

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

William P. and Marilyn Froling,  
Petitioners,

v

MTT Docket No. 443766

City of Bloomfield Hills,  
Respondent.

Tribunal Judge Presiding  
Victoria L. Enyart

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioners, William P. and Marilyn Froling, appeal ad valorem property tax assessments levied by Respondent, City of Bloomfield Hills, for the 2012, 2013, and 2014 tax years. Frank Lawrence, agent, represented Petitioners, and Derk Beckerleg, Attorney, represented Respondent.

A hearing on this matter was held on August 26, 2014. Petitioners' witnesses were Carol Froling, William F. Froling Jr, and Kenneth Johnson, appraiser. Respondent's witnesses were Terry Schultz, assessor and James Burton, of Hubbell, Roth and Clark, who is a consulting engineer.

The subject property is described as a one and two-story brick home of excellent quality construction with 3 full and 1 half bath, 4,739 square feet constructed around 1956 on 2.5 acres that abuts the Bloomfield Hills Country Club. Petitioners contend a severe flooding problem exists on the subject property and that the flooding has a negative effect on the property's value. Petitioners further contend that external obsolescence is measurable.

The parties' contentions (based on the assessment roll and pleadings) of true cash value ("TCV"), state equalized value ("SEV"), and taxable value ("TV") are as follows:

Parcel No. 63-12-19-15-126-005

	Petitioners			Respondent		
Year	TCV	SEV	TV	TCV	SEV	TV
2012	\$800,000	\$400,000	\$400,000	\$1,692,220	\$846,110	\$606,700
2013	\$1,000,000	\$500,000	\$500,000	\$1,767,120	\$883,560	\$621,260
2014	\$1,350,000	\$675,000	\$675,000	\$1,773,492	\$886,746	\$631,200

Respondent's revised contentions based on its valuation disclosures are as follows:

Parcel No. 63-12-19-15-126-005

Year	TCV	SEV	TV
2012	\$1,600,000	\$800,000	\$606,700
2013	\$1,650,000	\$825,000	\$621,260
2014	\$1,700,000	\$850,000	\$631,200

Based on the admitted 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 2012, 2013, and 2014 tax years are as follows:

Parcel No. 63-12-19-15-126-005

Year	TCV	SEV	TV
2012	\$1,575,000	\$787,500	\$606,700
2013	\$1,625,000	\$812,500	\$621,260
2014	\$1, 675,000	\$837,500	\$631,200

#### PETITIONERS' CONTENTIONS

The cost to cure the external obsolescence decreases the market value of the subject property. More specifically, the adjacent country club has overflow piping that feeds into a neighboring pond. In turn, the water comes down the street and flows towards the subject property creating an "over-flow ponding." The ponding causes occasional flooding on the subject property that negatively affects the value of the subject property. Therefore, reduction in value is warranted.

#### PETITIONERS' ADMITTED EXHIBITS

P-1 Appraisal report prepared by Kenneth Johnson.

P-2 DVD.

P-10 Photographs of the subject property.

#### PETITIONERS' WITNESSES

Carol Froling, Petitioners' daughter, works for her father's land development and construction company. Further, she is the supervisor and project manager for a property management company.

Ms. Froling testified that she videotaped flooding at the subject property on November 29, 2011. Petitioners' exhibit P-2 is a DVD that she videoed during a 4-hour rain to depict the

typical ponding of water on the subject property. In addition, Ms. Froling testified that some photographs were taken of the flooding at her parents' property; however, she was unable to recall the year that the pictures were taken. Ms. Froling lives within a few miles of her parents' home and has discretion in calling for assistance in pumping the water out of the yard.

Ms. Froling also testified that the subject property does not have a storm sewer because the city would not agree to pay for it, and she offered several times to pay for a storm sewer installation. She further explained her efforts to correct the problem:

We tried to build a wall, a garden wall, a little, small, 2-foot wall around the perimeter of the property to block the water that came in from all sides. We were voted down. We tried to build a berm from the – I think that would be the west – the north side of the property. I'm not really sure on my things, anyway; the line. We tried to build a berm, and the City forced us to take the berm down, which we did.

And we petitioned the City to build another berm in a different area, and they turned that down. One of the main influxes of water is from a culvert that runs underneath Rathmor Road. All the homeowners on the north side of the road – there are no drain ditches whatsoever on Rathmor Road, so everything is just flat. So, the houses on the north side of the road, all the houses on the north side of the road sit way up on a hill, and their water just flows down, and it runs into two different culverts and they run underneath Rathmor Road. And, eventually, the water from both those culverts end up on my parents' property. There was one culvert in particular where probably 80 percent of the water comes through and end up directly on my parents' property because it is only 20 feet away from the property. So, the water comes from the north side, mainly a lot of water from the golf club, which flows into the pond, which flows into the north side of the properties. They go through the culvert underneath the road. It exits out, and it all empties onto my dad's property, hence the flooding you saw on those pictures of the front and side yards. TR at 54-56.

On cross-examination, Ms. Froling explained that the subject property does have a catch basin which is cleaned out every year, that the basement has exterior and interior drain tiles, and that extra water is pumped to a swale between the subject property and the neighbor's property.

She also stated that Petitioners consulted with a real estate agent in 2006, who opined that the subject property wouldn't sell due to its water ponding issue, and that there have been no other realtor consultations since that year.

Kenneth Johnson, Certified General Real Estate Appraiser, prepared a separate appraisal report for each tax year under appeal. Based on his experience, Johnson was qualified as an expert in appraising residential property.

Mr. Johnson testified that the subject property was appraised as if it were in normal condition then the cost to cure was deducted from the conclusion of value. Johnson testified that he was given the cost estimate to cure by Petitioners, which he relied on to measure the obsolescence. He remarked that assessors and appraisers make judgments in the selection of comparable sales used. In this regard, Johnson noted that the assessor did not make any adjustment for the location or functional utility for the flooding issue.

Johnson inspected the subject property on April 28, 2014, and did not observe any evidence of flooding. Page 1 of each appraisal report states “There are no general adverse locational influences noted, although drainage from 7<sup>th</sup> and 8<sup>th</sup> holes of golf course adversely affects (floods) subject yard regularly per client (see addenda) creating appear of external obsolescence.” In other words, Johnson did not have first-hand knowledge of flooding. This information was given to him by the client. Likewise, he admits having done no research and the flooding is an assumption of the report. His scope of work for the appraisal was to visually inspect the property and to research the market for comparable sales. Johnson testified that he verified information with MLS, public records, Oakland County Gateway and BS&A, and the assessor’s office. He did not physically inspect the comparable sales or speak with any parties to these sales transactions. Johnson made negative adjustments of \$300,000, \$310,000 and \$320,000 respectfully for the tax years for “poor-ext” (AKA external obsolescence). Johnson explained that the measurement of external obsolescence is the cost to cure it and Petitioner provided Johnson with the “Cost of Storm Sewer”. Johnson testified his adjustments for site, square footage, age, and amenities were based on his expertise.

The following sales were considered for 2012:

2012 Sales	SUBJECT	P-1	P-2	P-3	P-4	P-5
Address	1895 Rathmor	1931 E Valley	215 Chestnut	326 Lakewood	1966 Tiverton	518 Kingsley
Sale Price		\$1,550,000	\$517,500	\$780,000	\$864,350	\$555,000
Sale Date		05/11	05/11	07/11	03/11	10/11
SF	4,738	5,629	4,693	5,405	5,996	3,569
BR	3	4	5	5	6	4

Baths	3.1	4.2	3.2	4.2	5.1	2.2
Basement	Pt Fin	Pt Fin	Fin	Fin	Pt Fin	Pt Fin
Gar	3 car	3 car	3 car	3 car	3 car	2 car
FP	1	2	3	2	3	2
Misc		Pool				
Acres	2.72	2.03	0.75	1.13	2.28	0.76
CC Golf Front	CC Golf Front	No Golf Front	No Golf Front	No Golf Front	No Golf Front	No Golf Front
GROSS ADJ.		43%	147%	90%	84%	141%
Adj SP		\$1,337,300	\$566,700	\$640,900	\$581,650	\$734,400

Johnson stated that Sales P-2 and P-4 were sold after foreclosure and that the most weight was placed on P-2 because it had the lowest net adjustment as noted in the appraisal. Johnson testified that he did not place any weight P-1. Although P-1 is located in close proximity to the subject property, and had the least net adjustments, Johnson concluded P-1 was not a good comparable because it had larger square footage. Johnson used his judgment to determine the true cash value of \$800,000 as of December 31, 2011.

The following sales were utilized for 2013:

2013 Sales	SUBJECT	P-6	P-7	P-8	P-9	P-10
Address	1895 Rathmor	287 Barden	3750 Lakecrest	1825 Rathmor	1650 Rathmor	2091 W Valley
Sale Price		\$1,160,000	\$910,000	\$1,945,000	\$1,350,000	\$1,875,000
Sale Date		10/12	07/12	07/12	08/12	06/12
SF	4,738	4,758	4,168	7,092	6,137	6,012
BR	3	3	4	5	3	5
Baths	3.1	4.1	4	5.4	3.1	5.2
Basement	Pt Fin	Fin WO	UnFin WO	Fin WO	Unf	Fin
Gar	3 car	2 car	3 car	4 car	4 car	4 car
FP	1	1	2	4	2	2
Misc						
Acres	2.72	1.5	2.1	2.2	1.71	1.2
CC Golf Front	CC Golf Front	No Golf Front	No Golf Front	CC Golf Front	No Golf Front	No Golf Front
Gross Adj.		51%	74%	44%	62%	57%
Adj Sale Price		\$1,076,000	\$927,000	\$1,137,200	\$995,200	\$1,298,200

The appraisal states that the most weight should be given to P-6 and P-7 for similar size and requiring the least adjustments. Johnson opined to a true cash value of \$1,000,000 as of December 31, 2012.

The following sales were utilized for 2014:

2014 Sales	SUBJECT	P-11	P-12	P-13	P-14
Address	1895 Rathmor	2070 W Valley	145 Canterbury	23 Pine Gate	1800 Rathmor
Sale Price		\$1,852,500	\$975,000	\$1,700,000	\$1,600,000
Sale Date		10/13	02/13	04/13	12/13
SF	4,738	4,891	4,151	5,942	6,702
BR			4		
Baths	3.1	5.2	4.2	5.2	6.2
Basement	Unf	Pt Fin	Pt Fin	Pt Fin	Pt Fin
Misc		Pool			Pool
Gar	3 car	3 car	3 car	4 car	4 car
FP	1	3	1	3	2
Acres		1.09	2.3	1.09	2.28
CC Golf	CC Golf Front	No Golf Front	No Golf Front	No Golf Front	No Golf Front
Gross Adj.		34%	67%	49%	59%
Adj Sale Price		\$1,730,900	\$975,400	\$1,358,200	\$1,068,200

The most weight was placed on P-11 and P-12. Johnson opined to a true cash value of \$1,350,000 as of December 31, 2013.

Johnson explained that the sales were adjusted for differences in site, view, bathrooms, square footage, basement finish, and additional fireplaces as well as the negative adjustment for the subject's external obsolescence. Johnson testified that the sale with the least net adjustments was the most reliable sale.

William John Froling testified to his responsibilities in contracting services to pump water from the property. He stated that the water issue has been ongoing since the early to mid-90s. Bids were taken to determine that a closed storm sewer system was a proper permanent solution. Regrading to re-direct water flow was not a viable option due to a lack of cooperation from abutting property owners. Again, Petitioners costs to cure are found within the Johnson appraisals.

Mr. Froling acknowledged he is a licensed real estate broker. He also contends selling the property is difficult due to the flooding. Mr. Froling compiled the addendum that included costs and estimates from 2006 to 2014. The data contains quotes but no engineering plans or witness to explain the basis for the numbers found in the addenda of Petitioners' appraisals. The septic system plan documents were not included as an exhibit.

### RESPONDENT'S CONTENTIONS

Respondent contends that the alleged ponding and drainage issues are a result of Petitioners' failure to take relatively simple and fairly inexpensive corrective measures (i.e. water outlets and underdrain systems). Respondent also contends that the Tribunal will hear testimony on the value of the subject property utilizing some sales in-common, but with proper consideration for adjustments. Overall, Respondent's valuation disclosure indicates a decrease in the market value of the subject property.

### RESPONDENT'S ADMITTED EXHIBITS

R-1 Respondent's valuation disclosure for December 31, 2011 and December 31, 2012.

R-2 Respondent's valuation disclosure for December 31, 2013.

R-15 Engineer's drawing of Petitioner's proposed grade, swale, underdrain and proposed contour.

### RESPONDENT'S WITNESSES

James F. Burton is employed by Hubbell, Roth and Clark, a consulting engineering firm. He is a licensed professional engineer with a Certified Floodplain Manager designation ("CFM"). The CFM designation represents an ongoing continuing education program dealing with FEMA flooding, flood management, and local floodplain ordinances. Based on his experience, skills, knowledge, education and training, he was admitted as an expert.

Mr. Burton testified that he has reviewed every grading plan in the city since 2000, and that he became familiar with the subject property in 2002-2003 during a city review of complaints from the property owner. He stated that the subject property has been inspected several times, and he has witnessed the water ponding. His general observations of the flooding were given in the following testimony:

Yeah. The water ponds in generally three locations. From the pictures, that we referred to earlier with the pump, some areas behind the property. There is ridges and valleys and low spots throughout the property, and those are typically where there are catch basins. So, when the rain exceeds the capacity or that is the system is in a state of disrepair, it ponds in the areas that you would expect it to pond. It's in the lowest areas of the property. TR at 204.

In addition, Burton testified that he reviewed "The Cost of Storm Sewer System" found in Johnson's appraisals. He explained that the cost does not include a plan associated with the numbers and that it is not clear what the \$320,000 cost is intended for. He explained that there

are various options, but he was uncertain what Petitioners' plan entails. Burton's professional opinion is Petitioners' plan lacks detail for the \$320,000 cost relative to the regrading of the two acres.

Burton testified that he came up with an alternative grading plan that was utilized in previous litigation, that the best estimate of cost was \$20,000 to \$25,000 for the plan that was discussed with Petitioners during mediation. Burton testified he suggested utilizing the surface water outlet and underdrain to regrade the subject property. He stated:

The lowest spot on the Froling property is near the southeast corner of the property adjacent to the Kiriluk property. There's actually an easement that runs in between the two properties, but generally speaking, both parties have kind of landscaped into that area. It's not a useful easement anyways. Low spot in that area, which is lower than the other areas within the property.

So, while not necessarily perfect or ideal, you could regrade the property so it would surface flow around and out to the outlet on their property. You would not need to grade anybody else's property. You could outlet the storm water via surface.

In addition to that, below the swale that runs behind Mr. Kiriluk's home are at least two edge drains. These would be 4-to-6-inch diameter pipes that show up on the - - Mr. Froling's surveys in the past that could be extended and run underneath any of the gradings. So you would simply need you could lower it by grading. Then you could bleed it off quicker via an underdrain-type system. But my understanding is there is one there already, which is connected into this area downstream. TR at 207,208.

Burton explained that the grading, the addition of a dry riverbed, and some landscaping were akin to a project he accomplished in his own yard over a weekend. He estimated a \$25,000 cost. When questioned on cross examination, he explained that the swale could be designed, graded and built to accommodate a ten-year storm event. Water would move off the subject property into a neighbor's swale between the two yards and out. This suggested plan does not change the flow of the water, but keeps the water from standing. The suggested plan changes the grading to allow gravity for the natural low areas on the subject property to drain.

Burton further testified that the landscaping could reflect a dry river bed which makes the grading more attractive. Upsizing the pipes would allow the swale to be downsized. The golf course is at a higher elevation than the subject property. The amount of water flowing onto the subject property is irrelevant. The base grade of the slope is sufficient to move water from one



end to the other. The swale grade is higher, if it exceeds capacity, it will come out of the banks. As long as the swale is positive the amount of water draining is not an issue, it will take the flow off the subject property.

Respondent's last witness was Terry Schultz, an employee at Oakland County Equalization. He is the Equalization Field Supervisor, and is certified as a Michigan Advanced Assessing Officer. Schultz prepared Respondent's valuation disclosures. He testified that the cost approach and sales comparison approaches were used to determine a decrease in the true cash value for the years at issue.

Schultz testified that the cost new less depreciation was calculated on a mass assessment basis for each year. The land value is based on vacant land sales. The actual building cost is calculated, with additions for extra amenities, and a county multiplier is applied. Depreciation is calculated with an economic condition factor (reflecting the increase or decrease in sales) to their related assessments is applied to the building. The depreciated value of the building is added to the value of the land and land improvements for each year for each property. The same methodology was applied for the years at issue per Schultz.

Schultz discussed the positive adjustment for location on the golf course. Two sales, 1825 Rathmor and 3715 Lahser, were located on the golf course. The remaining five sales utilized by Respondent were located within the subject neighborhood, but, without abutting the golf course. The difference between the averages of the sale prices is \$350,000. In addition, the vacant land sales were included for each year at issue. This confirmed the additional value for golf front locations. As noted, Bloomfield Hills Country Club is private membership.

Improved Sales were selected that were similar to the subject in location and relevant characteristics. Schultz explained the comparable adjustments bring the sales more in line with the subject. The comparative analysis was applied for each year at issue. The sales comparison approach is an effective reliable method to determine the true cash value of the subject property. There were an adequate number of sales that were similar to the subject property.

The 2011 sales that reflect market value for tax year 2012 are:

2012 Sales	SUBJECT	R-1	R-2	R-3	R-4	R-5
Address	1895 Rathmor	1931 E Valley	3926 Oakland	578 Rudgate	2091 W Valley	1825 Rathmor
Sale Price		\$1,550,000	\$1,400,000	\$1,425,000	\$1,875,000	\$1,945,000
Sale Date		05/11	08/11	03/11	06/12	07/12
SF	4,738	5,929	4,857	5,865	6,012	7,092
BR	3	4				5
Baths	3.1	4.2	3.3	4.2	5.2	5.4
Basement	Unf	Pt Fin	Pt Fin	Pt Fin	Fin	WO
Gar	3 car	4 car	3 car	3 car	3 car	3 car
FP	1	2	4	4	3	4
Fence/pool		Pool				
Acres	2.5	2.03	0.56	1.3	1.2	2.2
CC Golf	CC Golf Front	No Golf Front	No Golf Front	No Golf Front	No Golf Front	CC Golf Front
Gross Adj.		22%	6%	38%	34%	23%
Adj Sale Price		\$1,597,000	\$1,698,000	\$1,564,000	\$1,958,000	\$1,624,000

The comparable properties were adjusted for differences in market date, square footage, land size, bathrooms, basement finish and amenities. The adjustments were extracted from market sales. Schultz testified that the most weight was given to Sale 1 because it is located in the subject neighborhood. He opined that the true cash value of the subject property as of December 31, 2011 is \$1,600,000.

The 2012 sales that reflect market value for tax year 2013 are:

2013 Sales	SUBJECT	R-6	R-7	R-8	R-9	R-10
Address	1895 Rathmor	1825 Rathmor	2091 W Valley	1650 Rathmor	45 Pine Gate	3715 Lahser
Sale Price		\$1,945,000	\$1,875,000	\$1,350,000	\$1,657,000	\$2,050,000
Sale Date		07/12	06/12	08/12	11/12	12/12
SF	4,738	7,092	6,012	6,137	6,557	5,933
BR						
Baths	3.1	5.4	5.2	3.1	5.3	6.2
Basement	Unf	WO	Fin	Unf	Pt Fin	Pt Fin
Misc					Pool	
Gar	3 car	3 car	3 car	4 car	4 car	4 car
FP	1	4	3	2	6	4
Fence/pool						
Acres	2.5	2.2	1.2	1.71	1	1.4
CC Golf	CC Golf Front	CC Golf Front	No Golf Front	Golf view	No Golf Front	CC Golf Front
Gross Adj.		23%	34%	30%	46%	24%
Adj Sale Price		\$1,624,000	\$1,958,000	\$1,362,000	\$1,697,000	\$1,975,000

Schultz placed the most weight on R- 6, 8, and 10; these sales are located in the subject neighborhood. The market derived indication of value for tax year 2012 is \$1,650,000.

Sales from 2013 that reflect market value for tax year 2014 are as follows:

2014 Sales	SUBJECT	R-11	R-12	R-13	R-14	R-15
Address	1895 Rathmor	2070 W Valley	1800 Rathmor	23 Pine Gate	305 Pine Ridge	260 Guilford
Sale Price		\$1,852,500	\$1,600,000	\$1,700,000	\$1,425,000	\$1,797,500
Sale Date		10/13	12/13	04/13	12/13	08/13
SF	4,738	4,891	6,702	5,942	5,178	6,264
Baths	3.1	5.2	6.2	5.2	4.2	4.4
Basement	Unf	Pt Fin	Pt Fin	Pt Fin	Pt Fin	Pt Fin
Misc		Pool	Pool		Pool	Pool
Gar	3 car	3 car	4 car	4 car	2 car	3 car
FP	1	3	2	3	1	5
Acres	2.5	1.09	2.28	1.12	1	1.43
CC Golf	CC Golf Front	No Golf Front	No Golf Front	No Golf Front	No Golf Front	No Golf Front
Gross Adj.		26%	28%	34%	35%	31%
Adj Sale Price		\$2,141,500	\$1,439,000	\$1,870,000	\$1,745,000	\$1,875,500

Schultz explained that after adjustments, R-11, 12, and 13 were relied upon to determine the true cash value as of December 31, 2013 at \$1,700,000.

Regarding Petitioners’ sales, Schultz challenged their validity. For example, Sale 2 is a bankruptcy sale that was adjusted 147%, Sale 1 is located in the subject neighborhood but still had relatively large gross adjustments of 47%. For the 2<sup>nd</sup> year of the appeal, Petitioners’ appraiser relied on Sales 6 and 7 which are outside of the subject neighborhood. On the other hand, Schultz acknowledged the use of some common comparable sales that were used by Petitioners’ appraiser.

FINDINGS OF FACT

1. The subject property is located at 1895 Rathmor, City of Bloomfield Hills, Oakland County.
2. The parcel identification number for the subject property is 63-12-19-15-126-005.
3. The single family residential property is described as 1 and 2 story brick construction, Class A-10%, built in approximately 1956, with 4,378 square feet. The dwelling has 3 bedrooms, 3 full and one half bath, a recreation room and attached 3-car garage. The site has 2.5 acres which is adjacent to the Bloomfield Hills Golf and Country Club.
4. Petitioners purchased the subject property in June 1988.
5. The 2012, 2013 and 2014 tax years are at issue.
6. Petitioners contend that a ponding issue exists that negatively affects the true cash value of the subject property.
7. Petitioners’ appraiser relied upon the “Cost of Storm Sewer System” document provided by Petitioners for external obsolescence cost to cure, and did not verify or otherwise determine whether the proposed adjustment was appropriate.

8. Petitioners' appraiser presented appraisal reports that set forth a separate sales comparison approach for each year at issue.
9. Petitioners did not provide a witness to explain the proper method to prevent flooding on the subject property.
10. Petitioners' appraiser was unable to explain any detail for the costs to cure that were given to him by Petitioner.
11. Petitioners' photographic and video evidence depicts flooding at the subject property. However, Petitioners' daughter was unable to recall the date when the photographs were taken.
12. Petitioners' appraiser's conclusion for the "Cost of Storm Sewer System" was not supported by any engineering plans or expert testimony.
13. Petitioners' rely on their son and daughter for the maintenance of the flooding issues at the subject property.
14. Petitioners' appraiser's most significant adjustment to the comparables sales was the deduction for the cost to cure due to flooding.
15. Petitioners' appraiser did not make an independent determination regarding the cost to cure the subject's flooding problem.
16. Petitioners' appraiser determined comparable sale adjustments from his expertise and experience.
17. Petitioners' appraiser did not verify any of the comparable sales with the buyer, seller or real estate agents.
18. Petitioners' appraiser cites outdated authoritative texts. Respondent's assessor presented a valuation disclosure that contains both a cost new less depreciation (under the mass assessment technique) and a sales comparison approach for each year at issue.
19. Respondent presented a professional engineer that explained alternatives to Petitioner's cost to cure.
20. The parties have analyzed the following common sales: 2012: 1931 East Valley, 2013: 1825 Rathmor, 1650 Rathmor, and 2091 West Valley, 2014: 2070 West Valley, 23 Pine Gate, and 1800 Rathmor.

### 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. See MCL 211.27a.

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50 percent. . . . Const 1963, art 9, sec 3.

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 property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. MCL 211.27(1).

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.” *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.” *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985). “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.” *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991). 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.” *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735a(2). The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.” *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990). “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.” *Jones & Laughlin Steel Corp, supra* at 352-353.

“The petitioner has the burden of proof in establishing the true cash value of the property.” MCL 205.737(3). “This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party.” *Jones & Laughlin Steel Corp, supra* at 354-355. 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.” 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. *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). "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading." *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1). The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale, supra* at 277.

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell. See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

The parties' valuation experts were charged with presenting reports to assist the Tribunal in making an independent determination of the true cash value for the three tax years at issue.

#### TRUE CASH VALUE

In regards to the 2012 valuation, Petitioners' comparative analysis has inconsistencies and misapplications. Specifically, none of Johnson's sales have golf course frontage. Further, all of his sales have excessive net and gross adjustments. In that regard, an expert's testimony for support of adjustments must amount to more than one's experience and expertise. Appraisal Institute *Appraising Residential Properties*, (Chicago: 4<sup>th</sup> ed., 2007) at 110 and 316. Data verification facilitates a complete analysis on the part of an appraiser. On the other hand, Respondent's testimony regarding its market based adjustments is persuasive and supports its overall comparative analysis. Therefore, the Tribunal will apply the parties' common comparable sales to arrive at an independent determination of value for the three years under appeal.

Notwithstanding the above, the Tribunal is not a court of equity and cannot determine the parties' responsibility or liability for the flooding issues. This Tribunal's sole focus is the independent determination of true cash value for the subject property.

Petitioners' testimony and documentary evidence were not supportive of their contentions of value as the Johnson appraisal contains inconsistencies and errors which indicate arbitrary and

subjective actions on the part of the appraiser. Citing outdated appraisal sources, avoiding the verification of data and applying net adjustments are examples of advocacy for the client. In this instance, Petitioners' appraiser relied on the lower range of adjusted sales and then applied a cost to cure deduction of \$300,000. The cost to cure was given to Johnson by Mr. Froling. Johnson failed to do an independent verification or analysis. This extreme skewed analysis does not give any consideration to the thought of bracketed sales.

An appraiser must not allow assignment conditions to limit the scope of work to such a degree that the assignment results are not credible in the context of the intended use. The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice*, (2014-2015 Ed.), p 14.

The Johnson appraisal's citation to invoke professional appraisal standards is a stark contradiction to the appraiser's actions. "An appraisal must not allow the intended use of an assignment or a client's objectives to cause the assignment results to be biased." *Id.*

Petitioners' case is built around the appraiser determining that the ponding is considered external obsolescence. "External obsolescence is a loss in value caused by negative externalities, i.e., factors outside a property." Appraisal Institute, *Appraisal of Real Estate*, (Chicago: 14<sup>th</sup> ed, 2012), p 632. It usually has a market wide effect and influences a whole class of properties, rather than just a single property. The ponding is not external obsolescence. The Tribunal finds that the ponding issue is still not taken care of many years later. The issue is one more akin to deferred maintenance that is still ongoing. Deferred Maintenance is described as:

Curable, physical deterioration that should be corrected immediately, although work has not commenced; denotes the need for immediate expenditures, but does not necessarily suggest inadequate maintenance in the past.

Cost to cure: The cost to restore an item of deferred maintenance to new or reasonably new condition. Appraisal Institute *Appraising Residential Properties*, (Chicago: 4<sup>th</sup> ed., 2007) at 197.

The Tribunal finds that Burton's testimony and documentary evidence points to a reasonable solution for the subject's flooding. Moreover, the \$25,000 estimate to cure the problem is consistent with a deferred maintenance issue and not a monumental physical deterioration as inferred by Petitioners. In other words, Petitioners' efforts at interval sump pumping water is not mitigating, but prolonging the flooding issue. Likewise the cost of litigation does not appear to be an appropriate solution to Petitioners flooding. The true cash

value of the subject property is not reduced by Petitioners’ cost to cure. The loss in value has not been proven by the Johnson appraisal. Petitioners’ testimony does not answer why the property has not been maintained to solve the issue.

As noted, there were no sales of impaired properties or properties that had a loss in value due to flooding issues. Regardless, Respondents analyzed neighborhood sales for a comparative analysis.

As indicated above, the Tribunal will apply the parties’ common sales as well as the sales that each party places reliance for the 2012 tax year:

2012 Sales	SUBJECT	P-2	P-1	R-1	R-4	R-5
Address	1895 Rathmor	215 Chestnut	1931 E Valley	1931 E Valley	2091 W Valley	1825 Rathmor
Sale Price		\$517,500	\$1,550,000	\$1,550,000	\$1,875,000	\$1,945,000
Sale Date		05/11	05/11	05/11	06/12	07/12
SF	4,738	4,693	5,629	5,929	6,012	7,092
BR	3	5	4	4		5
Baths	3.1	3.2	4.2	4.2	5.2	5.4
Basement	Pt Fin	Fin	Pt Fin	Pt Fin	Fin	WO
Gar	3 car	3 car	3 car	4 car	3 car	3 car
FP	1	3	2	2	3	4
Misc			Pool	Pool		
Acres	2.72	0.75	2.03	2.03	1.2	2.2
CC Golf Front	CC Golf Front	No Golf Front	No Golf Front	CC Golf Front	CC Golf Front	CC Golf Front
GROSS ADJ.		147%	43%	22%	34%	23%
Adj SP		\$566,700	\$1,337,300	\$1,597,000	\$1,958,000	\$1,624,000

Petitioner opined to a true cash value of \$800,000, with a reliance on P-2 because it had a net adjustment of 9.5%. Respondent’s value was \$1,600,000. Respondent relied on market based adjustments. Respondent displayed the vacant land sales that were relied upon. Petitioner’s P-2 is not a reliable sale. The Tribunal finds the other sales indicate that Respondent’s true cash value of \$1,600,000 is appropriate based upon the market.

In a like fashion, the Tribunal will apply the parties’ common sales as well as the sales that each party places reliance for the 2013 tax year.



2013 Sales	SUBJECT	P-6	P-7	R-6	R-8	R-10
Address	1895 Rathmor	287 Barden	3750 Lakecrest	1825 Rathmor	1650 Rathmor	3715 Lahser
Sale Price		\$1,160,000	\$910,000	\$1,945,000	\$1,350,000	\$2,050,000
Sale Date		10/12	07/12	07/12	08/12	12/12
SF	4,738	4,758	4,168	7,092	6,137	5,933
BR	3	3	4			
Baths	3.1	4.1	4	5.4	3.1	6.2
Basement	Pt Fin	Fin WO	Un Fin WO	WO	Unf	Pt Fin
Gar	3 car	2 car	3 car	3 car	4 car	4 car
FP	1	1	2	4	2	4
Acres	2.72	1.5	2.1	2.2	1.71	1.4
CC Golf Front	CC Golf Front	No Golf Front	No Golf Front	CC Golf Front	Golf view	CC Golf Front
Gross Adj.		51%	74%	23%	30%	24%
Adj Sale Price		\$1,076,000	\$927,000	\$1,624,000	\$1,362,000	\$1,975,000

Petitioners' sales P-6 and P-7 are not located on a golf course or within the subject neighborhood. Petitioners' relies on these sales for their lower net and gross adjustments. However, Respondent's adjustments are lower than Petitioners' lowest adjusted sales. Again, Respondent relies on market based adjustments. Therefore, a reasoned and reconciled determination of value is consistent with Respondent's conclusion of \$1,650,000 for tax year 2013.

The relevant sales for tax year 2014 are:

2014 Sales	SUBJECT	P-11	P-12	R-11	R-12	R-13
Address	1895 Rathmor	2070 W Valley	145 Canterbury	2070 W Valley	1800 Rathmor	23 Pine Gate
Sale Price		\$1,852,500	\$975,000	\$1,852,500	\$1,600,000	\$1,700,000
Sale Date		10/13	02/13	10/13	12/13	04/13
SF	4,738	4,891	4,151	4,891	6,702	5,942
Baths	3.1	5.2	4.2	5.2	6.2	5.2
Basement	Unf	Pt Fin	Pt Fin	Pt Fin	Pt Fin	Pt Fin
Misc		Pool		Pool	Pool	
Gar	3 car	3 car	3 car	3 car	4 car	4 car
FP	1	3	1	3	2	3
Fence/pool				Pool	Pool	
Acres		1.09	2.3	1.09	2.28	1.12
CC Golf Front	CC Golf Front	No Golf Front	No Golf Front	No Golf Front	No Golf Front	No Golf Front
Gross Adj.		34%	67%	26%	28%	34%
Adj Sale Price		\$1,730,900	\$975,400	\$2,141,500	\$1,439,000	\$1,870,000

The parties' use of 2070 West Valley is persuasive in the analysis for the 2014 value. Further, Respondent's use of other common sales in prior years bolsters a conclusion of value. Consistent with 2012 and 2013, Petitioners' appraiser bases his adjustments on his experience. Respondent's adjustments are market based with an extraction for the difference of golf course frontage. Therefore, a reasoned and reconciled determination of value is consistent with Respondent's conclusion of \$1,700,000 for 2014.

#### COST TO CURE

The remaining issue for consideration is the parties' contention of the cost to cure the subject's flooding. Petitioners' complaint of water ponding at various heavy rainfalls throughout any given year goes back to early 1990s<sup>1</sup>. Petitioners concerns have played out in litigious actions with the Township. Through this adversity, Petitioners have been presented with various options to cure the flooding. The Tribunal agrees with Respondent's statement that Petitioners actions of "self-imposed non-corrective measures" are an apt description. Tr at 314.

Petitioners have gone through a mediation process as well as numerous hearings and are unsatisfied with the results. It appears that the \$25,000 remedy as indicated by Respondent to regrade the subject property would be a simple and affordable solution to the ponding. This alternative has been presented to Petitioners by Burton, a professional engineer with the CFM designation. Further, Burton was the only witness that addressed a cure for the flooding issue. The extreme cost of \$300,000+ cure from 2006 to 2007 and without the benefit of expert witnesses' support is not reasonable or logical.

The Tribunal considers that the \$25,000 cost to cure could increase the market value of the subject property when completed. The landscaping (as described by Burton), in addition to curing the pooling of the water, may be an attractive feature that could add esthetic value to the overall subject property. The cost to cure the deferred maintenance will be deducted from the final value conclusion.

Petitioners' effort in pumping rain water to divert ponding is commendable but these actions amount to a temporary solution. Implementing a solution to work the natural flow and gravity of rain water should be Petitioners focus.

As an ending note, Petitioners' agent, acting as a non-attorney, repeatedly argued that the Scheduling Order did not properly list all of the witnesses. Objections to Respondent's expert

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<sup>1</sup> Tr at 162.

engineering witness were over-ruled. Petitioners' agent also argued that the Tribunal scheduling the hearing for one day was dependent on the witnesses listed in the Summary of Prehearing Conference and Scheduling Order. This Tribunal scheduled the hearing for one day based upon the fact that the subject property was a single family residential property. A prehearing conference was conducted with Petitioners' agent participating telephonically. A party's responsibility to prepare for a prehearing and hearing are guided by the Tribunal's Rules of Practice and Procedure. Petitioners' lack of preparation to have an engineering witness has no correlation to Respondent's properly identified witness list.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioners' fail to meet the burden of proving that the assessment exceeds market value. Respondent's revised true cash value based on the sales comparison approach indicates that the subject property is over assessed. The Tribunal will reduce the true cash value for the \$25,000 cost to cure. It is noted however, that Petitioners' have not gone forward to solve the issue since the early '90s. The subject property's TCV, SEV, and TV<sup>2</sup> 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

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<sup>2</sup> Pursuant to MCL 211.27a2(a), the taxable value of the subject property is not affected by the reduction in true cash value.

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, and prior to July 1, 2012, at the rate of 1.09%, and (iv) after June 30, 2012, through December 31, 2014, at the rate of 4.25%.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

By: Victoria L. Enyart

Entered: Oct 21, 2014