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DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
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**UPCOMING TRIBUNAL VACANCY DUE TO RETIREMENT  
SPIFFY NEW LOOK FOR TRIBUNAL WEBSITE  
CLARIFICATION ON RESTRICTIONS ON EMAIL SUBMISSIONS  
RECENT CASE LAW OF INTEREST**

**Upcoming Vacancy in the Michigan Tax Tribunal**

The Michigan Tax Tribunal will be having a vacancy due to an upcoming retirement of Christine Schauer, At-Large Member. Judge Schauer has been an integral part of our team and we wish her a happy and long retirement. We also thank her for her service to the State of Michigan. Upon her retirement at the end of April, Judge Schauer's unexpired term will be open for a gubernatorial appointment. Individuals interested in serving on the Tribunal can inquire with the Governors Appointments Division. The appointment would be for a partial term expiring June 30, 2023, and is subject to advice and consent of the Senate.

**Tribunal Website Given Makeover**

Our website has recently been given a new look, designed to be easier to navigate, yet hopefully familiar enough for those who utilize it often. Please check it out, if you find any broken links or other errors, or have ideas for improvements, especially those to make it more user friendly, please email us at [taxtrib@michigan.gov](mailto:taxtrib@michigan.gov).

**Clarification on Restrictions on Email Submissions**

On February 3, 2022, the Tribunal issued a Newsletter regarding "Restrictions on Email Submissions." It neglected to mention that the Tribunal will still accept EXHIBIT LISTS, EXHIBITS (not rebuttal exhibits), pursuant to the MTT Guide for Participants for the conducting of ET Video Conference Hearings (on our website).

Please note that *Notification of Court Reporter* is **not** included in the participants guide and must be formally filed.

**Recent Cases of Interest**

*Love v Port Sheldon Township*, unpublished per curiam opinion of the Court of Appeals, issued January 20, 2022 (Docket No. 355451).

Petitioner appealed the Tribunal's TCV determination, arguing that it erred when it found Petitioner's evidence irrelevant and adopted Respondent's cost approach. The Court of Appeals found that the Tribunal did not misapply the law or rely on a wrong legal principal in determining that Petitioner's evidence should not be given any weight and that the property record card was the best evidence of value. The Court noted that Petitioner's evidence was admitted and considered but deemed irrelevant because it did not comport with recognized valuation methods; The ALJ explained why the parties' evidence was treated differently, and the Tribunal elaborated on this point in the final opinion; Petitioner's expertise was not dispositive of relevancy, and their disagreement with the Tribunal's methodology was not a basis for finding misapplication of the law or reliance on a wrong legal principal. Further, Petitioner acknowledged receipt of the record card and their failure to review it did not constitute lack of notice for due process purposes. Petitioner's lake frontage argument was not preserved because it was not discussed at the hearing, and any error in the Tribunal's determination was de minimis and did not affect the final value determination.

*Michigan Health and Wellness Center LLS v Royal Oak Township*, unpublished per curiam opinion of the Court of Appeals, issued January 20, 2022 (Docket No. 356003).

Petitioner appealed the Tribunal's order of dismissal, arguing that it erred in finding that the appeal was untimely because MCL 41.726(3) provides the correct statute of limitations for challenging the disputed special assessment. The Court of Appeals agreed because "when another statute provides a different limitations period for filing a petition with the Tax Tribunal, that statute controls and MCL 205.735 does not apply."<sup>1</sup> The Court also found that MCL 41.726(3) is only applicable if the special assessment has been confirmed, and inasmuch as there was no evidence of confirmation, the limitations period never began to run, and Petitioner's appeal was not untimely. Respondent argued that the 2019 winter tax bill served as notice of the special assessment and began the limitations period, but the Court found that both statutes based the limitations period on confirmation, not notice. The Court also rejected Respondent's argument that Petitioner's request for relief was equitable because complying with statutory mandates is not equitable in nature.

*Javor v Plymouth Township*, unpublished per curiam opinion of the Court of Appeals, issued January 27, 2022 (Docket No. 356238).

Petitioner appealed the Tribunal's TCV determination, arguing that the Tribunal erred in (1) refusing to accept the actual sale price of the subject property, (2) declining to consider Petitioner's economic condition factor (ECF) analysis, (3) eliminating valid comparables and relying on a single sale, and (4) using a \$50/SF land value adjustment in its valuation. The Court of Appeals disagreed, noting that sale price is not conclusive evidence of value. It also noted that the cited Supreme Court cases did not support Petitioner's arguments, and that their reliance on the assessor's manual was misplaced. The Court found that the Tribunal considered and analyzed various comparables and selected the most accurate valuation under the circumstances. Petitioner's land value

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<sup>1</sup> Briggs, 485 Mich at 76.

adjustment argument was not raised until after the hearing, and the Tribunal's refusal to consider additional evidence on that issue was supported by TTRs 287 and 289. The proffered adjustment was also more favorable than the one used in Petitioner's own analysis. Finally, the Court found that the Tribunal did not err in declining to consider Petitioner's ECF analysis because the underlying figures were not supported by any evidence on record.

*Ellsworth v Dept of Treasury*, unpublished per curiam opinion of the Court of Appeals, issued January 27, 2022 (Docket No. 355835).

Petitioner appealed the Tribunal's opinion upholding Respondent's denial of a principal residence exemption (PRE), arguing that the Tribunal erred in finding that Petitioner did not occupy the subject property as their principal residence. The Court of Appeals held that the Tribunal's determination was supported by competent, material, and substantial evidence. Several of Petitioner's arguments challenged the weight given to the evidence, which the Court found to be in the Tribunal's discretion. The Court also found that the Tribunal did not treat Petitioner's driver's license and voter registration as conclusive evidence of residency, in violation of *Drew v Cass County* as alleged, but cited the totality of the evidence, including the legal effect of using an address on these documents and Petitioner's renewal using a different address after filing their PRE claim. Further, consideration of Petitioner's "legal" intent to return to another property was proper because their intent to return to the subject was required to establish it as their principal residence.

*Kathawa v West Bloomfield Township*, unpublished per curiam opinion of the Court of Appeals, issued February 24, 2022 (Docket No. 355907).

Petitioner appealed the Tribunal's TCV determination, arguing that the Tribunal applied an unduly exacting standard to the evidence, and that its rejection of Petitioner's percentage-based adjustment method and the subject sale price was erroneous. Petitioner also argued that the Tribunal unintentionally and erroneously relied on one of Respondent's comparable sales in its value determination. The Court of Appeals interpreted Petitioner's evidentiary argument as contemplating MCL 205.746(1) and found it without merit because the statute permits, rather than mandates consideration of evidence "commonly relied upon by reasonably prudent persons." The Court also found that the evidentiary determinations were supported. As to valuation, the Court found that the subject sale was not conclusive evidence of value, and the property sold more than one year prior to the relevant valuation date. Petitioner's appraisal also indicated that its value was appreciating. The Court further found that the Tribunal was not required to accept Petitioner's methodology, and that it clearly outlined its reasons for rejecting it. Professional recognition and approval of the methodology did not mean that it was a better approach, or that the Tribunal's conclusion was incorrect, and authoritative language cited by Petitioner actually supported its findings. The Court also found that Petitioner's views on the relevancy of the comparables were not determinative of actual relevancy or the Tribunal's conclusions, and consideration of Respondent's comparable was both intentional and proper.

*Cohen v City of Oak Park*, unpublished per curiam opinion of the Court of Appeals, issued March 17, 2022 (Docket No. 356993).

Petitioner appealed the Tribunal's TCV determination, disputing the Tribunal's findings regarding their challenge to the economic condition factor (ECF) used to assess the subject property. Petitioner raised several issues relating to standing, jurisdiction, and burden of proof, all of which were found to be without merit. The Court of Appeals held that the Tribunal did not err in finding petitioners lacked standing to raise ECF issues affecting the subject property because it made no such determination—It found only that Petitioner lacked standing for other properties in the ECF neighborhood. Similarly, the Tribunal did not find that it lacked jurisdiction over issues relating to the establishment of ECF neighborhoods; Petitioners were allowed to present their case but failed to establish that the subject's ECF neighborhood was erroneous or invalid. The Court also held that there was no error in the allocation of the burden of proof because ECF is used to calculate TCV, and petitioners bear the burden on that issue.

**Concluding Note:**

As always, the Tribunal appreciates feedback, and we again thank those who have provided comments, suggestions, and ideas in the past. Best wishes as we begin what hopefully is springtime weather.

Sincerely,



Steven M. Bieda  
Chairperson, Michigan Tax Tribunal