



STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

GRETCHEN WHITMER  
GOVERNOR

ORLENE HAWKS  
DIRECTOR

SA676US23 LLC,  
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 18-002297

Harrisville Township,  
Respondent.

Presiding Judge  
Preeti P Gadola

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, SA676US23 LLC, appeals the ad valorem property tax assessment levied by Respondent, Harrisville Township, against parcel number 060-001-400-020-00 for the 2018 tax year. Larry Powe, Attorney, represented Petitioner, and Laura Hallahan, Attorney, represented Respondent.

A hearing on this matter was held on February 27, 2020. Petitioner’s witnesses were Steven Arends, principal of Petitioner, and Michael Tarnow, Member, Appraisal Institute (MAI). Respondent’s sole witness was John Widmer, MAI.

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 2018 tax year are as follows:

**Parcel Number:** 060-001-400-020-00

Year	TCV	SEV	TV
2018	\$219,500	\$109,750	\$109,750

PETITIONER’S CONTENTIONS

Petitioner contends that the subject property, which consisted of an inoperative restaurant, two rental houses, a garage and a shed, was purchased on October 17, 2017 for \$75,000. The property was on the market for twelve years with no offers to purchase, however, Petitioner purchased the property hoping to improve it into an operating restaurant. There were negotiations back and forth between two real estate brokers and the sale price was ultimately agreed upon; therefore, the sale was an at arm's length.

The property was in poor condition at the time of sale and as of the assessment date, only very minor improvements were commenced. However, in all, Petitioner spent about \$500,000, after December 31, 2017, to renovate the property into a brew pub.

The subject property's true cash value on the tax roll was \$289,600 in 2018, and based on the purchase price, the condition of the property, a professional appraisal and corrected professional appraisal, Petitioner contends the property is over assessed.

With regard to Respondent's appraisal, Petitioner contends the sales comparables utilized are not truly comparable to the subject property, including two lake front properties with only minor adjustments. Petitioner contends its adjusted sales comparables properly reflect the value of the property.

#### PETITIONER'S ADMITTED EXHIBITS

P-1 Tarnow Appraisal date August 12, 2019

P-2 Tarnow Appraisal dated October 18, 2018

#### PETITIONER'S WITNESSES

Steven Arends

Mr. Arends, principal of Petitioner, purchased the subject property in order for his wife to open a brew pub. He was familiar with the property because he frequented the former restaurant<sup>1</sup> many times as a child and it is located south of his cottage. He testified it has been vacant and for sale for 12 to 14 years. He also noted he owns the local grocery store, where all his children work, and laundromat, because it is his desire to continue to improve the area.

Mr. Arends testified that he viewed the subject property and after two weeks, made an offer to purchase. At that time it was listed for \$114,000. After 3-4 weeks of negotiation, between brokers, he purchased the property for \$75,000, cash. The property did not have a liquor license, but he spoke to the Township before purchasing, and the Board approved the license. He also testified that 12 years ago, the property was listed for \$235,000, which he determined from an MLS listing from years back. Further, he found two realtor's "for sale" signs in the bushes surrounding the property, as well as the current sign. As such, he concluded the property was listed by at least three real estate agents.<sup>2</sup>

At the time of sale, the property was in very poor condition with holes in the ceiling, infestation by animals, it was a propane facility with no tank, it did not have a gas run, had a minimally operating well, aged septic system, its basement flooded every year and you could see a water line about five feet off the floor. The only HVAC was

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<sup>1</sup> The witnesses and counsel refer to the property at times, as an "inoperative restaurant," (Mr. Powe, Tr. at 9) former restaurant, (Arends, Tr. at 16), "closed tavern" (Tarnow, Tr. at 55), "commercial building" (Hallahan, Tr. at 128) and a "newly renovated restaurant/bar" (Widmer, R-1 at 1). For the purposes of this final opinion and judgment, the Tribunal refers to the property as a former restaurant.

<sup>2</sup> Transcript (Tr.) at 186.

one window air conditioner and an inoperable furnace on blocks. Mr. Arends did testify that the property had electricity and the foundation was sound. He testified that in November or December he started to do a few things to improve the property, including tearing off a small amount of roof shingles, but not much else that winter.<sup>3</sup>

At the time of purchase, Mr. Arends testified that there were renters in the two houses on the property. One tenant was evicted because he did not have a lease in place and refused to pay rent. After eviction, the property was in such bad shape that in April 2018, it was torn down. Until that time the house remained vacant and there were no utilities over the winter. The second house had a lease in place and the tenant remained. The rent collected is \$475 per month.<sup>4</sup>

Mr. Arends testified that he had no issue with the county regarding building permits for the brew pub. However, before completion when he had 28 building permits pulled, and about 20 inspections completed, the Alcona Building Department called and informed him that a Township official (allegedly Mr. Thompson, Assessor) had come in and requested the facility be red tagged and shut down because it was missing a land use permit. He testified that this was in October 2018 and he had already invested \$300,000 to \$400,000 into the property.<sup>5</sup>

Mr. Arends testified he pursued the land use permit through his contractor, who went to the Township and received information from the assessor about the next meeting for permit approval. Mr. Arends collected the necessary information and went to the appointed meeting time and place, but no meeting occurred.<sup>6</sup> At that time, he

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<sup>3</sup> Tr. at 21-22, 29.

<sup>4</sup> Tr. at 31.

<sup>5</sup> Tr. at 23.

<sup>6</sup> Tr. at 24.

stopped construction on the project for five to six weeks, but the issue was never resolved and he decided to continue. He testified the property received its certificate of occupancy in the last week of April or first week of May 2019 and it took about one-and-a-half years to complete the project.

Mr. Arends testified that he attended his local Board of Review meeting in order to appeal the assessment of the subject property. Mr. Arends alleges that Mr. Thompson, the Harrisville Township Assessor, attended the meeting and claimed that he did not know that there was construction going on at the property site. However, Mr. Arends' contractor and construction employees had a photo of Mr. Thompson on site.<sup>7</sup> Mr. Arends also testified at the Board of Review that "Mr. Thompson asserted himself physically into their space, their personal space, and said, 'I did that review myself and it's correct.' And that was the end of my review."<sup>8</sup> As a result, Mr. Arends concluded to appeal the subject property's assessment to the Tribunal.

#### Michael Tarnow

Mr. Tarnow prepared an appraisal of the subject property which was dated October 18, 2018. He testified, however, that upon receiving Respondent's appraisal, he noted he had the incorrect square footage of the subject property former restaurant.<sup>9</sup> As such, he prepared a corrected appraisal which was dated August 12, 2019. He testified that the building was under construction when he visited it, on August 20, 2018, and as a result, his square footage calculation was inaccurate. In his original appraisal,

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<sup>7</sup> Tr. at 26.

<sup>8</sup> Tr. at 28.

<sup>9</sup> In the original appraisal, the square footage of the subject property former tavern was listed as 2,110 and in the revised appraisal, 3,622. See Tr. at 55, P-1, P-2.

Mr. Tarnow's conclusion of value for the subject property was \$78,000, but in the corrected appraisal, the value went up to \$115,000.

Mr. Tarnow testified that he is a Certified General Appraiser and Member of the Appraisal Institute. He testified he had 40 years of appraisal experience and specializes in the valuation of properties in the northern half of the Lower Peninsula and the entire Upper Peninsula.

In his appraisals, Mr. Tarnow considered all three approaches to value, but determined the sales comparable approach was the most appropriate. He testified that he did not complete a cost approach because of the condition of the property which would make "the amount of depreciation . . . quite speculative."<sup>10</sup> He also declined to complete an income approach because restaurants in Northern Michigan are typically owner-occupied and not rented. Further, the property was not habitable at the time of creating the appraisal.<sup>11</sup>

With regard to the sales approach, Mr. Tarnow testified, "[w]e researched several different MLS systems through northern - - a portion of the Lower Peninsula looking for comparable sales of vacant restaurant/bar/tavern facilities. We obtained the MLS data, when available the assessment records, and interviewed an agent to the sale."<sup>12</sup> In his testimony, the "we" that Mr. Tarnow referred to is his employee Susan Sweet, who had a limited appraisal license and was a trainee, but was dismissed for performance issues.<sup>13</sup> Mr. Tarnow testified that both he and Ms. Sweet researched the sales comparables and she participated in the interior and exterior inspection of the property.

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<sup>10</sup> Tr at 45.

<sup>11</sup> Tr. at 45.

<sup>12</sup> Tr. at 47.

<sup>13</sup> Tr. at 62-63.

He also testified that Ms. Sweet prepared the initial draft appraisal, including the report outline, the discussion of the comparables and the grid for his review and completion.

He finally testified that Ms. Sweet did all the research for the initial draft of the report.<sup>14</sup>

He agreed that Ms. Sweet had the incorrect parcel number in the appraisal.<sup>15</sup>

With specific regard to the comparables chosen for use in the appraisal, Mr. Tarnow's comparable one is located on Nicholson Road in Ossineke, about 15 miles from the subject property. The property was listed for \$69,500 and sold in October 2015 for \$21,500 after a foreclosure earlier that year. The seller, after repossessing the property, was a bank, but Mr. Tarnow was unaware who the purchaser was or how long it was on the market. He was questioned, "[d]o you know who Ms. Sweet spoke with to confirm the details of this transaction?" He answered, "I do not."<sup>16</sup> He was questioned as to why he chose this comparable and he answered that the comparable and the subject are both in small, tourist areas in northern Michigan.

Mr. Tarnow was questioned regarding his allegation that the comparable was in poor shape.<sup>17</sup> He was questioned, "[w]hat specific issues were there at this property that made it in poor shape?" He replied, "I don't recollect."<sup>18</sup> He was asked about how he applied his basement adjustment and he replied, "I don't recollect."<sup>19</sup> He was asked "what specifically, led you to apply a negative five percent - - \$5,000 adjustment to this comparable for site improvements?" He replied, "I don't recollect."<sup>20</sup>

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<sup>14</sup> Tr. at 63-64. See also P-1 at 19.

<sup>15</sup>Tr. at 51, P-1 at 10, P-2 at 10.

<sup>16</sup> Tr. at 83-84.

<sup>17</sup> R-1 at 37.

<sup>18</sup> Tr. at 87.

<sup>19</sup> Tr. at 88.

<sup>20</sup> Tr. at 89.

Mr. Tarnow's Comparable two is located in Lewiston, Michigan about fifty miles from the subject property. He testified the property is not located near a Great Lake like the subject property,<sup>21</sup> but is close to local lakes, near Garland Resort. The property sold in 2015, but Mr. Tarnow did not know who the buyer or seller, were.<sup>22</sup> He was questioned, "[c]an you tell me or show the Tribunal evidence in your appraisal that this property has a paved parking lot to justify the site improvement adjustment you made?" He replied, "I can't specifically show you anything at this time."<sup>23</sup> He was questioned as to when the property was built? He replied, "I don't know specifically. From the photographs, I would suggest the 1970s."<sup>24</sup> Mr. Tarnow agreed that he wrote in his appraisal that the comparable has "substantial differences [from the subject] in building age, condition, quality, lot size, lack of additional structures."<sup>25</sup>

Comparable three, which sold in January 2017, is located in Mio, Michigan, which is 80 miles due west of the subject property. The comparable was chosen because, "[i]t's located in a small rural city or village in central northern Michigan."<sup>26</sup> However, it is not located near a Great Lake or any inland lakes. The property was a foreclosure sale, listed by a broker, but Mr. Tarnow did not know who the broker was or how long it was listed prior to its sale. Mr. Tarnow testified that the property was in poor condition, but when asked, "can you identify for the Tribunal what repairs were needed at the property?" He replied, "No, I cannot."<sup>27</sup> He was asked if he knew the cost to cure

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<sup>21</sup> The subject property is about a half-mile from Lake Huron. See Tr. at 80.

<sup>22</sup> Tr. at 92-93.

<sup>23</sup> Tr. at 97.

<sup>24</sup> Tr. at 97.

<sup>25</sup> P-1 at 51, Tr. at 124.

<sup>26</sup> Tr. at 99.

<sup>27</sup> Tr. at 98.



those issues, and he did not. As with all his comparables, Mr. Tarnow considered the sale of comparable three to be at arm's length "from our research," which included speaking to real estate agents. He, however, did not have any discussions with agents, Ms. Sweet did.<sup>28</sup>

Mr. Tarnow's comparable four is located in Tawas City about one block from Lake Huron and sold in 2015 by land contract. It had repeated listings commencing at \$230,000, and it ultimately sold for \$130,000. Mr. Tarnow testified the property sold with a liquor license worth \$30,000 and FF&E worth \$10,000, and as such he deducted \$40,000 from the purchase price. He testified this information was obtained from a real estate agent by Ms. Sweet and he considered it market data.<sup>29</sup> Mr. Tarnow, however, had no personal knowledge as to what items the buyer and seller allocated to personal property. Also, he did not have a copy of the land contract nor know its terms, but testified land contracts are very common in northern Michigan and can be the same as financing through a mortgage or cash sale, depending on the terms.<sup>30</sup> Mr. Tarnow was questioned about his adjustment for the subject's superior, paved parking lot. He was asked if he had a photographs of the paved parking lot, and replied that he did not.<sup>31</sup>

In his reconciliation, Mr. Tarnow testified that he considered all his comparables,<sup>32</sup> but placed the most emphasis on comparable four because it also included a residence and had other similar characteristics to the subject that made it most influential.<sup>33</sup> He also testified with regard to the subject property, "[t]he purchase

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<sup>28</sup> Tr. at 100, P-1 at 45.

<sup>29</sup> Tr. at 107-108.

<sup>30</sup> Tr. at 114.

<sup>31</sup> Tr. at 120.

<sup>32</sup> Tr. at 125.

<sup>33</sup> Tr. at 48.

price is not my opinion of the market value as I understood the condition of the property.”<sup>34</sup>

With regard to Respondent’s appraisal, Mr. Tarnow was called as a rebuttal witness and testified that, Respondent’s appraiser, Mr. Widmer’s adjustments for location to comparables one and two, which he relied on, were too low. He testified the comparables were waterfront, while you can’t even see the lake from the subject property. He testified that comparable two, located in Alpena, consists of 10,704 square feet, is a brick building and is very attractive from its photos. He testified that the purchase price included a full liquor license and there are 13,500 daily “drive-bys” according to the listing, much higher than at the subject property location. He does not find Mr. Widmer’s comparables one or two to be appropriate comparables to utilize in determining the fair market value of the subject property.<sup>35</sup>

#### RESPONDENT’S CONTENTIONS

Respondent contends that the subject property is an approximately 3,500 square foot commercial property in Harrisville Township located within a half-mile of Lake Huron. The property is located on US-23, south of Alpena. As of tax day, it was improved with a main commercial building, two smaller residential structures, and two garage/shed structures. Respondent contends that the parties are in agreement relative to the nature of the improvements, the property’s highest and best use, and that the sales approach is the appropriate approach to utilize in determining the fair market value of the property. However, Petitioner contends the property’s true cash value is

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<sup>34</sup> Tr. at 126.

<sup>35</sup> Tr. at 189-190.

\$115,000, and Respondent, \$225,000. Respondent alleges the reason for the discrepancy lies in the comparables utilized by each party. Petitioner utilized two bank sales, a land contract sale and a comparable that has substantial differences from the subject property. In contrast, Respondent utilizes four fee simple, arm's length comparables that when adjusted, accurately reflect the true cash value of the property.

#### RESPONDENT'S ADMITTED EXHIBITS

R-1 Appraisal of the property prepared by John Widmer, MAI

#### RESPONDENT'S WITNESS

##### John Widmer

Mr. Widmer has a MAI designation and was/is employed by Frohm and Widmer for 30 years. In the past two years he's done about 100 appraisals for property tax purposes, as many appraisals for taxpayers as for units of government. He has valued commercial property in northern Michigan and testified as an expert appraiser about 30 times. The Tribunal qualified Mr. Widmer as an expert in appraisal.

Mr. Widmer prepared an appraisal of the subject property as of December 31, 2017. He noted, from assessing records, that the property consisted of a main restaurant building of approximately 3,541 square feet, residence and two garages, which were situated on 3.5 acres.<sup>36</sup> He testified that one residential structure was

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<sup>36</sup> Mr. Widmer mistakenly testified that the property was situated on 3.5 acres. See Tr. at 135, 163, 182. In his appraisal, he utilized 2.47 acres of land, which is the correct acreage. See R-1 at 15, 18, P-1 at 8, Tr. at 182.

demolished after tax day, but he did not include it in his appraisal, as it was not present on the date he inspected the property.<sup>37</sup>

Mr. Widmer testified the property is located on US-23, a main road through town, and is ½ mile from Lake Huron, which are advantages to a commercial property such as the subject.<sup>38</sup> His determination of the highest and best use of the property was continued commercial use.<sup>39</sup>

Mr. Widmer testified he considered all three approaches to value the subject property, but rested on the sales approach. In choosing his comparables, he searched utilizing a combination of CoStar and various MLS systems. He testified, "I tried to stay north of what I determined where 23 - - US-23 cuts off of I-75, so northern - - the northern half of the Lower Peninsula staying towards the sunrise side or the east side."<sup>40</sup> Initially Mr. Widmer found 54 comparables, but included the four he considered most reliable. They were all fee simple sales, none involved foreclosed or bank-owned properties and he agreed when questioned that it was not hard to find sales other than those involving a foreclosure or bank-owned property.<sup>41</sup> He also testified it was not difficult to find sales that did not include FF&E.<sup>42</sup> He confirmed his comparable data through public records, PTAs, recorded documents, MLS listing sheets, CoStar data sheets and/or broker data sheets.<sup>43</sup>

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<sup>37</sup> Tr. at 135-136.

<sup>38</sup> Tr. at 137.

<sup>39</sup> Tr. at 138.

<sup>40</sup> Tr. at 139.

<sup>41</sup> Tr. at 139-140.

<sup>42</sup> Tr. at 146.

<sup>43</sup> Tr. at 146.

Mr. Widmer's comparable one is located in Tawas City, consists of 1,824 square feet, and sold in an arm's length, fee simple sale in December 2017 for \$100,000 or \$54.82 per square foot. Prior to sale, the comparable was a tavern/bar/restaurant. It was adjusted for location, land-to-building ratio, building size and was given an economic adjustment based on an aggregate, value increment contribution from all accessory structures, of \$9.88 per square foot of gross building area.<sup>44</sup> The adjusted value per square foot of comparable one was \$61.97. The property is adjacent to Lake Huron.

Comparable two is located in Alpena, which is the next town north of Harrisville. This was a family restaurant prior to sale, consists of 5,511 square feet, and it sold in March 2017 for \$290,000 in an arm's length, fee simple sale.<sup>45</sup> It was adjusted for market conditions, location, land-to-building ratio, building size, and was given an economic adjustment. Its adjusted value per square foot was \$66.46. The property is adjacent to the Thunder Bay River.<sup>46</sup>

Comparable three is located in Grayling Township and is a former bar. It consists of 7,270 square feet and sold in an arm's length, fee simple sale, in January 2015 for \$100,000. It was adjusted for market conditions, location, in part, because it is not situated near water, land-to-building ratio, building size, building quality/utility, and was given an economic adjustment. Its adjusted value per square foot was \$35.32.

Comparable four, a former restaurant, is located east of Grayling in Clinton Township and is not near a lake. It consists of 1,988 square feet and sold in an arm's

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<sup>44</sup> See R-1 at 47, 48. The aggregate value increment was determined to be \$35,000.

<sup>45</sup> Tr. at 151.

<sup>46</sup> Tr. at 193.

length, fee simple sale, in October 2015 for \$55,000. It was adjusted for market conditions, location, land-to-building ratio, building size, building quality/utility, and was given an economic adjustment. Its adjusted value per square foot was \$51.17.

Mr. Widmer reconciled his comparables by placing the most weight on comparables one and two because they are commercial locations “that capture the reasonable tourist type demand,” like the subject property.<sup>47</sup> Comparables three and four have the most severe degree of adjustment of 25% for location, because they are not located near water. Comparables one and two received a (10%) adjustment for location because of their water frontage and because Tawas and Alpena have a higher population and density of development.<sup>48</sup> Mr. Widmer’s reconciled conclusion of the true cash value of the subject property for the 2018 tax year was \$225,000 or \$63.54 per square foot.

With regard to the sale of the subject property, Mr. Widmer was aware of the fact that it was listed since 2012 and its prior commercial use was as Muehlbeck’s Biergarten.<sup>49</sup> After speaking with Mr. Thompson and the equalization department, however, he determined it was not a typical market transaction because the compulsion to sell was favorable to the purchaser, a cash buyer. Mr. Widmer testified that he does not believe the subject sale is a reliable indication of market value.<sup>50</sup>

Mr. Widmer noted that Mr. Tarnow changed his adjustments for lot size in his revised appraisal. He was questioned, “would the fact that the building increased in size from 2000 plus square feet to him correcting it to 3,622 impact an adjustment for lot

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<sup>47</sup> Tr. at 157-158.

<sup>48</sup> Tr. at 158.

<sup>49</sup> See R-1 at 16.

<sup>50</sup> Tr. at 159-160, R-1 at 16.

acreage?”<sup>51</sup> He replied, “No. The original appraisal was identical to the amended with the exception that the subject building footprint was increased. You take your original adjusted unit price, \$37 a foot, and just apply it to the new square footage. There’s no mathematical calculation that would be made or could be made.”<sup>52</sup>

## FINDINGS OF FACT

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

1. The subject property address is 676 N. US-23, Harrisville Township, Alcona County, Michigan.
2. The subject property consists of a former restaurant of approximately 3,541 square feet. It is situated on approximately 2.47 acres. On tax day, it included two rental houses and two garage/sheds. It is located about one-half mile from Lake Huron.
3. The first rental house on the property was rented for \$475 per month. The second house, after eviction of the tenant, was torn down in April 2018 because of its poor condition.
4. Mr. Arends, principal of Petitioner, spent about \$500,000 renovating the property. It is currently a brew pub, “Alcona Brew Haus.”<sup>53</sup>

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<sup>51</sup> Tr. at 160.

<sup>52</sup> Tr. at 161.

<sup>53</sup> See R-1, cover page.

5. Petitioner presented the Tribunal with an appraisal of the property dated October 18, 2018. It was originally filed with the Tribunal on July 18, 2019. Subsequent to the filing of the original appraisal, a second appraisal was created, dated August 12, 2019, with the alleged, corrected square footage of the subject property. Petitioner's expert, Mr. Tarnow, contends that upon receiving Respondent's appraisal, he realized he had the wrong square footage of the property's former restaurant. As such, he created a corrected appraisal and it was served upon Respondent. Respondent, however, was not provided with the corrected adjustment grid until the hearing date of this matter.
6. Petitioner's appraisal and corrected appraisal contain the sales approach to value, including the same four comparable sales.
7. Petitioner considered, but did not prepare income or cost approaches to value.
8. Petitioner's comparables one and three were foreclosure sales, Petitioner's comparable two, Mr. Tarnow admitted was not a good comparable to the subject property. Petitioner's comparable four, located in Tawas City, one block from Lake Huron, was a sale by land contract. Mr. Tarnow did not review the land contract and did not know its terms. Mr. Tarnow testified comparable four, a vacant restaurant/bar, was sold with a liquor license and FF&E. Mr. Tarnow, however, was unaware as to what items the buyer and seller allocated to personal property. Mr. Tarnow deducted the alleged market value of the liquor license and FF&E from the property sale price, in completing his adjustment grid.



9. Respondent presented the Tribunal with an appraisal, prepared by Mr. Widmer, that contained the sales comparison approach to value. The income and cost approaches to value were considered, but not developed in the appraisal.
10. Mr. Widmer's appraisal presented four comparable sales. Comparables one and two were provided heavier weight in his reconciliation of value due to their similarity to the subject property, in capturing the seasonal tourist type demand. They are also located on water and have a higher population and density of development, and as such, a (10%) location adjustment was applied.
11. Mr. Widmer's comparables three and four are not located near water. He also found comparable three to be an outlier.
12. Mr. Widmer's comparable one is located in Tawas City adjacent to Lake Huron and his comparable two, in Alpena, adjacent to the Thunder Bay River. Mr. Widmer's comparable one sold on December 28, 2017.
13. Both appraisers agreed that the highest and best use of the property was for continued commercial use.
14. Both appraisers rejected the purchase price of the property, on October 17, 2017 for \$75,000, as representative of the true cash value of the subject property.

#### CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its TCV.<sup>54</sup>

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<sup>54</sup> See MCL 211.27a.

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>55</sup>

The Michigan Legislature has defined TCV to mean:

The usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.<sup>56</sup>

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”<sup>57</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>58</sup> The Tribunal is not bound to accept either of the parties' theories of valuation.<sup>59</sup> “It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case.”<sup>60</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>61</sup>

A proceeding before the Tax Tribunal is original, independent, and de novo.<sup>62</sup>

The Tribunal's factual findings must be supported “by competent, material, and

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<sup>55</sup> Const 1963, art 9, sec 3.

<sup>56</sup> MCL 211.27(1).

<sup>57</sup> *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

<sup>58</sup> *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

<sup>59</sup> *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

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

<sup>61</sup> *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

<sup>62</sup> MCL 205.735a(2).

substantial evidence.”<sup>63</sup> “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”<sup>64</sup>

“The petitioner has the burden of proof in establishing the true cash value of the property.”<sup>65</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>66</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>67</sup>

The three most common approaches to valuation are the capitalization of income approach, the sales comparison, or market, approach, and the cost-less-depreciation approach.<sup>68</sup> “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”<sup>69</sup> The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the TCV of the property, utilizing an approach that provides the most accurate valuation under the circumstances.<sup>70</sup> Regardless of the

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<sup>63</sup> *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

<sup>64</sup> *Jones & Laughlin Steel Corp*, *supra* at 352-353.

<sup>65</sup> MCL 205.737(3).

<sup>66</sup> *Jones & Laughlin Steel Corp*, *supra* at 354-355.

<sup>67</sup> MCL 205.737(3).

<sup>68</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>69</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>70</sup> *Antisdale*, *supra* at 277.

valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.<sup>71</sup> In this matter, the Tribunal finds the sales comparison approach to value to be the proper technique to utilize in determining the fair market value of the property for the 2018 tax year.

The subject property is a former restaurant situated on 2.47 acres. At the time of sale, the property included two rental houses, one of which was demolished, and also included two garage/sheds. Both appraisers applied an adjustment for additional/accessory structures; Mr. Tarnow's adjustment was \$30,460 and Mr. Widmer's, \$35,000. Mr. Tarnow, however, only applied an adjustment of \$7,260 to his comparable four because the property included a house with two-car garage.<sup>72</sup>

Both appraisers determined essentially the same highest and best use for the property. Mr. Tarnow wrote in his appraisal,<sup>73</sup> "[t]he highest and best use of the subject, as improved, is its continued use as a restaurant and rental housing."<sup>74</sup> Mr. Widmer wrote, "the highest and best use for the property is determined to be a commercial development consistent with the expanded footprint proposed for the property subsequent to the retrospective valuation date."<sup>75</sup> The Tribunal adopts the experts' highest and best use, as continued commercial use.

As noted above, the Tribunal finds the sales approach to be the appropriate technique to utilize to determine the fair market value of the subject property for the

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<sup>71</sup> See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

<sup>72</sup> P-1 at 50, R-1 at 47.

<sup>73</sup> The Tribunal admitted both of Mr. Tarnow's appraisals into evidence. The appraisals were similar (including the determination of highest and best use) other than the alleged adjustments for the difference in square footage of the subject property former restaurant.

<sup>74</sup> See P-1 at 33, P-2 at 33.

<sup>75</sup> See R-1 at 38.

2018 tax year. The Tribunal agrees with the appraisers that the cost and income approaches are not the best methods to apply in this matter. Due to the age and condition of the property, the calculation of depreciation is problematic pursuant to the cost approach. Further, the subject brew pub is owner-occupied; therefore, the income approach is inferior to the sales approach.

Proper application of the sales comparison approach involves “comparing similar properties that have recently sold . . . 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>76</sup> Both experts provided a sales approach to value, however, the Tribunal was not convinced by Mr. Tarnow’s comparables. His comparables one and three are foreclosure sales. Mr. Tarnow testified,

Q: And comparables 1 and 3 are foreclosures and less reliable for that basic fact alone, correct?

A: Correct.

Q: And with a foreclosure sale are banks usually in the business of holding property?

A: Not usually.

Q: Not usually. So on a foreclosure sale banks typically want to get rid of the property because they’re not in the business of property ownership, correct?

A: Yes.<sup>77</sup>

In order to be accepted as an indicator of value, a property must be proven to have sold “after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-

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<sup>76</sup>Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14<sup>th</sup> ed, 2013), p 377.

<sup>77</sup> Tr. 123-124.

interest, [with] neither . . . under undue duress.”<sup>78</sup> Petitioner’s own appraiser notes the stigma attached to foreclosure sales, and as a result, the Tribunal is not satisfied, that the sale of the comparables one and three provide the best evidence of the true cash value or “usual selling price” within the meaning of MCL 211.27.<sup>79</sup>

With regard to his comparable two, Mr. Tarnow repudiated his own comparable when he testified,

Q: And you also acknowledge on page 51 of your appraisal report that comparable 2 has, and I quote, “Substantial,” that’s your word, “differences in building age, condition, quality, lot size, and lack of additional structures,” correct?

A: On page 51 that’s what I said.

Q: And you would agree that if a property is substantially different in building age, condition, quality, and lot size it’s very different. It’s not really a great comparable?

A: I agree.<sup>80</sup>

In his conclusion of value, Mr. Tarnow relied on his comparable four located in Tawas City, which was a sale by land contract and included FF&E, and allegedly, a liquor license.<sup>81</sup> He testified that land contract sales in the northern Michigan market are very typical, are the same as financing through a mortgage or cash sale, and are arm’s length sales.<sup>82</sup> He further explained, however, that a land contract might be less or more preferable, but, “[i]t depends on the amount down and the interest rate or the contract and what alternative opportunities there are for the seller if they had all the

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<sup>78</sup> *The Appraisal of Real Estate*, supra at 58.

<sup>79</sup> MCL 211.27(1) states, “[a]s used in this act, ‘true cash value’ means 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>80</sup> Tr. at 124. P-1 at 51, P-2 at 51.

<sup>81</sup> See P-1 at 43, P-2 at 43.

<sup>82</sup> Tr. at 67, 111-112, 114.

money and the credit worthiness of the buyer.”<sup>83</sup> He also testified the seller takes more risk in hand because if the contract is breached it must take the property back. He also testified,

Q: In preparing for your testimony today did you have a copy of the land contract in the work file or in your appraisal report?

A: No.

Q: Did you personally review a land contract for this property?

A: No.

Q: Do you have any personal knowledge regarding how much money was put down on this land contract?

A: I do not.

Q: What about duration or contract or monthly payment or interest rate? Balloon payment the end?

A: No.<sup>84</sup>

The Tribunal finds, Mr. Tarnow did not have the requisite knowledge regarding the subject comparable, nor any of his comparables. He did not review the land contract in comparable four, he did not know what items the buyer and seller had allocated to personal property,<sup>85</sup> and he had no evidence to support his subtraction from sale price relative to the liquor license and FF&E adjustment, other than Ms. Sweet’s alleged discussion with an agent to the sale.<sup>86</sup>

With regard to his comparable one, Mr. Tarnow did not know the purchaser of the property or how long it was on the market. He did not know who Ms. Sweet spoke with to confirm the details of the property.<sup>87</sup> He wrote in his appraisal that the comparable was in poor shape, but he was unable to recollect what issues there were underlying the assumption.<sup>88</sup> He was also unable to recollect how/why he applied his basement

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<sup>83</sup> Tr. at 111.

<sup>84</sup> Tr. at 111.

<sup>85</sup> Tr at 113.

<sup>86</sup> Tr. at 113.

<sup>87</sup> Tr. at 83-84.

<sup>88</sup> Tr. at 87.

adjustment or site improvement adjustments.<sup>89</sup> With regard to comparable two, Mr. Tarnow did not know who the buyer or seller of the property were, or when the property was built.<sup>90</sup> He was also unable to show the Tribunal evidence in his appraisal to justify his site improvement adjustment.<sup>91</sup> With regard to his comparable three, Mr. Tarnow did not know who the broker was or how long the property was listed for sale. He testified that it was in poor condition, but he was unable to identify the repairs that were needed.<sup>92</sup> Mr. Tarnow did not speak with any brokers or agents regarding his comparables. That was the duty of Ms. Sweet, who is no longer employed by Mr. Tarnow, was not called to testify, and did not sign the appraisal.

Mr. Tarnow revised his appraisal after receiving Respondent's appraisal, determining that he had the incorrect square footage of the subject property's former restaurant. In fact, the corrected adjustment grid was not provided to Respondent until the day of the hearing. The Tribunal admitted both the original and corrected appraisals in order to compare and contrast the alleged differences. It appears to the Tribunal that the only adjustment was to lot size, which physically did not change.<sup>93</sup> In fact, Mr. Tarnow testified,

Q: Okay. So the only change between the two appraisals with respect to your adjustment grid is for lot size, acreage, correct?  
A: Yes.<sup>94</sup>

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<sup>89</sup> Tr. at 88, 89.

<sup>90</sup> Tr. at 92-93,97.

<sup>91</sup> Tr. at 97.

<sup>92</sup> Tr. at 97-98.

<sup>93</sup> See P-1 at 45, P-2 at 45.

<sup>94</sup> Tr. at 60.



As noted above, Mr. Widmer was questioned, “would the fact that the building increased in size from 2000 plus square feet to him correcting it to 3,622 impact an adjustment for lot size acreage?”<sup>95</sup> He replied and the Tribunal agrees, “No. The original appraisal was identical to the amended with the exception that the subject building footprint was increased. You take your original adjusted unit price, \$37 a foot, and just apply it to the new square footage. There’s no mathematical calculation that would be made or could be made to come up with different value.”<sup>96</sup>

Mr. Widmer provided the Tribunal with an appraisal of the subject property with four comparable sales. He placed the most weight on his comparables one and two because they are the most similar to the subject property. He testified that they, “capture the seasonal tourist type demand,” like the subject property.<sup>97</sup> He testified sales one and two had the least amount of adjustments.

Mr. Widmer’s comparable one is located in Tawas City, such as Mr. Tarnow’s comparable four, which he relied upon. Mr. Widmer’s comparable is adjacent to Lake Huron and Mr. Tarnow’s one block away. As both expert appraisers chose a sale in Tawas City, the Tribunal finds that they agree that the location is sufficiently similar to the subject location. Mr. Tarnow made no adjustments for location, while Mr. Widmer made a (10%) adjustment.

Mr. Widmer’s comparable two is located in Alpena adjacent to the Thunder Bay River. Mr. Widmer found the comparable appropriate, but Mr. Tarnow testified that it was a brick building, unlike the subject property, and consisted of 10,704 square feet,

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<sup>95</sup> Tr. at 160.

<sup>96</sup> Tr. at 161.

<sup>97</sup> Tr. at 157-158.

because it has two stories, not the single story put forth by Mr. Widmer. He also testified that according to the listing, the purchase price included a full liquor license and it has 13,500 daily “drive-bys.”<sup>98</sup> Mr. Widmer wrote in his appraisal that at the subject property, MDOT, “portrays an annual average daily traffic count in 2017 of nearly 2,300 vehicles.”<sup>99</sup> Mr. Widmer made a location adjustment of (10%) to comparable two, but the Tribunal is less persuaded by this comparable, because of Mr. Tarnow’s testimony. Further, Mr. Arends testified he visited comparable two last fall and confirmed it has two stories.<sup>100</sup>

Mr. Widmer applied less weight to his comparables three and four. Comparable three was an outlier with an adjusted square foot price of \$35.32 and it had 136% in adjustments, including 25% for location and 30% for building quality/utility.<sup>101</sup> Comparable four had 74% in adjustments. Mr. Widmer made large location adjustments of 25% to both comparables, in part, because they were not located near water. The Tribunal agrees that little weight should be applied to Mr. Widmer’s comparables three and four in its determination of the true cash value of the subject property for the 2018 tax year.

As noted above, Mr. Tarnow chose two foreclosure sales, one sale that he admitted was not comparable to the subject and with regard to the sale he relied upon, he did not confirm the transaction details, including the terms of the land contract. As a

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<sup>98</sup> Tr. at 189-190.

<sup>99</sup> R-1 at 30.

<sup>100</sup> Tr. at 195. Mr. Tarnow was shown the BS&A print out relative to the comparable that suggested the property has a floor area of 5,511 square feet, consistent with Mr. Widmer’s appraisal. See Tr. at 191. R-1 at 41. However, the Tribunal still places less weight on this comparable due to the testimony and visual inspection by Mr. Tarnow and Mr. Arends.

<sup>101</sup> See R-1 at 48. The adjusted dollar per square foot sale price of comparables one, two and four are \$61.97, \$66.46 and \$51.17.

result, the Tribunal is not persuaded by Mr. Tarnow's sales comparables. Mr. Widmer placed less weight on his comparables three and four, as does the Tribunal, and it is hesitant to place heavy weight on his comparable two, because of the uncertainty of the property square footage, transactional details, and the adjustment for location, including traffic count. The Tribunal finds the best evidence of the fair market value of the subject property for the 2018 tax year, to be Mr. Widmer's comparable one. Both expert appraisers found Tawas City to be a comparable location to the subject. The sale was of a former tavern/bar/restaurant, it sold very close to tax day<sup>102</sup> (December 28, 2017) and it had the least amount of adjustments of any of Mr. Widmer's comparables. The adjusted sale price of comparable one is \$62 per square foot which puts forth a true cash value of the subject property of \$219,500 for the 2018 tax year. As a result, the Tribunal finds that the fair market value of the subject property to be \$219,500.

It should be noted that the Tribunal is not concerned that Mr. Widmer did not include the second rental house in his economic adjustments.<sup>103</sup> Mr. Arends testified that it was in such poor shape, that he tore it down.<sup>104</sup> Mr. Tarnow allocated \$12,000 to his additional structures adjustment for the house that was torn down, the same as for the rented house, which the Tribunal finds to be inappropriate.<sup>105</sup>

It should also be noted that both appraisers rejected the purchase price of the subject property as reflective of its fair market value.<sup>106</sup> The Tribunal agrees that in this

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<sup>102</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."

<sup>103</sup> See R-1 at 17.

<sup>104</sup> Tr. at 18.

<sup>105</sup> See P-1 at 50, P-2 at 50.

<sup>106</sup> See Tr. at 126, 159-160.

instance, the purchase price does not reflect the true cash value of the property.<sup>107</sup>

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 SEV and TV 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

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<sup>107</sup> 211.27(6) states, "[e]xcept as otherwise provided in subsection (7), the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred. In determining the true cash value of transferred property, an assessing officer shall assess that property using the same valuation method used to value all other property of that same classification in the assessing jurisdiction."

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%, (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (xi) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (xii) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, and (xiii) after June 30 2020, through December 31, 2020, at the rate of 5.63%.

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>108</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>109</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 must be submitted with the motion.<sup>110</sup> Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.<sup>111</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>112</sup> A copy of the claim must be filed with the Tribunal with the filing fee required for

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<sup>108</sup> See TTR 261 and 257.

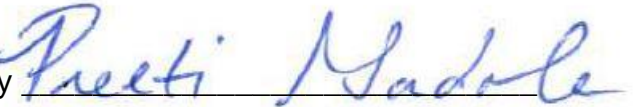
<sup>109</sup> See TTR 217 and 267.

<sup>110</sup> See TTR 261 and 225.

<sup>111</sup> See TTR 261 and 257.

<sup>112</sup> See MCL 205.753 and MCR 7.204.

certification of the record on appeal.<sup>113</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>114</sup>

By 

Entered: July 30, 2020

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<sup>113</sup> See TTR 213.

<sup>114</sup> See TTR 217 and 267.