



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

David A. Goran,  
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MAHS Docket No. 17-001324

Spring Lake Township,  
Respondent.

Presiding Judge  
Preeti P. Gadola

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, David A. Goran, appeals the ad valorem property tax assessment levied by Respondent, Spring Lake Township, against Parcel No. 70-03-15-302-025 for the 2017 tax year. Donovan J. Visser, Attorney, represented Petitioner, and Ingrid A. Jensen, Attorney, represented Respondent.

A hearing on this matter was held on September 21 and 26, 2018. Petitioner’s witnesses were Dr. Natalie Goran and Larry Rottman, Appraiser. Respondent’s witnesses were Scott Penning, Appraiser and Heather Singleton, Assessor.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash value (“TCV”), state equalized value (“SEV”), and taxable value (“TV”) of the subject property for the 2017 tax year are as follows:

Parcel No.	Year	TCV	SEV	TV
70-03-15-302-025		\$1,700,000	\$850,000	\$850,000

PETITIONER’S CONTENTIONS

Petitioner contends that the subject property, a single family home abutting Spring Lake, is over assessed. The property is located at 309 Barber Street in Spring Lake Township, Michigan. Petitioner contends that its conclusion of value is more accurate than Respondent's, because its appraiser, Mr. Rottman, inspected the interior and exterior of the property unlike Respondent's appraiser who performed a "drive-by" appraisal. For example, Respondent's appraiser, Mr. Penning, calculated the wrong square footage, wrong percentage basement finish, and incorrect number of bedrooms and bathrooms in the subject property residence. Petitioner also contends that Respondent's comparable properties were not properly verified, unlike its comparables.

#### PETITIONER'S ADMITTED EXHIBITS

P-1: Curriculum vitae and Michigan State Licensed Appraiser Certificate for Petitioner's Expert, Larry D. Rottman.

P-2: Appraisal Report for 309 Barber Street, Spring Lake, MI prepared by Petitioner's Expert Appraiser, Larry D. Rottman of Midwest Real Estate Services, Inc.

P-3: 2017 Board of Review Decision for the subject property.

P-4: Spreadsheet submitted by Petitioner to Assessor and 2017 March Board of Review demonstrating a failure to uniformly assess the subject property.

P-5: Architectural Plans for subject property.

P-6: Ottawa County GIS Map of subject property.

P-7: Survey of subject property.

P-8: Warranty Deed conveying title, with reservations for easements, to Petitioner.

P-9: Answer to Petitioner's post-valuation disclosure discovery requests to Respondent.

P-10: Assessor's BSA Records for 215 Monarch, Spring Lake, MI.

P-11: Assessor's BSA Records for 17885 N. Fruitport Rd, Spring Lake, MI.

P-12: Assessor's BSA Records for 18777 N. Fruitport Rd, Spring Lake, MI.

P-13: Assessor's BSA Records for 17628 Oakwood Rd, Spring Lake, MI.

P-14: Assessor's Partial Record Card for 17628 Oakwood Rd, Spring Lake, MI.

P-15: Assessor's BSA Records for 17931 N. Fruitport Rd, Spring Lake, MI.

P-16: Assessor's Partial Record Card for 17931 N. Fruitport Rd, Spring Lake, MI.

P-17: Easement Agreement (Supplemental Exhibits as disclosed by Respondent).

#### PETITIONER'S WITNESSES

##### Dr. Natalie Goran

Dr. Goran is the spouse of the owner of the property, Dr. David Goran ("Mr. Goran"). She testified she hired Mr. Rottman to perform an appraisal of the subject property. She met him at the property and he spent approximately four hours in the property house. She also witnessed Mr. Rottman taking measurements of the home.

Dr. Goran testified that she noticed a large increase in the assessed value of the property between 2015 and 2016, of approximately \$86,000 or 17.4%. She testified her husband did a study of all the homes that sold for over \$1,000,000 in the area, and noted that the subject property assessed value was higher than the other properties. He noted that by comparing assessed value as a percentage of purchase price, the subject property was assessed at 47%, while other properties were assessed at

37.37%.<sup>1</sup> Dr. Goran also testified the square footage of the house was in dispute between the Gorans and the Township as well as the reduction in value as a result of a landscape easement of 20 feet, that abuts the neighboring property. She testified that the easement prevents her family from utilizing about one-quarter of their 92 feet of frontage on Spring Lake.

Dr. Goran testified that that there is one bedroom on the first floor of the house, one full bath and two half-baths. She testified there are three bedrooms, one full bath with a tub, and two “three-quarter” baths with no bathtubs, on the second floor. In the basement of the house, there are no bedrooms, but a half-bathroom. Dr. Goran testified that the assessor and Respondent’s appraiser have not been inside the house.

On cross-examination, Dr. Goran acknowledged that in the study of \$1,000,000 homes, there was a note that stated, “[m]ay not want to show this line to the Tribunal.” Dr. Goran testified after the plans for the property house were presented and examined, that two plans are labeled, “Existing Main Level Plan” and “Existing Upper Level Plan,” while two others are labeled, “Main Level Design Plan,” and “Upper Level Design Plan.” Further, the “Design” plans are dated 4/15/16 and state on them “For permit.” Dr. Goran testified she and her husband refurbished the house in 2016.

#### Mr. Larry Rottman

Mr. Rottman was deemed an expert in appraisal by the Tribunal. The Gorans hired him to prepare an appraisal of the subject property home and lot. He testified he

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<sup>1</sup> See P-4, wherein the increase in assessed value between 2015 to 2016 is alleged to be \$83,400 and the property alleged to uncap in 2016. However, the property uncapped in 2017 as it was purchased on February 5, 2016. See R-8.

has appraised about 20,000 residential homes and appraised the subject property four times in 1987, 1993, 1996, 1997 and again in 2018. He noted, however, that the older appraisals were of “the old home without all these updates and additions and changes.”<sup>2</sup> The house was originally built in 1900 with an addition completed in 2009.

Mr. Rottman considered all three approaches to value the subject property, but noted that “Fannie Mae and Freddie Mac do not require the cost approach anymore.”<sup>3</sup> Further, Marshall and Swift “is not that accurate as what it used to be,”<sup>4</sup> so he did not utilize the cost approach. Additionally, he testified the income approach is not relevant because typically a home like the subject property is not rented, therefore rental income is unavailable. As a result, Mr. Rottman determined the sales comparison approach was the proper technique to utilize in valuing the subject property.

Mr. Rottman visited the property on May 8, 2017. He testified he measured the exterior twice for the purpose of determining the square footage of the first floor, but on level two, he found an abundance of open space, including several open loft areas including a “catwalk,” or “moving bridge.” As such, interior measurements were required on the upper level.<sup>5</sup> The total measured square footage for the subject property house was 6,267. Mr. Rottman’s first floor measurement was 3,387 square feet and his second floor concluded square footage was 2,880.

In valuing the property, Mr. Rottman disregarded the property transfer affidavit because it indicated the transfer of the property was a “property swap” at \$900,000<sup>6</sup> Further, the MLS listing put forth a sale price of \$1,900,000, and as such, he was

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<sup>2</sup> Transcript at 47 (“Tr. at 47”)

<sup>3</sup> Tr. at 49.

<sup>4</sup> *Id.*

<sup>5</sup> Tr. at 50, 95, P-2 at 5.

<sup>6</sup> Tr. at 56, 68.

unable to reconcile the “sale” prices and did not find them to be a consideration in determining the value of the property.<sup>7</sup> Instead, as indicated above, Mr. Rottman relied on the sales approach to value.

In his sales approach, Mr. Rottman considered six to eight sales in the Spring Lake area and chose three out the six or eight, as the best comparables to the subject property. Sale number one is located at 18301 N. Fruitport Road, Sale number two at 17628 Oakwood Drive and sale number three at 15384 Leonard Road. The sales were adjusted to be consistent with the characteristics of the subject property and his conclusion of value is \$1,450,000. The comparable houses were adjusted by \$40 per square foot because he found the subject house to be too large for its lot, and as such, he adjusted at this lower rate recognizing functional obsolescence as a result of superadequacy.

Mr. Rottman testified that he factored the 20 feet of landscape easement into his appraisal site adjustments, but the adjustment was made for lake frontage, depth, and beach or lack of beach, not just for frontage.<sup>8</sup> Mr. Rottman also testified that he changed his appraisal comparable three after being told by counsel that it was the property involved in the swap at “purchase,” and as such, might not be a good comparable to the subject property.<sup>9</sup> He also determined when he “ran the numbers it had very high gross adjustments.”<sup>10</sup> Mr. Rottman noted that both he and Respondent’s appraiser used a

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<sup>7</sup> Tr. at 68.

<sup>8</sup> Tr. at 60.

<sup>9</sup>Tr. at 72-73.

<sup>10</sup> Tr. at 120.

common comparable, 17628 Oakwood Drive, and as such, it is a very good comparable to the subject property.<sup>11</sup>

Mr. Rottman reviewed Respondent's appraisal and found there was approximately a 700 square foot difference in measurement for the subject property house and a difference in bedroom<sup>12</sup> and bathroom count. "He's got 6992 with 5.5 baths and, of course, I have 4.5.5 and I've got 6267 square feet."<sup>13</sup> With such a large dispute in square footage, Mr. Rottman abandoned his assignment to complete a review appraisal because it would taint the rest of the adjustments.<sup>14</sup> He further testified that the subject property has a walkout basement with 88% finish, however Respondent put forth in its appraisal that the basement is 100% finished.<sup>15</sup>

Mr. Rottman testified that he doesn't find drive-by appraisals to be accurate, such as that prepared by Mr. Penning, especially with a property of the quality and uniqueness of the subject property. As noted above, he testified that he's prepared 20,000 residential appraisals, over his forty years of practice, and he inspected the interior of "[a]ll of them."<sup>16</sup> Mr. Rottman testified, however, that he did not go through any of his comparable properties, instead relying on public records and the MLS.<sup>17</sup> He testified, "[t]hat's what all appraisers do that I know."<sup>18</sup> "[Y]ou'd have to talk to the owner and you'd probably get a no 95% of the time . . . ."<sup>19</sup> He further testified, that he looks through his "database to see if I have appraised any of the comparable properties and

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<sup>11</sup> Tr. at 101.

<sup>12</sup> See P-2 at 2 and R-1 at 3. Mr. Penning found five bedrooms and Mr. Rottman, four.

<sup>13</sup> Tr. at 104. "He" refers to Mr. Penning, Respondent's appraiser.

<sup>14</sup> Tr. at 107.

<sup>15</sup> Tr. at 149.

<sup>16</sup> Tr. at 164.

<sup>17</sup> Tr. at 136,138. MLS, or "Multiple Listing Service," puts forth real estate listings of properties for sale in Michigan.

<sup>18</sup> Tr. at 140.

<sup>19</sup> Tr. at 162.

then I would compare the notes in my previous appraisal in terms of sites and year built and additions and stuff with the MLS to try to confirm some of that data.<sup>20</sup>

On cross examination, Mr. Rottman testified that a room over the subject property garage, with beds, could be construed to be a fifth bedroom.<sup>21</sup> Further, based on photos presented and viewed, he also testified that the property could have a full bath in the basement, though he represented only a half-bath. On redirect, however, he recalled that there is a sauna in the basement and the potential full bath actually included a sauna, not a shower.<sup>22</sup>

Also, on cross-examination, Mr. Rottman noted that in his site adjustments, he included an additional sixteen-foot easement, on the northwest corner of the property, for ingress and egress of two neighbors to move from their homes to the main road. He also noted that 95% of the easement is located on the adjoining property with a sliver on the subject parcel. Additionally, the easement could benefit the subject property by providing a second access point to the main road, Barber Street. However, he also noted that the property would have more traffic and a smaller lot due to the ingress and egress easement.<sup>23</sup>

## RESPONDENT'S CONTENTIONS

Respondent contends that the subject property was properly assessed at 50% of its true cash value. Respondent presented an appraisal of the property that put forth four sales comparable to the subject. Respondent contends that its sales are truly

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<sup>20</sup> *Id.*

<sup>21</sup> Tr. at 149.

<sup>22</sup> Tr. at 150, 172, P-2 at 16.

<sup>23</sup> Tr. at 153-156, 160.



comparable to the subject property, unlike two of Petitioner's, one much smaller and a second located on the Grand River. Respondent contends that its comparable property verification properly included appraiser inspection, colleague inspection, assessor records and MLS listings.

#### RESPONDENT'S ADMITTED EXHIBITS

R-1: Respondent's Valuation Disclosure (appraisal dated 5/16/18).

R-3: Appraisal with invoice cover sheet dated May 18, 2017 prepared for Petitioner by Midwest Real Estate Services, Inc.

R-4: Nederveld Survey dated 1/4/16

R-6: Photos from listing of subject property sale.

R-7: Building sketches with square footage.

R-8: Warranty Deed and PTA for subject property.

R-9 : Mortgage for subject property.

R-10: Easement for subject property.

R-12: Building Plans.

R-15: MLS photos of the subject.

#### RESPONDENT'S WITNESSES

##### Scott Penning

Mr. Penning prepared an appraisal of the subject property and was recognized as an expert in residential appraisal by the Tribunal. Mr. Penning did not inspect the interior of the property, but performed an exterior inspection. He testified he obtained

information about the home from “[a]ssessor records and then MLS data from when the home was sold most recently.”<sup>24</sup> “I utilized the assessor records for the gross living area and I used the MLS for the room count and I also looked at the pictures on the MLS and determined that would appear to be adequate room counts.”<sup>25</sup> He noted the large addition to the subject property house in 2009 and renovations, and found the home to be in very good condition and like-new within the last five to ten years.

Mr. Penning was contacted by the Spring Lake Assessor, Heather Singleton, to prepare the appraisal. He testified he wasn’t requested to do a drive-by or exterior appraisal, “but it was agreed upon that was probably the best route to go.”<sup>26</sup> Mr. Penning testified he rarely performs an appraisal of a property without inspecting the interior because, “[t]o see what the interior is, see the quality and the materials and room count, things like that.” “It’s more accurate.”<sup>27</sup> He also noted that typically speaking, appraisers don’t inspect comparable properties.<sup>28</sup> Mr. Penning testified that he did not use the property transfer affidavit and MLS sale prices of \$900,000 and \$1,900,000 because, “[t]here was such a large difference and I didn’t know - - all aspects of the sale so I didn’t give it any weight.”<sup>29</sup>

With regard to the ingress and egress easement, Mr. Penning notes it only slightly encroaches on the subject property and provides a second point of access, so he didn’t consider the easement to be adverse. Further, he found the landscape easement to include useable frontage as he determined from examining overhead

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<sup>24</sup> Tr. at 180.

<sup>25</sup> Tr. at 180-181.

<sup>26</sup> Tr. at 203.

<sup>27</sup> Tr. at 205.

<sup>28</sup> Tr. at 218.

<sup>29</sup> Tr. at 183.

photos, that the property dock was located in the easement, indicating useable frontage and no detriment to the site.

Mr. Penning also utilized the sales comparison approach to conclude in the true cash value of the subject property for the 2017 tax year. He agreed with Mr. Rottman that the cost approach is not reliable, given Marshall and Swift has not kept up with current costs and the income approach is not appropriate, given there is minimal rental information for a home similar to the subject.

Mr. Penning located four sales comparable to the subject property and adjusted them to be consistent with the characteristics of the property, adjusting for gross living area, quality, basement and lake frontage. The comparables were all on Spring Lake with similar size and amenities. Comparable one is located at 17885 N. Fruitport Road, comparable two at 18777 N. Fruitport Road, comparable three at 17628 Oakwood Drive, and comparable four at 215 Monarch Street. Mr. Penning testified he would not use Mr. Rottman's comparable three, on the Grand River, because "[v]alues are different on the river than on the lake. They're not as reflective as the homes that are on Spring Lake."<sup>30</sup> Mr. Penning further testified he would not use Mr. Rottman's comparable one because its gross living area of 1,801 square feet is not comparable to the subject 6,992 square feet. He also determined the quality of construction of comparable one to be far inferior to the subject's. Mr. Penning's conclusion of value for the subject property was \$2,000,000.

Mr. Penning testified that he did not make any date of sale adjustments to his comparable properties even though they sold in August 2016, May 2014, June 2015

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<sup>30</sup> Tr. at 188.

and August 2014, because “homes of this quality and this size, they did not appreciate at the rate of the typical market.”<sup>31</sup> He also testified he adjusted for lake frontage and acreage of the site, separately.<sup>32</sup>

On cross-examination Mr. Penning agreed that the assessor records and his measurements for comparable one were approximately 300 square feet apart and he chose to utilize his own measurements, because he appraised the property at the time of sale. However, relative to comparable two, he inadvertently utilized the MLS square footage over the assessor records, which he finds “are more reliable than MLS records.”<sup>33</sup> “Because they have all the data and they have measured the properties. I don’t know if all realtors have measured the properties.”<sup>34</sup> With regard to comparable three, his square footage came from the plans for the property, but the assessor records indicated the property had 56 more square feet. Mr. Penning utilized his own company measurements for comparable four versus the assessor records.<sup>35</sup> As such, his conclusion of square footage of the comparables, was first, based on measurements from himself or a colleague, and second, assessor records. As a result, he utilized the assessor records to calculate the square footage of the subject property, which he did not inspect on the interior. Further, he testified that at the time of preparing his appraisal, he did not have Mr. Rottman’s appraisal to compare square footage. Mr. Penning adjusted his comparables by \$75 per square foot for differences in the square footage of the subject and the comparables and that number is “based on the market

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<sup>31</sup> Tr. at 189.

<sup>32</sup> Tr. at 230

<sup>33</sup> Tr. at 210.

<sup>34</sup> Tr. at 213.

<sup>35</sup> Tr. at 216.

reaction and my experience in the area, and any like sales if there's a difference that we could track over the years."<sup>36</sup>

Heather Singleton

Mrs. Singleton is the assessor for Spring Lake Township and was qualified as an expert in assessing and valuation. Mrs. Singleton viewed the property transfer affidavit and a mortgage document executed by Mr. Goran for \$1,900,000. She determined because the property transfer affidavit put forth the property swap, she also concluded more information was required to determine the actual purchase price of the property.

Mrs. Singleton testified that she received the first copy of the subject property appraisal, approximately one year earlier than the signature date of the second appraisal, relative to possible settlement of this appeal. The appraisal was forwarded from Petitioner's counsel, including the property with which the subject property was swapped, as comparable three. She informed counsel that comparable three was an inferior comparable because not only was it the swapped property, but it was located in Ferrysburg, not Spring Lake Township. She also noted that the second appraisal, filed for this appeal, removed the swapped comparable and replaced it with Petitioner's comparable three, located on the Grand River.<sup>37</sup> She testified that in her experience, properties located on the river sell for much lower prices than properties located on the lake.<sup>38</sup>

In order to verify the characteristics of a property, Mrs. Singleton testified that she re-measures property houses, takes new photographs, and consults the MLS and the

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<sup>36</sup> Tr. at 231.

<sup>37</sup> Tr. at 301-302.

<sup>38</sup> Tr. at 302.

Register of Deeds, to determine if there were any sales. She testified in 2009, an addition was constructed to the property which almost doubled it in size.<sup>39</sup> She also testified the assessor's office measured the property house in 2008 or 2009 and noted that no additions have been made since that time. The only building permits pulled were with regard to the interior refurbishment in 2016, which added \$6,600 in "additions," which is what the Township computer program labeled the refurbishment.<sup>40</sup> Her conclusion of square footage for the subject property house was 6992,<sup>41</sup> which was confirmed through the plans for the building permits,<sup>42</sup> photographs and APEX software. She testified the assessed and taxable values of the property increased in 2017 due to additions and uncapping. An economic condition factor was added, and she noted that Mr. Goran's comparables were not in the same ECF neighborhood as the subject, therefore different ECFs would be applied, skewing the results.

Mrs. Singleton also noted the landscape easement and ingress and egress easements and agreed with Mr. Penning that they did not detract from the value of the subject property. It appeared to Mrs. Singleton, from aerial photographs, that three docks were included with the property, including one located in the landscape easement. The three docks were also mentioned in the MLS listing for the property. She also concurred with Mr. Penning that the easement for ingress and egress did not detract from the property value because it provided two points of access to and from the subject property.

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<sup>39</sup> Tr. at 304.

<sup>40</sup> Tr. at 306, 329, 333.

<sup>41</sup> Tr. at 307.

<sup>42</sup> Dr. Goran's "Main Level Design Plan," and "Upper Level Design Plan."

## FINDINGS OF FACT

1. The subject property residential house is located at 309 Barber Street in Spring Lake Township. It is a two-story house, consists of 6267 square feet and is situated on .59 acre. It has 92 feet of lake frontage, however, only 72 feet are usable.
2. The subject property house has four bedrooms, four full and two half-baths, and a walk-out basement with 88% finish.
3. The property was “purchased” on February 5, 2016 for \$900,000 in a property swap. The sale price for the property is listed on the MLS as \$1,900,000.
4. Petitioner presented an appraisal of the property, utilizing the sales approach to value, which put forth three sales adjusted to be consistent with the characteristics of the subject property.
5. Petitioner’s sales comparable one is located at 18301 N. Fruitport Road and is a residential home, located on Spring Lake, and consists of 1801 square feet.
6. Petitioner’s comparable two, a residential home on Spring Lake, is located at 17628 Oakwood Drive.
7. Petitioner’s comparable three is located 15384 Leonard Road in Fruitport and is situated on the Grand River.
8. Petitioner’s appraiser adjusted the square footage of the comparable homes to the subject property by \$40 per square foot.
9. Respondent presented an appraisal of the subject property, utilizing the sales approach to value, with four sales adjusted to be consistent with the characteristics of the subject property.

10. Respondent's comparable one, on Spring Lake, is located at 17885 N. Fruitport Road and is adjusted for the difference in square footage from the subject house by \$75 per square foot, as are all of Respondent's comparables.
11. Comparable two, on Spring Lake, is located at 18777 N. Fruitport Road, consists of 8,040 square feet and has 450 feet of lake frontage.
12. Comparable three is a common comparable with Petitioner's comparable two, and is located on Spring Lake at 17628 Oakwood Drive.
13. Comparable four, on Spring Lake, is located at 215 Monarch Street, consists of 2,557 square feet and is a ranch-style home.
14. Both appraisers verified the characteristics of their comparables through previous appraisals, if available, assessor records and MLS listings.
15. There is a landscape easement on the subject property of 20 feet as well as an easement for the ingress and egress of two neighboring properties. The second easement provides another point of access for the subject property to reach Barber Street.
16. Petitioner's appraiser, Mr. Rottman, viewed the interior and exterior of the subject property, while Respondent's appraiser, Mr. Penning, did not. Respondent's assessor, Mrs. Singleton, also was unable to view the interior of the subject property residence.



## 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 true cash value.<sup>43</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>44</sup>

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 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>45</sup>

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”<sup>46</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>47</sup> The Tribunal is not bound to accept either of the parties' theories of valuation.<sup>48</sup> “It is the Tax Tribunal's duty to determine which approaches are useful in

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<sup>43</sup> See MCL 211.27a.

<sup>44</sup> Const 1963, art 9, sec 3.

<sup>45</sup> MCL 211.27(1).

<sup>46</sup> *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

<sup>47</sup> *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

<sup>48</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>49</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>50</sup>

A proceeding before the Tax Tribunal is original, independent, and de novo.<sup>51</sup> The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”<sup>52</sup> “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”<sup>53</sup>

“The petitioner has the burden of proof in establishing the true cash value of the property.”<sup>54</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>55</sup> However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.”<sup>56</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

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<sup>49</sup> *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

<sup>50</sup> *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

<sup>51</sup> MCL 205.735a(2).

<sup>52</sup> *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

<sup>53</sup> *Jones & Laughlin Steel Corp*, *supra* at 352-353.

<sup>54</sup> MCL 205.737(3).

<sup>55</sup> *Jones & Laughlin Steel Corp*, *supra* at 354-355.

<sup>56</sup> MCL 205.737(3).

approach.<sup>57</sup> “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”<sup>58</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 true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances.<sup>59</sup> Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.<sup>60</sup>

As noted above, both appraisal experts in this matter utilized the sales comparison approach to value the subject property because they contend Marshall and Swift cost estimates were not up-to-date, and a property such as the subject is not typically rented; therefore, few rental comparable incomes are available. The Tribunal also concludes that the sales comparison approach to value is the correct technique to utilize in determining the true cash value of the subject property for the 2017 tax year.

The sales approach to value is,

[t]he process of deriving a value indication for the subject property by comparing similar properties that have recently sold with the property being appraised, identifying appropriate units of comparison, and making adjustments to the sale prices . . . of the comparable properties based on relevant, market-derived elements of comparison.<sup>61</sup>

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<sup>57</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>58</sup> *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

<sup>59</sup> *Antisdale*, *supra* at 277.

<sup>60</sup> See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

<sup>61</sup> Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14<sup>th</sup> ed, 2014), p 377.

As such, the key to a successful sales approach is finding similar properties and adjusting them properly. One important factor in determining proper adjustments is to seek out the most accurate characteristics of the subject property and comparables. Both Mr. Rottman and Mr. Penning agree that viewing the inside of a property house is necessary in determining its characteristics and quality and the Tribunal notes Mr. Rottman is the only appraiser who has viewed the interior of the property. Mr. Rottman testified an interior inspection is necessary,

to see the quality, number one; to verify room count, number two; to see which areas are two levels and which areas are single levels for square foot verification; to see which portions of the basement are finished and the square footage and room count and the finish in the basement. There's just a lot of reasons to get inside a house of this nature, of this quality.<sup>62</sup>

The Tribunal also finds an interior inspection of the subject property is more reliable than an exterior viewing. As such, it finds Mr. Rottman's square footage measurement of the subject property house to be accurate at 6,267 square feet. The Tribunal also finds Mr. Rottman's conclusion of bedroom and bathroom count, basement finish, and other amenities in the home to be more reliable, even further persuasive by corroboration from Dr. Goran's testimony.

In evaluating the expert appraisals, the Tribunal notes that Petitioner's comparable one, located at 18301 N. Fruitport Road is too small to be a reliable comparable to the subject as it consists of only 1801 square feet. The Tribunal finds the property is too small to be truly comparable to the subject property and gives no weight to the comparable. Petitioner's comparable three is located at 15384 Leonard Road

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<sup>62</sup> Tr. at 109-110.

which is not on Spring Lake, but the Grand River. Mr. Penning and Mrs. Singleton reliably testified that properties located on the Grand River are inferior to the properties located on Spring Lake and Mr. Rottman made a \$100,000 adjustment for “site” though the properties had a similar amount of water frontage.<sup>63</sup> Further, the Tribunal is reluctant to provide great weight to the comparable considering it was substituted for the original appraisal comparable three, at a later date, at counsel’s advice.

Mr. Penning’s comparable one, located at 17885 N. Fruitport Road, was inspected by him, personally, at the time of sale. As such, he measured the property and confirmed its characteristics. The Tribunal finds comparable one to be a good comparable to the subject property, at first glance, however, the Tribunal finds the adjustment for square footage to be too high at \$75 per square foot. The Tribunal is persuaded by Mr. Rottman’s testimony that the adjustment for dollar per square foot should be lower due to the small size of the lot relative to the large property house. The house may also be too large for the area, given all the comparable properties are quite a bit smaller than the subject, other than Petitioner’s comparable two, which is unreliable, given its 450 feet of lake frontage as opposed the subject 92 feet. Mr. Rottman adjusted the comparables to the subject by \$40 per square foot, which based on the testimony of both appraisers, the Tribunal finds to be too low. The Tribunal finds a reasonable adjustment for the differences in house square footage is \$60 per square foot. The Tribunal is also unpersuaded by Respondent’s comparable two, given its frontage, basement, and bathroom adjustments.

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<sup>63</sup> See P-2 at 2.

The Tribunal is also not persuaded by Mr. Penning's comparable four, located at 215 Monarch Street, because it is much smaller than the subject property at 2,557 square feet, is a ranch-style home and has only one bedroom on the main floor and three on the lower level. Mr. Penning did verify its characteristics from a colleague who prepared an appraisal of the comparable.

Mr. Rottman's comparable two and Mr. Penning's comparable three are a common comparable, located at 17628 Oakwood Drive on Spring Lake. The Tribunal is persuaded that this comparable best supports the true cash value of the subject property for the 2017 tax year. Mr. Rottman testified,

Q: Okay, now in your opinion and in your experience, because it's in his comp or their comp or their appraisal and it's in your appraisal, does that make it the only reliable comp?

A: I think it might make it a very good comp, yeah.<sup>64</sup>

Mr. Rottman adjusted the Oakwood comparable by \$50,000 for date of sale given it sold approximately 1-1/2 years before the subject date of value of December 31, 2016.<sup>65</sup> The Tribunal, however, is persuaded by Mr. Penning's testimony that the market for this size and quality of house was increasing more slowly than that for smaller homes, between the date of sale and the date of value. As a result, the Tribunal disregards the positive, date of sale adjustment.

Mr. Rottman adjusted the comparable by (\$100,000) for site, and the Tribunal finds this adjustment to be too high. The Tribunal finds, despite testimony about aerial photos of a dock in the "landscape" easement, Dr. Goran testified, under oath, that her family does not utilize 20 of their 92 feet of lake frontage due to lack of access. The

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<sup>64</sup>Tr. at 101.

<sup>65</sup> MCL 211.2(2) states: "The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, any provisions in the charter of any city or village to the contrary notwithstanding.

Tribunal finds this testimony to be persuasive, but also agrees with Mr. Penning's \$0 site adjustment given the subject property consists of .59 acre and the comparable, .60 acre. The Tribunal instead adjusts the property for lake frontage for a difference of 38 feet (110 feet for the comparable and 72 feet for the subject). The Tribunal finds the appropriate adjustment, using Mr. Penning's front foot adjustment of \$2,000, is (\$76,000).

Mr. Rottman found the Oakwood comparable house to consist of 4,870 square feet. Mr. Penning, however, found it consists of 3,544 square feet. The Tribunal is persuaded by Penning's conclusion of square feet given, in his colleague's appraisal, building plans were consulted to determine the accurate square footage, while Mr. Rottman relied on public records.<sup>66</sup> Both appraisers agree that an important step in evaluating a comparable is to check the company database to see if the property was previously appraised. Further, as the Tribunal previously concluded the appropriate adjustment per square foot to be \$60, the proper positive adjustment would be \$163,380.<sup>67</sup>

The Tribunal adopts Mr. Rottman's (\$100,000) adjustment for quality of construction based on his convincing testimony, viewing of MLS photographs and the MLS description of the property, despite Mr. Penning's testimony to the contrary.<sup>68</sup> However, Mr. Rottman adjusted the comparable by \$70,000 for lack of basement, as compared to the subject 88% finished, walk-out basement. Mr. Penning testified the comparable has a partially finished, walk-out basement; therefore, the Tribunal finds no

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<sup>66</sup>Tr. at 195-196.

<sup>67</sup> Subject 6267 square feet, minus comparable 3,544 square feet equals 2,723 square feet. 2,723 square feet multiplied by \$60 per square feet, equals, \$163,380.

<sup>68</sup> Tr. at 130-131.

adjustment necessary. Mr. Penning did make a \$15,000 adjustment for a bedroom and bathroom in the comparable basement, which the Tribunal finds to be appropriate.

It should be noted that Mr. Rottman testified, though did not indicate in his appraisal, that he would make an additional negative adjustment to the comparable for its quality of construction relative to the subject property's.<sup>69</sup> The Tribunal, however, is not persuaded by this testimony.

The Tribunal adopts Mr. Rottman's deck/fireplace adjustment of (\$5,000), and corrects Mr. Penning's adjustment for bathrooms to \$7,500, as the comparable has three bathrooms and the subject four full, and two half-baths. Mr. Penning incorrectly found the subject property to have five-and-a-half baths. The Tribunal is not concerned with the discrepancy in number of bedrooms between the parties as it finds the adjustment to be sufficiently included in the square footage adjustment.

In conclusion, in determining the true cash value of the subject property, the Tribunal commences with the sale price of the Oakwood comparable of \$1,725,000 and adjusts it by (\$100,000) for quality of construction, (\$5,000) for fireplace and docks, \$7,500 for bathrooms, \$15,000 for its lower level, (\$76,000) for frontage and \$163,380 for square footage. The Tribunal's conclusion of true cash value for the subject property for the 2017 tax year is thus rounded to \$1,700,000.

With regard to Mr. Goran's analysis of \$1,000,000 property assessed values as a percentage of purchase price, the Tribunal provides it no weight. The Tribunal is unable to determine where the information came, its accuracy, and Mr. Goran wasn't present at the hearing to explain his analysis. Further, Mr. Goran is not an appraiser, but a lay

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<sup>69</sup> Tr. at 101-102.



person, and the Tribunal finds effective and accurate appraiser analysis to be the most impactful evidence in determining the value of a property.

With regard to the ingress and egress easement, the Tribunal finds that both appraisers have agreed that only a small portion of the easement is located on the subject property and it provides the property with an additional point of access to Barber Street. As such, the Tribunal finds the easement does not affect the value of the property.

The Tribunal also placed no weight on the sale price of the property, given the MLS put forth a sale price of \$1,900,000, while the property transfer affidavit put forth a “sale” price of \$900,000 in a property swap. No further information was provided about the property swap, Mr. Goran who purchased the property was not present as a witness at the hearing, and both appraisers and Mrs. Singleton all agreed that additional information about the sale was necessary in order to provide it appropriate consideration. Therefore,

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject property is over-assessed. The subject property’s TCV, SEV, and TV for the tax year at issue are as stated in the Introduction section above.

## JUDGMENT

IT IS ORDERED that the property’s state equalized and taxable values for the tax year at issue are MODIFIED as set forth in the Introduction section of this Final Opinion and Judgment.

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

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

December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, and (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%.

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

#### APPEAL RIGHTS

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

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.<sup>70</sup> Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.<sup>71</sup> A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service

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<sup>70</sup> See TTR 261 and 257.

<sup>71</sup> See TTR 217 and 267.

must be submitted with the motion.<sup>72</sup> Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.<sup>73</sup>

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an “appeal by right.” If the claim is filed more than 21 days after the entry of the final decision, it is an “appeal by leave.”<sup>74</sup> A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.<sup>75</sup> The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.<sup>76</sup>

By Preeti P. Gadola

Entered: November 27, 2018

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<sup>72</sup> See TTR 261 and 225.

<sup>73</sup> See TTR 261 and 257.

<sup>74</sup> See MCL 205.753 and MCR 7.204.

<sup>75</sup> See TTR 213.

<sup>76</sup> See TTR 217 and 267.