

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Deerfield Township,
Petitioner,

MTT Docket No. 345838

v

County of Livingston,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Preliminary Statement of Facts

Petitioner, Deerfield Township appeals from the 2008 intra-county equalization of residential real property as adopted by the Livingston County Board of Commissioners on April 15, 2008.

The assessed value, as adopted by the board of review for the residential class is:

\$187,068,328

Deerfield Township believes that the inclusion of nine residential sales would be a **54.42%** ratio of assessed to true cash value, which would result in a negative factor of **.9188**.

Respondent Livingston County determined that Deerfield Township's residential class of property was at a **45.93%** ratio of assessed to true cash value. This resulted in a **1.08855** factor for the residential property. The assessed value as adopted by Livingston County for the residential class is:

\$203,633,509

Petitioner was represented at hearing by Michael P. Hatty, attorney and John S. Lobur, attorney.

Respondent was represented by Timothy M. Perrone, attorney.

Petitioner's witnesses were Diane James, CMAE I assessor, and Terrell Oetzel, MAI.

Respondent's witnesses were David Lawrence, CPA; Susan Murray, CMAE III assessor; Sue Bostwick, CMAE III assessor; and Kathy Towne, CMAE IV, Equalization Director.

Petitioner presented 17 exhibits; Respondent presented 45 exhibits. There were a total of 17 Joint exhibits. All of the exhibits were admitted with the exception of Petitioner's exhibit 8, pages 10-33¹.

The sales-ratio study for the residential class of property had 33 total sales; Livingston County excluded nine of those sales for a total of 24 sales used to determine the ratio of 45.93%, which resulted in a factor of 1.08855.

Issues

Petitioner submits that the county acted in a manner that was unfair, unjust, inequitable and discriminatory when nine sales were excluded from its residential sales study.

Respondent states that the nine sales were correctly excluded from the residential sales study based upon four issues:

1. Should sales from a lending institution be excluded from a sales-ratio study?
2. Should sales involving a relocation service be excluded from a sales-ratio study?
3. Should a land contract memorandum be excluded from a sales-ratio study?
4. Should residential sales where the sales ratio fell below 20% or exceeded 80% be excluded from the sales-ratio study as a statistical "outlier" ("80/20 rule")?

¹ This exhibit was an appraisal of 8715 Hidden Lake Road. The author of the appraisal was not a witness; therefore, it was excluded as an exhibit.

The Tribunal will discuss each of the nine sales, including testimony from Petitioner and Respondent, and set forth the Tribunal's ruling on whether the individual sale should have been excluded from the residential sales study for Deerfield Township.

Nine Sales

Sale 1 **11474 Clairmont Drive**, parcel no. 03-02-200-004, Foreclosure Sale, 74.42% Ratio.

Exhibits relating to this parcel include P-1 pp 5-6, P-3, P-17 pp 1-3, and R-21.

This is a sale from Charter One Bank to Jennifer A. Wilson and James R. Nelson for \$110,000 on March 20, 2007. Previous sales history includes the following:

Welther Robert and Jean to Charter One Bank November 15, 2006 for \$170,667;
Daniels, Richard & Mechele to Welther, Robert and Jean, October 30, 1998 and
Fulkerson, Bradley N. & Lil August 21, 1995 for \$120,400.

Petitioner's record indicates that this property has a 2,236 square foot house located on one acre. It was built in 1973 and is located across the street from Lobdell and Bennett Lakes. James testified that based on an exterior inspection in March 2008, she determined that the house and yard were kept up in good condition. P-3, p7. The Real Property Statement ("RPS") was filed by Charter One Bank and received by Deerfield Township on January 7, 2008. The RPS stated that the bank sold the property for \$110,000 with a new mortgage. The statement indicates that the property was listed for \$119,900 on February 8, 2007 and sold on March 20, 2007. The closing was 3% with \$5,000 towards well and septic replacement. This is considered real estate owned by the bank or an REO. The deed indicates that the bank owned the property on November 17, 2006.

Petitioner's witness Oetzel testified that he spoke to Laura Tomms:

She represented the buyer on this property. It had some problems and it was not winterized. There was some pipe breakage due to a boiler. The bank had fixed that up and the bank did pay some closing costs concerning this or what you might call concessions. Miss Tomms indicated there was an appraisal on the property of \$148,000, at this time, and she felt that the property sold below value. Transcript Volume I, page 125 (hereinafter Tr I, p 125).

Oetzel testified that he would not use this sale as comparable for an appraisal.

Respondent's witness Bostwick testified that when she investigated the nine sales she found that this property was in disrepair, with broken plumbing and drywall, and that the plumbing, electrical and flooring needed replacing or repairing. She testified that the assessment did not reflect what the owners actually purchased. She felt this sale should be excluded because condition was not reflected on the assessment roll.

The basis for excluding this sale from the sales study used by equalization to determine the ratio of assessed value to sale price was because it was considered a sale from a lending institution and, therefore, not reflective of an arms-length transaction. In addition, the assessment placed on the property did not reflect the condition of the property at the time of the sale.

The Tribunal finds that the condition of the property at the time of the sale was verified; however, it was subsequent to the sales-ratio study. The financing, terms of the sale and concessions were not verified. The Tribunal finds that this sale from a lending institution was appropriately excluded from the sales-ratio study.

Sale 2 **6529 Hartwood Drive**, parcel no. 03-02-202-008, Foreclosure Sale, 41.15% Ratio.

Exhibits relating to this parcel include: P-1 pp 7-8, P-4, P-17 pp 4-6 and R-19.

This is a sale from U.S. Banks NA, as Trustee c/o of Homecomings Financial LLC to Stephen Titus, for \$194,900 on January 22, 2007. Previous sales include the following:

Sophiea, Robert to Homecoming Financial Network June 16, 2006 for \$216,000;
Michigan Team Investment Company to Sophiea, Robert October 24, 2005 for
\$295,000;
Willey Rodney & Carra to Willey, Nicholas May 3, 2001 for \$178,000.

Petitioner's witness James testified that based upon an exterior inspection of this house on Bennett Lake, she found it to be in good condition with new siding. She testified that she sent a certified mail receipt for the RPS, but it was not returned.

Petitioner's witness James testified that State Tax Commission Bulletin No. 6, page 2, item 4 provides the authority to include foreclosed properties (in the sales-ratio study) based upon "real property statements unless adequate alternative statistical procedures are utilized to ensure the sales are an adequate part of the market." Tr I, p 34.

A copy of a Realcomp listing from Keller Williams Realty-Hartland was provided for subject property. It states in part, "Sellers motivated....enjoy lake life at a great price on the Lobdell chain of lakes. Recently updated with 2 bedrooms, 2 full baths and many recent upgrades...."

Petitioner's witness Oetzel testified that he spoke with the ReMax agent about this property, who proffered the opinion that it was listed at \$194,900 and that is what it sold for; thus, it sold at

market. The agent told Oetzel that the condition of the house at the time of the sale was very poor, most of the value was in the land, it needed a new roof, as well as some deferred maintenance. The property is currently listed for \$299,900. The new owner replaced the roof, added new siding, and updated the kitchen as well as other upgrades to the property. This property has currently been on the market for over a year with no offers.

Oetzel opined that this property met the “test of true cash value: willing buyer, willing seller, all those tests based upon the time in which it sold and the condition it was in at that time.”

Bostwick testified that this is a lakefront property with 37.67 feet of frontage on Lobdell Lake. The land has a 120% adjustment per the property record card. She testified that she did not know why. The house is a 564 square foot cabin built in 1950. The property record card indicates a good quality improvement with 92% good. At the time of inspection the roof and siding appeared new. However, Bostwick was not able to confirm the condition of the property at the time of the sale.

The Tribunal notes on P-17 p 4 that the Realcomp Online sheet indicates a seller concession of \$11,694. There was no testimony that indicated the reason for the concession.

The Tribunal finds, notwithstanding that the sales ratio is within the acceptable parameters, the condition of the property at the sale was poor, per Oetzel’s testimony. However, the assessment record indicates 92% good per Bostwick’s testimony. Without further documentation, the Tribunal agrees with Respondent that this sale from a financial institution should be excluded

form the sales-ratio study. The financing, terms of the sale, and concessions were not verified.

This sale from a lending institution was appropriately excluded from the sales-ratio study.

Sale 3 **6474 Hogan Road**, parcel no. 03-14-200-005, Foreclosure Sale, 50.12% Ratio.

Exhibits relating to this parcel include: P-1 pp 9-10, P-5, P-17 pp 7-9, and R-20.

This is a sale from Deutsche Bank to Paul and Kelly E Bokuniewicz for \$165,000 on January 24, 2007. Previous sales include the following:

Thomas, Stephen & Jeanne to Deutsche Bank on June 21, 2006 for \$166,000;
Maxon, Clifford G. to Thomas, Stephen & Jeanne on January 8, 2004 for
\$190,000.

Petitioner's witness James testified that based on an exterior inspection of the property it appeared to have new log siding. She testified that the township received a deed, property transfer affidavit, and a principal residence exemption for this property. A real property statement was sent to the financial institution, but was not returned.

Petitioner's witness Oetzel testified that he spoke to the listing agent. The property owner had left town and the property was vacant at the time of sale. The condition was poor, below average, so the sale price reflects the condition of the property at the time of the sale. Oetzel said he would use this property as a comparable if he had a subject property that was similar in the same condition.

Respondent's witness Bostwick testified that she did not receive a call back from the property owner. She believes that an addition on the rear of the property does not appear to be added to

the current property record card nor was a deck added to the record card. She also questions the size of the inground pool.

Oetzel's testimony was that the property was vacant and below average condition at the time of sale. It is not clear to the Tribunal whether the property record card is indicative of the condition of the property at the time of sale. The Tribunal finds that there is insufficient verification of the sale; therefore, it is excluded from the sales-ratio study. The financing, terms of the sale, and concessions were not verified. This sale from a lending institution was appropriately excluded from the sales-ratio study.

Sale 4 **5804 Sedge Lane**, parcel no. 03-10-200-030, Foreclosure Sale, 59.27% Ratio.

Exhibits relating to this parcel include: P-1 pp11-12, P-6, P-17 pp 10-12, and R-18.

This is a sale from GMAC Mortgage to Frederick K Alt and Lindsay J. Lyop on June 28, 2007 for \$179,000. Previous sales include the following:

Mortgage Electronic Reg Sys to Federal National Mortgage on March 2, 2006;
Coleman, James & Tracy to Mortgage Electronic Reg Sys on January 4, 2006 for
\$151,927.

Petitioner's witness James testified that this property should be included in the sales study. She sent via certified mail an RPS to the bank and to the property owner; neither responded. She did receive a property transfer affidavit from the property owner, as well as the deed. She testified that the ratio is 59.27%, which is well within the guidelines for the county. She stated that if an RPS had been received it would have been included in the sales study.

Petitioner's witness Oetzel testified that he spoke to the selling agent for this property. The agent indicated that the road changed names while it was listed. It originally was listed for \$215,500, dropped to \$194,900, and sold for \$179,900. This was market value per the realtor due to the timing and some deferred maintenance. The property needed a new floor, had damaged kitchen cupboards, and landscaping that needed some work.

Oetzel testified that this property was listed on the open market, but there are not as many buyers as in the past. The property would have to be adjusted for the deferred maintenance, but he stated he might use it as a comparable depending on the subject property.

Respondent's witness Bostwick testified that she did not receive a response to the card left on this property.

The Tribunal finds that without additional verification the condition of the property at sale was reflective of the assessment, and based upon knowledge of the terms of the sale, this property should be excluded from the sales-ratio study. The financing, terms of the sale, and concessions were not verified. This sale from a lending institution was appropriately excluded from the sales-ratio study.

Sale 5 Vacant Lake Front Lots on Westminster, parcel nos. 03-02-209-033 and 03-02-209-034. Ratio exceeds 80%; ratio is 88%.

Exhibits relating to this parcel include: P-1 pp13-14, P-7, P-17 pp 13-14, and R-28.

This is a sale from Gloria M. Kehoe to Larry E. and Patricia Mroz on January 12, 2007 for \$100,000. There are no previous sales.

Petitioner's witness James testified that she received a deed and an RPS indicating that this was an arms-length transaction and should be included in the sales study even though the ratio was 88%. James states, in part, at P-1 p13:

There has been no indication of how long this property was on the market before an offer was given. This sale is representative of the sales we are seeing in the township. If every sale in the Township was analyzed there is probably a high percentage that would fall into the category of desperate sale.

The County indicated in a letter to the Township that the seller stated that her husband had "always taken care of everything." She did not know how much land was selling for on the lake, but she needed the money and accepted the \$100,000 offered for the land. Tr I, p 44.

When asked about further information on the property, James said that it had been "on the open market and there is too many facts here to remember everything." Tr I, p 45. She referred to Mr. Oetzel, who "can tell you exactly how long...it was on the market." She was aware that the owner's daughter lived next door to the vacant lots and she believes that the daughter must have some information on how much the property is worth on Bennett Lake because it is a beautiful, all-sports lake.

James testified that the property was listed with a real estate company and assumes that the realtor would tell her how much it was worth. She testified that the two lots are buildable as one

lot. She has information from the building and zoning administrator that they gave the “ok” for a house to be built if it was combined as one lot. Tr I, p 46.

Petitioner’s witness Oetzel testified that this property was listed originally for \$144,900 as two vacant lots. He spoke to the listing agent. In order to sell the property they had to go to the township and get a variance. The daughter went with the buyer to successfully receive a variance to build IF the two lots were combined. The road is very close to the lot and Oetzel opined that it may need some fill to get a house built on the site. Oetzel did not speak to the daughter, but the listing agent and the daughter worked hard to get the problem lot(s) sold. Oetzel felt that if he had a problem lot he would use this property as a comparable arms-length transaction.

When asked about the fact that the sale is outside of the 80/20 rule imposed by Equalization in reference to excluding sales that exceed 80% or are under 20% of the assessed value to sale price ratio, Oetzel testified :

I don’t want to be blunt, but that doesn’t make any difference to me in what I’m trying to do here of finding out whether it was a market sale or not. My job was to figure out if it was a market sale, then the sale price needs to be used in any sales study. Tr I, p 133.

Respondent’s witness Bostwick testified that she did not speak with the new property owners, but did speak with the former property owner, Mrs. Kehoe, who lives in Grand Blanc. She was an elderly lady who spoke broken English, and was apparently ill as evidenced by medical supplies around the apartment. Mrs. Kehoe’s son, Eric, was available and assisted with the sale. He said the sale was contingent on a variance to build on the property. The buyer had to bring sewers to the property. There is a well on the property, which is for the house next door, so a

well had to be dug for the neighbor. There were additional costs for engineering and surveying, which took over a year to complete. Mr. Kehoe stated that he did not know how much money was spent preparing the property prior to the sale, but felt that it was significant. The land is currently listed for sale for \$159,900.

The Tribunal finds that the sale price of this property reflects the issues with the sale. The seller spent significant time and resources getting a variance to build and bringing sewer to the property. Oetzel testified that if he had a problem lot, this would be a comparable property. The Tribunal further finds that these problem lot(s) are not reflective of typical market value and should be excluded from the sales-ratio study. The ratio exceeds 80% due to the problems noted above, and exceeds the parameters of Respondent's 80/20 rule. The Tribunal excludes this sale from the sale-ratio study.

Sale 6 **8715 Hidden Lake Rd and adjacent lot**, parcel nos. 03-19-101-005 and 03-19-101-030. Ratio exceeds 80%; ratio is 82.21%.

Exhibits relating to this parcel include: P-1 pp 15-16, P-8, P-17 pp 16-18, and R-26.

This is a sale from Shiposh, Dusan & Deborah to Egri, Robert & Susan on April 27, 2007 for \$228,000. Previous sales include the following:

Lawless, Curtis & Maria to Shiposh, Dusan & Deborah on August 27, 2003 for \$377,500;
Shubel, Stanley & Esther to Lawless, Curtis & Maria on November 18, 1996 for \$150,000.

Petitioner's witness James testified that this sale was over the 80% ratio at 82.21%. She feels that this sale is very indicative of what is happening on the lake properties with values going down. This was a sale from one individual to another. The property has 892 square feet, with a walk-out basement and 139 feet on an all-sports lake.

She stated that the March Board of Review lowered the value to \$228,000 based upon an appraisal.

Petitioner's witness Oetzel testified that he would have to do additional research before determining if the sale price meets the test of market value for his purposes.

Respondent's witness Bostwick testified that she spoke to both the buyer and seller. The buyer confirmed the sale price of \$228,000, that the property had been on the market in excess of one year, and the previous owners had purchased another lake property prior to putting this property on the market.

Bostwick stated that the sellers indicated they owned four parcels throughout Livingston County at the time of the sale. They purchased their current property on Coon Lake eighteen months prior to selling the Hidden Lake property. The seller stated that they were financially over-extended and needed to "get rid of" the property. They wanted to build another house on the vacant lot; however, it required variances. The sellers said that they lost money on the Hidden Lake house.

The Tribunal finds that the ratio, which exceeds 80%, was due to financial distress, which is not indicative of the market. The Tribunal finds that the ratio of assessed to true cash exceeds Livingston County Equalization's 80/20 parameters. This property is excluded from the sales-ratio study.

Sale 7 **7213 Driftwood and adjacent lot**, parcel nos. 03-24-302-005 and 03-24-302-004. Ratio exceeds 80%; Short Sale, ratio is 100.88%.

Exhibits relating to this parcel include: P-1 pp 17-18, P-9, P-17 pp 19-21, and R-27.

This is a sale from John E. Forsmark to Walter J. Faron on September 25, 2007 for \$220,000.

Previous sales include the following:

Noonan, Glenn & Marynell to Forsmark, John E on April 28, 2000 for \$200,000.

Petitioner's witness James testified that this sale is a good indicator of the lake subdivision lots. She stated that Lake Shannon "is one of our more expensive, exclusive areas." Tr I, p 57. She testified that this property had been on the market for over 18 months, which is enough opportunity to sell while not under duress. In addition, it was listed with a realtor.

The sale was not included in the sales study because the ratio was 100.88%. In addition, the County in a letter stated that "the buyer stated that the seller was going to be foreclosed on the next day if the property did not sell. One of the prerequisites of an arms length sale is that the buyer or seller cannot be under duress. This would certainly be duress if the property would be

foreclosed on the following day if no sale occurred. This could be an indication of why the ratio is over 80%.” P-1 p 17.

Petitioner’s witness Oetzel testified that he spoke to an agent who showed the property 15 to 20 times. The property was listed earlier for \$284,000 and then listed for \$239,900 before selling. The property had to sell with the adjacent lot, which contained the septic tank. He believed that it was a good sale.

Respondent’s witness Bostwick testified:

I went out and reviewed the property and talked to the owner of the – the buyer of the property. When I asked him if he felt he, you know, if his sale was market value, he told me it was a short sale, that the seller was going to – it was going to go in foreclosure the following day after closing on the property. Tr II, p108.

Respondent’s Exhibit R-27, analysis of the Driftwood property, states:

On Monday, March 24, 2008, Deerfield Township addressed the Commissioners at the Meeting of the Whole. The Supervisor, Tom Green stated he had talked to the previous owner, who currently lived out of state, and he confirmed, it was in the redemption period of [being]foreclosed on and he had 6 months to redeem the house. He chose not to.

The Tribunal finds that the short sale may not be indicative of an arms-length transaction.

The property owner was under duress to sell the property or, in the alternative, have the bank foreclose the following day. This property was exposed on the market for a reasonable period of time, with showings, but no testimony was given that indicated the condition of the property at the time of the sale. The impending foreclosure may be the reason why the property sold in excess of 100% of the assessed to true cash value.

The Tribunal finds that this property's ratio of assessed to true cash value exceeds Livingston County Equalization's 80/20 parameters. This property is excluded from the sales-ratio study.

Sale 8 **Vacant lot on Driftwood**, parcel no. 03-24-402-024, Memorandum of Land Contract, Ratio is 43.97%.

Exhibits relating to this parcel include: P-1 p 19, P-10, and P-17 pp 22-23.

This is a sale from Gilbert Montez to Robert M. Pardikes and Jacqueline M. Pardikes on January 12, 2007 for \$199,000. Previous sales include the following:

Bencsik, Michael to Montez, Gilbert and Karen, on December 30, 1994 for \$60,200.

Petitioner's witness James testified that this vacant parcel is at a ratio of 43.97%. The township received a Memorandum of Land Contract, PTA, and RPS from the owner date-stamped March 5, 2008, showing the following terms: \$20,000 down payment, \$179,000 financed at 7% interest for 7 years, a monthly payment of \$500 with a balloon payment due January 12, 2012. The buyer stated on the real property statement that "due to market conditions the property was most likely overpriced." P-10, p 5.

Petitioner's witness Oetzel testified that for this property he was not able to confirm the information on the multiple listing. The only data was from the township and he did not contact

the buyer or seller. From the document, he has no reason to believe that this sale was not an arms-length transaction.

The Tribunal finds this appears to be an arms-length transaction that could have been included in the sales-ratio study IF the real property statement would have been received in a timely manner. The RPS was received March 5, 2008, several months after the January 11, 2008 letter (R-8) that states “this ratio will be considered your final ratio for the residential starting base for the 2008 assessment year.” The Tribunal finds this is an arms-length transaction; however, it was received after the deadline and is excluded from the sales-ratio study for 2008.

Sale 9 **5050 Dean Rd.**, parcel no. 03-27-100-010, Relocation Sale, Ratio is 46.67%.

Exhibits relating to this parcel include: P-1 pp 20-21, P-11, and P-17 pp 24-26.

This is a sale from Prudential Relocation, Inc. to Mark T. and Darlene S. Hughes on May 7, 2007 for \$296,000. Previous sales include the following:

Longobardo, Anthony and Cynthi to Prudential Relocation, Inc. on May 3, 2007 for \$296,000.

Longobardo, Anthony and Cynthi on May 30, 2000 for \$319,000.

Dybata, John G. and Donna to Sutton, John and Donna on April 23, 1998 for \$46,000.

Petitioner’s witness James testified that the ratio was 47.67%. The Township received a deed and a PTA. The RPS was sent to the owner and the relocation company, but was not returned. She stated that this was constructed in 2000 and previously sold for \$319,000.

James opined that the relocation company was just a go-between because the original owner had moved out of state. The two deeds were four days apart and for the same sale price.

Petitioner's witness Oetzel testified that he spoke to Ken Ives of the Michigan Group that opined that this was an arms-length transaction, not a distressed sale. The seller was moving out of state and the property was in fairly good condition. The kitchen dishwasher had a leak so there was some damage in the basement ceiling. They made a slight adjustment. The property was listed for \$319,000 and sold for \$296,000, a decrease of 7.21%. Oetzel found, based upon his investigation, that the sale price appeared to be at market.

The Tribunal finds that without the real property statement that discloses the terms, concessions, and condition of the property that the exclusion of this relocation sale is appropriate. This was treated equitably with the other units of government within Livingston County and no real property statement was received.

Petitioner's Arguments

Petitioner argued about the exclusion of nine sales to its 2007 sales study that Livingston County determined were not considered arms-length transactions or did not meet verification and parameters set by Respondent. Petitioner would like the Tribunal to overturn the action of Livingston County because Petitioner believes that the residential class of property is assessed in excess of 50% of true cash value.

Livingston County originally had 33 total sales in the residential class of property that Deerfield Township wanted included in its sales study. Nine of those sales were excluded by the County. The exclusion of those nine sales was the basis for this appeal.

Petitioner believes that sales from lending institutions should be included, indicating that banks could have properties listed for a period of several months, advertising the property and selling the property. This bank sale is between a willing buyer and a seller that may fall out of the sales ratio where the sales ratio fell below 20% or exceeded 80% are excluded from the sales-ratio study as a statistical “outlier” of the “80/20 rule.” Petitioner argues that the banks will not respond to Petitioner’s mail, and the inclusion of a bank sale should not hinge on whether the bank answered and filed the RPS. It does not change whether or not it was a fair sale; it just changes how it is proven that it is a market sale. Petitioner believes the bank sales should be considered in the county’s sales study.

Petitioner further questions why a relocation sale is not considered an arms-length transaction by Respondent. Petitioner argues that land contract memorandums are sufficient evidence to include in the sales-ratio study.

Petitioner does not believe that Respondent has the authority to determine parameters for the exclusion of sales that fall below 20% and above 80% of the ratio of assessed value at the time of the sale and the sale price.

Respondent’s Arguments

Respondent, in addressing relocation sales, explained that relocation sales involve an employer purchasing a house from an employee who has been transferred elsewhere, in order to facilitate the employee's move. The sale is considered a pass-through with little incentive to obtain optimum value. All of the assessors agreed that the sale involving a relocation service would be excluded from the sales study. R-1.

Respondent, in addressing statistical outliers, states that MCL 211.34(3) authorizes the county to develop uniform valuation standards and techniques for the assessment of property. The county conducted field work on each of the outliers (see Testimony of Bostwick that found circumstances in each case that were cause for excluding those sales from the sales study).

Respondent further states that Petitioner did not inspect such properties, as the sale cannot be included in a sales study where a property's condition at the time of sale is not reflective of the condition reflected on the property assessment record.

Respondent believes that land contract sales should not be included in a sales study because a memorandum of land contract is insufficient verification. In order to understand the land contract sale, the financing terms should be included to determine the down payment, interest rate, purchase price, etc. The assessor must determine if the land contract contains creative financing that may skew value.

Respondent states the last issue is the exclusion of foreclosure sales from banks or other lenders to individuals, although Respondent's Exhibit R-37, STC Bulletin No. 6, stated that foreclosure

sales could be included under stringent criteria. Petitioner was not able to meet the criteria that would allow these sales to be included in its sales study. Generally, the sales were excluded because Petitioner did not acquire an RPS reflecting the condition of the property at the time of the sale as compared to the condition of the property as reflected by the assessment.

Respondent argues that the standards for intracounty equalization exist. The General Property Tax Act, MCL 211.1 *et seq.*, provides for the yearly assessment and equalization of property for ad valorem tax purposes. Pursuant to MCL 211.134(4), a township may appeal the County's equalization determination to the Michigan Tax Tribunal. The Tribunal is required to determine whether or not "there is a showing that the equalization complained of is unfair, unjust, inequitable or discriminatory." The township has the burden of proof. *Plymouth Twp v Wayne Co Bd of Comm'rs*, 137 Mich App 738, 746 NW2nd 547 (1984).

Respondent states that Petitioner's residential sales study is flawed and based upon improper procedures. R-16. Respondent contends that Petitioner is treated the same as all other taxing jurisdictions located within Livingston County. Other local jurisdictions had sales excluded from their studies under the same criteria.

Petitioner's Witnesses

Petitioner's first witness James testified to the information known on each of the nine sales. She was the assistant to the assessor and is certified as a level 1, working on her next certification level. James did an exterior inspection of the nine properties and took photographs.

Petitioner's second witness Oetzel, MAI testified:

I was asked to do basically two things. Number one, check statistics concerning general property sales and direction in Livingston County and Deerfield Township. As part of doing appraisal assignments, we have to check out comparables in which to do the sales comparison approach or comparables to do the income approach. Part of checking out a comparable is to make sure it is a valid sale, meets the test of market value or meets the test of true cash value, so that is part of what we do each and every day when we do an appraisal. As part of that, we belong to the multiple list system and as part of my assignment was to check the multiple list system. To see what was happening to sales in Livingston County I went back actually three years, checked the velocity, the average sale, the median sale and other data concerning just general information concerning the direction and velocity of the market.

The second part of my assignment was to interview buyer, seller or broker, someone who was familiar with these nine sales to test the market to see if those sales were valid market sales that met the test of true cash value. I did not make an inspection of the properties because the first task of collecting any sales data is to make sure it's a market sale. If it's not a market sale, I'm not going to go out and inspect it. In this assignment I was not asked to do an evaluation, I was asked simply in checking out that sale is that a sale that if you had a similar type property that you were appraising, would that meet the test of market value or true cash value, and I'm using those terms synonymous, which is generally considered synonymous in this court as far as I'm concerned. So my assignment was to check general parameters of the market and to check these nine sales to see what I found out in the market place as to how they fit the test of market value. Tr I, pp119-121.

Oetzel's testimony for each of the nine properties is included above with the specific property.

He was presented as a witness who was to review the methods used to determine whether the nine sales were valid sales or not. He stated that as part of doing an appraisal assignment the

comparables have to be valid sales; that is, they have to meet the test of true cash value or market value.

Oetzel testified that the second part of his assignment was to interview someone: buyer, broker or seller, who was familiar with the sale, to test the market to determine if the sale meets the definition of market value. He did not inspect the subject properties.

Respondent's Witnesses

Respondent's witness Lawrence is a certified public accountant (CPA) who testified that he was familiar with the dynamics involved in bank foreclosures and the pressures for the financial institutions when it comes to selling the properties.

Lawrence testified that banks become owners of and sell other real estate property, or foreclosed properties. He overviews and reviews the audit on the sales transactions. He reviews the valuation of those properties as held by banks and he works with the clients to figure out at what point they become owners of the properties, as well as how long the properties are reflected on the financial statements.

Respondent indicated that Lawrence was at the Tribunal to establish that there is a rational basis for the exclusion of foreclosure sales in general, and particularly if they fail to meet the stringent criteria in STC Bulletin No. 6 of 2007. Lawrence has some knowledge of what goes into the sale of a bank-owned property, and the various pressures imposed on them. Respondent stated that foreclosure sales are a form of a distressed sale.

Lawrence testified that banks monitor delinquent accounts. When a borrower starts missing payments, the bank requests payment and initiates foreclosure if the payment is not received. After approximately three months of nonpayment the bank starts foreclosure procedures. Generally, he opined, the redemption period is six months. During the six months there is some negotiation with the property owner. The bank obtains possession of a property upon the end of a redemption period. At that time the bank is required to establish a valuation for its internal purposes. It is generally required to dispose of that property within five years within the State of Michigan. There are instances where a property owner can sign a deed over to the bank in lieu of foreclosure.

Lawrence stated that after the redemption period the bank will acquire an appraisal on the property, inspect the property to determine the condition and any necessary immediate repairs to secure the property. The period between the missed payments and the bank's acquisition of the property could be up to nine months in which the property could have been vacated, vandalized, and in less than pristine condition. After the bank acquires the property it is responsible for the carry costs, which include property taxes, maintenance, and the cost of marketing the property.

The longer the bank owns a property the more likely it is that it will cut its losses and sell the property. The financial institutions are required to quarterly evaluate the real estate owned by them in order to balance the maximization of the loan and manage the carrying cost of a property. According to Lawrence, the banks have to determine how aggressively to market the property or to hold and hope for a greater value.

Lawrence opined that banks do negotiate with the buyers of the properties for favorable terms on a new loan, based on the condition of the property and where it is located. The banks do not make money by owning properties. It is a non-earning asset, so they want the properties off the balance sheets.

Lawrence stated that if a property is foreclosed, it is the bank's asset; they try to sell it for whatever they can get. The balance of the mortgage has no bearing on the sale price because once the property is foreclosed it becomes the bank's asset. If the value of a property is worth more than the mortgage, the borrower would sell it and pay off the mortgage.

Respondent's next witness was Murray, CMAE3 assessor for Hamburg Township, located in Livingston County. Murray testified that in her experience after investigating all sales the sales with ratios under 20% and over 80% usually have a reason why the ratio is out of line. She stated that she didn't believe that foreclosure sales represented market value.

Well first of all you're really purchasing someone else's hardship to begin with. There are -- people don't go into foreclosure willingly. There is different amounts that are owed on the mortgages depending how long the people have owned the homes. You know, there are just numerous reasons why we don't include them, the condition of the property when we inspect it and the foreclosure comes through. Tr I, pp195-196.

Murray also stated that she investigates foreclosure sales before determining that they should not be included in her sales study for the township. She stated that it is "her opinion that the State Tax Commission had made the requirements very stringent" to include the foreclosures, which makes the task of verifying and qualifying the foreclosure sale daunting.

Murray stated that relocation sales often contain incentives to the seller. In her experience with Pfizer Company leaving Ann Arbor it was her understanding that Pfizer was giving upward of \$100,000 to the sellers to compensate them for the losses that they may be taking on some relocations.

Murray also discussed economic condition factor (ECF) studies:

An ECF study is a result of your sales. You take all of your sales; you subtract the land and the land improvements from that sale and then the residual from that you compare to how you priced the structure out of the [cost] manual, and for sales you divide your sales into neighborhoods where parcels will sell similarly in the market and then those sales are combined and a mean of those sales is applied to all of the parcels in that neighborhood. Tr I, p201.

Murray testified that she looks at the properties that have sold to determine if what was for sale and what was purchased is reflective of what was being assessed.

Murray discussed the one-year sales study. She stated that for a one-year sales study for 2009, the first six months would be from 2007 and the second six months would be from 2008, as required by the State Tax Commission. Land value, for example, may change from one year to the next. If the correct land value is not used then it would likely skew the sales study.

Respondent's witness Towne is the Equalization Director for Livingston County. She testified that the function of the Equalization office is to ascertain whether assessments in the respective townships and cities have been set equally and uniformly at 50% of true cash value as set by the legislature.

The Board of Commissioners is charged with the process of equalization and they appoint a director and staff as needed. That staff and director has the charge of assisting the assessors with development of property tax descriptions, with discovery and valuation of property, for setting uniform standards and techniques for assessment and to survey assessments. And to survey assessments, studies are done in either sales ratio studies, appraisal studies, or personal property audits. Tr II, p5.

Towne explained the process of receiving deeds electronically, and validating whether the sale is valid and put in the sales-ratio study. For a twelve-month study, the sales are listed with the first six months and the last six months divided. They are calculated on an L-4047 form to adjust the first six months for the previous year's assessments and then the ratio is calculated and sent to the assessor.

When asked to explain what the difference is between a valid and invalid sale, Towne stated the following:

Well, valid sales are used in the sales study and they occur between an informed buyer and seller, not being under duress, not a family sale and for a cash sum of money. Invalid sales could be where buyer and seller are under duress, where the buyer and seller are related. They could be influenced by unusual market conditions or land contract where the terms are not known. Tr II, p6.

Towne was asked a variety of questions relating to definitions. She stated true cash value as described in MCL 211.27 is the usual selling price that could be obtained for a property at a private sale, not under an auction unless certain circumstances were met and not at a forced sale. She indicated that the International Association of Assessing Officers ("IAAO") defines market value as:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming prices not affected by undue

stimulus. It goes on to state or to list the conditions. Number one, buyer and seller are typically motivated. Number two, both parties are well informed and well advised and acting in what they consider their best interests. Number three, a reasonable time is allowed for exposure on the open market. Number four, payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto, and number five, the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. Tr II, pp14-15.

Towne testified that all sales that occur may not be used in a sales-ratio study. She went on to talk about the various townships where sales were not included for a variety of the following reasons: (i) foreclosures, (ii) relocation sale, (iii) lack of terms on a land contract, and (iv) ratios exceeded 80% or are below 20%. These types of sales were not allowed for any township, and to do so would provide the township with preferential treatment and prohibit uniformity in Livingston County.

When questioned why foreclosures were not typically allowed, Towne stated that until August 2007, foreclosures were not considered. The State Tax Commission then issued a bulletin that set strict and stringent guidelines to verify foreclosure sales. A physical inspection is required to ascertain what condition the property was in at the time of the sale. The assessment that is being compared to the sale price must reflect the same condition that is reflected at the time of the sale. If the property is damaged, and the assessment assumes the property is in good condition, the assessment is not reflecting the true condition of the property at the time of the sale.

Livingston County received two real property statements from financial institutions where the properties were sold by the financial institution. However, when the county confirmed the sales,

there were concessions which required further investigation before they could be used in a sales-ratio study.

Towne, in R-17, did a statistical analysis of the foreclosures in Deerfield Township. The analysis indicates that using 3 out of 4 sales would result in a 50.92 ratio of assessed to sale price. The ratio used by the county as a starting base for the township is 50.84. One of the sales was verified as damaged and was therefore not included because the assessment of that property did not include the same condition as the sale.

Towne explained statistical outliers as unusual values resulting from market influences. There are a variety of reasons for an outlier: a non-market sale, unusual market variability, or incorrect appraisal compared to the sale price. It can be an error in the assessing of the condition of a property or undue stimulus in the market. The outliers are extreme highs and lows that influence the outcome of a sales study. These are observations that are determined to be way above or below what is expected. The outliers have to be thoroughly validated and documented because they play a pivotal role in the outcome of the sales study.

Towne conducted a survey of counties to determine if they had a standard on using or excluding parameters from the sales ratio studies. She received a response from 38 counties indicating they go from 10% to 100%. Twelve counties indicated that they do not use a ratio outlier standard. Seven counties use the same 80-20% parameter as Livingston County.

In responding to her analysis of the array for Deerfield Township, Towne states:

Okay, under the premise of [MCL] 211.34 which allows equalization departments to set uniform standards and techniques for assessments, and after input and discussion with the assessors, I determined that we would use an outlier standard and that the parameters of that standard would be 20 and 80 percent. And after arraying the ratios of that sales study, two following statistics. There were ten sales that occurred in the first six months with a ratio of 48.11. There were 14 sales which occurred in the second six months and they had a ratio of 51.27. The mathematical mean was 49.95 and the median was 50.61. There were 11 sales below the mathematical mean and 13 sales above the mathematical mean. And after careful review and investigation of each of the outlier ratios it was determined that they were invalid indicators of market value and not used in the sales study. So the equalization department's determination of the ratio for the starting base for 2008 was set at 50.84. Tr II, pp 22-23.

The equalization department did investigate the sales that were outliers for Deerfield Township.

The three sales that exceeded 80% were checked on and, after a field investigation, it was determined that two of the sales were under duress and the third sale had a sales concession attached.

The one sale that was under 20% was determined to be an arms-length transaction. However, to treat all of the units the same and not give preferential treatment to one township, the outlier sale was not included in the sales ratio study.

In regard to land contract sales, Towne testified that:

Well, land contracts are seller financed, and they can be creative financing influencing the sale price, and that could – well, let me just back up a bit. There are three different ways that creative financing needs to be examined in the market, and one is, in the case of a land contract where the seller is the financier, the terms on the land contract need to be examined to see if they are the same as what's in the current marketplace. Another one could be if there is an assumption, a mortgage and the cash value and the difference between the assumed rate and the current market rate could influence the sale price. And the third one would be if the seller pays points allowing the buyer to obtain more

favorable financing then the point, the amount that's paid for the points, would have to be added to the sale price. Tr II, pp 26-27.

Towne discussed Creative Financing Bulletin 11 of 1985, issued by the State Tax Commission "after the Michigan Supreme Court recognized that there could be creative financing affecting sale price when the seller is the lender." The Bulletin establishes procedures to follow for a non-typical financing for a sale.

Towne's last issue to address was relocation. She believes that because relocation sales have a lot of market variability they are not typically an indicator of the market value of a property. Relocation sales may have situations where the amount that the seller receives is not what the buyer pays because of concessions.

Deerfield Township's L-4023, as prepared by Equalization, started with a 50.84 ratio for the residential class of property. The losses, adjustments, and new are calculated for the ending ratio of 45.93 for a factor of 1.08855 for the residential property.

Towne testified that R-16 is the ECF analysis that Equalization developed for Deerfield Township in setting the 2008 assessments. The ECF adjusts the manual costs to the local market. She stated that a physical inspection of the property will assist in determining the condition of the property at the time of the sale. She stressed that current land values need to be used. Towne stated that it appeared as if the 2007 land values were used by Respondent to develop its 2008 ECF. Towne was concerned that the assessments may be skewed due to its usage of improper land values in its ECF neighborhood analysis.

Towne testified regarding R-17, which contains pages that Deerfield Township gave to Equalization. She stated that Equalization put together its own ECF calculations using a correct 2007 land value for sales that occurred the first six months of the study and 2008 land values for the last six months of sales. The correct county multiplier also has to be used to accurately reflect the ECF for each neighborhood. The equalization department calculated different ECFs using correct information.

Towne is concerned that the Township has incorrectly set the ECFs. Proper land values from the correct time period have to be used to properly determine the correct ECF. For example, in the first six months of a twelve month sales-ratio study the 2007 land values should be used and in the last six months the 2008 land values are used.

Towne had issues with how Deerfield Township set the assessments with the use of improper ECFs. One property parcel, No. 02-200-004, was a foreclosure sale. In 2007 this property had a depreciation of 83%. After the ECF was developed to set the 2008 assessments, the depreciation was changed to 42.3%. But by the end of the year the property had been brought back to a normal depreciation level with the repairs completed.

Towne indicated that for Parcel No. 200-005 the record card indicates “there is 1,085 square feet, and upon field investigation it was determined that there is 1400 square feet.” Towne stressed that when you do an ECF an appraisal of the property needs to be done, using the assessed value at the time that it was sold, the condition and size of the property as it was sold. There was no change to the record card to reflect the additional square feet.

Towne testified that Respondent used incorrectly calculated ECFs, then she also questions whether the assessments are calculated correctly. The concern falls into future years and what will happen when the combination of incorrect ECFs and incorrect land values are used to determine the assessments and how the errors will influence future sales and calculations of market value. If this is historically how assessments have been set, then she also questions the ratios on the sales.

General Overview of the Assessment and Equalization Process

The initial step in the assessment and equalization process is the assessment by the local assessor of property at 50% of its true cash value. Const 1963, art. 9 para 3; MCL 211.27a(1).

Local assessors cannot individually reappraise each parcel of property within the local unit every year as of tax day December 31. Each property is placed within a proper “classification.”

Classes include: residential, commercial, developmental, industrial, timber cut-over, exempt and personal property. Each individual property is measured; specific data relating to the improvement is used to determine a basic value via a cost approach. An economic condition factor (“ECF”) is calculated for each class of property based upon its neighborhood. The economic condition factor adjusts the cost approach to reflect a 50% assessment ratio for a neighborhood. This is only used in mass appraisal. This is calculated for neighborhoods that have similar market influences. Simplistically, it is the sale price minus land value divided by the assessment at the time of the sale, for sales within a neighborhood. The factor calculated is used to adjust the improvement value closer to the market. Land value is calculated pursuant to

the market and does not receive an ECF. The ECF does not mean that individual properties are assessed at 50% of market value; it just brings an entire area to the required level of assessment.

The assessors are required to use the STC Assessor's Manual in using the cost approach when determining assessments. MCL 211.721. Assessors may use a sales-ratio study, rather than individually reassess all of the properties within a jurisdiction, in fulfilling their function. The sales-ratio study compares the sale prices of recent arms-length transactions within a specific classification with the assessed value at the time of the sale. *Washtenaw Co v Tax Comm*, 422 Mich 346, 351-352 n 1; 373 NW2d 697 (1985). The result is the ratio that indicates the adjustment in assessed values of a class of property.

The next step is intracounty equalization, which is performed by the County Board of Commissioners, assisted by the County Equalization Department. Equalization's job is to achieve uniformity of property assessments among the cities, townships, and villages within a county.

Intracounty equalization requires the Board of Commissioners in each county to determine whether the taxing units have equally and uniformly assessed property at 50% of its true cash value. This is accomplished through the equalization study in the form of a sales-ratio study, an appraisal study, or a combination of both.

The State Tax Commission allows the use of a one-year sales-ratio study in a declining market.

On August 15, 2007 the State Tax Commission in Bulletin No 6, adopted guidelines for Assessors to use for verification for inclusion of foreclosure sales in sales-ratio study. The proper selection of sales for inclusion in these ratio studies is critically important to the development of uniform and accurate assessments. The State Tax Commission has established these guidelines to be used when reviewing sales for sales-ratio studies. The purpose of the guideline is to provide direction when compiling a “desk-reviewed” sales study. Desk review means determining whether a particular sale will be used in a study based on transfer documents and other information in the office without additional investigation or field inspection. Deviation from the guidelines should be based on investigation of the transaction beyond the normal steps of a desk review process. The recent increase in foreclosures has caused those transactions to have an impact on the real estate market in some parts of the state.

The Guidelines for using foreclosure sales are²:

- Sales to financial institutions are excluded from a sales ratio study unless the financial institution is using the property for its operations and it was not previously held as collateral.
- Sheriff’s deeds are not typically included in sales ratio studies.
- If it is determined that sales from financial institutions are open market transactions the sales may be used if they have been verified.
- All sales must be analyzed and verified to ensure they are arms-length transactions. The appropriate verification process contains but is not limited to:
 1. A determination as to whether the type of sale being reviewed is a measurable portion of the market.
 2. A determination that the sale property was properly exposed to the market, for example, by listing with a real estate company.

² STC Bulletin 6 issued August 15, 2007.

3. A physical inspection of the property to make a determination that the assessment reflects the condition of the property at the time of sale unless the condition can be verified by other means.
 4. Receipt of a properly completed real property statement to determine the terms and conditions of the sale unless adequate alternative statistical procedures are utilized to ensure the sales are an adequate part of the market.
 5. A determination that the parties to the transaction were not related and each was acting in their own best interest.
- Additional analysis specific to foreclosure transactions:
 1. Was a market value appraisal obtained before listing?
 2. Did the seller have the right to refuse all offers?
 3. Did the property have full market exposure after governmental intervention?
 4. Was the property marketed for an adequate period of time?
 5. Was the seller obligated to prorate taxes in accordance with local custom and provide evidence of title and a warranty deed to the purchaser?
 6. Was property purchased “as is” and was property well maintained during the marketing period?
 7. Was purchaser supplied with a disclosure and/or lead paint statement?
 8. Did seller help with financing? If yes, then the sale must also be treated as a creatively financed sale and be treated under the same rules established for adjusting creatively financed sales.
 9. Were concessions involved and, if so, are they typical of market?
 10. Were sale conditions affected by the financial institution’s requirement to dispose of the foreclosed property within 1 year to avoid the uncapping of taxable value or because of banking regulation conditions requiring special treatment of property owned by the institution?
 - If a sale is used in the sales-ratio study, it is also used to help determine land values and Economic Condition Factors.

- Counties and local units using “usually excluded sales” in a sales study for a particular period must maintain documentation of the verification process for each sale included in the study.
- Once verified for use in a study, a sale is included in the study in the appropriate year in the same manner as all other sales used in the study.
- Please note that if the foreclosing institution is also financing the sale for the new owner, the property is subject to analysis for creative financing as outlined in State Tax Commission Bulletin 11 of 1985.

Discussion and Conclusions of Law

Equalization appeals are governed by section 34 of the General Property Tax Act, which states in pertinent part:

...The state tax tribunal shall, upon hearing, determine if in its judgment there is a showing that the equalization complained of is unfair, unjust, inequitable, or discriminatory. The state tax tribunal shall have the same authority to consider and pass upon the action and determination of the county board of commissioners in equalizing valuations as it has to consider complaints relative to the assessment and taxation of property...If the state tax tribunal decides that the determination and equalization made by the county board of commissioners is correct, further action shall not be taken.... MCL 211.34(4).

The purpose of equalization is not to set individual assessments throughout the state. The well-worn excuse of assessors that an assessment increase is the fault of the county or state is just that—an excuse for the assessor not doing his or her job. County equalization is merely the county reviewing an assessor’s work to be sure assessing is being done at 50% of true cash value. If the assessor is not doing his work according to law, then the county will remedy his poor work by applying an equalization factor. The city or township should be convincing the county and state of its value with their own studies and accurate, legal assessments. County and state equalization were not intended to be scapegoats for poor local assessing practices.

Where the assessing practices of a unit clearly cloud the validity of a sales study, it is appropriate not only to question the validity, but to make a determination of the result and variance and thereby set out to determine the realistic true cash value of the class. State Tax Manual, chapter 16, Equalization, page 21, paragraph 4.

The purpose of equalization is to adjust or correct different modes of assessment to achieve uniformity among governmental units within the county and among all counties in the state. *O'Reilly v Wayne County*, 116 Mich App 594 (1982).

In this case, Petitioner Deerfield Township alleged that the equalization of the residential class was discriminatory because Respondent did not include nine sales in the sales-ratio study. With reference to the process of county equalization, MCL 211.34(2) states:

The county board of commissioners shall examine the assessment rolls of the townships or cities and ascertain whether the real and personal property in the respective townships or cities has been equally and uniformly assessed at true cash value. If, on the examination, the county board of commissioners considers the assessments to be relatively unequal, it shall equalize the assessments by adding to or deducting from the valuation of the taxable property in a township or city an amount which in the judgment of the county board of commissioners will produce a sum which represents the true cash value of that property, and the amount added to or deducted from the valuations in a township or city shall be entered upon the records...[T]he county board of commissioners...shall equalize separately the following classes of real property by adding to or deducting from the valuation of agricultural, developmental, residential, commercial, industrial and timber cutover taxable real property...an amount as will produce a sum which represents the proportion of true cash value established by the legislature... MCL 211.34(2).

Subsection (3) of this section provides in pertinent part:

The county board of commissioners of a county shall establish and maintain a department to survey assessments and assist the board of commissioners in the matter of equalization of assessments, and may employ in that department technical and clerical personnel which in its judgment are considered necessary. The personnel of the department shall be under the direct supervision and control of a

director of the tax or equalization department who may designate an employee of the department as his or her deputy. The director...shall be appointed by the county board of commissioners. The county board of commissioners, through the department, may furnish assistance to local assessing officers in the performance of duties imposed upon those officers by this act, including the development and maintenance of accurate property descriptions, the discovery, listing, and valuation of properties for tax purposes, and the development and use of uniform valuation standards and techniques for the assessment of property. MCL 211.34(3).

The Tribunal is charged in this appeal to decide if the county board of commissioners determined the appropriate equalized value of the aggrieved unit based on facts and information known to them **on or before** final county equalization.

Throughout the testimony of the witnesses, the level of assessment and increases for the northern tier of Livingston County were discussed. The Tribunal finds that this is mostly dicta; it has little to do with the actual level of assessment for Deerfield Township. The comparison of assessment and percentage increases for surrounding townships is akin to a property owner wanting to compare its taxable value to the surrounding neighbors. It simply is not relevant in determining what the assessed to true cash ratio should be for Petitioner.

The sales-study ratios are dependent upon not only the sales but how they are interpreted and used by the assessor for the unit. The experience of the assessor and the ability to assess the properties within a jurisdiction will influence how the assessments are calculated. Assessors will vary from unit to unit not only in experience, but certification level, education, and communication skills. Assessors have access to all of the sales within their unit of government, but how they interpret the data and how it is verified determines the sales' validity. Unverified

information is of little use to determine whether a sale is valid or not. Verification of sales information after reasonable deadlines is also moot.

Petitioner's attorney stated at the onset of the hearing that the exclusion of nine sales from its sales ratio study resulted in an inequitable, unjust, unfair, and discriminatory factoring of the residential class of property for Deerfield Township.

The Tribunal will address each of Petitioner's issues:

(1) Should sales from a lending institution be excluded from sales studies?

The Tribunal looks to Bulletin 6, August 15, 2007, wherein the State Tax Commission adopted guidelines for Assessors to use for verification for inclusion of sales of foreclosed properties in ratio studies. "The proper selection of sales for inclusion in these ratio studies is critically important to the development of uniform and accurate assessments."

Petitioner attempted to verify the foreclosure sales; however, trying is not the same as actually receiving verified information. Petitioner presented evidence that an RPS was requested from the financial institutions, but never received. The RPS contains information required to determine if there were any concessions, the type of financing, or if the sale conditions were affected by the financial institution's requirement to dispose of the foreclosed property prior to losing the Principal Residence Exemption.

Petitioner's attempt to verify the foreclosures is required; however, sending a certified real property statement is not the only way to determine the terms and conditions of a sale. Petitioner

did hire Oetzel, an MAI³, to verify information to determine whether he would include the property in an appraisal. Oetzel then opined if, for *his* purposes, he would use a sale or not. This was certainly a function that the assessing office could have performed earlier in the year instead of one week or so prior to the hearing before the Tribunal. Oetzel testified that he verified as much as possible in the week he was given to complete the task. However, Oetzel's verification did not include terms of the financing.

Petitioner has to have a cut-off date in which to send information to the county for inclusion in its annual sales ratio study. Because the information is used to determine sales ratios and economic condition factors, it needs to be verified and analyzed prior to its use in setting the December 31st value. The assessor is required by statute to send out change of assessment notices a minimum of ten days prior to the board of review. Therefore, *at the latest*, the verification and conversations with Equalization should be completed prior to the March Board of Review and, in an optimistic cooperative effort, by January 2008 at the latest. Equalization does not have to accept the unverified information, and in this matter, apparently did not.

Respondent's Exhibit R-8 on January 11, 2008, states:

I have included the additional sale you requested to be added to the Deerfield twelve month sale studies. I have enclosed a listing of sales and the L4047. I will also send a revision to the State Tax Commission for their records.

This ratio will be considered your **final** ratio for the residential starting base for the 2008 assessment year.

³ The MAI designation is held by appraisers who are experienced in the valuation and evaluation of commercial, industrial, residential and other types of properties, and who advise clients on real estate investment decisions.

It is well within Respondent's rights to set up parameters for inclusion of sales in the sales ratio study. MCL 211.34(3) states in part: "The county board of commissioners through the department, may furnish assistance to local assessing officers...and the development and use of uniform valuation standards and techniques for the assessment of property." Respondent, through verbal and written communication, treated ALL of the sales data utilized for sales-ratio studies the same for all of the taxing units within Livingston County. Petitioner was not treated any differently than other taxing units in the county when it came to the verification of sales of foreclosed properties. Those sales were not included because no verification was completed prior to equalization. The verification of additional information was done just prior to the hearing by an outside contractor. Petitioner was still lacking when it came to inspections of the properties to determine the condition of the property at the time of the sale. No information was provided to determine if the financing was by the actual financial institution that sold the property.

The Tribunal finds that sales from financial institutions need verification to ascertain if they represent market value and should be used in a sales-ratio study. The August 15, 2007 State Tax Commission Bulletin 6 provides assessors the stringent guidelines for inclusion of these sales. Petitioner did not meet these guidelines. When these guidelines are not appropriately met Respondent rightfully excluded the sales of foreclosures in the sales-ratio study.

The Tribunal finds for the reasons stated above and from the facts and evidence presented that it is reasonable to exclude the financial institution sales from the sales-ratio study because they do not meet the verification criteria, and we accordingly find that they were properly excluded. The

Tribunal finds that Deerfield Township was not treated unfairly, inequitably, discriminatorily, or unjustly by exclusion of the sales that did not meet the verification criteria of foreclosure sales.

(2) Should sales involving a relocation service be excluded from the sales-ratio study?

Equalization again has the authority to exclude specific sales based upon their parameters. It was agreed throughout the county by assessors that relocation sales may not be arms-length transactions. Relocation sales are assisted by a relocation company having a vested interest in selling the property not necessarily at market value, but with concessions to the seller provided by the employer.

Testimony indicated that the sale price may not reflect the amount of cash paid by the buyer that the seller would receive. In the instance of relocation sales, an institution agrees to move an employee to another location. The employer may pay a bonus to the seller as an incentive to move, or may provide financial assistance for the relocation, especially when the employee needs to be in the new location quickly.

The Tribunal finds that Deerfield Township was not treated unfairly, inequitably, discriminatorily, or unjustly by excluding the one relocation sale.

(3) Should a land contract memorandum be excluded from the sales-ratio study?

Petitioner provided to Equalization a copy of a land contract memorandum without the financing terms until March 7, 2008. The date the actual information was received is past the last date set by equalization where it indicated “this is the last revision to the sales-ratio study.” To bring in untimely information and expect the Tribunal to accept carte blanche an untimely RPS that was

not considered would be unfair, inequitable, unjust, and discriminatory to the rest of the county governmental units. It would give Deerfield Township preferential treatment. The Tribunal will not include information that was not received in a timely manner to use in Respondent's sales-ratio study for Petitioner.

The Tribunal finds that Deerfield Township was not treated unfairly, inequitably, discriminatorily or unjustly by excluding the memorandum of land contract sale.

(4) Should residential sales where the sales ratio fell below 20% or exceeded 80% be excluded from the sales studies as a statistical "outlier."

The Tribunal finds sales 5, 6 and 7 may be reminiscent of an arms-length transaction on paper, but upon further verification, appear to be a reason why the ratio exceeds the 80/20 rule. Sale 5 was a "problem" lot with two lots that required a variance in order to be built on. Sale 6 had owners in financial distress. Oetzel was not able to determine without additional information whether he would use it as an arms-length transaction. Sale 7 was a property that was under duress to sell. Testimony indicates that this property was a "short sale." The property was scheduled for foreclosure the day after closing. If the Sale 7 property had not been sold it would have been foreclosed. Therefore, the Tribunal will not overturn Respondent's 80/20 parameters where, as here, they serve a purpose.

The Tribunal finds that Deerfield Township was not treated unfairly, inequitably, discriminatorily, or unjustly by excluding the sales where the ratios fell below 20% or exceeded 80%.

Final Conclusion and Judgment

The guidelines established by the State Tax Commission are designed to provide standardized techniques to achieve uniformity of assessments by the various units within the county. Since the county equalization studies are performed for the purpose of comparing the average level of assessment in the units in the county, if they are performed using the same studies, data, gathering techniques, and guidelines as to all units, the county equalization studies should achieve a high degree of uniformity between units. Equalization Director Towne testified that the same methodology was utilized in all units throughout the county and we can find little fault with her one-year sales-ratio study.

The township bears the burden of proof to show that the equalization complained of was unfair, unjust, inequitable, or discriminatory. Essentially, the township contends that its inclusion of nine sales typically considered non-arms-length transactions by Respondent merits more weight than the figures reached by the county equalization department.

We conclude that the evidence presented by Petitioner does not warrant a change of equalized values.

Deerfield Township has not met its burden of proof by the greater weight of the evidence under MCL 211.34(4); MSA 7.52(4). The township was treated fairly, justly, equitably, and in a non-discriminatory manner in the equalization process by the Livingston County Board of Commissioners.

IT IS ORDERED that the appeal of Petitioner, Deerfield Township, from the intra-county equalization of the residential class for the year 2008 is DENIED.

IT IS FURTHER ORDERED that this case is DISMISSED with prejudice but without costs to any party.

MICHIGAN TAX TRIBUNAL

Entered: September 11, 2008

By: Victoria L. Enyart
Tribunal Member