



STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

GRETCHEN WHITMER  
GOVERNOR

ORLENE HAWKS  
DIRECTOR

Leonard and Sara Miriam A Cohen,  
Petitioners,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 18-003295

City of Oak Park,  
Respondent.

Presiding Judge  
Christine Schauer

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioners, Leonard and Sara Miriam A Cohen, appeal ad valorem property tax assessments levied by Respondent, City of Oak Park, against parcel number 52-25-30-128-015 for the 2018 tax year. Ieshula R. Ishakis, Attorney, represented Petitioners, and Courtney Krause, Attorney, represented Respondent.

A hearing on this matter was held on December 8, 2020. Petitioners' sole witness was Frank Lovasco, Appraiser. Respondent's sole witness was Aaron Powers, Assessor.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash value (TCV), state equalized value (SEV), and taxable value (TV) of the subject property for the 2018 tax year are as follows:

**Parcel Number: 52-25-30-128-015**

Year	TCV	SEV	TV
2018	\$155,800	\$77,900	\$77,900

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
MICHIGAN TAX TRIBUNAL

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### PETITIONERS' CONTENTIONS

Petitioners contend that the subject property's ECF neighborhood was improperly created and the subject property's ECF neighborhood should be ECF 30 rather than ECF 30 Etkin, which would result in a lower TCV, AV and TV for the subject property.

### PETITIONERS' ADMITTED EXHIBITS

- P-A Petitioners' Valuation Disclosure
- P-B State Tax Commission – Development of Economic Condition Factor (ECF)
- P-C Maps indicating boundaries of sampling of Oak Park ECFs
- P-D Sample of Properties within ECF-30 Etkin
- P-E Sample of Properties within ECF-30
- P-F Sample of Properties within ECF-30 Ed Rose A&W
- P-G Sample of Properties within ECF-31

### PETITIONERS' WITNESSES

#### Frank Lovasco

Frank Lovasco, a licensed certified appraiser in Michigan, was admitted as a qualified appraisal expert, although Respondent objected specifically to his lack of experience and expertise in the mass appraisal method for purposes of an ECF neighborhood determination.

Mr. Lovasco began his testimony by reading page 2 of his report (admitted as exhibit P-A) which indicated that he was engaged by Petitioner "to develop and express an opinion on the assessed values of properties found in Etkin-Schein subdivision in Oak Park, particularly to identify differences between economic neighborhoods or ECFs

in particular, ECF 30 Etkin.”<sup>1</sup> Mr. Lovasco described the types of homes in these neighborhoods and the boundaries of ECF 30 and ECF 30 Etkin and contends that neither ECF is more desirable to a potential buyer than the other. Mr. Lovasco testified that if the subject property were one block further east, it would be assessed lower and contends that it should be assessed as if in ECF 30 rather than in ECF 30 Etkin and its TCV is \$135,940. Mr. Lovasco testified to the various types of houses in ECF 30 and ECF 31 and the boundaries of these ECF neighborhoods. Mr. Lovasco claims that all ECF neighborhoods get the same city services.

On cross examination, Mr. Lovasco testified that he used Realcomp Multiple Listing Service (MLS) to obtain data for his report submitted as exhibit P-A. Specifically, Mr. Lovasco claims to have reviewed 2018 sales. Mr. Lovasco testified that he did not make any comparison using the cost approach and the Assessor’s Manual. Mr. Lovasco testified that he has a “very minor”<sup>2</sup> understanding of how an ECF is calculated and no specific training or experience with statistical mass appraisal. Mr. Lovasco testified regarding the different land-to-house square footage values in ECF 30 and ECF 30 Etkin and claims the ratio is larger in ECF Etkin.

Mr. Lovasco testified that he did not do any calculations to determine an alternate ECF for the subject property that more closely aligned with his opinions.

On re-direct examination, Mr. Lovasco testified that his report, Petitioners’ exhibit P-A, was not an appraisal report but was “just to show the differences between ECF -- you know, just so that the different houses between the Etkin-Schein subdivision and

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<sup>1</sup> Transcript (Tr.) at 20.

<sup>2</sup> Tr. at 56.

the other homes in the area.”<sup>3</sup> Mr. Lovasco testified that there were no significant differences between the lot sizes or sizes of the houses on Sussex and Church.

#### RESPONDENT’S CONTENTIONS

Respondent contends that it lawfully and uniformly assessed the subject property, and that Petitioners have not provided any evidence of commonly accepted methodologies that would support a reduction. Further, Respondent contends that Petitioners’ contention that Respondent unfairly creates ECF neighborhoods is lacking in factual support.

#### RESPONDENT’S ADMITTED EXHIBITS

R-1 Respondent’s Valuation Disclosure

R-2 ECF 30 Etkin Map

#### RESPONDENT’S WITNESS

##### Aaron Powers

Aaron Powers is a partner and managing director of WCA Assessing and has been the assessor for Respondent since 2016 and worked for multiple municipalities since he began his assessing career in 1991 and before opening his business in 2006. Mr. Powers is certified as a Michigan Master Assessor with extensive training and experience in statistical mass appraisal. Mr. Powers was admitted as an expert assessor on behalf of Respondent.

Mr. Powers testified that he uses all methods to value properties, including the market comparison approach, the cost approach, and the income approach, and has performed calculations of ECFs in conjunction with statistical mass appraisals. Mr.

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<sup>3</sup> Tr. at 63-64.

Powers testified that he prepared the valuation disclosure for the instant case (exhibit R-1) which identified a TCV for the subject property of \$155,800 as of December 31, 2017. Mr. Powers testified regarding Respondent's comparable sales approach. Specifically, Mr. Powers claims all comparable sales are similar to the subject property in style, size and construction with sale dates close to the valuation date. Mr. Powers claims that Petitioners purchased the subject property on July 27, 2017, for \$160,000, in an arm's-length transaction based on the property transfer affidavit and the warranty deed. Mr. Powers testified that Respondent's assessment of the subject property for the 2018 tax year is as follows: "The 2018 assessed value is determined based off statistical mass appraisal. It's a methodology that assessors utilize throughout the State of Michigan for various types of property. It is most often utilized for the assessment of residential real and vacant property."<sup>4</sup>

Mr. Powers testified that creating ECF neighborhoods is a part of the mass appraisal process and gave a detailed description of the process of mass appraisal. Mr. Powers further testified how the ECF is applied to the depreciated value of a house to get its TCV for that particular neighborhood. Mr. Powers testified that the subject property is in ECF 30 Etkin and that Respondent reviews its ECF neighborhoods annually. Mr. Powers contends that the subject property is properly included in the ECF 30 Etkin neighborhood.

On cross examination, Mr. Powers testified that among the attributes of value that are different between ECF 30 and ECF 30 Etkin was that properties in ECF 30

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<sup>4</sup> Tr. at 83.

Etkin historically sell for more than those in ECF30. Mr. Powers testified that at some point ECF 30 Etkin was split from ECF 30, “because the ECFs that were determined for that area were probably considerably higher or lower than the other area around it.”<sup>5</sup> Mr. Powers testified that ECFs can change every year.

Mr. Powers testified that land value is not a factor in determining an ECF, only the value of buildings. Mr. Powers testified that the various factors that determine how ECF neighborhoods are established include features of the properties, school districts, proximity to a negative feature, and numerous other considerations. Mr. Powers testified that his sales comparison approach did not consider the ECF of the comparable properties because an ECF is only used for statistical mass appraisal.

#### 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 a residential property located at 24651 Sussex in the City of Oak Park, in Oakland County.
2. The parcel under appeal has a parcel identification number of 52-25-30-128-015 and consists of 0.18 acres of land with a 1,680-square-foot house.
3. The subject property is in Respondent’s ECF 30 Etkin neighborhood which had an ECF of 1.240 for the 2018 tax year.

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<sup>5</sup> Tr. at 97.

4. Petitioners submitted a valuation report which contended the ECF neighborhood of the subject property should be changed from ECF 30 Etkin to ECF 30 which does not conclude a specific TCV for the subject property but “proposes” two different TCVs for the subject property, \$109,289 and \$135,940.
5. Respondent submitted a valuation report with both a cost approach and a sales comparison approach and contends a TCV of \$155,800 for the 2018 tax year.

Petitioners purchased the subject property on July 27, 2017, for \$160,000.

#### 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>6</sup>

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not exceed 50 percent.<sup>7</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>8</sup>

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”<sup>9</sup>

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<sup>6</sup> See MCL 211.27a.

<sup>7</sup> Const 1963, art 9, sec 3.

<sup>8</sup> MCL 211.27(1).

<sup>9</sup> *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

“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>10</sup> The Tribunal is not bound to accept either of the parties' theories of valuation.<sup>11</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>12</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>13</sup>

A proceeding before the Tax Tribunal is original, independent, and de novo.<sup>14</sup> The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”<sup>15</sup> “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”<sup>16</sup>

“The petitioner has the burden of proof in establishing the true cash value of the property.”<sup>17</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>18</sup> However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average

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<sup>10</sup> *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

<sup>11</sup> *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

<sup>12</sup> *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

<sup>13</sup> *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

<sup>14</sup> MCL 205.735a(2).

<sup>15</sup> *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

<sup>16</sup> *Jones & Laughlin Steel Corp*, *supra* at 352-353.

<sup>17</sup> MCL 205.737(3).

<sup>18</sup> *Jones & Laughlin Steel Corp*, *supra* at 354-355.



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>19</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>20</sup> “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”<sup>21</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>22</sup> Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.<sup>23</sup>

Here, Petitioners claim that Respondent has over-assessed the subject property and consistently and unfairly creates ECFs using demographics of the residents. Petitioners claim they have not provided any common valuation approach to value for the subject property because their contention is that Respondent has improperly created the ECF neighborhood of 30 Etkin where the subject property is located. Petitioners argue that the subject property should be valued as if it were located in Respondent’s ECF 30 neighborhood which has a lower ECF factor. Petitioners argued

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<sup>19</sup> MCL 205.737(3).

<sup>20</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>21</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>22</sup> *Antisdale*, *supra* at 277.

<sup>23</sup> See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

that there is no difference between the properties in the two adjacent ECF neighborhoods and have provided lists of sales in each ECF neighborhood. These lists conclude an average sale prices per square foot in each ECF neighborhood, with ECF 30 averaging a lower per square foot sale price than does ECF 30 Etkin. Based on this, Petitioners contend that the TCV of the subject property should be its square footage times the average price per square foot in the ECF 30 neighborhood which resulted in a “proposed” TCV of \$109,289. However, in another section of Petitioners’ valuation disclosure, a “suggested” TCV for the subject property of \$135,940 is presented based on an assumption of the land and building values if the subject property were located one block east. The Tribunal finds these contradictory contentions of value lack credibility and, overall, Petitioners’ “valuation disclosure” is sorely lacking in any reliable evidence of the TCV for the subject property. Further, the report does not provide anything that would constitute evidence that Respondent made an error in creating its ECF 30 Etkin neighborhood, and Petitioners’ valuation expert admitted that he knows next to nothing about mass appraisal and how ECF neighborhoods are created. For these reasons, the Tribunal finds that Petitioners have totally missed the mark in providing any proof that the subject property’s ECF neighborhood was improperly established or that the subject property’s TCV is less than that assessed by Respondent.

Respondent’s valuation witness, Mr. Powers, spent much of his testimony teaching a class in how statistical mass appraisal is done and how ECF neighborhoods are created. Respondent submitted a cost approach and a sales approach that both

support its contention of value. The Tribunal finds that Respondent's valuation evidence is reliable and Mr. Powers' testimony is credible.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Respondent's contentions of value 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 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%, (xiii) after June 30 2020, through December 31, 2020, at the rate of 5.63%, and (xiv) after December 31, 2020, through June 30, 2021, at the rate of 4.25%.

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>24</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>25</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>26</sup> Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.<sup>27</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>28</sup> A copy of the claim must be filed with the Tribunal with the filing fee required for

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<sup>24</sup> See TTR 261 and 257.

<sup>25</sup> See TTR 217 and 267.

<sup>26</sup> See TTR 261 and 225.

<sup>27</sup> See TTR 261 and 257.

<sup>28</sup> See MCL 205.753 and MCR 7.204.

certification of the record on appeal.<sup>29</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>30</sup>

By 

Entered: March 5, 2021

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<sup>29</sup> See TTR 213.

<sup>30</sup> See TTR 217 and 267.