STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Kurt A. Weber,
Petitioner,

v

MTT Docket No. 327730
(Consolidated with MTT Docket No.339495)

City of Pleasant Ridge,
Respondent.

Tribunal Judge Presiding
Stuart Trager

FINAL OPINION AND JUDGEMENT

This matter is an appeal of the 2006 and 2007 true cash and taxable values established by the city of Pleasant Ridge (Respondent) under the general property tax act (GPTA) for real property (the subject property), owned by Petitioner, Kurt A. Weber.

The subject property is located at 21 Oakland Park Blvd., Pleasant Ridge, MI 48069, with parcel identification number 25-28-277-008. A hearing was held January 27, 2009 at the offices of the Michigan Tax Tribunal, Lansing, Michigan. Tony F. Di Ponio, Attorney at Law, represented Petitioner. Attorney Charles Y. Cooper represented Respondent.

Respondent's 2006 tax rolls indicate an assessed value of $473,030 and a taxable value of $470,720 with a true cash value of $946,060. Petitioner asserts that the 2006 assessed value/taxable value should be $379,119 with a true cash value of $758,238.

Respondent's 2007 tax roll values indicate an assessed value of $472,600 and a taxable value of $472,130. Petitioner asserts the 2007 assessed value/taxable value should be $379,119 with a true cash value (TCV) of $758,238.

FINAL VALUES

YEAR	TCV	SEV	TV
2006	$1,135,000	$567,500	$470,720
2007	$1,045,000	$522,500	$472,130

PETITIONER'S CASE

Petitioner argues that the subject property's true cash value and taxable values as determined by Respondent exceed the property's actual true cash value and taxable value. In support of this contention, Petitioner offered the following exhibits, which where admitted into evidence:

-P1, valuation disclosure, prehearing statement dated September 27, 2007.

-P2, appraisal report prepared by Gregory Bialas dated March 31, 2005.

-P3, appraisal report prepared by Gregory Bialas dated March 31, 2006.

-P 4, appraisal report prepared by Craig Fuller (Respondent's appraisal).

Petitioner presented two witnesses. The first witness was Petitioner, Kurt A. Weber. Petitioner purchased the property in July of 2001. There was an existing structure on the property, which he had razed. The time from purchase to construction to move in was 11 months and from the tear down to move in, nine months. (T-9). He believes the cost of construction was around $600,000. (T-9). Once he got his tax bill, he looked at Respondent's property tax records for neighboring properties, and came to the conclusion that the Equalization Department of Oakland County had decreased TCV by an average of 18% for similar homes in his square footage

bracket. (T-11). He believes the changes and taxable value were unsolicited and they were not at the request of the home owner. (T-12). He went to the 2006 Board of Review and, based on the Board's decision, filed a tax appeal. He went through the same process for the 2007 tax year. (T-12). At this juncture, Petitioner's Exhibits 2 and 3 (Petitioner's 2006 and 2007 appraisal reports) were admitted. Respondent objected based on hearsay, but this was overruled. (T 13-14).

On cross examination Petitioner testified that the lot Petitioner purchased had had a house on it, which Petitioner had torn down and replaced with an over 5000 ft.^{2} house. (T-16). Petitioner reviewed the property tax records at the Pleasant Ridge City Hall and determined that most of the houses near the subject property had decreases in their tax assessments, and a few had tax assessment increases. (T-17). However, Petitioner admitted he was not an appraiser, nor was he an assessor. (T-18). Petitioner would not agree that everything in the subject property was of the highest quality construction for a residential property because the 2x4's in the subject property were less than other properties. Petitioner did agree that these lesser 2x4's were not visible. Further, he did agree that the gutters and downspouts were all copper, and that his property had a two-story cut stone front porch. (T-19). He also testified that the entry foyer and dining room had marble flooring, and that the kitchen cabinets were hardwood cherry, and that the quality and workmanship in the kitchen and lavatories were excellent. (T-20). Further, it was noted that the kitchen has Black Galaxy granite countertops, interior doors are solid wood with good quality hardware. Also the upper level of the house has extensive use of marble in the bath areas and high quality fixtures. Notwithstanding the indicia of quality, Petitioner did not take issue with his appraiser's description of the property having average construction. (T-21). Also, Petitioner did not take issue with the omission of the property at 38 Ridge Rd. from the appraisal Petitioner

submitted because it is an "anomaly." (T-22). Petitioner was aware that 38 Ridge Rd. sold in 2006 for over $1 million. (T-23).

Petitioner's next witness was Gregory Bialas, certified real estate appraiser. Mr. Bialas had been a real estate appraiser for ten years and had worked on numerous types of appraisals, high end, REO work, foreclosure work, tax appeals and different other appraisals. (T-26). He had become certified a month before the instant hearing. (T-26).

Respondent began a short voir dire and established that Mr. Bialas had never testified before the Michigan Tax Tribunal. (T-26). On direct examination, Mr. Bialas indicated that he was contacted by Petitioner and made an appointment to do an inspection of the property. He was told that this would be for a fair market value of the subject property for tax reasons, and Petitioner gave him the effective dates for the appraisals. (T-29). The effective date for the tax year 2006 appraisal was March 31, 2005 with an inspection date of September 29, 2008. (T-30). Also, the effective date for the appraisal for tax year 2007 was March 31, 2006, with a September 29, 2008 inspection date. (T-31). Mr. Bialas testified that he did not use 38 Ridge Rd. as a comparable because it sold for a lot more than the other comparables he had used, and it stood out as an oddity. "It was just one sale, it wasn't the market." (T-32). Mr. Bialas testified:

> Q Do you have any observation in general about homes that are overbuilt or much larger than the homes in the community?
>
> A Well, even being in the business for ten years and going to even many continuous education classes, we're told on a continuous basis that you put a large home into an area where there's smaller homes, it's going to drive the value of that home down similar to the other homes, to match the other homes, where if you put a small home into an area where there's larger homes, it's going to drive the value of that home up similar to the other homes. So -- and again, this home is, in my opinion --professional opinion, is overbuilt

> for the area. It's over-improved for the area. The average and typical homes are smaller. A typical buyer, would he spend a lot more money to buy that home when he can pretty much buy any other new construction home anywhere in Oakland County? They're a dime a dozen in Oakland County, where a typical buyer in the Pleasant Ridge market would look for an older home – even though smaller, would probably prefer an older home with all the custom woodwork, plaster and so forth. (T-33).

Mr. Bialas indicated that he relied on the sales comparison approach and did not use the cost approach, nor did he use the income appraisal approach. (T-34). The income approach was not applicable to an owner occupied residential property, and the cost approach was not used because there was no new construction in Pleasant Ridge. (T-35).

This first comparable was 48 Cambridge Blvd., two blocks southeast of the subject property, which sold for $600,000 on December 15, 2004. (T-35). Mr. Bialas made an upward adjustment of $7,000, because the subject property has a larger lot. Also, he used this comparable because it was newer construction, built in 1995. The basis for the adjustment was "industry standards." (T-36).

The second comparable was 20 Cambridge Blvd., which was also two blocks southeast of the subject property, and it sold for $649,900 in October 2004. He made an upward adjustment of $10,000 based on the year the comparable was built, 1929. (T-39). Part of Mr. Bialas' appraisal approach was that if a typical buyer was looking for new construction the buyer would not be looking for new construction in a community composed primarily of older homes. (T-40).

The next comparable was 14 Ridge Rd., which is four blocks northwest of the subject property, and sold for $675,000 on July 6, 2004. This comparable was built in 1918. (T-41). The

Tribunal pointed out that there was a square footage adjustment missing from his comparable number three, which Mr. Bialas acknowledged would increase the adjusted value by $72,720 to $760,720. (T-43). Thus carrying forward the upward adjustment for tax year 2006, Mr. Bialas raised the value for the subject property from $720,000 to $745,000. (T-45).

Regarding the cutoff dates for Mr. Bialas' appraisals, Mr. Bialas asserted that he contacted either the city assessor or the city manager and asked them what the cutoff date was for comparables for doing an assessment on the property, and ostensibly was advised that March 31 was the cutoff date. Hence, March 31, 2005 and March 31, 2006 are the effective dates in Petitioner's appraisal reports. (T-48). Respondent strenuously objected, because March 31 is not the tax day, as specified by statute, MCL 211.2. The objection was overruled, indicating that the Tribunal would give the testimony and evidence the weight it is due.

Mr. Bialas then testified as to the second appraisal, which was effective March 31, 2006 for tax year 2007. He indicated that his first comparable was 11 Cambridge Blvd., which sold March 14, 2006 for $575,000. He determined an adjusted value of $672,000. (T51-52).

The second comparable was 13 Oxford Blvd., which sold August 4, 2005 for $610,000, which after adjustments yielded a value of $676,000. (T-53).

The third comparable was 19 Cambridge Blvd., which sold for $674,000 on August 24, 2005, which value adjusted to $794,000. (T-53-54).

Mr. Bialas concluded with a value of $680,000 for the subject property for tax year 2007. (T-54).

Respondent's attorney, Charles Y. Cooper, commenced cross-examination of Mr. Bialas. (T-55).

> Q Now, sir, once you learned that this particular case was going to come to the Michigan Tax Tribunal, did you look up, for example, the definition of market value that the Michigan Tax Tribunal uses?
>
> A I don't think I have, no.
>
> Q So you don't know whether your definition that you've given regarding market value, then, is consistent with the definition that is utilized by the Michigan Tax Tribunal?
>
> A I based my appraisal on true market value for that subject property.
>
> Q That's not the question I asked you, sir. The question I asked you is, to your knowledge, do you know whether the market value -- the definition of market value that you utilized is the same definition that is used by the Michigan Tax Tribunal?
>
> A As far as my knowledge? No.
>
> Q Okay. Now, sir, your definition of market value certainly is consistent with Fannie Mae, though, is it not?
>
> A That is correct.
>
> Q So, I mean, that most of your appraisals [are] for Fannie Mae, is that not correct?
>
> A That is correct. (T-56).

Then the cross examination turned to the valuation of the subject property:

> Q Now, sir, what is your opinion of Mr. Weber's home, 21 Oakland Park, as of December 31st, 2005?
>
> A Opinion of what?
>
> Q What is the market value of Mr. Weber's home as of December 31st, 2005?
>
> A Where is -- can I see my appraisal?
>
> MR. DI PONIO: Would you like my copy of the appraisal?

A I do so many appraisals, so many numbers, I mean, even just right now --
MR. COOPER: Here, I have it.

MR. DI PONIO: I have it right here. I'm just giving you all the pages.

* * *

Q. Sir, I'm handing you what has been marked as Exhibit P1 (sic). And again, I'll have you review that.

(Witness reviews exhibit)

A Okay. The effective date on this report was –

Q No; no. I'm not asking you what the effective date of your report, sir, is. I'm asking what your opinion is of the value -- the market value of Mr. Weber's home, 21 Oakland Park, Pleasant Ridge, Michigan, as of December 31st, 2005.

A How can I state that opinion when my appraisal report is based on a date of March 31st, 2005? I didn't-- I wasn't --I didn't use any comparables after the fact, so how can I state an opinion after the fact?

Q Sir, I'm just asking you the question. Either you know or you don't know.

A I don't know the value at that time.

Q All right. And again, sir, again the same question:
What is your opinion of the market value of Mr. Weber's home at 21 Oakland Park, Pleasant Ridge, Michigan, as of December 31st, 2006? Do you need to see the appraisal on that, sir?

A No. I don't know. (T-57-58).

The cross examination turned to the cost approach and Mr. Bialas testified that he did not use the Marshall and Swift handbook in determining that the subject property was of "average construction." (T-60). Cross examination went on to ask, given the difference between average construction, which would have a square-foot value of $105, and "excellent" construction, which have a $170 square-foot cost, would the price per square foot affect whether or not the subject property was of average construction and Mr. Bialas's conclusion as to the property's value. (T-

63). Mr. Bialas, when pressed, conceded that with a rating of "good construction," the value would be $140 to $150 per square foot and the value conclusion would be substantially higher. (T-63).

Further Mr. Bialas agreed that Marshall and Swift could indicate that a house in excess of 4000 sq. ft.[2] would fall under the category of "excellent" construction, and not simply "good" construction. (T-64).

The cross examination shifted to looking at 13 Oxford, which was used by Mr. Bialas and Respondent's appraiser, Mr. Fuller, and Oakland County. Mr. Bialas used a value of $7,000 as an upward adjustment for this site and on five of the six comparables, because they were all the same frontage size of 60 to 65 front feet. (T- 65). However, Oakland County made an upward adjustment for the same property of $70,000 for land value and Respondent's appraiser, Mr. Fuller, made an adjustment as to the value based on lot's size of $50,000. (T-67). Mr. Bialas testified as follows:

> Q How can you -- can you explain to the Court how it is that you came to the figure of $7,000 for the adjustment on lot size?
>
> A Well, again, I based it on the frontage, 65 compared to 100, so you're talking 35 feet of -- really, at that point in the city of Pleasant Ridge where it's -- all the homes are side by side, there's not much value difference between 100-foot frontage compared to 65. Now, if you go out in the suburbs, if you go out to rural areas where you're talking about acreage and you're talking about one acre compared to five acres or six acres, yeah, there's a big difference there. Or if you're talking frontage of 100 compared to 2- or 300, there's a big difference there. Now, is this -- if this lot here is splittable, can it be rebuilt? I called up the City, and they told me that the Building Department didn't know. They said that you would have to contact the city manager, and that she was out. But she thinks that you'd definitely need 30 percent of a building site to build on. So if you would build a home on that lot, it would be a very smaller home.
>
> Q Sir, again, what was it -- did you -- is this just a figure that you just came up with yourself? Or did you --

A No. It's just experience in the area and industry standards.

Q Okay. Industry standards? When you say industry standards, what do you mean by that?

A What other appraisers use, what adjustments other appraisers use. And that's really -- a lot of times that's what we base our adjustments on and other typical --

Q Well, what other appraisals did you use?

A What's that?

Q What other appraisals did you use?

A Just the experience in the area and reviewing other appraisals.

Q So your experience in the area?

A Correct. (T-67-69).

During continued cross examination Mr. Bialas testified that for the sales comparison approach he used an adjustment factor of $45 a square foot, for size differentials based on "industry standards" even though the property could not be duplicated at $45 a square foot, but that this adjustment factor somehow was justifiable based on the Bialas sales comparison approach. (T-70).

When asked whether or not he would agree with Mr. Fuller's statement that "Accents and construction of this nature are generally found in dwellings that are in the upper echelon of overall construction quality," Mr. Bialas responded that he was not an expert in construction quality of homes. (T-73).

On redirect examination Mr. Bialas indicated that any real estate values, after the effective date of March 31, 2005 as given in his appraisal, would be declining. Also he indicated that in addition to Ridge Road being an outlier, that a low $200,000 sale would be considered an outlier and not used as a comparable. (T-73).

RESPONDENT'S CASE

Respondent's first witness was Craig John Fuller, a certified general appraiser. Mr. Fuller testified that a certified general appraiser is the highest level of licensure that is granted by the State of Michigan. (T-75). He has been certified as an expert witness at the Michigan Tax Tribunal, federal court, and Oakland and Wayne County circuit courts. (T-76).

Mr. Fuller testified that he had prepared two appraisals as of tax day December 31, 2006 for the 2007 tax year, and tax day December 31, 2005 for the 2006 tax year, which were marked and admitted as Respondent's Exhibit Number Two. (T-79). His opinion as to market value of the subject property, 21 Oakland Park, Pleasant Ridge, Michigan, was $1,135,000 as of December 31, 2005 and $1,045,000 as of December 31, 2006. (T-79). He noted that the assessed value for 2005 was $470,720, and the assessed value in 2006 was $472,600. Also, he noted that the zoning was single-family residential. He indicated that his retention as an appraiser was to determine the true cash value of the subject property as defined by the General Property Tax Act. (T-80). He used two approaches to reach valuation of the subject property: the cost approach and the market data approach. The cost approach to value, in his report, was abbreviated because he found that there was a significant amount of economic obsolescence. He believes the subject house was overbuilt for the area. (T-81).

Q Can you give us a discussion of the appraisal problem in this particular area specifically?

A Well, it's an area of historic homes; generally expensive homes. The subject property is a larger, newer home. Most of the surrounding homes are older. The difficulty or the crux of their appraisal problem, in my opinion, is would a larger home in this area sell at a price that's commensurate to what the smaller homes are selling for.

Q And can you give us a description of the property itself, sir?
A The property's a little over 5100 square feet in terms of gross floor area, based upon my physical measurement of the property. It's an outstanding dwelling. In my years of appraisal, it might make the top ten list. (T-81).

Q And can you give -- can you describe the building improvements on this particular parcel, sir?

A Well, in addition to 5100 square foot dwelling improvement, you basically have a front porch area that's cut stone; a beautiful piece of architecture, actually. There's a rather large garage, about 700 square feet. At the rear of the dwelling there's a double balcony, upper and lower, with brick arch supports, also quite significant architecturally; fully landscaped yard with a stone paver patio; stone paver driveway, I believe.(T-82).

As to the cost approach Mr. Fuller testified as follows:

Q All right. And did you determine or estimate the value via the cost approach to value?

A I didn't summarize a value via the cost approach. I did estimate the reproduction costs of the property and determined that for this quality of construction, based upon the Marshall Swift handbook, the reproduction cost of the dwelling alone would be in the area of $875,000. Once you add the porch, the balconies, the landscaping, the basement and all the other areas, the cost of the improvements would likely be over $1,000,000. Once you add the land you'd be well north of $1,000,000, which is above what the market data approach would suggest the property is worth.

Q And now, sir, did -- and again, we were talking before in relation to the Petitioner's appraiser, and he used the term "average construction." Did you use the term "average construction" when you assessed this particular house?

A No.

Q And do you agree with the concept that it's average construction?

A Well, within the definition of the Marshall Swift handbook, I think it's excellent quality construction. That's one area where we have a specific reference point, and the Marshall Swift handbook I think pegs it fairly accurately at that point.

Q In other words, at an "excellent quality" construction?

A Yes.

Q Now, sir, does -- then may I say that there's maybe another grouping or a couple of groupings below excellent and average in the cost in Marshall book?
A Yes. The handbook has six groupings. There's excellent, there's very good, there's good, there's average, there's fair and there's low cost. (T-82-84).

Mr. Fuller went on to testify that in a property of the size of the subject, the appraisal issue is whether it would sell for a commensurate amount more than the more typical properties that are surrounding it. (T-84). Mr. Fuller testified that he used three comparables for the market sales approach:

38 Ridge Rd; 4200 ft.^{2}; sold February 2006 for $1,010,000.

32 Oxford; 3200 ft.^{2}; sold January 2006 to for $780,000.

13 Oxford; 3740 ft.^{2}; sold August 2005 for $610,000. (T-86-87).

Mr. Fuller derived a value for lots in Pleasant Ridge and Huntington Woods having a selling price of $250,000 to $300,000. He was asked to opine as to the basis for the difference in adjustments between his plus adjustment of $50,000, and Mr. Bialas's plus adjustment of $7,000 for 13 Oxford. He responded as follows:

Q Can you explain to the Court how you arrived at this figure of $50,000?

A Well, the overall assessment -- or, my overall assessment of the land value is taken from a sale at 38 Ridge. 38 Ridge was the $1,000,000 sale which we previously mentioned. It sold back in 2001 for $510,000 and subsequently was gutted and restored to its present situation. That suggests to me that land values are probably in the area of 2-, 300,000, if not more, given that a gutted frame would contribute roughly -- a gutted 4,000 square foot frame and a pool would contribute roughly a couple hundred. Also there's evidence that I came across in Huntington Woods where houses were being tore down and built at 250,- to 300,000 for the land values there. So with lots values in that

area, then for the – let's say $250,000 for the subject lot, that would be roughly $12.50 a square foot. My adjustment is less than the 12.50, because as lots get larger prices on a per square foot basis decline. But the market still enjoys those larger lots and can build a larger footprint on those larger lots; do more on those larger lots. The $7,000 difference for a lot that's almost twice as big, it's not commensurate, I guess, is what I'm trying to say. If we're talking about $250,000 for the subject lot, one that's 33 percent smaller is not going to be worth $7,000 less; it's going to be more like 50,000 less.

Q All right.

A And that's the basis for my adjustment.(T-88-89).

Regarding 13 Oxford, a comparable used by Petitioner and Respondent, he was asked to testify regarding the differential in adjustment for the dwelling size, Mr. Bialas's plus adjustment of $57,500, and Mr. Fuller's adjustment of plus $215,000. He responded as follows:

Q Now, sir, regarding the dwelling size, I believe that the figure for Mr. Bialas was $57,500 and your adjustment upward was $215,000; --

A Yes.

Q -- a significant increase over Mr. Bialas's estimate. Can you tell the Court how you arrived at $215,000?

A Well, in my report you'll see that there's two areas of the market that I look to. The one that I looked to was a comparison between 38 Ridge Road and my other sale, which is smaller, at 32 Oxford. When you compare those houses, which were 1,000 square feet difference, the difference in sale price is $230,000. The higher priced house is newer, true; but the difference in terms of total size -- or, the total difference is almost $300 per square foot. The average price per square foot, interestingly enough, for the $4,000 sale doesn't decline; it stays on par with the smaller sale. So the average price per square foot from the market with the one larger sale that I was able to find does not appear to be declining. Hence the market is paying and it looks to be paying pretty close to cost for -- if not -- actually it looks like more than cost for this additional square footage, based upon the two houses being compared. The adjustment -- my adjustment at $150 is actually below my estimate of costs. So there are basically two points, then. The comparison between 32 Oxford and 38 Ridge, and the cost approach to value where roughly the cost of building additional square foot is around $170 a square foot. Those both form my -- the basis for my conclusion of adjusting at $150 per square foot for marginal square footage.

Q Now, again, on dwelling size there is a difference in opinion regarding dwelling size. I think that your dwelling size is at $210,000? (T-89-90).

Mr. Fuller was asked if he was able to find comparable parcels in Huntington Woods and Royal Oak:

Q Now, other than the city of Pleasant Ridge, did your research take you to any other areas around the subject area?

A Yes; primarily Huntington Woods and Royal Oak.

Q And were you able to find comparable parcels in those areas?
A Well, I looked in Huntington Woods and Royal Oak in order to find out if there were any sales of larger houses in that area that carried the value upward, if you will, carried the cost of -- tended to carry the cost of construction upward. And I did locate one sale, I believe it was at 1205 Vinsetta – I'm sorry -- 1704 Vinsetta that sold for 1.2 million; 4800 square foot house, smaller than the subject. And Royal Oak is not an exactly similar community to Pleasant Ridge but it is similar in the extent that the average house in the surrounding area is less valuable than that house on Vinsetta. So across I-96 I see somebody that built a rather -- a house that's rather larger than that around it, and it sold for more. And that was in September '05 that that sale took place. Also there were -- the two houses in Huntington Woods that struck me were 8440 and 10554 Ludlow. Those were houses that both sold near $1 million, as well; older, smaller houses than the subject.

Q And supported your position, sir?

A I believe so, yes. (T-93).

Regarding his 2005 appraisal, Mr. Fuller indicated that he looked at the average sale price in the city of Pleasant Ridge and noticed the sale price trend was upward during 2005, and then declined at the end of 2006. He perceived a peak sometime around mid-2006. He discovered that although the decline was fairly significant, around 15%, the sales were for smaller houses at the end of 2006. However, the price per square foot for the dwellings stayed about the same. So although the average sales declined, he estimated that there was a decline of about 9% during 2006, and that his 2005 value basically utilized the same values as the 2006 values with the time adjustment being reduced. (T-94).

He testified that he thought the Oakland County assessment for 2005 at $470,720 and the assessment for 2006 at $472,600 were low, and he thought they should be higher.(T-94-95). Respondent's counsel Tony Di Ponio commenced cross examination.

Mr. Fuller was asked whether the comparables used by Petitioner's expert for tax year 2006 based on sales in December 2004, October 2004 and July 2004 were permissible for appraisal purposes. Mr. Fuller responded that they were permissible, but he would prefer in sales in 2005. Likewise for the 2007 assessments, Mr. Fuller indicated that comparable sales that closed in March 2006 and August 2005 would be acceptable under appraisal practice. (T-98).

Other than Mr. Bialas not using 38 Ridge Road as a comparable, Mr. Fuller appeared to agree that there was no difference in the methodology used by Petitioner and Respondent, and that different comparables were used, and Petitioner and Respondent had different opinions as to the adjustments. (T-102).

On redirect, Mr. Fuller testified that he had been performing appraisals for over 30 years, averaging 50 to 60 appraisals a year and that the subject property, 21 Oakland Park, Pleasant Ridge would fit in the top 1% of all the homes he's looked at. (T-103).

Respondent then introduced William David Thompson, Field Supervisor for the Oakland County Equalization Department. He testified that the assessed value for the subject property in 2006 was $473,030 and that for 2007, it was $472,600. (T-105-106).

Thompson had met with Petitioner and his counsel to discuss the property tax assessment issues. Given the dispute, he ordered that an appraiser be hired to value the property. On prior occasions he had determined that a property under review was over assessed and corrected the assessment. (T-107). In order to prepare for the instant tax appeal Respondent's Exhibit Number 1, a valuation disclosure, was prepared and it was admitted into evidence.(T-109).

Mr. Thompson derived a land value of the subject property at $239,430, which was based on the sale of land in the subject community and adjacent cities, villages or townships.(T-112). Based on the State Tax Commission manuals, a value was derived of $5,055 for the patio. (T-112). Then the value of the totality of the structure was calculated establishing a true cash value for 21 Oakland Park, after rounding, of $946,060. (T-113).

It was noted in direct examination that one of the comparables used by Petitioner was 13 Oxford, which the county had given an upward adjustment of $70,000, compared to the upward adjustment in value of $7,000 by Petitioner. (T-114). Mr. Thompson responded that the subject property has a 100 x 200 foot lot size, while the comparable 13 Oxford has a lot size of 65 front feet by 150 feet. The county developed an adjustment of $2000 per front foot, hence the $70,000 upward adjustment in comparable value. As to gross living area, comparing 13 Oxford with the subject property, 21 Oakland Park, there was an upward adjustment of $124,960. This adjustment was derived by subtracting the living area for 13 Oxford from the square footage of 21 Oakland Park and then multiplying that figure by $80 a square foot. (T-115). Oakland County Equalization Department has derived a range in value for Pleasant Ridge from $60 a

square foot to $100 a square foot. The Oakland County Equalization Department practice is to use $80 a square foot at the high-end in Pleasant Ridge. (T-116).

Mr. Thompson testified that, after sitting through the hearing, he had not heard any testimony that would cause him to change the assessed valuation for 21 Oakland Park. (T-119). On cross examination Mr. Thompson was asked whether there would be a square footage adjustment reduction if a home was overbuilt. Mr. Thompson indicated that that was addressed in Oakland County's cost approach; however, Petitioner's counsel directed the response to the sales comparison approach. Mr. Thompson would make appropriate adjustments per square foot for a property that was overbuilt for the surrounding area. (T-121). Mr. Thompson testified that if a house had more than six bathrooms, this would not necessarily increase the fair market value by the $8,000 per bathroom, because greater than a certain number of bathrooms in a certain quality of homes are not necessarily going to generate more money in value. (T-122).

FINDINGS OF FACT

The Tribunal finds that the subject property, 21 Oakland Park Blvd., Pleasant Ridge, MI 48069 (property identification number 25-28277-008) is a single-family residence with its highest and best use as a single-family residence. The gross living area is 5303 ft.² The lot dimensions are 100 feet x 200 feet.

That Petitioner's appraiser, Mr. Bialas, did not consult the statutory definition of true cash value, MCL 211.27, and that he did not determine the tax date for the appraisals, goes well beyond a mere technical violation of the general property tax act. By focusing on sales on or before March 31, 2005 for the 2006 tax year and March 31, 2006 for the 2007 tax year, Mr. Bialas ignored the

sale for 38 Ridge Rd., even though its sale date of June 7, 2006 was closest to the relevant tax date of December 31, 2006, for tax year 2007. Characterizing the 38 Ridge Rd. sale as an anomaly does not overcome its relevance as a comparable.

Not using the statutorily required tax date, December 31, was more than a technical violation of the statute. This was pointed out when Mr. Bialas could not and would not testify as to the true cash value of the subject property on tax dates December 31, 2005 or December 31, 2006.

The calculation of the land value of the subject property as indicated by Respondent's representatives is more credible at $250,000 for the subject lot, which is supported by the land value conclusion of Mr. Thompson, who calculated value of $239,430 for the subject lot.

The Tribunal notes that no evidence was submitted as to the purchase price of the subject property, nor was evidence submitted as to the cost of demolition of the existing structure on the property. Further, even though the structure was built in 2001, no documentation was submitted regarding the cost of construction or architectural fees.

Although assertions were made that the property was overbuilt and that there was external obsolescence, the conclusion that this would necessarily affect true cash value was not supported. Neither Petitioner nor Respondent submitted any evidence or calculations supporting an obsolescence adjustment.

Regarding the cost less depreciation methodology, Petitioner's appraiser indicated using this methodology was not mandated by the nature of the appraisal and he believed that market sales would be the most indicative of true cash value so he did not use cost less depreciation at all.

Mr. Fuller, Respondent's appraiser, recognized the obsolescence problem, and made allowances for the same in the market comparisons that he used.

Respondent's appraiser indicated he did not summarize the value via the cost approach; however, based on the Marshall Swift, construction costs of the dwelling alone would be in the area of $875,000. Once the other improvements costs are added, the total costs would be over $1 million, and then if the cost of the land was factored in, the value would be greater than what the market data would suggest the property is worth.

Further, Mr. Bialas's basis for making the value adjustments for the comparables based on "average construction" instead of "excellent construction" was simply not credible. Mr. Fuller indicated that a residential structure with a size over 4000 ft.^{2} is considered excellent construction in the Marshall Swift handbook. In Mr. Bialas's appraisals, a value of $105 per square foot was used to compensate for the differences in the square footages of the various comparables. However, as was pointed out in cross examination of Mr. Bialas, if the values were based on Marshall Swift, the size differential calculations for excellent construction would be $170 per square foot. On the other hand, Respondent, through Mr. Fuller, calculated the differential based on using 38 Ridge Rd. and the subject property, 32 Oxford Place, and derived a marginal cost per square foot of $170, which was confirmed the $170 per square foot stated in the Marshall Swift handbook. However, Mr. Fuller was more conservative and used $150 per square foot value for calculating the marginal square footage differentials.

Mr. Bialas's use of the term "industry standards" to support his speculations without submitting a substantiating factual basis was simply not probative. In sum, Petitioner did not meet the required burden of proof.

Petitioner's appraisal has failed to comply with MCL 205.737 to establish TCV as of the relevant tax days. Indeed, Mr. Bialas could not testify as to the value of the subject property on the relevant tax days. Also, his simple assertion that the income approach was not mandated is not in line with the law. Pursuant to *Meadowlanes, infra,* the Tribunal is required to consider all three appraisal approaches. Mr. Bialas's statement that the income approach was not mandated is not sufficiently explanatory. The income approach does not apply because there is no income stream. Mr. Bialas classified the subject property as having average construction, which was controverted by the evidence. The subject property is, by the Marshall Swift definition, of "excellent construction." Further, Mr. Bialas did not consider in his market sales approach a property, 38 Ridge Rd., that was more comparable to the subject property, and that had sold closer to the subject tax day, than Petitioner's other comparables.

Therefore, based on the evidence submitted and the testimony given, the Tribunal concludes that the value estimates as determined by Respondent's appraiser, Craig J. Fuller, are the most probative based on the market sales approach as adjusted. The true cash value for tax year 2006 is $1,135,000 and the true cash value for 2007 is $1,045,000.

CONCLUSIONS OF LAW

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

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law. 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%.... Const 1963, art 9, sec 3.

The Michigan Legislature has defined "true cash value" to mean:

> ...the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. MCL 211.27(1)

The Michigan Supreme Court has held that "'[t]rue cash value' is synonymous with 'fair market value.'" *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450; 221 NW2d 588 (1974).

Under MCL 205.737(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 377 NW2d 908 (1985). 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. *Meadowlanes Limited Dividend Housing Association v City of Holland*, 437 Mich 473, 485- 486, 473 NW2d 636 (1991). A similar position is stated in *Tatham v City of Birmingham*, 119 Mich App 583; 326 NW2d 568 (1982): "The Tax Tribunal is not required to accept the valuation figure advanced by the taxpayer, the valuation figure advanced by the assessing unit, or some figure in between these two. It may reject both the taxpayer's and assessing unit's approaches."

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735(1). The Tribunal's factual findings are to be supported by competent, material, and substantial evidence. *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Department of Treasury*, 185 Mich App 458, 462-463; 452 NW2d 765 (1990). Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. *Jones and Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

Although *Country Meadows, GP v Township of Macomb*, COA Docket No. 182305 (April 1, 1997), is an unpublished decision by the Michigan Court of Appeals, the Court's decision does provided some guidance for the Tribunal in situations where neither party provides sufficient and reliable evidence of the subject property's true cash and taxable values. In that regard, the Court stated:

> Plaintiffs cite *Jones & Laughlin Steel Corp v City of Warren,* 193 Mich App 348; 483 NW2d 416 (1992), for the proposition that even when the plaintiff fails to meet his burden of proof, the tribunal must still make an independent determination of the true cash value of the property in question. However, unlike the plaintiff in *Jones & Laughlin,* in the present case plaintiffs did not meet their burden of going forward with evidence. See *id.* at 354-356. Under the circumstances, the tribunal could not make an independent determination of the true cash value of the property because it had no evidence on which to base such a determination except that provided by defendant. A contrary holding would be tantamount to requiring the tribunal to hire its own appraiser."

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. *Meadowlanes*, at 484-485; *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (1966),

aff'd 380 Mich 390 (1968). The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale,* p 277.

In the Findings of Fact section of this Opinion and Judgment, the Tribunal found that the Market sales approach to valuation as provided by Respondent's appraiser is the most probative approach to determine subject property's true cash value.

JUDGMENT

IT IS ORDERED that the subject property's true cash value, assessed taxable values for 2006, and 2007 are those shown in the "Final Values" section of this Opinion and Judgment.

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 as required by the Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of 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, 1995, at a rate of 6.55% for calendar year

1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998, at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, and (xiii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009.

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

MICHIGAN TAX TRIBUNAL

Entered: September 29, 2009 By: Stuart Trager, Tribunal Judge