buyers in a down market would not pay as much for additional features.

Lenk testified that the basis for all of his adjustments was a paired-sales analysis utilizing sales from Island Lake. The data sources include MLS, real comps and real estate agents. Taweel testified that his adjustments,

or lack thereof included his experience, and discussions with real estate brokers, and agents. However, when questioned why he made no adjustment for the fireplace or full bath. Taweel testified that it is difficult to determine adjustments as the lower-level amenities could be a buyer preference.

Lenk made no adjustment for the elevator because he couldn't tell, based on paired sales, what a buyer would pay for the amenity. Sale 5 had an elevator, but it was a distressed sale. He was not able to derive an adjustment for the elevator. Taweel calculated the cost new of an elevator and depreciated it 40% to arrive at an \$8,000 adjustment.

The Tribunal considers the negative \$6,000 adjustments for baths and fireplaces utilized by Petitioner and \$8,000 positive adjustment for elevator utilized by Respondent and finds that the adjustments offset each other.

The Tribunal finds that this results in no adjustment for baths, fireplaces or lack of an elevator. ¹

¹ Respondent did not include Petitioner's Sale 5 which had an elevator.

Both appraisers adjusted the sales for the difference between the subject's (center unit) and comparable sales of end units. Lenk used \$15,000 and Taweel used \$6,000 to adjust the sales. Lenk testified that it was difficult to quantify the adjustment because the end units were different models, sizes, and layouts. He had a list of all of the sales, which he averaged to determine a price difference between end and center units. Taweel stated that his basis was based on discussions with real estate agents, and his experience with condos. Respondent's assessor Lemmon testified that he utilized the sales study for the condos in the Island Lake general development and did not find a value difference between center and end units.

The Tribunal finds that Taweels "experience" is not a reasonable basis for adjustments. A paired sales analysis is defined as:

"A qualitative technique used to identify and measure adjustments to the sale prices or rents of comparable properties." Appraisal Institute, *Appraising Residential Properties* (Chicago: 4th ed, 2007), p 243.

Lenks use of paired-sales analysis is an appropriate technique to determine the market interactions for amenities.

Petitioner did interior measurements and indicated 16 feet more than Respondent. Respondent's appraiser did not indicate where the square footage came from; however, it matches the property record. Generally, properties are measured from the exterior or from a building plan. The interior measurement for the second floor may be appropriate.

This Tribunal finds that Taweel made adjustments not properly based on a paired-sales analysis but on an elusive discussion with real estate brokers and his extensive experience. Lenk did testify to the use of paired sales analysis to assist his determination of the adjustments. The adjustments for fireplaces and difference between a half and whole bath are counterbalanced with the fact that no adjustment was made for the lack of an elevator. The elevator was adjusted by Respondent on a cost basis. For a highly unique property it may be reflective of the upper end of value. However, eight other condos had elevators, and an adjustment from the market may have been subjective.

The Tribunal finds that ,based on the testimony, photographs and sales grid, the end units have more square footage and substantially more windows than the center units. Differences in square footage were already

considered by both appraisers. Petitioner's smallest adjustment for square footage was a \$5,300 deduction (Sales 1, 5, and 6). Therefore, it appears that Petitioner's \$15,000 may contain an adjustment for the additional square footage. The \$15,000 negative adjustment is excessive.

Respondent's \$6,000 adjustment, however, was not based on a paired-sales analysis and little weight is given to this adjustment. An adjustment of \$10,000 would exclude square footage that was already accounted for earlier.

The unadjusted sale prices range from \$265,900 to \$445,000. The high and low sales were extracted. The remaining sales are \$365,900, \$375,000, \$380,000 and \$380,000. (This includes two distressed sales.)

Adjusting the arms-length sales, using the \$10,000 adjustment for end unit sales, zero adjustment for lower level bath and fireplace or elevator the Tribunal finds the value for the subject property falls in the middle of the range.

In the Tribunal's final analysis, having considered the information and adjustments finds that the subject property's market value is \$380,000.

JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the tax year at issue shall be as set forth in the *Summary of Judgment* section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year 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 90 days of the entry of the Final Opinion and Judgment, the 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 as required by the Final Opinion and Judgment within 28 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax

administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09% for calendar year 2012, and (iv) after June 30, 2012, through December 31, 2013, at the rate of 4.25%. This Opinion and Judgment resolves the last pending claim and closes this case.

MICHIGAN TAX TRIBUNAL

By: Victoria L. Enyart

Entered: July 03, 2013