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

J. Todd Trucks and Wendy Trucks,
Petitioners,

v

MTT Docket No. 14-001757

City of Mt. Pleasant,
Respondent.

Tribunal Judge Presiding
David B. Marmon

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioners, J. Todd Trucks and Wendy Trucks, appeal ad valorem property tax assessments levied by Respondent, City of Mt. Pleasant, against Parcel No. 17-000-16639-00 for the 2014 and 2015 tax years. Michael D. Homier, Attorney, represented Petitioners, and Ryan M. Shannon, Attorney, represented Respondent.

A hearing on this matter was held on December 11, and December 17, 2016. Petitioners' witnesses were J. Todd Trucks, (Petitioner) Margaret Murphy, (appraiser) and Jack Johns (appraiser). Respondent's witnesses were Stephen Eipper (appraiser) and David Rowley, its Assessor.

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 2014 and 2015 tax years are as follows:

Parcel No.	Year	TCV	SEV	TV
17-000-16639-00	2014	$752,000	$376,000	$376,000
17-000-16639-00	2015	$752,000	$376,000	$376,000

PETITIONERS' CONTENTIONS

Petitioners contend that although they spent over a million dollars building their new home, the amount spent was not built on a foundation of economic rationality. Rather, it was built based upon personal preferences, and thus contains a great amount of obsolescence and superadequacy. Petitioners argue that the property was over-built for the area and that no home has ever sold for the subject's true cash value on the tax roll. Petitioners contend that their

contention of true cash value is supported by two separate, independent appraisers.

Petitioners' contentions for true cash value, state equalized value and taxable value are as follows:

Year	TCV	SEV	TV
2014	$475,000	$237,500	$237,500
2015	$475,000	$237,500	$237,500

PETITIONERS' ADMITTED EXHIBITS

P-1 Appraisal prepared by Margaret Murphy as of December 31, 2013

P-2 Appraisal prepared by Jack Johns as of December 31, 2013

P-3 Appraisal prepared by Jack Johns as of December 31, 2014

P-4 (p. 018) MLS sheet for 2108 N. Harvest Circle

PETITIONERS' WITNESSES

J. Todd Trucks

Mr. Trucks was his own first witness. He testified that Petitioners received an unsolicited offer from Central Michigan University's new basketball coach to purchase their prior home.[1] With two teenage sons approaching driving age, Petitioners concluded that they would prefer to live within the Mt. Pleasant city limits, and build their dream house. Trucks testified that he paid $50,000 for the subject lot, but that it was "an absolute mess," having been backfilled with stumps. [2]

As to construction, Trucks hired Mick Straus, a contractor that he had previous dealings with, who gave Petitioners a proposal of $669,000 to complete. However, from excavation onward, there were cost overruns. Trucks testified as follows regarding the cost overruns:

> Q So I'd like to run through a couple of sort of broad categories. You've covered excavation. Did you end up paying more for labor?
> A Yes.
> Q And materials?
> A Yes.
> Q Did you upgrade fixtures, flooring, cabinets, appliances, trim, and countertops along the way?
> A All of the above.
> Q Did you make any changes to the overall plans?

[1] T.1 p. 11
[2] T.1 p. 14

> A No. There were no, like, structural-type changes to the plan. Once again, I want to stress to the Tribunal that this was 100 percent my wife's -- this was her dream home. She made all the decisions regarding this. And so, when it came time to pick out the width of the baseboard, that was her decision. When it was the crown molding, that's a decision she made. When it was the flooring, she made the decision. And, you know, I knew early on in the project because, when I poked my nose in it a couple of times trying to give an opinion, our marriage probably would not have survived a year of that. And so I just flat out told her she's going to build this house, and I'm not going to poke my nose in it, and that's exactly what we did. And I got a very big, beautiful house that cost a lot of money.[3]

As to costs, Trucks further elaborated that he "honestly did not want to know… ." As to the spiraling of costs that set in, he stated:

> And at no point did I ever add it up because I really didn't want to know. I knew that it was running over, and I didn't want this to create marital problems, and so I just said I'm going to finish the house and -- because, once you get into it, you can't have, you know, flooring that you like, you know, in one room and then you're going to put less-expensive flooring in the next room. You're going to -- once you get into it, I mean it was our opinion we had to finish it the right way.[4]

He testified that he never added up the expenses until he received a discovery request in this proceeding.[5] Trucks testified that he sold his old home for $455,000 in 2012 and that had been the highest sale in Isabella County in years; and that no property has ever sold for more than $500,000 in the County.[6]

On cross examination, Trucks admitted that he spent $1,114,359.05 on the home, not including landscaping. He also testified that he did not secure a mortgage on the property, and would have been unable to do so.[7]

Margaret Murphy

Petitioners' next witness was Margaret Murphy. Murphy testified that she has been a licensed appraiser since 1990, and prior to that sold real estate since 1980. She has lived in the Mt. Pleasant area since 1972, when she began attending Central Michigan University. She

[3] T.1 p. 18-19
[4] T.1 p. 21-22
[5] T.1 p. 21
[6] T.1 p. 24-25
[7] T.1 p. 28-29.

testified that she performs over 300 appraisals a year, and that 99.9% of them are for residential. She carries no other certifications than licensed appraiser. She was accepted by the Tribunal as an expert in residential appraisal.[8]

Murphy testified that the lot was 2.56 acres, and that she measured the exterior of the property, and subtracted the garage area.[9] She testified that the neighborhood in which the subject sits has both older and newer homes, and used to be called "Pill Hill" because of all the doctors that lived in the neighborhood.[10]

She opined that Mt. Pleasant was not really comparable to the Midland market because of Midland's larger and more diverse tax base. She also testified regarding the sale of residential properties above $500,000:

> Q In the past five years, how many residential properties within the City of Mt. Pleasant have sold for over $500,000?
> A Not many, if any. If anyone wants to do that price range, they generally build.[11]

Murphy did not perform a cost approach. While conceding that the cost approach is appropriate with "a new build with brand new numbers,"[12] she stated that she was not provided with, (nor did she request) plans and specs. She also agreed with counsel's statement that the sales comparison approach, particularly on residential, is more reliable. [13]

As to comparables, Murphy used 6 sales, 3 of which were in Mt. Pleasant proper. As to the first three comparables, her appraisal notes that these were the only sales in 2013 above $250,000 that took place in Mt. Pleasant proper. In testimony, as well as in her appraisal, Murphy noted that the first three comparables, while in the city limits, were not the best comparables.[14] Murphy's first comparable at 1820 Woods Way was a bank owned sale, which sold for $255,000. There was no adjustment for its bank owned status. Its condition, which was

[8] T.1 p. 33-37
[9] T.1 p. 40
[10] T.1 p. 41
[11] T.1 p. 43
[12] T.1 p. 46
[13] T.1 p. 45-46
[14] T.1 p. 51

rated at C-4, was only adjusted by +$4,000 for condition, and by a +28,650 for the square foot differential, which was 955 square feet smaller. She testified that $30 per square foot was appropriate where the selling price is in the range of $255,000.[15] She indicated that her adjustment of $100 per year comes from "the industry."[16] Of the 6 comparables she used, she relied equally on Comparables 4, 5 and 6 (3114 Hilltop), the only comparable she considered superior to the subject.[17] She testified that she relied most on Comparable 5, (2121 S. Amber Ln.), which sold for $360,000, and which she adjusted to $430,250. She opined that the subject's value for the 2014 tax year was $425,000.[18] Regarding the incongruence of a home costing $1.1 Million to build in 2012, and having a value of only $425,000, Murphy had the following exchange with Petitioners' counsel:

> You have been inside of the hearing room today, correct?
> A Yes.
> Q And you either know or knew or know now that Petitioner has spent $1.1 million building this home, correct?
> A Correct.
> Q In your opinion, is the true cash value of this home 1.1 million?
> A On the open market, he would never get it.
> Q Is it 900,000?
> A Not in our area.
> Q Is it 500,000?
> A That would be pushing it.
> Q And why is that?
> A Because there are very, very limited amount of people that would be coming to town with that kind of money.
> Q Have you ever heard of the term "super adequacy"?
> A Yes.
> Q And what is "super adequacy"?
> A You built the house because you wanted it the way you wanted it. Basically. I'm sure there's fancy words for it but...
> Q If -- if instead of building -- if instead of spending 1.1 million on this house, Petitioner has expanded and spent 3 million, would a house like this on this lot ever fetch $3 million?
> A Heavenly days, no.[19]

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[15] T.1 p. 49
[16] T.1 p. 52
[17] Per Her appraisal, Exhibit P-1, the comparable sold for $480,000, which she adjusted to $463,160.
[18] T.1 p. 57-59
[19] T.1 p. 59-60

Murphy then equivocated somewhat on her conclusion of value:

> Q Is it your opinion that the true cash value for the 2014 tax year is 425,000?
> A Probably should be a little bit higher than that.
> Q Okay. And why is that?
> A Only because, in retrospect, I probably should have looked harder at -- there aren't any other – there weren't any other comps. And probably should have looked a little harder at some of the adjustments, but then the ratios would be way out of whack too. So trying to keep an even balance on this.[20]

As to industry standards for adjustments, she testified that the industry recognizes 10% line item adjustments, 15% net adjustments and 25% gross adjustments as appropriate.[21] On cross, she had the following exchange with opposing counsel:

> Q Now, you testified earlier that maybe some of your adjustments were a bit low; is that correct?
> A Correct.
> Q Okay. But that you had -- you had kept them low in order to keep them in balance, I think was the word you used?
> A Absolutely.
> Q Okay. So is it accurate to say you kept those adjustments low because you did not want to exceed the industry range?
> A Correct.
> Q And, if you had made the adjustments, in retrospect, at the proper range, they might be in excess of the industry minimums?
> A Oh, definitely.
> Q Definitely. Okay. Does that suggest that there are errors, then, in the comparable approach, that it would be less reliable than if you had to make smaller adjustments?
> A No.
> Q Why are the industry minimums set up the way they are?
> A I have no idea, but I think it's basically the guidelines that they want us all to follow.
> Q But so they -- you agree, then, or disagree with the notion that the more a property has to be adjusted, the more room there is for error?
> A I would agree with that.
> Q You would agree with that. So you suppress your adjustments to keep them within the industry guidelines?
> A Correct.
> Q And now you're saying your adjustments were too low?

[20] T.1 p. 60
[21] T.1 p. 49

A They may have been.[22]

Jack Johns

Petitioners' last witness was Jack Johns, a licensed certified general appraiser, a licensed real estate sales person, whom the Tribunal also accepted as an expert in real estate appraisal.[23] On cross, Johns testified that 80 percent of his appraisals are commercial and only 20 percent residential. He also stated that his primary geographical focus for appraisal is mid-Michigan. Johns also prepared a report regarding the subject property for tax year 2014 as well as a report for 2015.[24]

As to the subject's compatibility to the neighborhood, Johns stated:

> I would consider it to be the total definition of an outlier or super adequate residence within the neighborhood. Most of the homes along Watson and in the general area were smaller, older, mid-century type construction.[25]

Johns measured the home's square footage and concluded it was 3,951 gross living area above grade. Johns also used 6 sales comparables, although two of the comparables in both years are listings, rather than sales. His first comparable, 3114 Hilltop was also used by Margaret Murphy, as well as Stephan Eipper, Respondent's expert. Johns also found it to be superior to the subject, and adjusted its purchase price of $480,000 to $461,180. As to 3114 Hilltop's superiority to the subject, he explained:

> It was what I considered to be one of the more comparable properties. It's a two-story home on 5.2 acres. It's quite a bit larger than the subject. Four bedroom, three bathroom home. So very, very nice home, good condition. Three-car garage, well landscaped. That's about it.[26]

As to adjustments, Johns stated:

> It was reported in the line side from the MLS and by the realtor that there was concessions granted. So -- within the financing or within the sale of the home by the seller. So we made a downward adjustment -- I made a downward adjustment.

[22] T.1 p. 74-75
[23] T. 1 p. 77-79
[24] Exhibits P-2 and P-3.
[25] T.1 p. 84
[26] T.1 p. 85-86

> I applied a downward adjustment for the size of the lot. In this instance, it was almost exactly double the subject lot. I made an upward adjustment for quality. I considered the subject to be a better quality than the comparable. I made a downward adjustment for bathroom and bedroom count. Downward adjustment for gross living area, and an upward adjustment for the difference between a three- and four-car garage. All of my adjustments were based on years of experience of primarily discussions with market participants and what I read on the line side from the MLS.[27]

Johns also testified regarding his other 5 comparables. Two of these 5 comparables, 1841 East Pickard and 3190 Saratoga Springs, were also used by Respondent's appraiser, as was the aforementioned 3114 Hilltop. 1841 E. Pickard sold for $425,000, and was adjusted by Johns to $450,000, while 3190 Saratoga Springs sold for $390,000 and was adjusted to $480,550. Johns concluded that the subject's value via the Sales Comparison Approach was $475,000.[28]

Johns also valued the subject via the Cost Approach. Rather than using actual costs, Johns relied upon Marshall Swift. Johns explained:

> Sometimes builders charge premiums for contingencies that aren't normally recognized in the marketplace for a new home build. And it's always better just to rely on the data that's readily available via public sources like Marshall and Swift.[29]

In his Cost Approach, Johns calculated the value of the subject prior to depreciation at $1,107,301 as replacement cost new. From this he deducted $15,818 physical depreciation, and a whopping $653,308 for functional obsolescence, concluding to a value of $498,200.

Johns explained the large amount of obsolescence as follows:

> Given the super adequacy of the subject in comparison to where the most reliable approach, being the sales comparison approach, leads us in determining market or true cash value, there's substantial incurable functional obsolescence at the subject property in the fact that I don't have a crystal ball, but it most likely will never reach the market value -- in comparison to the cost of the home.[30]

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[27] T.1 p. 86-87
[28] T.1 p. 97
[29] T.1 p. 99
[30] T.1 p. 99

He later stated, "[u]nfortunately for the Trucks, they built a super adequate home that they probably will be upside down on for a very long time."[31]

As to how he calculated the obsolescence, he testified:

> It's simple math. Basically the difference between the depreciated cost and where the market approach or sales comparison approach concludes is a percentage of what would be called incurable functional obsolescence. In other words, the market participants aren't going to recognize the cost versus the value. So it's not something that could be readily cured. Only time might cure it; but most likely, when it's 56 percent, it's not going to be cured in our lifetime.
> Q And that incurable obsolescence simply results from the market; is that correct?
> A Correct.[32]

As to the reconciliation between the Sales Comparison Approach and the Cost Approach, Johns had the following exchange with Petitioners' counsel:

> Q And you have then or conclude to an indicated value by cost approach; is that right?
> A Yes.
> Q Okay. And that number is 498,200?
> A Correct.
> Q Okay. So why don't you use that number instead of 475? [$475,000]
> A Again, given the obsolescence, I believe that the stronger approach and the most applicable approach, and in most residential appraising, is going to be the sales comparison approach. There was enough data to derive a market-driven value. And so this was more of a system of checks and balances and to determine what I already knew existed. I just didn't know how much it existed, the incurable functional obsolescence.
> Q So are you saying that that difference between the market value on the sales comparison and this cost approach value makes it less reliable?
> A I would say it makes it almost irrelevant, the cost approach.
> Q And I think you've testified to this earlier. Is that because of the -- the principle of substitution?
> A Yes.
> Q That's -- which is what?
> A The crux of residential appraising and the premise behind the sales comparison approach.
> Q That somebody will just go get a different house?
> A Correct.[33]

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[31] T.1 p. 104
[32] T.1 p. 100
[33] T.1 p. 101-102

For tax year 2015, Johns used the same comparables and came up with the same value as he did in 2014 of $475,000. In support of this conclusion he stated that "[t]here wasn't a notable, discernable increase in overall market value and marketability of properties in the Mt. Pleasant market."[34] He also testified that he did not come across any houses that had sold for over $500,000 within the previous five years. [35]

RESPONDENT'S CONTENTIONS

The values on the tax roll are as follows:

Year	TCV	SEV	TV
2014	$909,600	$454,800	$454,800
2015	$820,000	$410,000	$410,000

Respondent contends that the subject's true cash value should be calculated both upon a Sales Comparison Approach and a Cost approach, per its appraisal performed by Stephen Eipper. Its contentions as to True Cash Value, State Equalized Value and Taxable Value are:

Year	TCV	SEV	TV
2014	$820,000	$410,000	$410,000
2015	$820,000	$410,000	$410,000

RESPONDENT'S ADMITTED EXHIBITS

R-1 Appraisals of Stephen J. Eipper for tax years 2014 and 2015

R-2 City of Mt. Pleasant Record Cards for 2014 and 2105

R-3 Petitioner's Answers to Respondent's First Discovery Request

R-4 Mick Straus Construction LLC Proposal for 1042 Watson Rd.

R-5 Auto-Owners Insurance policy for the subject

R-6 City of Mt. Pleasant Building Permit records for 1042 Watson Rd.

R-7 City of Mt. Pleasant Building Permit records for 1108 Watson Rd.

[34] T.1 p. 103
[35] T.1 p. 103

R-8 Photographs and Sketch of 1108 Watson

R-13 Isabella County Equalization list of sales greater than $500,000 from 1/1/2005 to 12/31/2015

R-14 Assessment records for selected properties in Union Twp., MI

RESPONDENT'S WITNESSES

Stephen Eipper

The first of Respondent's two witnesses was Stephen Eipper who holds a Bachelor's Degree from Michigan State University in Business, a brokerage license (formerly), a builder's license, certified residential appraisal license, and a SRA designation from the Appraisal Institute. He prepared 12 appraisals for property tax purposes, 8 for the property owner and 4 for the taxing unit. In 2015, his company prepared 413 appraisals, 63 of which were in the Mt. Pleasant area.[36] Eipper was held to be an expert in appraising by the Tribunal.

Eipper gave a lengthy description of the subject's features:

> It's a 3,600 square foot, one-story, call it executive ranch just meaning that it's a very high quality home. It's on a 2.2 acre parcel. There's been a -- there's a side parcel that's been included in prior testimony that I -- my understanding is not part of that. So that's where the 2.2 acres comes from. It has a full walk-out basement that's completely finished to the same degree as the first level. Three bedroom, two and a half bath on the first level, a bedroom, one and a half bath on the bottom level in the basement. It's a four-car finished, attached garage. Extensive landscaping. It's -- it's a very, very nice house.[37]

Eipper next elaborated on the photographs in his appraisal:

> It's 100 percent brick exterior. The second view is the rear view from the backyard. The next, the side view with the garage side of the house. Then the other side, which shows the walk-out basement. This is another. Next is the landscape. That shows some of the landscaping in front of the house. Then it shows the stamped concrete walk-out patio. Then the garage entrance. Interior of the garage showing the finished degree of the garage. The second garage photo is a separate -- the fourth-car garage, which I believe is 30 feet by 16. Then the next one is a stamped, raised walk-out from the living room patio. Again, I just made another photo of the -- the custom stamped patio. Very nice. The driveway. Landscape. And there is actually some stamped concrete in the driveway. There's

[36] T.1 p. 138-140
[37] T.1 p. 142

> very nice extensive I – I don't think they missed a plant. There's extensive landscaping, it's very, very attractive. Has a wooded view behind the house. There is the drainage ditch creek that borders the north side of the house. The foyer front entrance, the front living room, great room. The fireplace. There's a recessed tray ceiling, custom ceiling in the living room. Kitchen, granite countertops throughout the house. Dining area, and there's a den office right in the front door. Master bedroom. Master bathroom. Custom walk-in closets throughout. And bedroom, there's another bedroom. Jack and Jill bathroom is where they have a common shower area, then each side of that has bathroom and a toilet. Has two fixtures. So basically it's a bath and a half. I labeled it as one bathroom, as did the other appraisers. Again, custom closet, laundry room. There's a half bath just inside the garage. A mud room entrance off the garage. The basement, the next photo shows the basement. Custom tile work, large living area. There's a daylight bedroom. There's a full bathroom with custom tile, really custom tile. It's very nice. There's another half bathroom in the basement. There's a theater room with a custom wet bar area. Then there's more custom closets. The hockey rink, as stated before, is square footage with a custom plastic floor. Then other living areas of the bay -- and storage areas of the basement.[38]

Eipper prepared an analysis under the Sales Comparison Approach, and concluded to a value via that approach of $682,000 for 2014[39] and $690,000 for 2015.[40] For valuing the property in 2014, he used six comparables located in the Mt. Pleasant area. He testified that he drove by these comparables and had previously inspected 3114 Hilltop. For tax year 2015 he used six different comparables. The first three comparables he used for that year were located in Midland. He testified that he did not drive by those comparables.[41] Rather, he relied totally upon a realtor he knew in Midland, who gave him comparables for 2015 only. He relied upon the Multi Listing Service for a description of those comparables' amenities and condition.[42] On direct examination, Eipper testified as follows for his use of Midland for comparables:

> Well, I used -- because this was different with the Midland comps, I kind of looked at the quality, the age, and adjustments. And Midland, I knew that would be an issue; but I didn't see Midland as a -- I would call it a superior market, but it's close enough to Mt. Pleasant to where it's commutable, and -- and the homes are more similar. These comps are most similar to the Trucks' in quality. They're larger, and I gave – I brought them down in value because of that. But they -- you

[38] T.1 p. 143-144
[39] T.1 p. 147
[40] T.1 p. 173
[41] T.1 p. 148
[42] T.1 p. 184-187

> know, they're -- I'd say the -- consider them all about equal. . . . You know there's two of them at 700,000, and then one at 544, the first three.[43]

On cross, Eipper stated that he does not appraise properties in Midland.[44] He admitted making a statement in his report that there were no comparable sales for tax year 2014 in Midland, but in fact, relied totally upon an unnamed realtor for this information.[45] Per Petitioner's Exhibit P-4, he did not discover a sale of a Midland home built in 2012 with comparable square footage that sold in 2013 for $595,000.[46]

Eipper was unable to bracket his sales, and admitted that he made "extreme" adjustments. He testified regarding situations where adjustments must be extreme, and bracketing is unavailable:

> The adjustments were extreme, again, because there's not a lot of houses like the Trucks house. . . . And I had to adjust for that.
> Q Can you give us some examples of similar appraisal projects where you might have to make these kind of adjustments?
> A Really extreme. Again, if it's a complex appraisal, we do lakefront, Lake Michigan properties. Sometimes the amount of glass work in the windows. I've appraised a house that was all glass, and there are no comps for that. And so we -- again, we -- it falls into the category of a complex assignment, which means that, if something is not typical -- and you have to be careful because, if we're typical in the normal market of $200,000, that's one thing. Typical in the $750,000 market is different. It's a different buyer. We have to find out who the buyer is, and that's who's going to buy this house. And so we just have to look at the adjustments and make sure that they're warranted or that we feel they're warranted.[47]

As to how he arrived at his adjustments, he testified that they were derived from his experience as a builder, and his experience (presumably) as an appraiser.[48] Eipper's gross adjustments for 2014 ranged from 65% to 135.8%, and for 2015, from 44.7% to 131.9%.

Regarding the sales comparables from greater Mt. Pleasant, three of them were also used by Jack Johns, and one sale, 3114 Hilltop was used by all three appraisers. As to 3114 Hilltop,

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[43] T.1 p. 173-174
[44] T.1 p. 184
[45] T.1 p. 206-208
[46] T.1 p. 209-210
[47] T.1 p. 158-159
[48] T.1 p. 150

Eipper had gross adjustments of 65%, with 10% net positive adjustments and determined the adjusted sales price to be $528,155. While this comparable is on a lot double the size, and has 4,600 square feet above grade, Eipper positively adjusted this comparable by $75,000 for its condition being only good, compared to the subject's excellent condition. He also adjusted it by +$50,000 for landscaping. He admitted on cross that his negative adjustment of $75 per square foot of gross living area was inconsistent with his positive adjustment of $150 per square foot for his smaller comparables.[49] Similarly, he admitted to an inconsistency between his upward and downward adjustments for lot size with several comparables, although he characterized it as "inconsistency but not inaccuracy."[50]

The second comparable Eipper and Johns had in common was 3190 Saratoga Springs. He adjusted this comparable by 83.8% gross and determined its adjusted sales price was $689,550. As with 3114 Hilltop, and in fact, with every comparable used in the Mt. Pleasant area, Johns adjusted from good to excellent condition by at least $75,000. Even in Midland, where all three of his comparables were rated Excellent in terms of condition, he adjusted two of this comparables by +$30,000. Again, he adjusted this comparable +$50,000 for landscaping, and adjusted it by +$84,150 for its smaller square footage.

The third comparable Eipper and Johns shared is 1841 E. Pickard Ct. Eipper adjusted this comparable by 78.2% gross and determined its adjusted sales price to be $620,450. While rating its condition as good, Eipper adjusted its condition by +$110,000. Again, there was a +$50,000 adjustment for landscaping.

Eipper also performed a cost approach, which he relied upon in part, also using Marshall Swift, rather than actual costs. While admitting that the subject would not sell for the cost spent to build it, he denied that there was any super adequacy. On Redirect, Eipper testified that the presence of the new construction at 1108 Watson is evidence that the subject is not super adequate, or as his Respondent's counsel put it, "not a white elephant."[51] His testimony on this superadequacy is as follows:

> Q Are there any features of the Trucks house that stand out to you as being undesirable to a home buyer?

[49] T.1 p. 219-220
[50] T.1 p. 221-224
[51] T.1 p. 249

> A No. The term "super adequacy" has been thrown around, and I disagree from the curable or uncurable [sic]. That usually -- the general market, if it's acceptable or not, when you're dealing with a $750,000 to a million dollar house, like I said, it's different things, different -- different buyers. Everything about the Trucks house is done first class, it's very nice. The hockey rink, now, if he had a formal rink like the rumors in the basement, that would have been a super -- I mean that would not have any value. A pool is sometimes -- in Michigan is a super adequacy because not everybody wants one. And, if it takes 20 or 30,000 for a pool, it's not going to have that kind of value. You could say that he did overspend on the house. And so that's going to be a judgment call from the buyer because there's not a lot of buyers in the million-dollar range. It would take longer to sell. It's definitely high quality. It would sit on the market a long time. But, if he wanted to sell it, you know, I think the price would have to come down below a million dollars. So that's why we came in...
> Q Okay. So did you adjust your cost conclusion for any obsolescences?
> A No.[52]

Under the Cost Approach, he determined the subject's value to be $995,963 for 2014 and 2015.

Eipper concluded to a value of $820,000 for both years. He stated the following on Direct concerning his reconciliation between the Sales Comparison and Cost approaches:

> Well, the sales comparison approach I actually gave less consideration than the cost approach based on the factors that I told you. Now, I do think that they overspent on the house. I've seen Italian slate roofs where people spend a hundred thousand on a roof, and they think they can get that back, and that's not the case. But there is data between both appraisals that show, for quality, the comps I used in the first, 2013, were of lesser quality, exterior or interior, than the subject. So I gave the -- my sales comparison less consideration than I did the cost approach. That's how I came in, about in the middle, between the two at 820 [Thousand].
> Q And how did you determine exactly the split between the --
> A I didn't. There's no exact formula. I think that I -- you know, I always start with let's look in the middle and think, well, you know, again, there's no depreciation. The weight of the cost approach in this case cannot be questioned because, again, the variables of costs are the depreciation. If there's a large depreciation number, then it could be anything. The actual cost numbers, unfortunately, sometimes they can be made up. And so -- but we have several sources of similar numbers. And then the site size, the site value has to be relevant and realistic. And we use the actual site value in our cost approach. If it was worth more, then that would raise the value of the cost approach. So I gave my cost approach more consideration than the sales comparison in 2013.

[52] T.1 p. 162-163

David Rowley

Respondent's second and final witness was its assessor, David Rowley. Rowley testified that he has been Mt. Pleasant's assessor for just under 20 years. Prior to that, he was a township assessor, and prior to that, a real estate agent for Century 21. He holds a bachelor's degree from Central Michigan University, and is currently enrolled in Central's MPA program. As an assessor, he has reached the rank of Level 3.[53] The Tribunal found him to be an expert in assessing.

Rowley testified that Mt. Pleasant is a stable market, and was not severely affected by the 2008 recession. He stated, "it's not a great market, certainly; but it's – it's a relatively stable market overall; and held its values during our economic downturn."[54]

As to whether or not there has ever been a sale of residential property in Isabella County for greater than $500,000, he provided a list from Isabella Equalization, showing 57 examples.[55] However, that list failed to identify the amount of land sold, or whether or not there were improvements built on the land, or the nature of those improvements.[56] He did testify, however, that there was a property on Meadowbrook Rd. in Union Twp., just outside the city limits that sold for $1.3 Million in 2007.[57] Exhibit R-14 is a collection of Union Twp. record cards. The first record shows that a property, located at 500 Meadowbrook Rd. sold for $1,546,371 on June 27, 2007. R-14 also shows three other residential properties assessed in Union Township for greater than $500,000.

Rowley was asked about the purchase of 1108 Watson, and testified that the current owner purchased a lot with a 3,000 square foot home from the estate of Dr. Dean, Rowley's family physician on Pill Hill, for $250,000, which the purchaser demolished to build a new home. Rowley stated that the Dean home was "a little dated, but very well maintained."[58]

When asked whether or not the subject was overbuilt, Rowley gave the following response:

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[53] T.2 p. 5-6
[54] T.2 p. 110-11
[55] Exhibit R-13
[56] T.2 p. 57-59
[57] T.2 p. 13
[58] T. 37-39

> Okay. You heard Mr. Johns testify that he made a 56 percent reduction on the basis of functional obsolescence for the subject property based on it being overbuilt. Do you agree with that conclusion?
> A No, I do not.
> Q And why not?
> A I do not believe the property is overbuilt for the Mt. Pleasant market. Just because you have a property that the Petitioner claims is in excess of his neighbor doesn't mean that the subject property is overvalued. Further, this is brand-new construction.
> Q And is there anything about the neighborhood that you think supports your disagreement with Mr. -- Mr. Johns?
> A Yes. The nature of the neighborhood, the fact that this historically was a -- a professional neighborhood. The fact of the -- the Harkins property being constructed right next door. Also, the location that Mr. Trucks himself selected was very similar to the re -- rationale that Mr. Harkin selected the location he did. They wanted to be close to city amenities, they wanted to be in town. As I recall, as I said, both of them -- both of the owners were former township residents, they wanted to be into the -- into the walkability, if you will, of the City of Mt. Pleasant. Had either one of these properties been built in what we consider the west town part of the city, there would be much more validity to an overbuild argument. In this particular location, I would respectfully disagree with the appraiser.
> Q So, in your view, as the City Assessor, you think that this property would -- would command a sale price north of $820,000?
> A Yes.[59]

On cross, Rowley admitted that no properties have sold for more than $500,000 in the city limits in the last 10 years.[60]

Rowley made the following observation concerning the cost approach used by assessors and the market approach used by appraisers:

> Well, the appraisers have argued for years that the cost approach is not reliable because of measuring the depreciation. That the only value that matters is the sale comparison approach. While assessors recognize the sale comparison approach, it has merit, it has weight. In a brand-new construction, the cost model should have more weight. Simply for that, there is no depreciation in it. It's brand new. You don't have to guess as to what the depreciation should be. And, when you look at the adjustments the appraisers are making in some cases, especially with five, ten, fifteen, twenty, thirty-year-old houses, you are doing, in the -- in the appraisal model, what they accused the assessors of doing in the cost model. That they're

[59] T.2 p. 46-47
[60] T.2 p. 68

> saying, assessors, you can't measure depreciation; so, therefore, your cost model is unreliable.
>
> Appraisers, you are making adjustments in your sales comparison model of older houses, however many years old, compared to brand-new construction and then trying to say that those adjustments trump the cost approach in brand-new construction. Which this is a classic assessor/appraiser argument that has gone on forever and, with all due respect to the Tribunal, will probably not settle it going forward. Because there's -- it's a debate that is -- is pretty much universal.[61]

FINDINGS OF FACT

1. The subject is a residence located at 1042 Watson in Isabella County, with a Principal Residence Exemption of 100%.
2. The subject is a custom built, Class A quality executive ranch, sitting on 2.58 acres of land, completed in 2013, with a four car attached garage, finished walk-out basement with the same finishes as the first floor living area, and a daylight bedroom, extensive landscaping and sprinkling system.
3. Petitioners purchased the lot for $50,000.
4. Petitioners signed a contract with Mick Straus Construction to build the home on the subject property for $701,925.
5. Petitioners spent $1,114,359 on improvements in 2012 and 2013, spending an additional $376,482 over the contract price.
6. Per each witness, no residence has sold within the Mt. Pleasant City Limits for over $500,000 in the last 10 years.
7. Per each witness, the subject is the only Class A property located within Mt. Pleasant.
8. Four different witnesses measured the subject, and each found a different square footage of gross living area.
9. David Rowley assessor determined the gross living area to be 3,686 square feet; Stephen Eipper found it to be 3600 square feet, Margaret Murphy found it to be 3,583 and Jack Johns found it to be 3,951.
10. Petitioners hired two appraisers to determine the subject’s true cash value.

[61] T.2 p. 103-104

11. Margaret Murphy, who has lived in Mt. Pleasant since 1972 and been an appraiser since 1990 used the sales comparison approach only, and determined the true cash value to be $425,000.
12. Murphy admitted that she under adjusted her sales comparables to stay within industry guidelines.
13. Petitioners' second appraiser, Jack Johns testified that only 20% of the appraisals he performs are residential.
14. Johns valued the subject using the sales comparison approach, using the same 4 sales and 2 listings for 2014 and 2015.
15. Three of Johns' sales comparables were also used by Respondent's appraiser.
16. Johns also performed a cost approach, and used his sales approach to determine that the subject has 56% superadequacy.
17. Johns determined the subject property to be worth $475,000 for both years.
18. Respondent relied upon two appraisals performed by Stephen Eipper.
19. For 2014, Eipper used 6 sales, with gross adjustments ranging from 65% to 135.8%, and for 2015, another 6 sales with gross adjustments ranging from 44.7% to 131.9%.
20. For 2015, Eipper used three sales from Midland, Michigan, and three from greater Mt. Pleasant.
21. Eipper also performed a cost approach, with zero functional obsolescence for superadequacy.
22. In his reconciliation for each year, Eipper picked a number half way between his conclusion via the Sales Comparison Approach and the Cost Approach, and valued the property at $820,000 for both years.
23. David Rowley testified and provided evidence that the residence located at 500 E. Meadowbrook in neighboring Union Township sold for over $1.5 million.

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.[62]

[62] 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. . . .[63]

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.[64]

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."[65]

"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."[66] The Tribunal is not bound to accept either of the parties' theories of valuation.[67] "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."[68] 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."[69]

A proceeding before the Tax Tribunal is original, independent, and de novo.[70] The Tribunal's factual findings must be supported "by competent, material, and substantial evidence."[71] "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[72]

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[63] Const 1963, art 9, sec 3.
[64] MCL 211.27(1).
[65] *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).
[66] *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).
[67] *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).
[68] *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).
[69] *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).
[70] MCL 205.735a(2).
[71] *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).
[72] *Jones & Laughlin Steel Corp, supra* at 352-353.

"The petitioner has the burden of proof in establishing the true cash value of the property."[73] "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."[74] 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."[75]

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.[76] "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading."[77] 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.[78]

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.[79]

This appeal involves the "usual selling price" of an unusual home for the area; a brand new custom built Class A quality home. Four different valuation experts testified as to their opinion of what the usual selling price would be. Two of four experts used both the cost and sales approach, while one expert, (Margaret Murphy) used only sales, and another, (David Rowley) used only cost.

Petitioner submitted two valuations. The first was by local appraiser Margaret Murphy, who valued the property using only the sales comparison approach, despite the fact that the subject was brand new. Murphy completely ignored this approach, and found it to be irrelevant.

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[73] MCL 205.737(3).
[74] *Jones & Laughlin Steel Corp, supra* at 354-355.
[75] MCL 205.737(3).
[76] *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).
[77] *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).
[78] *Antisdale, supra* at 277.
[79] See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

She used 6 comparables, 3 from inside Mt. Pleasant, and three from the surrounding area. Her first comparable at 1820 Woods Way for $255,000 was a mere 2,628 square feet (compared to approximately 3,600 square feet for the subject) and was rated C4 as to condition, as opposed to the subject's C-1 condition and was a REO sale. Despite the condition of sale and the obvious lack of similarity in size, and condition, Murphy only adjusted it by 21%. Her second comparable at 511 Russell which sold for $270,000 was also inferior in condition at C3 and size at 3,000 square feet. Moreover, its age is 42 years, compared to the subject's brand new construction, completed in 2013. Yet, this sale was only adjusted by 13% gross. Similarly, her 3rd comparable 1112 Kent, which sold for $282,000 was significantly older at 47 years, in inferior condition at C3 and considerably smaller at 2,834 square feet. Yet, it was only adjusted 20% gross. Murphy did indicate in her appraisal that her first three comparables, while in the city limits, were not the best available.

Her best available were 2092 Cobblestone, 2121 S Amber and 3114 Hilltop. The Cobblestone and S. Amber comparables were both significantly smaller than the subject, at 2,150 square feet and 1,981 square feet respectively. Yet, these two comparables were only adjusted 22% gross and 20% gross. The only comparable she used that appears to be in any way a substitute for the subject is Comparable 6 at 3114 Hilltop, which was also used by Johns and Eipper. This property was on a bigger lot, and was a larger property. She rated its condition at C2 and found it a superior comparable to the subject, adjusting its $480,000 selling price to $463,100. There was no mention in her sales grid of the subject's attached 4 car garage or whether any of her comparables had a garage.

In concluding to her value of $425,000, she relied most heavily on the S. Amber comparable, despite the fact that in was slightly more than half the size of the subject. During her testimony, she admitted that she under-adjusted her comparables to meet an industry standard. The Tribunal finds this flaw to be fatal to her analysis. Despite indications to the contrary in her appraisal, she admitted under cross that she performed no paired sales analysis for any item she adjusted for. Her square footage adjustments, while possibly appropriate for a tract home, have no relationship to actual cost per square foot for a custom home built to the subject's standards. Similarly, her age adjustment of $100 per year appears to be completely arbitrary, as

does her $1,000 per degree of condition. Accordingly, the Tribunal places no weight on her valuation.

The Tribunal does give some weight to her observation that in Mt. Pleasant, "anyone wants to do that price range, [over $500,000] they generally build."[80] The testimony of Mr. Trucks, as well as the testimony of Rowley regarding the parcel next door where a 3,000 square foot home was demolished in favor of a custom home lends credence to Murphy's observation, and raises the issue regarding superadequacy. While Murphy's report does not address this issue directly, Jack Johns' report tackles this issue head on, which will be discussed below.

Jack Johns testified that he is predominantly a commercial appraiser, (and commercial realtor for Signature) and although based in Lansing, is familiar with Mt. Pleasant. Johns performed both a sales comparison approach and a cost approach. He used the same 4 sales and two listings to determine a value for the subject for 2014 and 2015.[81] The use of the same comparables for both years in the present case is bolstered by the testimony of Murphy as to the lack of comparables in the city; by the use of comparables 25 miles away in Midland by Eipper, as well as by the testimony of Johns, Eipper and Rowley that the market is stable, and the lack of any time adjustment by any appraiser.

Three of Johns' sales were also used by Stephen Eipper. The commonality of these sales between these two appraisers suggests that these are the best tools under the market approach to determine a value. The large difference in each appraiser's conclusions under this approach is accounted for by the large differences in adjustments.

Johns' first comparable at 3114 Hilltop sold for $480,000. Johns adjusted this comparable by+$25,000 for condition, and -$32,500 for its 4,600 square feet, and concludes to an adjusted price of $461,180 for both years. Eipper used this comparable in valuing the property in 2014 as his comparable 4. His +$75,000 adjustment for condition more than overcame his negative land size adjustment of $45,000 and his negative square foot adjustment of $74,925, to conclude to an adjusted price of $528,155.

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[80] T.1 p. 43

[81] Johns was criticized by Respondent for using sales that occurred after the valuation date. However, the Michigan Court of Appeals specifically held that sales after the valuation date are relevant in determining true cash value. *Jones & Laughlin*, cited above, p. 353-354.

The second comparable the two appraisers have in common is 1841 E. Pickard Ct, which sold for $425,000. Johns' gross adjustments were a relatively modest 19.2%, and he concluded to an adjusted sales price of $450,400 for both 2014 and 2015. Eipper used this same comparable in his 2015 valuation, and with 78.2% gross adjustments, adjusted the sales price to $620,450. Eipper's condition adjustment for this comparable from good to excellent was +$110,000, while the same adjustment for 3114 Hilltop was a mere +$75,000.

The final common comparable was 3190 Saratoga Springs, which sold for $390,000. After 28.3% gross adjustments, Johns determined the adjusted selling price to be $480,550 for 2014 and 2015. Eipper used this same comparable as part of his 2014 analysis, and with 83.8% gross adjustments, determined that its adjusted sales price was $689,500.

Eipper's adjustments were both large, and inconsistent. For 2014, Eipper used six sales, with gross adjustments ranging from 65% to 135.8%, and for 2015, six sales from 44.7% to 131.9%. Unlike Margaret Murphy, he cannot be criticized for adjusting to an industry standard. As to inconsistency, he admitted that his downward and upward adjustments for gross living area were inconsistent, as were his adjustments for lot size. Even in Midland, where all three of his comparables were rated Excellent in terms of quality, he adjusted two of these comparables by +$30,000. At the same time, he made no quality of construction adjustment for his Mt. Pleasant comparables, despite rating them as Good, compared to the subject's Excellent. Moreover, his adjustment was much larger for good versus excellent condition for 3114 Hilltop, than for his other 8 comparables rated "Good."

Johns' adjustments, while far more modest, do not necessarily reflect the actual market differences between the subject and the comparables. For instance, his adjustments based upon the square footage of the gross living area may be off in that his measurements of the subject calculate approximately 350 feet more area, than the area determined and measured by the other three valuation witnesses. As to the amount of the adjustments, Johns also, in the end, relied upon his experience.

The Tribunal is unable to determine which appraiser's adjustments of these common comparables is most accurate. Both relied upon their "experience," as well as a cost basis for additional square footage or higher quality. While Eipper may in fact be correct in his cost estimates for determining larger square footage or higher quality, there is no indication that the

market will pay for the cost differential. It is noteworthy that none of the actual sales prices or asking prices in the Mt. Pleasant area sold for $500,000 or more.

Eipper also relied upon three comparable sales of "Excellent condition" properties in Midland. The Tribunal is not convinced that any of these sales reflect the market for the subject in Mt. Pleasant. While Midland is within commuting distance of Mt. Pleasant, it is clear that each town has its own demographics, household income, cultural institutions and jobs base. Further, Eipper admitted on cross that he did not drive by any of the Midland comparables, and was given a list of such sales from an unnamed Midland broker, who failed to give him any comparables for 2014. Petitioners were able to show through Exhibit P-4 that a new home in Midland in excellent condition, and comparable square footage , selling for $595,000 was never considered by Eipper, suggesting that his search for Midland comparables at best, was not thoroughly researched, and at worst, was skewed.

While the sales comparison approach is usually the approach more heavily relied upon in valuing residential properties, this particular case shows the limitations of such an approach, when a property is super adequate. In both appraiser's sales approaches, there is a high degree of judgment in the form of adjustments replacing actual data as to what the subject property should sell for. Accordingly, the Tribunal finds that the sales comparables in Mt. Pleasant should be recognized as a floor to the market.

Fortunately, both Johns and Eipper also provided a cost approach. In the present case, where a property is brand new, and the land value is known, the cost approach is recognized as a valid method of determining true cash value. As noted in the *Appraisal of Real Estate*:

> The cost approach is most applicable in valuing new or proposed construction when the improvements represent the highest and best use of the land as though vacant and the land value is well supported.[82]

The problem with this approach in the present case is the existence of super adequacy. *The Dictionary of Real Estate Appraisal* defines superadequacy as "[a]n excess in the capacity or quality of a structure or structural components; determined by market standards."[83]
Johns acknowledged and responded to superadequacy in both of his reports stating as follows:

[82] Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p. 566
[83] Appraisal Institute, *The Dictionary of Real Estate Appraisal (*Chicago: Appraisal Institute, 5th ed., 2010), p. 190

> The subject property is considered to be of excellent quality construction. However, it is considered to be over-built for the market and super adequate in quality of construction. As such, the subject suffers from incurable obsolescence [which] can be quantified by the difference between what the subject property cost new, less physical depreciation, and what the comparable sales data indicates the market value of the subject to be, as of the effective dates. In the case of the subject, the incurable functional obsolescence is approximately 56%. As such, this amount of incurable functional obsolescence has been applied to the value of the subject property, via the cost approach.[84]

Johns testified that this level of superadequacy was in fact, a plug-in number, based completely on his market approach:

> It's simple math. Basically the difference between the depreciated cost and where the market approach or sales comparison approach concludes is a percentage of what would be called incurable functional obsolescence.[85]

Rather than reconciling two different approaches, Johns relied solely upon his sales comparison approach, and using that data, painted his cost approach to match his sales approach.

In contrast, Stephen Eipper had no factor in his cost approach to account for super-adequacy. Rather, he picked a number somewhere half way between his heavily adjusted sales comparable approach, and his cost approach. As to the existence of superadequacy, Eipper testified:

> The term "super adequacy" has been thrown around, and I disagree from the curable or uncurable. [sic]. That usually -- the general market, if it's acceptable or not, when you're dealing with a $750,000 to a million dollar house, like I said, it's different things, different -- different buyers.[86]

In explaining his reconciliation between the cost and market approach, Eipper stated:

> Well, the sales comparison approach I actually gave less consideration than the cost approach based on the factors that I told you. Now, I do think that they overspent on the house. I've seen Italian slate roofs where people spend a hundred thousand on a roof, and they think they can get that back, and that's not the case. But there is data between both appraisals that show, for quality, the comps I used in the first, 2013, were of lesser quality, exterior or interior, than the subject. So I gave the -- my sales comparison less consideration than I did the cost approach. That's how I came in, about in the middle, between the two at 820.[87]

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[84] Exhibits P-2, p. 004, P-3 p. 004.
[85] T.1 p. 100
[86] T.1 p. 162
[87] T,1 p. 168

Neither Johns, nor Eipper made a serious attempt to follow recognized appraisal practice to account for the subject's superior size and condition compared to the market. Johns acknowledged the condition, and left it to his sales comparison approach to "plug in" a factor for superadequacy, which in effect rendered his cost approach meaningless, as this adjustment was fully dependent upon his market approach. Eipper refused to plug in a factor at all, instead tempering his cost approach by picking a number in the middle in his reconciliation with his sales approach, which already contained very large adjustments. While acknowledging that Petitioners "overpaid" for their home compared to the market, Eipper did not consider the subject's unique to Mt. Pleasant "Excellent" condition rating, or its rarified size as super adequate.

The Appraisal of Real Estate lists the following as two of its three examples of superadequacy:

- Excess ceiling height
- High-end finish in a Class C office building.[88]

The Appraisal of Real Estate goes on to advise that the amount of superadequacy should be removed from the replacement cost.[89]

The Tribunal finds that the subject, with its basement finished to the same degree as the first floor; with its 4-car garage, custom high-end finishes in every room, custom ceilings in every room, custom floors, custom stamped patio and drive-way, extensive landscaping and sprinkling system, suffers from superadequacy in the Mt. Pleasant market. Unless CMU brings a new football coach into town, it is unclear what buyer will have the requisite income to afford these amenities. The Tribunal finds that the differential paid by Petitioners of $376,500 (rounded), taken from Exhibit R-4 is the best evidence offered to quantify the amount of superadequacy. Mr. Trucks testified that he had a written proposal from a contractor he trusted in the amount of $702,000 (rounded).[90] In the interest of marital bliss, Trucks allowed the cost to significantly billow, reaching the level of $1,114,359. He further testified that he stopped

[88] Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p. 630-631
[89] Id., p. 631
[90] Exhibit R-4

keeping track of the overruns until the prosecution of this appeal. The additional amount over contract price expended appears to be for the most part, to reflect the personal taste and preferences of Mrs. Trucks.

As additional evidence supporting the overspending as superadequacy, the Tribunal notes Respondent's Exhibit R-7, where the neighbor at 1108 Watson Rd. pulled a permit for construction of a $675,000 home, which is within 4% of the amount Petitioners originally contracted. Accordingly, the Tribunal will deduct $376,500 from the replacement cost approach to determine true cash value.

Both Johns as well as Eipper and David Rowley, the assessor performed cost approaches. (Rowley testified that he deferred to Eipper as to value, since he had more information). Both Johns and Eipper used Marshall Swift for replacement cost, rather than actual costs. Johns, (prior to depreciation, or applying his plug in for superadequacy determined the estimate of cost – new to be $1,107,301. Eipper determined his indicated value to be $995,963. Unlike Johns, he fails to itemize the costs, or to show how he calculated depreciation.

While Johns, Eipper and Rowley all relied upon Marshall Swift for their replacement cost, a cost per square foot is problematic without the proper square footage. All four valuation witnesses calculated different square footage, and each provided sketches showing their calculations. While Johns' sketch is the most detailed, showing additional stair-shaped cut-outs in living areas, he nonetheless arrived at the largest square footage at 3,951. Murphy measuring the exterior of the home and subtracting the garage came up with a square footage of 3,583. Eipper measured the interior and came up with 3,601. Rowley, who had the actual plans on file, determined that the square footage was 3,686. Because the square footage could not be accurately determined, the subject's replacement costs via Marshall Swift, or using the Assessor's manual cannot be accurately verified. While Marshall Swift is useful as a guide, the accuracy of these costs at this time in this location is less sharp than the actual costs. Rowley depended upon an Economic Condition Factor and County Multiplier to modify the costs found in the assessor's manual to approximate actual costs. Johns and Eipper used an updated version of Marshall Swift, by region.

Unlike the numbers in Marshall Swift, the actual cost originally contracted for at $702,000 can be verified by the Tribunal. Further, Trucks testified that he trusted Mick Strauss,

and that no structural changes were made in the plans to increase the cost. Accordingly, the Tribunal finds that in this case, where the subject was completed in 2013, actual costs provide a superior basis over Marshall Swift to determine the subject's true cash value.

Adding to the cost of improvements, the land cost of $50,000 renders a true cash value of $752,000 for 2014. The Tribunal declines to add additional costs for landscaping, as it finds that this cost is unlikely to be recouped in resale. Both Johns and Eipper determined the true cash value be the same value for 2014 and 2015, and neither adjusted their comparables for time. Rowley's testimony also indicated the values for this area are stable. Therefore, the Tribunal finds $752,000 to also be the true cash value for 2015.

While neither party could point to a recent sale above $500,000 in the market area, Rowley was able to show that such sales have happened in the past. Specifically, Exhibit P-14 shows a 2007 sale at 500 E. Meadowbrook in nearby Union Township to have sold for $1,546,371 in 2007. The fact that another high-end property is being built next door in the traditionally affluent "Pill Hill" neighborhood suggests that a sale for $752,000, while exceedingly rare, is not out of the question. Unlike Murphy and Johns, the added amenities of the subject are given some value, albeit not anywhere near dollar per dollar of their cost. Unlike Eipper, the true cash value calculated is based more upon specific data, than "judgment" found in his very large unbracketed sales adjustments, and his reconciliation between the two approaches.

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 year(s) 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, and prior to July 1, 2012, at the rate of 1.09%; and (iv) after June 30, 2012, through December 31, 2015, 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 Tribunal's final decision in this case, you may either file a motion for reconsideration with the Tribunal or a claim of appeal directly to the Michigan Court of Appeals ("MCOA").

A motion for reconsideration with the Tribunal must be filed, by mail or personal service, with the $50.00 filing fee, within 21 days from the date of entry of this final decision.[91] A copy of a party's motion for reconsideration must be sent by mail or electronic service, if agreed upon by the parties, to the opposing party and proof must be submitted to the Tribunal that the motion

[91] See TTR 257 and TTR 217.

for reconsideration was served on the opposing party.[92] However, unless otherwise provided by the Tribunal, no response to the motion may be filed, and there is no oral argument.[93]

A claim of appeal to the MCOA must be filed, with the appropriate entry fee, unless waived, within 21 days from the date of entry of this final decision.[94] If a claim of appeal is filed with the MCOA, the party filing such claim must also file a copy of that claim, or application for leave to appeal, with the Tribunal, along with the $100.00 fee for the certification of the record on appeal.[95]

By David B. Marmon

Entered: March 11, 2016

[92] See TTR 225.
[93] See TTR 257.
[94] See MCR 7.204.
[95] See TTR 213 and TTR 217.