

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

Daniel Stahl,
Petitioner,

v

MTT Docket No. 418290

Township of Hamburg,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Introduction

Petitioner, Daniel Stahl, appeals the ad valorem property tax assessment levied by Respondent, Township of Hamburg, against the real property owned by Petitioner for the 2011, 2012 and 2013 tax years. Joshua T. Shillair, attorney, appeared on behalf of Petitioner. Peter Goodstein, attorney, appeared on behalf of Respondent. Petitioner's valuation witness was Brian D. Baldrice, State Licensed Appraiser; Respondent's witness is Susan J. Murray, Michigan Advanced Assessing Officer (3).

The proceedings were brought before this Tribunal on October 28, 2013, to resolve the real property dispute.

Summary of Judgment

Petitioner contends the values should be as follows:

Parcel No. 4715-33-110-105

Petitioner			
Year	TCV	SEV	TV
2011	\$435,000	\$217,500	\$217,500
2012	\$445,000	\$222,500	\$222,500
2013	\$445,000	\$222,500	\$222,500

The Township of Hamburg has assessed the property on the tax roll as follows:

Parcel No. 4715-33-110-105

Respondent			
Year	TCV	SEV	TV
2011	\$556,600	\$278,300	\$278,300
2012	\$633,480	\$316,740	\$282,317
2013	\$559,580	\$279,790	\$279,790

The Tribunal finds the values shall be:

Parcel No. 4715-33-110-105

Respondent			
Year	TCV	SEV	TV
2011	\$545,000	\$272,500	\$272,500
2012	\$551,000	\$275,500	\$275,500
2013	\$570,000	\$285,000	\$282,112

Background

At issue is the true cash value for the subject property located at 4379 Cornwell Lane, Whitmore Lake, Hamburg Township, Livingston County.

The subject property is a single family residence with a principal residence.

It has 115 feet on the Cornwell River. Petitioner prepared an appraisal for

2011 and 2012. Respondent prepared the cost-new-less depreciation approach for all three years at issue and in addition prepared a sales comparison approach for 2013.

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 admitted exhibits:

P-1 Appraisal of subject property as of December 31, 2010.

P-2 Appraisal of subject property as of December 31, 2011.

Petitioner's only witness was Brian D. Baldrice, State Licensed Appraiser.

He prepared an appraisal for Petitioner as of tax day for 2011 and 2012.

Baldrice testified that he prepared the appraisal following USPAP. He completed an interior inspection.

Baldrice explained that the subject property was constructed approximately five years ago. It is a Cape Cod style, with brick and stone with an unfinished basement with eight-foot ceilings. The basement is built-up approximately four feet or so, to prevent a water problem. The location of the subject property is on a river that is part of a chain of lakes connected with eight lakes. This results in nine miles of waterway access. The

access is a private gravel road. The home owner association fees were not disclosed to Baldrica.

Baldrica verified sale prices with MLS, Assessor's office, and viewing of interior photos. Waterfront was the most relevant factor in the comparable property sales. He testified that 30% of the sales were Real Estate Owned by banks ("REO"). The adjustments were made for time at 2.3%, extracted from matched paired sales.

Baldrica tried to relate the land to the assessor's land values and comparing them. The land sales from the assessor's office indicated a December 30, 2010 sale at \$120,000 or \$49,000 per acre. The smaller site size on a lake would approximate the larger land on a river. The lake would have a higher land value. If a lake front comparable property was on a smaller parcel, no adjustment was made.

Baldrica discussed the following six sales for the 2011 tax year:

	SUBJECT	P-1	P-2	P-3	P-4	P-5
Address	4379 Cornwell	9306 Shannon	4189 Cordley	4136 Shoreview	10202 Buhl	4261 Cornwell
Sale Price		\$270,600	\$325,000	\$336,500	\$420,000	\$545,000
Sale Date		12-10	10-10	11-10	04-10	09-10
Sq Ft	2,674	1,934	1,878	2,214	2,452	2,283
BR	3	3	3	3	3	3
Baths	2.1	2.1	2	2.1	3	2
Basement	Unf WO	Unf	WO Fin	Unf	Slab	Crawl
Acres	1.21	1	1.16	0.16	0.22	2.66
Garage	3 car	2 car	3 car	2 car	2 car	4 car

Sale 2 has a mother-in-law finished area in the basement.

Sale 3 was a bank sale on the market for 17 days. It was sold “as is” and was eligible for Homepath Renovation. Sale 4 contains mother-in-law quarters. Sale 5 is the only sale over \$500,000 with 591 days on the market.

After adjustments, Baldrice reconciled to the midrange as only one sale exceeded \$430,000. The same methodology was applied for the 2011 tax year.

Baldrice used sales to determine that the increase was 2.3% for 2011. His sales were all waterfront, 1 ½ and 2 story’s. Sales 6 and 9 were remodeled. Sale 9 was adjusted for the size and walk-out basement at \$10 per square foot and \$5,000 for the walk-out. Sale 5 had a 25-foot by 30-

foot pole barn which Baldrica found to be equivalent to a 2-car garage. He therefore adjusted for a 5-car garage. The bonus room above the garage added no market value. He gave equal weight to all of the sales. The sales are¹:

	SUBJECT	P-6	P-7	P-8	P-9	P-10
Address	4379 Cornwell	9127 Riverside	2974 Indian Tr	10880 Lake Pt.	9116 Lake Crest	10686 Bob White
Sale Price		\$290,000	\$325,000	\$395,000	\$295,000	\$551,000
Sale Date		08-11	04-11	08-11	06-11	06-11
Sq Ft	2,674	2,562	3,031	2,170	2,851	2,964
BR	3	3	3	3	3	3
Baths	2.1	3.1	2	3.1	3	3
Basement	Unf WO	WO Fin	Slab	Crawl	WO Fin	Crawl
Acres	1.21	0.16	0.14	0.29	0.22	0.37
Garage	3 car	2 car	2 car	2 car	3 car	5 car

When questioned on cross-examination, Baldrica testified that he did not take any photographs of the comparable properties. He did not view the comparable properties except on the internet.

Baldrica testified that he does not normally check building permits to determine when a comparable sale was updated. He did not drive-by any of the comparable sales.

¹ The Tribunal rennumbers the sales for the second appraisal.

Respondent's exhibits were utilized to indicate the following; Sale 2 had reverse osmosis for arsenic in the water, deck was replaced for safety issues and basement walls were reinforced. Sale 3 was not adjusted for REO. It was on the market for 17 days. However, P-1, page 22, states that it was sold "as is." R-1, page 5, is a photograph of Sale 3. The photograph indicates that Sale 3 is not the same quality as the subject property. Sale 5 has two houses in the backyard.

Baldrice's 2012 sales were also discussed. Sale 6 is on the northern edge of the waterway. Sale 7 was an estate sale. Sale 8 was an estate sale with an unknown date of renovation. 9 is on Gill Lake, which is not on the chain of lakes.

Baldrice testified that the Tribunal requires more research, due diligence and requires an appraiser to be held to a higher standard than a bank appraisal. He agreed that an inspection of all of the properties would be relevant.

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 Photo of Subject.
- R-2 Photo of Petitioner's Sale 1.
- R-3 Photo of Petitioner's Sale 2.
- R-4 Page from Wolodzko appraisal.
- R-5 Photo of Petitioner's Sale 3.
- R-6 Photo of Petitioner's Sale 4.
- R-7 Photo of Petitioner's Sale 5.
- R-8 Photo of Petitioner's Sale 6.
- R-9 Photo of Petitioner's Sale 7.
- R-10 Photo of Petitioner's Sale 8.
- R-11 Photo of Petitioner's Sale 9.
- R-12 Photo of Petitioner's Sale 9 Gill Lake.
- R-13 Photo of Petitioner's Sale 10.
- R-14 Photo of Petitioner's Sale 10 detached garage.
- R-15 Respondent's 2013 valuation disclosure.
- R-16 2011, 2012, and 2013 ECF studies.
- R-17 2011, 2012 and 2013 L 4023 reports.

Susan J. Murray, Michigan Advanced Assessing Officer (3), testified that she is the assessor for Respondent. She is familiar with all of the sales as she inspects them at the time of reappraisals.

Murray explained that the county equalization department removes from its study estate and REO sales. If an assessor has confirmed that the REO sale is in the same condition as it was on the assessment roll, a request is made to the equalization department to reconsider its use in the sales study. Petitioner's Sale 3 was not in good condition at the time of the sale and it was not considered part of the sales study for the township.

Murray testified to the following short comings in Petitioner's sales.

Petitioner's Sale 1 is far north of the subject on the river. To get to the chain of lakes it requires traversing under three bridges. If there is high water there is no passage. The new owner stated that he did no updates.

Petitioner's Sale 2 has no access to the chain of lakes. It is located on Bass Lake. There was a previous short sale, December 2008. The owner from Ohio was going to renovate, but did not.

Petitioner's Sale 3 is a foreclosure owned by a bank. It was eligible for a HomePath renovation. Respondent viewed this property to determine that it was not in good condition and was not included in the sales study. This property as shown in the photo is very average, the siding needs repair, no window trim. It was sold "as is".

Petitioner's Sale 4 is 65 feet wide. The renovation took place 20 years earlier. It is plain construction not equal to the above average contemporary construction of the subject property.

Petitioner's Sale 5 is the closest in acreage and quality of construction to

the subject with 2.66 acres. There are two houses on the back part of the lot.

Petitioner's Sale 6 is much older with no brick or stone, a lower quality construction with no architectural features. It is also at the northern edge of the area.

Petitioner's Sale 7 was sold by an estate. Murray testified that she spoke to the daughter who tried to sell the property quickly. The parcel is 80 feet by 79 feet on the river. It is 1980's décor with no architectural features.

Petitioner's Sale 8 was also an estate sale, owned by a veterinarian. It is average quality, 1984 construction.

Petitioner's Sale 9 is on Gill Lake which is more like a pond, no motors are allowed. Swimming is off of a raft in the middle of the lake. This is in a 1970s subdivision.

Petitioner's sale 10 has no distinguishing features, on a 53 foot wide lot. It resold in August for \$629,000.

Murray testified that the average decrease in the residential class of property was 1.3% to 1.5%. She forecasts an increase in properties for tax year 2014. This information is included in her exhibits.

Murray refuted Baldrica's (Dunlevy) vacant land sale. She explained that the sale price was discounted for two parcels, after the DNR did a stop-order on a fill-in that the owner was doing to make it buildable.

Murray testified that she prepared a sales comparison approach using similar high quality sales which have been limited in the past few years. She adjusted the sales \$40 per square foot with \$5 for a basement and garage differences.

	SUBJECT	R-1	R-2	R-3	R-4	R-5
Address	4379 Cornwell	4741 Cornwell Lane	6140 Cornwell	3534 Windwheel	4191 Shoreview	4799 Downing
Sale Price		\$570,000	\$450,000	\$400,000	\$460,500	\$551,000
Sale Date		01-12	04-12	07-12	06-12	07-12
Sq Ft	2,674	2,479	2,309	2,540	1,950	4,026
Baths	2.1	2.1	3.1	3.1	2.1	3
Basement	Unf WO	Crawl	Fin	Slab	Crawl	Crawl
Acres	1.21	0.16	0.14	0.29	0.22	0.37
Gar	3 car	2 car	2 car	2 car	3 car	5 car
Location		Superior				Superior

She determined that her Sale 1 was the most comparable sale. She explained that Petitioner's Sale 5 was located on Cornwell and would be reflective of the market value of the subject property.

Murray, on cross-examination, explained the properties that she has been in, the verification process for sales to be used in the annual study. She went into some depth with the location adjustment for river versus lake study. Each is considered separately to determine land value.

Tribunal's Findings of Fact

1. The subject property involves a residential single family property.
2. The subject property is located at 4379 Cornwell Lane, Hamburg Township, Livingston County.
3. The parcel identification number is 4715-33-110-105.
4. The Tribunal finds that the subject property has 2,674 square feet, 3-bedrooms, 2.1 baths, one fireplace, an unfinished basement and a two-car garage, built in 2005.
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 has 115 front feet on Cornwell River.
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.
12. The subject property has access to a chain-of-lakes.

13. Respondent was able to refute Petitioner's sales with the use of photographs, site visit, and professional knowledge of the area.

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, finds that the information provided by Baldrice was successfully rebutted by Respondent. Respondent was familiar with all of the properties, circumstances surrounding the sales and had taken recent photographs that depicted some of the flaws and lower quality construction that Baldrice was not aware of, because he failed to inspect or at minimum drive-by the comparables utilized in his appraisal. This greatly weighed on his credibility.

Baldrice is a state licensed appraiser. The pertinent license description from LARA follows:

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.

Baldrice testified that he followed USPAP and complied with appraisal standards. He fails, however, in selecting sales that would be comparable with the subject property. By selecting sales that were lesser quality, the result is misleading. The subject property is newer above average construction. The subject property has 115 feet of river frontage with access to a chain of eight lakes. The construction quality of Baldrice's sales was average or below average. He was not aware that the majority of his sales were not comparable to the subject property. It does not take a rocket scientist to look at Respondent's clear photos of his sales to realize that the same buyer would not substitute Petitioner's Sales 1, 2, 3, 4, 6, 7, 8, or 9. Petitioner's appropriate sales are Sale 5, which resold in 2013; and Sale 10, which is not brick and stone but has more complicated roof lines that make it appear higher quality construction than his other sales.

Baldrica's appraisal also has issues with conditions of the properties at the time of sales. Murray visited all of the properties and viewed them in order to take the photographs. Murray successfully rebutted the majority of the sales Baldrica utilized for an indicated lower value.

Baldrica did not select sales that would have the same market influence as the subject property. Murray through photographs and public records went through every comparable sale that Baldrica utilized. The Tribunal accepts the rebuttal testimony from Murray therefore, does not repeat it in this conclusion.

Baldrica's 2011 appraisal contains one sale that is appropriate as a substitute property. Sale 5 is located in close proximity to the subject property, slightly smaller but the same above average quality construction. It sold for \$545,000 September 2010. The Tribunal finds that this sale is the best indication of market value for the subject property as of December 31, 2010.

Petitioner's Sale 10 is the only 2011 sale that is closer in quality, although it is a smaller waterfront access. It sold for \$551,000, June 2011. It resold

August 2013 for \$627,000. The Tribunal finds that this is the only sale presented that is close to an indication of value for the subject property as of December 31, 2011.

Petitioner failed to submit any information for the 2013 tax year.

Respondent's 2012 sales indicate that the 2013 value should be increased.

Respondent's Sale 1 is located in close proximity to the subject property, same quality construction, with appropriate adjustments for differences in amenities. Respondent's Sale 1 was \$570,000 January 2012, adjustments increased the comparable value. The Tribunal finds this sale is the indicated value for the subject property as of December 12, 2012.

After considering the sales put forth by both parties, an increase in the value for the 2013 year is appropriate. Taxable values have been adjusted accordingly.

In the Tribunal's final analysis, having considered the information and adjustments finds that the subject property's 2011 and 2012 values are adjusted downward to reflect 50% of market value. The 2013 value is adjusted upward to reflect market value.

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, and prior to January 1, 2014, at the rate of 4.25%.

This Opinion and Judgment resolves the last pending claim and closes this case.

By: Victoria L. Enyart

Entered: Nov. 18, 2013