



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

SA2226th Properties LLC,
Petitioner,

v

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 19-001426

City of Harrisville,
Respondent.

Presiding Judge
Christine Schauer

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, SA2226th Properties LLC, appeals ad valorem property tax assessments levied by Respondent, City of Harrisville, against parcel number 120-100-013-002-02 for the 2019 tax year. Larry E. Powe, Attorney, represented Petitioner, and Seth O'Loughlin, Attorney, represented Respondent.

A hearing on this matter was held on July 7, 2020. Petitioner's witnesses were Steven M. Arens and Paul L. Sabourin. Respondent's sole witness was Randy Thompson.

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 2019 tax year are as follows:

Parcel Number: 120-100-013-002-02

Year	TCV	SEV	TV
2019	\$53,000	\$26,500	\$26,500

PETITIONER'S CONTENTIONS

Petitioner contends that the subject property is assessed in excess of 50% of its true cash value for the tax year at issue. Petitioner claims that its purchase of the subject property, which was formerly used as an illegal meth lab and then was professionally remediated by the seller, should be commended as an act of public service to the community rather than be treated in the negative fashion Respondent has by increasing the assessment of the subject property well beyond the sales price paid by Petitioner. Petitioner contends that the sale price paid in October 2018 was the result of an arm's-length transaction and is relevant to the valuation of the subject property, although Petitioner does not claim that it is the presumptive TCV.

Petitioner argues that its valuation expert, Mr. Sabourin, who is a State of Michigan licensed appraiser and a residential real estate broker with many years of mortgage lending appraising, is far more qualified and experienced to render an opinion of value than is Respondent's assessor, Mr. Thompson, who is not an appraiser and is only licensed as a Michigan certified assessor. Petitioner contends that its comparable sales are more like the subject property than are Respondent's comparable sales. Further, Petitioner contends that the average TCV to sales price ratio of all nine comparable sales used in this case is 25.55% while this ratio for the subject property is much higher at 83.94%, which indicates inconsistency.

Petitioner's contentions of TCV, SEV, and TV, as established by its valuation disclosure, are as follows:

Parcel Number: 120-100-013-002-02

Year	TCV	SEV	TV
2019	\$40,000	\$20,000	\$20,000

PETITIONER'S ADMITTED EXHIBITS

P1 – Purchase closing documents, October 2018

P2 – Alcona County drug cleaning certificate, pages 1-2

P3 – Randy Thompson, Assessor “sale comparisons”

P4 – City of Harrisville Board of Review conclusions

P5 – Sabourin Appraisal Service appraisal (revised), December 29, 2019

PETITIONER'S WITNESSES

Steven Arens

Mr. Arens testified as one of the principals of Petitioner, which is an LLC. Mr. Arens claims that he appealed the assessment of the subject property at Respondent's Board of Review (BOR), but the BOR deemed that the value set was correct. Mr. Arens testified that Petitioner purchased the subject property on October 28, 2018 for \$29,900 and that he was present at the closing. Petitioner had been looking for a house in the city limits to use as a part of a trade with an owner of property it wanted to acquire adjacent to another property it owned and explained that it was looking for a house in the city limits with proximity to shopping and the library to use as a part of a trade for the other property. After consulting the multi-list, Petitioner found the subject property, which is in close proximity to the library. This factor was important because the person that Petitioner was trying to negotiate the property swap with does not drive but goes to the library almost every day. So Petitioner chose the subject property because it was the closest house to the library and then attempted to incorporate the subject property

plus cash into a trade with that lady for her house and property adjacent to Petitioner's other property and she (the seller) would then move into the city.

Mr. Arens testified that Petitioner paid the full asking price for the subject property, did not know the seller, and did not negotiate the price. Further, Mr. Arens claims that he had full knowledge that the subject property had been a former crystal meth manufacturing site which had been remediated and certified by the Alcona County Health Department as cleaned and habitable. Mr. Arens testified that the subject property has been leased by Petitioner to a woman with two minor daughters living there with her and that he would not have leased it to anyone if he had any belief that there was still any chemical residue or issue that could cause harm to those individuals.

Mr. Arens testified that he appeared on behalf of Petitioner at Respondent's March 2019 BOR, but no comparable sales spreadsheet was provided by Respondent to support its assessed values and that he first received Respondent's comparable sales analysis well after filing this appeal with the Tribunal. Mr. Arens claims he has no idea how Respondent reached its valuation for the subject property of \$53,000.

In describing the subject property, Mr. Arens testified that it was a residential property of about 1,000 square feet with two bedrooms, an average yard, a detached garage and was located in a nice neighborhood on a side street in Harrisville adjacent to a city property that contains an 80-foot water tower. Mr. Arens testified that the condition of the house upon taking possession was unfinished due to the removal of various items needed to effectuate the meth lab remediation and that he made no repairs or changes to the house between October 2018 and December 31, 2018, other than winterizing it.

Mr. Arens testified that after the BOR denied his appeal, he sought an independent valuation of the subject property from Paul Sabourin.

Paul Sabourin

Petitioner presented testimony from its Certified General Appraiser, Paul Sabourin. Based on his experience and training, the Tribunal accepted Mr. Sabourin as an expert in real estate appraisal. Mr. Sabourin prepared an appraisal of the subject property as of December 31, 2018 and testified that he used the comparable sales approach to valuation in concluding the TCV of the subject property.

An initial appraisal report was prepared by Mr. Sabourin concluding a TCV of \$39,500 but Mr. Sabourin claims that he found errors in the report during his second review of it, which caused him to prepare a second appraisal report which is Petitioner's Exhibit P-5. Mr. Sabourin testified that he inadvertently sent out the original report with no photographs of the comparable properties and that two of the subject property photos appeared in slots where comparable photos should have been plus the report was unsigned. Further, Mr. Sabourin testified that after looking at Respondent's drawings and property information, he realized that the subject property was 38 feet in depth, but he had originally used only 33 feet which he changed in the second report. Mr. Sabourin testified that all the changes that he made to the report in the second version were listed in the addendum to the second report and that his new conclusion of value was \$40,000.

Mr. Sabourin testified that he used three comparable sales in his appraisal that he found on the RMLS multi-list and he thought were suitable and that none of his comparable sales were in common with comparable sales used by Respondent. Mr.

Sabourin testified that he started with seven sales but ultimately rejected all but the three he used in his reports. Mr. Sabourin described all three of his comparable sales as city residential properties and testified that the property classification of class C was considered average and class CD is something less than average. When asked by Mr. Powe, "What do you mean by average?"¹, Mr. Sabourin responded, "Well, average – average construction costs, because that's – assessors base everything on cost. It's cost less [d]epreciation."²

Mr. Sabourin testified that his comparable sale one was at 206 6th Street and is either next door or one house over from the subject property and that he made an upward adjustment for the date of sale as it had a sale date of May 2017, an upward adjustment for less frontage using the assessor's value of \$155 per front foot, an upward adjustment for the size of the dwelling, and an upward adjustment because it had only a slab and no basement or crawl space. Mr. Sabourin testified that his comparable sale one has a built-in garage underneath a part of the dwelling but that he thought it did not affect the value. Mr. Sabourin concluded an adjusted sale price for comparable sale number one of \$42,000.³

Mr. Sabourin testified that his comparable sale two sold for \$60,000 about a month after the sale of the subject property but that he adjusted the sale price upward for the smaller lot, and adjusted for the C-5 construction quality, the age of the property, the second bathroom, the crawl space, a two-car attached garage, and a fireplace for a final adjusted sale price of \$38,900.⁴

¹ Tr. at p 56.

² Id.

³ See Tr. at 57-60.

⁴ See Tr. at 60-61.

Mr. Sabourin testified that his third comparable sale was at 206 East Jackson, sold for \$40,000, and was sold in March 2016. Mr. Sabourin testified that he adjusted comparable three upward for a smaller lot size, downward for its effective age, downward for a three-quarter bathroom, upward for less square footage, upward for a crawl space rather than a basement, downward for a two-car attached garage, and upward for no air conditioning for an adjusted sale price of \$40,100. Mr. Sabourin also added that his other two comparable sales were also adjusted for no air conditioning which the subject does have.⁵

Mr. Sabourin testified that he obtained information from Respondent's assessor, Randy Thompson, several times over the years and has always been provided whatever he requested. Mr. Sabourin testified that he researched Respondent's property data cards to determine the TCV set by Respondent for each of his comparable sales in order to look at the difference between their actual sale prices and the TCVs set by Respondent. Mr. Sabourin testified that he compared the actual sale prices of his comparable properties with the TCV set by Respondent for the year of the sale for each property and found that his comparable sale one had a TCV 55.3% higher than its actual sales price, comparable sale two had a TCV 33.3% higher than its actual sales price, and comparable number three had a TCV 90.5% higher than its actual sales price. Mr. Sabourin testified that his conclusion is that these properties are over-assessed. "I don't know why they're so much higher other than the fact that my notes and the calculations show or indicate that these properties are over[-]assessed."⁶

⁵ See Tr. at 61-62.

⁶ Tr. at 69.

Mr. Sabourin testified that he did a similar sale price to Respondent's TCV comparison for Respondent's six comparable sales as well which showed that Respondent's TCV was from one percent to 16.5% over the sales price and that Respondent's comparable sales were not over-assessed as were the comparable properties used by himself (Mr. Sabourin). "His sales were not overly assessed like the ones we used for our subject property."⁷

Mr. Sabourin testified that Respondent's comparable sale one is a class C property which is a better classification than the subject and it is on a corner lot while the subject is not and that it was a 2016 sale. Mr. Sabourin claims that Respondent's comparable number two is a rural property and does not have the urban character of the subject property; Respondent's comparable three is on a corner lot with a very large attached garage; Respondent's comparable four is on a major highway versus a city street and is located in a township rather than the city; Respondent's comparable five is a rural, township property; Respondent's comparable six is on a major highway and has brick siding which is considered superior to the vinyl siding of the subject property. Mr. Sabourin testified that he did not think that any of Respondent's comparable sales were acceptable as comparisons for the subject property.

On cross examination, Mr. Sabourin was questioned regarding his previous testimony regarding the addendum in his revised appraisal report and whether there were any other changes to the original submitted appraisal report beyond the seven listed in the revised report. He was questioned, "[T]here were no other changes made that you're aware of, is that correct?" He answered, "Not that I can think of offhand. But I

⁷ Tr. at p 70.

thought I covered all the issues."⁸ He was questioned regarding an additional difference in regard to market condition comments contained in the two reports that was not listed in the addendum and testified that he had missed listing the difference in the marketability comments of the two reports.

Q. On your original report, do you see a section at the top labelled marketability comments?

A. Yes.

Q. Can you read -- there's three lines and there's a separated line starting values on a slow decline, can you please read that line in your original report for me. Read it out loud, please, I'm sorry.

A. I'm just trying to find it here. It was under marketability comments? Oh, I see it. That's also an error. That was not supposed to be there.

Q. Mr. Sabourin, I appreciate your admitting it's an error. Can you read that line out loud for me please.

A. It says values on a slow decline of ten percent per year and marketing time that averages over a hundred twenty days.

Q. Is that -- if you look at your revised report starting with the same sentence values show, can you read that sentence in your new report. If you're having trouble locating it --

A. I have it right here, that -- you want that second line?

Q. Yes, in your revised report, the sentence beginning under marketability comments.

A. Values show average of sales reviewed modest decrease over the past couple of years, two point twelve percent per year and marketing time that averages over a hundred days.

Q. So that's totally different between your original report and your revised report, is that a fair statement?

A. It is a fair statement.⁹

Regarding whether the market was actually improving or decreasing between the date of sale and valuation of the subject property, Mr. Sabourin testified that he made a positive adjustment for time of sale on all three of his comparable sales which would indicate that the market is improving. Mr. Sabourin was then questioned why the market

⁸ Tr. at p 75.

⁹ Tr. at p 75-76.

comments were changed in his second report from those in the original report and testified that both reports had incorrect statements.

Mr. Sabourin was questioned about whether he knew when preparing his appraisal that the purchase of the subject property by Petitioner was originally intended to be a part of a property swap and his opinion regarding whether this constituted normal market influence on the sale of property.

Q. And do you believe that the purchase of a property by someone who is intending to use that property in some kind of swap transaction would be a market influence that is not normal?

A. I don't have an opinion on that because that was not made known to me, the purpose of the appraisal – or purchase.¹⁰

When asked, if he would need further details regarding the sale of the subject property to determine if there were other than normal market influences involved, Mr. Sabourin testified, "I definitely would."¹¹ And when asked if it was correct that he had not been provided any such details regarding the sale of the subject property, Mr. Sabourin testified, "That is absolutely correct."¹²

In further testimony, Mr. Sabourin confirmed he used the multi-listing when choosing his comparable sales and that he drove by each of the comparable sale properties used in his appraisal. When asked what parameters he used when searching for comparable sales, Mr. Sabourin testified, "[P]arameters I used is within size range, location."¹³ Mr. Sabourin testified that he also used the property record card data from

¹⁰ Tr. at 83-84.

¹¹ Tr. at 87.

¹² Id.

¹³ Tr. at 89.

Respondent while preparing his appraisal report but did not look at any property transfer affidavits or deeds nor did he speak with any broker involved with any of the sales.¹⁴

Mr. Sabourin was questioned as to the adjustments made to the three comparable sales used in his appraisal and testified that comparable one was a ranch style house that was on the market for 758 days, had the largest square footage difference from the subject (about 300 square feet), had no basement or crawl space, and had total gross adjustments of 84% indicating that it was not very similar to the subject property.

Q. That indicates to you that a high amount of adjustments were necessary to make this property analogous to the subject?

A. That's correct.¹⁵

Mr. Sabourin testified that his comparable sale number two was on the market for 314 days and had undergone a kitchen renovation according to information from the real estate company listing but that he had never been on the inside. When asked who the seller of comparable sale was, Mr. Sabourin testified, "Seller is Fannie Mae,"¹⁶ indicating that comparable sale number two was likely a foreclosure sale.

Q. Do you believe that when Fannie Mae sells a property it is a foreclosure sale?

A. In most cases, yes.¹⁷

Mr. Sabourin further testified that he would not routinely use a foreclosure sale as an arm's-length transaction without making an adjustment which was not made in this case, and that he did not have that information when he prepared his appraisal.¹⁸

¹⁴ See Tr. at 92-93.

¹⁵ Tr. at 101.

¹⁶ Tr. at 106.

¹⁷ Tr. at 108.

¹⁸ See Tr. 109-111.

Mr. Sabourin testified that his comparable sale number three was the same grade and quality of construction as the subject, was the most similar in terms of gross living area, had the smallest net adjustment, but was given the least weight in concluding his value of the subject property. He further testified that that he believed that the adjustment he made for date of sale was not accurate.

Q. Do you believe your date of sale adjustment is accurate?

A. We went through that earlier. And because it's supposed to be a different adjustment, this one here should be amended.¹⁹

Mr. Sabourin testified that he gave it the least weight, "just because it was the oldest sale [and] I thought there was information newer that was better offered."²⁰

RESPONDENT'S CONTENTIONS

Respondent contends that the subject property is assessed at 50% of its true cash value.

The property's TCV, SEV, and TV as established by the Board of review for the tax year at issue are as follows:

Parcel Number: 120-100-013-002-02

Year	TCV	SEV	TV
2019	\$53,000	\$26,500	\$26,500

RESPONDENT'S ADMITTED EXHIBITS

R1 – Respondent's Valuation Submission

R2 – Petitioner's original valuation disclosure

R3 – Warranty Deed for 206 N First Street

R4 – Covenant Deed and Sheriff's Deed for 206 E Jackson Street

¹⁹ Tr. at 112.

²⁰ Tr. at 113.

RESPONDENT'S WITNESS

Randy Thompson

Respondent presented testimony from its Assessor, Randy Thompson, Michigan certified assessing officer and certified personal property examiner. The Tribunal accepted Mr. Thompson as an expert in valuing residential properties but notes Petitioner's objection to such admission.²¹ Mr. Thompson prepared and relied on a valuation disclosure containing a comparable sales approach of the subject property as of December 31, 2018 and concluding a TCV of the subject property of \$53,000. Mr. Thompson testified, "I found 33 comparable properties within the approved timeline or close to that approved timeline that were applicable,"²² and then he claims to have chosen the six best comparable sales for use in his analysis, applying appropriate adjustments. Mr. Thompson testified that all the comparable sales used were arm's-length transactions and none were bank sales or estate sales.²³ In regard to the comparable sales used, Mr. Thompson testified that his comparable sale one was right around the corner from the subject property, was a ranch style property, sold for \$89,000 on March 17, 2016 and that a \$1,000 adjustment was made for date of sale as well as adjustments for different site size, quality of construction, effective age, heating and cooling, garage size, and basement type.²⁴ For his comparable sale number two, Mr. Thompson testified that it was 575 feet away from the subject property, sold for \$82,000, and was adjusted for time of sale, different site size, classification, effective

²¹ See Tr. at 123-129.

²² Tr. at 148.

²³ See Tr. at 149-150

²⁴ See Tr. at 151-152.

age, type of foundation (crawl space), heating/cooling, and size of garage.²⁵ For his comparable sale number three, Mr. Thompson testified that it was 0.3 miles away from the subject property, sold on July 10, 2017, and was adjusted for time of sale, different site size, classification, effective age, number off bathrooms, type of foundation (crawl space), heating /cooling, and a second separate garage.²⁶ For his comparable sale number four, Mr. Thompson testified that it was less than 0.2 miles away from the subject property, sold for sold for \$82,000, and was adjusted for time of sale, different site size, and type of foundation (crawl space), and heating/cooling.²⁷ For his comparable sale number five, Mr. Thompson testified that it was 1.1 mile away from the subject property, sold on November 10, 2017, and was adjusted for time of sale, different site size, classification, effective age, and size of garage.²⁸ For his comparable sale number six, Mr. Thompson testified that it was inside a subdivision within Harrisville Township, is slightly smaller than the subject property, and was adjusted for size, effective age, type of foundation (full basement), heating /cooling, and a brick exterior.²⁹ Mr. Thompson testified that his first four comparables were located less than a half mile from the subject property and that none of those four sold for less than \$60,000 nor had an adjusted sale price of less than \$53,000.

Q. Now, were any of your comparable sales one through four sold for less than \$60,000?

A. No, sir.

Q. And even when adjusted to make the properties comparable to the subject, were any adjusted to a value of less than \$53,000?

²⁵ See Tr. at 154-156.

²⁶ See Tr. at 156-158.

²⁷ See Tr. at 158.

²⁸ See Tr. at 158-160.

²⁹ Se Tr. at 160.

A. No, sir.³⁰

Mr. Thompson testified that he was familiar with the October 2018 sale of the subject property for \$29,900 and that he did not believe that the sale price was indicative of the true market value of the subject property.

Q. Do you believe that the \$29,900 sale was indicative of the fair market value of the subject property?

A. No, sir.

Q. Why do you not believe it is?

A. Well, when I got the deed and when I got the property transfer affidavit that confirmed the sale price, I just noted that there was a large difference. So I did an investigation on it, because the petitioner did not file a real property statement indicating any information at all.

Q. Did you speak to the seller in the October 2018 transaction?

A. Yes, sir.

Q. Did they indicate to you that they were motivated to sell the property and not necessarily sell the property at a fair market value?

A. Yes, sir.³¹

Mr. Thompson testified that he concluded a TCV for the subject property of \$53,000 based on his comparable sales approach and arrived at that conclusion because, “[T]here were two comps that came up to \$53,000, so that is why that is the mode. The average was 59. Being conservative, I estimated it at \$53,000.”³²

Regarding the comparable sales used by Petitioner's appraiser, Mr. Thompson testified that the property located at 206 6th Street (Petitioner's comparable sale number one) is not a ranch style as indicated by Petitioner's appraiser because “it is physically above grade, two stories,”³³ and it is only a one bedroom house and is not indicative of a comparable to the three bedroom ranch style subject property.

³⁰ Tr. at 161.

³¹ Tr. at 163.

³² Tr. at 156.

³³ Tr. at 167.

Q. Do you believe a one bedroom house and a three-bedroom house exist in the same market?

A. It can exist in the same market, yes. But it's not indicative of a comparable.³⁴

Mr. Thompson testified that Petitioner's comparable sale number two was in mid-renovation at the time of its sale in November 2018 and he knew this because, "I inspected it in February 2017."³⁵ "They were just redoing it. But when I went onto the property, there was a dumpster full of what appeared to be old stuff that was taken out of the house."³⁶ "It is still under construction right now."³⁷ The last inspection was January of 2020.³⁸ Mr. Thompson claims that this fact should have been adjusted for when using it as a comparable sale property and further testified that the sale was an estate sale as evidenced by the warranty deed (Exhibit R3) information and this fact should also have been adjusted for or this comparable not used at all.³⁹

Mr. Thompson testified that Petitioner's comparable sale number three was a foreclosure sale as evidenced by Sheriff's deed (Exhibit R4)⁴⁰ and it should not have been used as a comparable sale for the subject property.

Q. Do you believe it would be appropriate to use this sale as a comparable for the subject property?

A. Not currently for this year, no.⁴¹

On cross examination, Mr. Thompson testified the job of an assessor was different from that of an appraiser and that, as an assessor, "I use the mass appraisal

³⁴ Tr. at 169-170.

³⁵ Tr. at 170.

³⁶ Tr. at 171.

³⁷ Id.

³⁸ Id.

³⁹ See Tr. at 172-176.

⁴⁰ See Tr. at 178.

⁴¹ Tr. at 179.

type cost less depreciation because it's easier for doing multiple parcels. It would not be effective to try to find six comparables for 6,000 plus parcels."⁴² When asked what prompted his investigation into the subject property, Mr. Thompson testified, "I get a copy of every deed recorded at the Register of Deeds office in Alcona County."⁴³ "Well, I looked at the difference between what I had it valued and what the purchaser purchased the property at."⁴⁴ "I have the property transfer affidavit. I do not have a real property statement from the petitioner."⁴⁵

Q. What do you mean by a real property statement?

A. It's a statement that tells the assessor the intentions of the buyer as to whether he or she thinks that they paid too much for the property or whether they think that there was personal property in that sale."⁴⁶

When questioned whether he knew the subject property had been a meth lab, Mr. Thompson testified, "I knew that at one time before remediation there was meth in there and then they cleaned it up."⁴⁷ When asked if he thought this had an effect on value, Mr. Thompson testified, "No, sir. I got a certified document that said that the previous owner paid good money and there's 24 pages of documentation as to what was cleaned up. And if there is no residual contamination, according to the documents, there was a certification that said that this place is clean; it's like it never, ever happened."⁴⁸ "It was cleaned before the sale."⁴⁹ On further testimony, Mr. Thompson said, "[t]he owners told me that the reason that they put the selling price of less than

⁴² Tr. at 188.

⁴³ Tr. at 189.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Tr. at 194.

⁴⁷ Tr. at 196.

⁴⁸ Id.

⁴⁹ Id.

\$30,000 was because their daughter was the one that was cooking meth, and they wanted to get rid of the house so they did not have that memory. Because now their daughter is in prison.⁵⁰ When asked whether he thought being next to a municipal water tower had a negative effect on the subject property, Mr. Thompson testified, "I can't prove that by sale."⁵¹

Q. Does the water tower immediately adjacent to this house have any negative effect on the sale of a piece of property?

A. I do not believe so, no, sir.

Q. And do you think that maybe the \$29,900 price – list price, by the way, list price – had something to do with immediately wanting to sell this property, the condition that it had been a meth lab, and that there's a huge water tower right next to it may have been elements that were considered when setting that price?

A. No, sir, I can't. Because I cannot prove it. It was not in the petitioner's appraisal as to whether he thought it was. When I looked at it, I could not confirm it, so I did not think that it had any value to it or detraction of it.⁵²

When questioned, Mr. Thompson testified that his comparable sale at 445 West Church (Respondent's comparable sale number 2) was not considered rural and that his comparable sales number five and six were not farms nor considered rural although they were located in the township but not in the country.⁵³ Regarding Respondent's comparable sale number five, Mr. Thompson testified that it was four-and-a-half acres outside of the city limits.⁵⁴ Regarding Respondent's comparable sale number six, Mr. Thompson testified, "It is not a city lot, but it is a lot, 75 by 176."⁵⁵

⁵⁰ Tr. at 197.

⁵¹ Id.

⁵² Tr. at 198-199.

⁵³ See Tr. at 199-200.

⁵⁴ See Tr. at 200-201.

⁵⁵ Tr. at 201.

When asked if he had ever made a mistake as an assessor, Mr. Thompson testified, "I have had the judge say that there was a different value than I have."⁵⁶ On further questioning regarding whether he committed an error rather than simply losing a case, Mr. Thompson testified, "Yes."⁵⁷

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 is located at 222 6th Street in the City of Harrisville, Alcona County, Michigan.
2. The subject property is a 99 X 132 square foot city lot and is improved with a 1,050 square foot Class CD ranch style house with three bedrooms and one bathroom.
3. The highest and best use of the subject property is residential use.
4. Petitioner purchased the subject property on October 31, 2018, for \$29,900.
5. Petitioner's appraiser prepared two appraisal reports; the first was submitted as Petitioner's Valuation Disclosure on December 31, 2019 and admitted as Respondent's exhibit R2. The revised report was submitted on June 26, 2020 and was conditionally admitted as Petitioner's Exhibit P5. The Tribunal finds that this revised report corrected the square footage of the subject property which

⁵⁶ Tr. at 210.

⁵⁷ Tr. at 211.

resulted in a modified contention of value for the subject property. It also contained signatures missing from the original appraisal report and various other corrections. The Tribunal finds that accepting this version of Petitioner's appraisal more accurately represents the subject property and does not unduly prejudice Respondent. Therefore, the Tribunal fully admits Petitioner's Exhibit P5 as evidence in this case.

6. In the admitted appraisal (P5), Petitioner's appraiser utilizes a sales comparison analysis for the tax year at issue which presents three comparable sales. The cost and income approaches were not used.
 - a. Comparable sale number one was 0.03 miles from the subject property, had a sale date of June 2017 and was adjusted for date of sale, site, quality of construction, actual age, gross living area, basement type, heating/cooling, and garage size for gross adjustments of 84.1% and an adjusted sale price of \$40,200.
 - b. Comparable sale number two was 0.34 miles from the subject property, had a sale date of November 2018 and was adjusted for date of sale, site, quality of construction, actual age, number of bathrooms, gross living area, basement type, heating/cooling, garage, and fireplace for gross adjustments of 53.5% and an adjusted sale price of \$38,900.
 - c. Comparable sale number three was 0.35 miles from the subject property, had a sale date of March 2016 and was adjusted for date of sale, site, actual age, number of bathrooms, gross living area, basement type,

heating/cooling, and garage for gross adjustments of 63.7% and an adjusted sale price of \$41,100.

7. Respondent's assessor prepared a sales comparison analysis for the tax year at issue using six comparable sale properties. The cost and income approach were not used.
 - a. Comparable sale number one was less than 350 feet from the subject property, had a sale date of March 17, 2016 and was adjusted for date of sale, site, quality of construction, actual and effective age, number of bathrooms, gross living area, heating/cooling, and garage for gross adjustments of 27.9% and an adjusted sale price of \$71,250.
 - b. Comparable sale number two was less than 700 feet from the subject property, had a sale date of April 20, 2017 and was adjusted for date of sale, site, quality of construction, actual and effective age, number of bathrooms, gross living area, heating/cooling, garage, and fireplace for gross adjustments of 38% and an adjusted sale price of \$53,000.
 - c. Comparable sale number three was 0.35 mile from the subject property, had a sale date of July 10, 2017 and was adjusted for date of sale, site, quality of construction, actual and effective age, number of bathrooms, gross living area, heating/cooling, and garage for gross adjustments of 48.4% and an adjusted sale price of \$53,900.
 - d. Comparable sale number four was 0.16 mile from the subject property, had a sale date of October 31, 2017 and was adjusted for date of sale,

- site, gross living area, heating/cooling, and a second garage for gross adjustments of 30.5% and an adjusted sale price of \$66,300.
- e. Comparable sale number five was 1.1 miles from the subject property, had a sale date of November 10, 2017 and was adjusted for date of sale, site, quality of construction, actual and effective age, and garage for gross adjustments of 26.9% and an adjusted sale price of \$59,600.
 - f. Comparable sale number five was 1.5 miles from the subject property, had a sale date of August 14, 2018 and was adjusted for site, actual and effective age, heating/cooling, and a brick exterior for gross adjustments of 29.4% and an adjusted sale price of \$53,000.
8. The subject property was a former meth house that was remediated by Meth Lab Cleanup LLC and certified by the District Health Department No. 2 as fit for use on June 12, 2018.

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.⁵⁸

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.⁵⁹

The Michigan Legislature has defined TCV to mean:

⁵⁸ See MCL 211.27a.

⁵⁹ Const 1963, art 9, sec 3.

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.⁶⁰

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”⁶¹

“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.”⁶² The Tribunal is not bound to accept either of the parties' theories of valuation.⁶³ “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.”⁶⁴ 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.”⁶⁵

A proceeding before the Tax Tribunal is original, independent, and de novo.⁶⁶ The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”⁶⁷ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”⁶⁸

⁶⁰ MCL 211.27(1).

⁶¹ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

⁶² *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

⁶³ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

⁶⁴ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁶⁵ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

⁶⁶ MCL 205.735a(2).

⁶⁷ *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

⁶⁸ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

"The petitioner has the burden of proof in establishing the true cash value of the property."⁶⁹ "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."⁷⁰ 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."⁷¹

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.⁷² "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading."⁷³ 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.⁷⁴ Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁷⁵ In this matter, the Tribunal finds the sales

⁶⁹ MCL 205.737(3).

⁷⁰ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

⁷¹ MCL 205.737(3).

⁷² *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).

⁷³ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

⁷⁴ *Antisdale*, *supra* at 277.

⁷⁵ See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

comparison approach to value to be the proper technique to utilize in determining the fair market value of the property for the 2019 tax year.

The subject property is a 1,040 square foot, three-bedroom, one bathroom, single family, ranch-style house on a 99 X 132 foot city lot. It sits on a 578 square foot basement and has a one-car detached garage. While a previous resident or owner of the house had previously utilized it as a meth cooking facility, the subject property was cleaned-up and certified as being completely remediated and was deemed suitable for occupancy by the county health department prior to its sale to Petitioner for \$29,900 in October 2018. However, as testified to by Respondent's Assessor, Mr. Thompson, "[t]he owners told me that the reason that they put the selling price of less than \$30,000 was because their daughter was the one that was cooking meth, and they wanted to get rid of the house so they did not have that memory. Because now their daughter is in prison."⁷⁶ Further, Petitioner's attorney, Mr. Powe, speculated that this low sale price was at least partially due to the house being a former meth lab while questioning Mr. Thompson as follows: "And do you think that maybe the \$29,900 price – list price, by the way, list price – had something to do with immediately wanting to sell this property, the condition that it had been a meth lab, and that there's a huge water tower right next to it may have been elements that were considered when setting that price?"⁷⁷ The Tribunal finds that this high motivation to be rid of the property on the part of the seller constitutes an unusual market influence on the subject property. Further, it is clear from Mr. Arens' testimony that the original motivation of Petitioner to purchase the subject

⁷⁶ Tr. at 197.

⁷⁷ Tr. at 198.

property was to use it as a part of a land swap deal with an owner of other property adjacent to some Petitioner already owned.

Q. Mr. Arens, did you previously state that you bought the house with the intention of swapping the property with another property owned by a different individual?

A. Well, it wouldn't be a swap, but I would incorporate it into a transaction of some type to acquire a different property, correct.

Q. So the purpose of acquiring the property at issue in this case was not to acquire the property at issue and use that property, was to then include it in a transaction with another person, is that correct?

A. That is correct.

Q. What was the nature of the transaction?

A. Which transaction?

Q. The transaction that you purchased this property for.

A. Oh, it was an attempt to acquire property that joins other property that we own.⁷⁸

Therefore, the Tribunal finds that the sale price of the subject property is not a good indicator of its TCV in this case because there were unusual influences both on the part of the seller and the buyer (Petitioner) and the sale of the subject property in October 2018 was not a typical arm's length sale. This is further evidenced by the range of adjusted sales prices concluded among the nine different comparable sales used by Petitioner's appraiser and Respondent's assessor which were between \$38,900 and \$72,250. As such, the Tribunal gives no weight to the actual sale price of the subject property when Petitioner purchased it in October 2018. However, price does not necessarily equal value and while the former presence of meth at the subject property may have influenced the sale price, the Tribunal finds that it does not necessarily have influence upon the value of the subject property post-remediation.

⁷⁸ Tr. at p 36.

In fact, in Mr. Arens' testimony, he confirms that the property is no longer contaminated from its previous use as a meth facility and that he would never lease to a family if he thought there was still contamination present at the subject property.

Q. And I -- can you tell the court what that is?

A. This is a document provided to me by the seller and it's a third-party certificate of remediation showing the cleanup of the crystal meth and then a signoff by health department --

COURT REPORTER: Health department what?

A. Number two. It provides me clarity that the state approves, and it's been cleaned up property.⁷⁹

Q. And would you lease the property to somebody and let children live in the property if you had any belief that there was any chemical remnants or issue in property that could cause harm to those individuals?

A. Zero chance of that, sir.⁸⁰

Turning to the sales comparison approach put forth by Petitioner's appraiser, Mr. Sabourin, the Tribunal has serious misgivings as to the reliability of the comparable sales chosen and the adjustments made to them. The comparable sale used by Mr. Sabourin, as his comparable number one was brought into question as being mischaracterized as a ranch-style house and being significantly smaller than the subject property. Mr. Thompson testified, "It is physically above grade, two stories,"⁸¹ and photographs verify this. Further, on direct examination, Mr. Thompson testified in relation to Petitioner's comparable sale number one as follows:

Q. Do you believe a one bedroom house and a three-bedroom house exist in the same market?

A. It can exist in the same market, yes. **But it's not indicative of a comparable.**⁸² [Emphasis added]

⁷⁹ Tr. at 19.

⁸⁰ Tr. at 38-39.

⁸¹ Tr. at 167.

⁸² Tr. at 169-170.

During the testimony of Respondent's assessor, Mr. Thompson, it was revealed that another of Mr. Sabourin's comparable sales, comparable number two, was likely not an arm's length transaction as it appears to have been an estate sale as evidenced by information a warranty deed (R3):

Q. What in this warranty deed makes you believe that the November 2018 sale of the property at 206 1st Street has – was an estate sale?

A. If you look at the very, very first part of it, it says 'know ye men by these present, Dennis E. and Edward Atchison, survivor of themselves and Julie Atchison, whose death certificate.' Therefore, there was a death of somebody. Now they did this as joint tenants with full rights of survivorship on 3/24/11. Julia, I believe that's how she pronounces her name, she did a quit claim deed for herself to – herself and her sons, which was the ladybird deed reserving a life estate. She – usually they do this for estate planning. And she passed away February 23, 2017."

Q. Mr. Thompson, do you believe that without presenting this information regarding the estate sale or making an adjustment for the fact that it was an estate sale, that it would be appropriate to use this sale as a comparable?

A. I would not use it. I don't think it's – I don't think it would be good, not without —⁸³

Further, Mr. Sabourin neglected to verify that his final comparable sale was indeed an arm's-length sale and included a foreclosure sale as comparable number three, as evidenced in this cross examination testimony of Mr. Sabourin.

Q. Do you believe that when Fannie Mae sells a property it is a foreclosure sale?

A. In most cases, yes.⁸⁴

Q. Did you know that this was a Fannie Mae sale when you used it in your report?

A. I guess I didn't actually review who the sellers were when I read the records.⁸⁵

⁸³ Tr. at 175-176.

⁸⁴ Tr. at 108.

⁸⁵ Tr. at 110.

In sworn testimony, Mr. Sabourin admitted to mistakes made in his market comments and in applying some of his adjustments.

Q. So the statement made in your original appraisal that it was decreasing by ten percent and the statement made in your revised appraisal that it's decreasing by two percent; both those are incorrect?

A. That's correct.⁸⁶

Q. Do you believe your date of sale adjustment is accurate?

A. We went through that earlier. And because it's supposed to be a different adjustment, this one here should be amended.⁸⁷

Mr. Sabourin's comparable sales had gross adjustments of from 53.5% to 84.1% applied which indicates that they are really not that much like the subject property. Further, Mr. Sabourin's appraisal contained errors. Thus, the Tribunal finds that Mr. Sabourin's appraisal is not credible and reliable evidence in determining the TCV of the subject property and gives no weight.

Petitioner, through its attorney, Mr. Powe, claimed that there was inconsistency of assessing by Respondent through asking Mr. Sabourin to testify to the TCV to sales price ratio average of the nine comparable sales used by the parties was much less than that of the subject property; however, the Tribunal finds that there was no basis established for this claim as these various TCVs and sale prices relied on by Mr. Sabourin were not specifically placed before the Tribunal and therefore, this claim is given no weight.

Respondent's assessor, Mr. Thompson, also prepared a sales comparison approach which contained six comparable sales with adjustments applied to

⁸⁶ Tr. at 79.

⁸⁷ Tr. at 112.

make them comparable to the subject property. The gross adjustments made by Mr. Thompson range from 26.9% to 48.4%. Mr. Sabourin, Petitioner's appraiser, testified that he would not have used any of the comparable sales used by Respondent.

Q. Mr. Sabourin, of the six comps that were used by Mr. Thompson, can you accept any of those as comparables for 222 6th Street?

A. Not when we compare those to the three we used.⁸⁸

However, in listing his reasons for finding Respondent's comparable sales unacceptable, Mr. Sabourin cited that Respondent's comparable sale one was an older sale and different classification than the subject which were both adjusted for by Mr. Thompson. Mr. Sabourin cited Respondent's comparable sales number two, three and four as being rural, yet they are all within 1.1 mile or less of the subject property. Other features called out by Mr. Sabourin were garage size on Respondent's comparable number three and a brick exterior on comparable sale number six, both of which were adjusted for by Mr. Thompson. Therefore, the Tribunal finds that Respondent's comparable sales as presented by Mr. Thompson had reasonable and appropriate adjustments applied and Petitioner did not provide proof that the adjustments made to Respondent's comparable sales were inappropriate nor that the comparable sales themselves were not the best comparable sales available in the market

Petitioner's attorney, Mr. Powe, attempted to impeach Mr. Thompson as a valuation witness by implying that Mr. Thompson's wife assisted him in preparing Respondent's valuation disclosure, that he did not have the appropriate education or experience to render a valuation opinion, and that he made errors in his work.⁸⁹

⁸⁸ Tr. at p 72.

⁸⁹ See Tr. at 135-142, 180-188 and 206-211.

However, the Tribunal finds that as a Michigan Certified Assessor Officer, Mr. Thompson is qualified to render an opinion of value for the subject property and no evidence provided by Petitioner has proven otherwise. Both Mr. Sabourin and Mr. Thompson provided their different professional opinions of value for the Tribunal to consider in its determination of the TCV of the subject property.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the comparable sales approach submitted by Mr. Thompson, Respondent's assessor, is the only reliable evidence in this case. Therefore the contention of values put forth by Respondent in this case are upheld. 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(s) at issue are AFFIRMED 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%, (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.⁹⁰ 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.⁹¹ 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.⁹² Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.⁹³

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

⁹⁰ See TTR 261 and 257.

⁹¹ See TTR 217 and 267.

⁹² See TTR 261 and 225.

⁹³ See TTR 261 and 257.

filed more than 21 days after the entry of the final decision, it is an “appeal by leave.”⁹⁴

A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.⁹⁵ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.⁹⁶

Entered: September 28, 2020

By Christine Schauer

⁹⁴ See MCL 205.753 and MCR 7.204.

⁹⁵ See TTR 213.

⁹⁶ See TTR 217 and 267.