

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

Ralf and Norma Dittman,
Petitioner,

v

MTT Docket No. 16-005299

Larkin Township,
Respondent.

Tribunal Judge Presiding
David B. Marmon

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioners, Ralf and Norma Dittman, appeal ad valorem property tax assessments levied by Respondent, Larkin Township, against Parcel No. 090-018-415-150-00 for the 2016 and 2017 tax years. Frederick Overdier, Attorney, represented Petitioner, and Coiene Tait, Respondent's Assessor represented Respondent.

A hearing on this matter was held on February 1, 2018. Petitioner's witnesses were Richard Peterson and Norma Dittman. Respondent's sole witness was Coiene Tait.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values ("TCV"), state equalized values ("SEV"), and taxable values ("TV") of the subject property for the 2016 and 2017 tax years are as follows:

Parcel No.	Year	TCV	SEV	TV
090-018-415-150-00	2016	\$540,000	\$270,000	\$270,000
090-018-415-150-00	2017	\$540,000	\$270,000	\$270,000

PETITIONERS' CONTENTIONS

Petitioners contend that the property is over-assessed and that the appraisal prepared by Richard Peterson is the best evidence of the property's true cash value.

Parcel No.	Year	TCV	SEV	TV
090-018-415-150-00	2016	\$540,000	\$270,000	\$270,000
090-018-415-150-00	2017	\$540,000	\$270,000	\$270,000

PETITIONERS' ADMITTED EXHIBITS

P1 Residential Appraisal Report as of December 31, 2015

P2 Residential Appraisal Report as of December 31, 2016

P3 Subject's record card.

PETITIONERS' WITNESSES

Petitioner's first witness was Richard Peterson, a certified appraiser. Peterson testified that he opened his appraisal business in 1988, serving a multi-county area in and around Midland County.¹ Without objection, Peterson was recognized as an expert in appraisal.² He testified that he completed Exhibits P1 and P2, appraisals of the subject for 12/31/2015 and 12/31/2016.³ When asked about which approach he used, Peterson stated, "I completed the appraisal based on market sales, considered the cost approach; however, in this market, cost is not relative to market value."⁴

Peterson then explained how he chose the 5 comparables for his sales comparison grid:

The comparables that I used bracket the subject home's size, quality, location, age, features of the homes. I pulled those sales from the market, determining what were the best comparables in reference to this home obtaining a fair market appraisal.⁵

Regarding adjustments, he testified that these were market driven. He testified to his conclusion of value under this approach and for the appraisal at \$540,000.⁶

Peterson then testified about his appraisal for tax year 2017. He testified that he followed the same methodology as for 2016 but used five new sales. He stated the following as to why he used different sales for the subsequent year:

While this is not for lending practice, this market revolves around ability to finance a home. In order to conclude sales that a lender would use, they require sales within a 12-month time period. The sales used in the 2015 appraisal would

¹ T at 8-9.

² T at 9.

³ T at 10.

⁴ T at 11.

⁵ T at 12.

⁶ T at 13.

not be effective for lending practice in the 2016 appraisal affecting the ability of the home to be financed.⁷

Again, for 2017, Peterson concluded to \$540,000. He testified that as in his 2016 appraisal, he selected sales based on trying to bracket the subject's size, quality, location, features and amenities.⁸

Next, Peterson was asked if there were any unusual aspects of the real estate market in Midland County. He answered:

Midland is in a state of flux. Dow Chemical, our largest employer, has gone through a merger with the DuPont Company that was completed in 2017. And because of that Dow was going to divide themselves into three divisions, which has ultimately become five divisions. They had -- I guess I'll use the word "bragged" about increasing employment in the Midland market, which has not happened. That state of flux has kept the market subdued in this upper price range.⁹

Peterson was cross-examined by Respondent's assessor. When asked about using sales in the City of Midland, rather than Larkin Township, he answered:

I would say that the comparables used from the City of Midland compete directly with Larkin Township, and that there were not similar sales in Larkin Township that occurred within that 12-month time period.¹⁰

He was then asked about his use of two relocation sales in his 2017 appraisal. Peterson explained his use and adjustment of the sales as follows:

... I interviewed the parties on each of the sales included in the appraisal, so when I interviewed the realtor involved in this sale, my question was would this home have sold for more had it not been a relocation sale? The answer was based on a polled response and it included adjustment of a positive 35,000 for that sale.¹¹

Peterson was also cross-examined as to why he used the sale of a four-year-old home when the subject was newer than that. In response, he testified that any sale for a fair market appraisal has

⁷ T at 14.

⁸ T at 15.

⁹ T at 16.

¹⁰ T at 18.

¹¹ T at 20.

to be exposed to the market, and that the contract sales price for building a home would not be considered an arm's length sale because the home would not have been exposed to the market.¹²

Peterson was next asked about his cost approach to value. He indicated that using Marshall & Swift, he determined a cost approach value of \$615,000 to rebuild the subject but agreed that it would never sell for that price.¹³ He was then queried regarding his determination that the subject would sell for the same exact price for each year under appeal, as well as for an earlier financing appraisal. His response was that "[t]he market has been pretty flat in the upper-price range. ... If anything, it's soft."¹⁴

Tait's final questions on cross concerned 38 sales, the summaries of which appear on pages 37-41 of Exhibit P-1. That exchange was as follows:

Q. And I was having trouble with that analysis. I mean, I couldn't read it, for one thing. It looks like it come out of MLS or -- and I just wanted you to explain why this would even be in your appraisal?

A. I was attempting to show what activity there had been in the upper price range for Midland County. So this -- these pages of analysis are all of the sales that occurred above \$400,000, I believe, in Midland County for that one-year time period. So this would show days on market, competing properties that had been in the marketplace for the same time period.

On redirect, Peterson explained that these sales summaries referred to were not a select group. Rather, they were all sales above \$400,000 in Midland County occurring in that 12 month period.¹⁵

Petitioner's second and final witness was co-Petitioner Norma Dittman, who was called to answer the question posed by the bench as to what the actual costs were paid to build the property. Dittman answered that including the lot, she had paid \$651,086.¹⁶

¹² T at 21-22.

¹³ T at 22.

¹⁴ T at 23.

¹⁵ T at 25.

¹⁶ T at 31.

RESPONDENT'S CONTENTIONS

Respondent's original contentions regarding the subject's assessment were, per the Prehearing Summary:

Parcel No.	Year	TCV	SEV	TV
090-018-415-150-00	2016	\$981,200	\$490,600	\$490,600
090-018-415-150-00	2017	\$981,200	\$490,600	\$490,600

At hearing, Respondent revised her contentions during her opening statement to:

Parcel No.	Year	TCV	SEV	TV
090-018-415-150-00	2016	\$772,000	\$386,000	\$386,000
090-018-415-150-00	2017	\$772,000	\$386,000	\$386,000

RESPONDENT'S ADMITTED EXHIBITS

R-1 1-page sales grid with 3 comparable sales.

RESPONDENT'S WITNESS

Respondent's only witness was also its representative at the hearing, Coiene Tait. From the podium, she testified on direct that she was an appraiser, as well as an assessor. She attempted to place into evidence a Tribunal small claims decision in which the Tribunal accepted her cost approach. As small claims decisions are generally not precedent, and this decision, (MTT Docket No. 17-000694) involved different property and a different petitioner, the Tribunal declined to find it relevant.¹⁷ Next, Respondent offered into evidence a 1 page sales grid, marked R-1, which was accepted into evidence, over Petitioner's objection.¹⁸ Tait then discussed the three comparables, naming the sales date and price, and adjusted sales prices. She also noted that her second sale at \$700,000 which she adjusted upward to \$736,000 was a relocation sale. After 14 lines of testimony, Tait had finished her direct testimony.

On cross examination, Tait admitted that she was unable to find any sales in Midland County for \$980,000, and that it "sounds right" that the original assessment valued the subject at

¹⁷ T at 35.

¹⁸ T at 37.

\$355 per square foot.¹⁹ She also admitted that she originally assessed the subject as if it was built out of limestone, when in fact, it was cement that looked like limestone, and that the new homes on either side of the subject were assessed at \$588,000 and \$447,800 True Cash Value.²⁰ Finally, Tait was asked by the bench as to what the highest sale price was in Midland County in 2015 or 2016, to which she replied, “I know we’ve hit 750 (thousand), but I don’t know if there’s one higher than that.”²¹

FINDINGS OF FACT

1. The subject property is located at 2400 E Little Turtle Way, consisting of a 2,988 square foot contemporary style home on 1.66 acres, with a 3-car garage, and full basement, built in 2013.
2. Petitioners paid a total of \$651,086 for the land and to build the subject, exclusive of landscaping.
3. Petitioners provided an appraisal by Richard Peterson for each year using 5 different sales for each year, concluding to a value of \$540,000 for each year.
4. Peterson’s sales bracketed the subject in terms of age, square footage, lot size, and amenities.
5. For 2016, the 5 sales used by Peterson were quelled from listings of 38 sales that took place in Midland County and sold for over \$400,000.
6. Of those 38 sales, the only sales that had prices exceeding Peterson’s highest comparable had square footage exceeding it by roughly 2,000 square feet.
7. For 2017, the 5 sales used by Peterson were quelled from listings of 43 sales that took place in Midland County and sold for over \$400,000.
8. Of those 43 sales, the only sales that had prices exceeding Peterson’s highest comparable had square footage exceeding it by roughly 1,000 square feet.

¹⁹ T at 39.

²⁰ T at 41-42.

²¹ T at 45.

9. At hearing, the only evidence submitted by Respondent was a 1-page grid listing 3 sales “R-1”.²²
10. Respondent’s grid fails to indicate the size of the lot, the square footage, or any amenities of any of the comparables, nor does it state the basis used for any of the various adjustments made by Respondent’s assessor.
11. Respondent’s first comparable R1, at 3175 Sturgeon, which sold for \$695,000 on May 15, 2015, per Petitioner’s Exhibit P-1 at 37, contained 5,120 square feet, and on the market for 0 days, indicating that it was not exposed to the market.
12. Respondent’s comparable sale R2 at 2044 Mockingbird, which sold for \$700,000 on June 3, 2016, and which Respondent adjusted upward by \$36,000 was a relocation sale, which per Petitioner’s Exhibit P-2 at 37, contained over 4,300 square feet.
13. Respondent’s third comparable, R3 sold for \$780,000 on July 28, 2017.
14. Respondent’s assessor failed to explain how she chose her comparables, how she arrived at her adjustments, and how she determined the value to equal the adjusted sales price of her highest sales comparable, which sold in July 2017, for her conclusion of value for 2016 or 2017.

CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value.²³

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. . . .²⁴

The Michigan Legislature has defined “true cash value” to mean:

The usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the

²² This grid was part of a much larger valuation disclosure, which Respondent had submitted prior to hearing in satisfying the Tribunal’s prehearing General Call order. It is unknown as to why Respondent’s representative failed to present her full valuation at hearing.

²³ See MCL 211.27a.

²⁴ Const 1963, art 9, sec 3.

property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.²⁵

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”²⁶

“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.”²⁷ The Tribunal is not bound to accept either of the parties' theories of valuation.²⁸ “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.”²⁹ 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.”³⁰

A proceeding before the Tax Tribunal is original, independent, and de novo.³¹ The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”³² “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”³³

“The petitioner has the burden of proof in establishing the true cash value of the property.”³⁴ “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.”³⁵ 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.”³⁶

²⁵ MCL 211.27(1).

²⁶ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

²⁷ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

²⁸ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

²⁹ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

³⁰ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

³¹ MCL 205.735a(2).

³² *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

³³ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

³⁴ MCL 205.737(3).

³⁵ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

³⁶ MCL 205.737(3).

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.³⁷ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”³⁸ The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances.³⁹ Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁴⁰

In this appeal, Petitioner provided the Tribunal with appraisals valuing the subject on tax day for the 2016 and 2017 year. Peterson used five sales comparables for each year, which bracketed the subject as to size, lot size and amenities. He also provided a comprehensive list of sales which took place in Midland County during the 12-month period preceding each valuation date. A review of those sales confirms that the comparables he chose were much more comparable to the subject than the highest sales found in the county. Sales that were above Peterson’s highest sales comparable in both years were significantly larger than the subject, by over a thousand square feet for 2017, and over two thousand square feet for 2016. The Tribunal finds his sales approach for both years to be reasonable, and appropriately performed.

In contrast, Respondent failed to put on much of a case. Its assessor submitted a mere 3 comparables, without description, or explanation, and concluded to the highest adjusted price of the three comparables she chose. For the first two comparables, the only comparables she used in which evidence was provided as to their description,⁴¹ the homes were significantly larger than the subject. The Tribunal holds that a buyer for a 3,000 square foot home is likely not the same buyer looking to purchase a 5,000 square foot home. As to Tait’s third comparable, no data was put forth into evidence for the Tribunal to judge its comparability to the subject. The sales date for this comparable was July 28, 2017. While 2017 sales are relevant to the value of a property for the 2017 and 2018 tax year, such sales are generally too remote to be considered for

³⁷ *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).

³⁸ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

³⁹ *Antisdale*, *supra* at 277.

⁴⁰ See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁴¹ Those comparables were described by Petitioners’ expert in his appraisal, rather than by Respondent.

the 2016 tax year. Additionally, the Tribunal was not given evidence as to whether this sale was exposed to the market, or was, as Respondent's R1, a contract price to build a home. It is also noteworthy that Respondent attempts to cast doubt on Peterson's conclusion of value for being the same in both years, when she also concludes to the same value for both years, on far less evidence. Tait also failed to establish her credibility at the get-go by changing her contention of value by over \$200,000 during her short opening statement. She failed to salvage any credibility by submitting only a 1-page grid, inadequate for even a small claims hearing, as it fails to describe the subject; fails to describe the comparables and fails to provide the basis for the adjustments she makes. The grid's failure to even list the square footage of the comparables renders it inadequate as a grid, let alone a complete valuation. Finally, concluding to the highest adjusted value she could find and using this to support her contention of value for both tax years is not only unsupported by the evidence – it is evidence of a valuation attempting to support an assessment, rather than an independent determination of the subject's true cash value. As final proof of Respondent's unreasonableness was Ms. Dittman's testimony regarding actual costs. Monies expended by Petitioners was less than Respondent's true cash value, or even its revised contention of true cash value. Accordingly, the Tribunal declines to put any weight upon Respondent's evidence.

The only difficulty in this case is to reconcile the value of the subject via the market approach with either the cost approach, or the actual cost expended to buy the land and build the subject. As the subject is relatively new, the cost approach is an acceptable method to value the home. However, the Tribunal finds Peterson's testimony that if exposed to the market, the subject would not fetch the costs calculated to reproduce it, or to build it in the first place, to be credible. In any case, the actual cost method fails to take into account any economic obsolescence or overbuild. Peterson's lists of sales in the entire county support this contention, in that anything selling for more than the concluded value of the subject was significantly larger than the subject. It is also likely that persons with the wherewithal to purchase a home such as the subject in the Midland area would pay less than what it costs to build it. Otherwise, for the same money, they would likely build a home to their own specifications, rather to the tastes of Petitioners. In Midland's uncertain economic environment after Dow's merger with DuPont,

the Tribunal finds Peterson's opinion that the market for high end properties is soft, to be credible.

True Cash Value in Michigan can be summarized as "the usual selling price." Accordingly, the Tribunal accepts Peterson's value conclusions for both years, and holds that the True Cash Value for the subject is \$540,000.

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

JUDGMENT

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

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

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

the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, and (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%.

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.⁴² 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.⁴³ 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.⁴⁴ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.⁴⁵

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."⁴⁶ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on

⁴² See TTR 261 and 257.

⁴³ See TTR 217 and 267.

⁴⁴ See TTR 261 and 225.

⁴⁵ See TTR 261 and 257.

⁴⁶ See MCL 205.753 and MCR 7.204.

appeal.⁴⁷ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.⁴⁸

By David B. Marmon

Entered: February 27, 2018

⁴⁷ See TTR 213.

⁴⁸ See TTR 217 and 267.