

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

Dr. Brian Adelman,
Petitioner,

MTT Docket No. 314575

v

Township of West Bloomfield,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

OPINION & JUDGMENT

This case is an appeal of the 2005 true cash, state equalized, and taxable values, and the 2006 taxable value, established by the Township of West Bloomfield (Respondent) under the general property tax act (GPTA) for one parcel of real property (the subject property) owned by Dr. Brian Adelman (Petitioner) and utilized by Dr. Adelman as his family residence. The subject property is known as Parcel No. 18-25-301-016. For the reasons set forth herein, the Tribunal finds that Petitioner, through the replacement cost approach presented in his appraisal, met his burden of proof in establishing the subject property's 2005 true cash value.

The subject property's 2005 and 2006 true cash value (TCV), state equalized and assessed value (SEV/AV) and taxable value (TV), as originally established by Respondent are:

Year	TCV	SEV/AV	TV
2005	\$4,972,180	\$2,486,090	\$2,270,410
2006	\$5,254,460	\$2,627,230	\$2,345,330

Respondent's revised contentions of values are:

Year	TCV	SEV/AV	TV
2005	\$5,265,480	\$2,632,740	\$2,417,060
2006	\$5,254,460	\$2,627,230	\$2,496,822

Petitioner’s contentions of values are:

Year	TCV	SEV/AV	TV
2005	\$4,000,000	\$2,000,000	\$2,000,000
2006	\$4,000,000	\$2,000,000	\$2,000,000

FINAL VALUES

The subject property’s 2005 and 2006 true cash values (TCV), state equalized and assessed values (SEV/AV) and taxable values (TV), as determined by the Tribunal are:

Year	TCV	SEV/AV	TV
2005	\$4,600,000	\$2,300,000	\$2,084,320
2006	\$5,254,460	\$2,627,230	\$2,153,102

PROPERTY DESCRIPTION

The subject property consists of one parcel of real property located at 6100 Bloomfield Glens, in West Bloomfield, Michigan. Bloomfield Glens is an unpaved road with little traffic. The property is known as Parcel No. 18-25-301-016 and is classified as residential for taxation purposes. The property contains five acres of land and a custom built single-family residence for which construction began in 2001 and was completed in 2004. The residence is a two-story Tudor-styled house, with a third story loft. While the total size of the residence is at issue, it is certain that it contains at least 12,653 square feet. There are two garages, one being a two-story, three-car attached garage with a second story exercise room, the other being a two-story, two-car garage with living space on the second story. This space is described as a “carriage house” or a “studio,” and consists of one big room with one bathroom. It is attached to the residence by a breezeway.

PETITIONER’S CASE

Petitioner asserts that this case is a straightforward valuation case. According to Petitioner, the subject property’s assessments were established through a “misapplication of

appropriate assessing and appraisal practices.” Specifically, Petitioner asserts that Respondent’s use of a Class A+60 rating is not supportable and that the economic condition factor (ECF) of 1.45 is inappropriate given the fact that the residence was newly constructed. The result of this misapplication is a distortion of the subject property’s value. (Transcript¹, day 1, p13)

Dr. Brian Adelman, the petitioner in this case, was the first witness to testify. Petitioner testified that he is the owner of the subject property and that he purchased the property in 1997 for \$540,000. In addition to approximately five acres of land, the property contained a residential structure. This structure was subsequently demolished so that Petitioner could build the residence at issue. The building was completed in 2004 at a cost of more than \$5 million. (T1, p24) Petitioner testified that the main house, including the basement area, is approximately 17,000 square feet in size. Petitioner obtained this information from his builder.

Petitioner described some of the features of his residence. Entry to the residence is gained through a two-story foyer. Located on the first floor are the living room, dining room, library, two half-bathrooms, and a kitchen with an island and an area referred to by Petitioner as a “nook” that contains a fireplace.

The residence’s second floor contains five bedrooms, one of which is a master bedroom. The master bedroom has a full bathroom, a fireplace, and a sitting room. Also located on the second floor are a laundry room and three additional full bathrooms. According to Petitioner, there is also a “loft” area located on the third floor. This area is utilized as a play room and consists of one large room with a full bathroom.

The residence contains a walk-out basement that has one bedroom with a full bathroom, a small kitchen or prep area, and two half-bathrooms. There are five furnaces in addition to central

¹ Hereinafter, references to the transcripts will be indicated with a “T” and a number indicating one of three hearing days, e.g., T1, T2, T3.

air conditioning. The walk-out basement leads to an area that contains an in-ground swimming pool and a built-in hot tub.

The subject property contains two attached garages, one three-car garage and one two-car garage. The three-car garage is attached directly to the residence and can be accessed without going outside, while the two-car garage is accessed through a connecting breezeway. An exercise room is located on the second floor of the three-car garage. The two-car garage is referred to as the “carriage house” as it has a small living space on the second floor. This space consists of one large room and a full bathroom.

Petitioner’s next witness was Mr. Howard Babcock. Mr. Babcock testified that he has been in the appraisal business for 34 years and that he holds the SRA designation (Senior Residential Appraiser) from the Appraisal Institute. As a member of an organization known as the Relocation Appraisers and Consultants, Mr. Babcock specializes in relocation and luxury housing and has done so for the past 20 years. Mr. Babcock is also licensed by the State of Michigan as a real estate broker. Finally, Mr. Babcock testified that he has a Bachelor of Science degree in business from Ferris State University. Given his education and experience, Mr. Babcock was qualified as an expert in the appraisal business.

Mr. Babcock’s appraisal contained the following description of the subject property:

The site is an interior lot, situated on the west side of Bloomfield Glens Road, south of Walnut Lake Road and west of Inkster Road on the City’s southeast side. The site is level above grade, with enhanced view appeal backing to a branch of the Rouge River and wetlands.

Bloomfield Glens Road is a short, unpaved, north/south residential street. No sidewalks, curbs, gutter or street lighting. Site improvements include: asphalt and circular drive, sprinkler system, ornamental landscaping and shade trees and brick and concrete patios. (Petitioner’s Appraisal, p21)

The subject is a custom built home of very good quality, consisting of a 2 story Tudor Style colonial house with a (3) car attached garage and a (2) car detached garage with a carriage house. The house was built in 2004 and is presumed to be

a wood frame construction with a stone and concrete siding exterior, built over a concrete block foundation. The majority of the improvement is constructed over a basement. An in ground pool and spa were added. The property is serviced by municipal water and sewer, overhead electrical lines and natural gas. (Petitioner's Appraisal, p22)

The first floor of the subject residence consists of a formal living room, dining room, library, kitchen, nook, hearth room, family room, computer room and powder room. The second floor has a total of five bedrooms, 5-bathrooms, plus a sitting room, exercise room & a second floor laundry. The third level consists of a loft with a bathroom. The walk-out basement is finished and contains a family room, bedroom, bathroom, recreation room, a second kitchen, a steam room & 2 lav's.

The following items are worthy of mention as they contribute to the overall quality of construction: 2 story foyer, with custom wood banister, stone floor in the entry foyer and hall, wood floor in the living room with fireplace, wood floor in the dining room, with open wall viewing rear yard, paneled library with built in bookcases, natural fireplace and wet bar. The house has an island kitchen, designed to service large group's functions. The kitchen has custom cabinetry, built-in Sub-Zero refrigerator and Professional Thermador 6-burner stove.

All (5) of the upstairs bedrooms have private bathrooms. The master bedroom features a fireplace, custom ensuite bathroom with separate shower & bathtub. There is also a large his/her dressing area with a walk-in closet. An exercise room is located above the garage. The third level has a loft with a full bathroom.

The house has a finished basement containing a kitchen with easy access to the pool for entertaining, a lower level family room with a fireplace, a wet-bar, bedroom and a bathroom. There are (5) furnaces with central air-conditioning. (Petitioner's Appraisal, p23)

According to Mr. Babcock, the subject property contains 11 rooms, 5 bedrooms and 5.5 bathrooms, not including the bedroom and bathrooms located in the walk-out basement. Mr. Babcock testified that he personally measured the subject property and concluded that it is 12,653 square feet in size, not including the garages or the basement area. Specifically, Mr. Babcock determined that the first floor of the subject property is 6,035 square feet in size, the second floor is 6,057 square feet in size, and the third floor, that being the loft area, was 560 square feet in size. In addition, the three-car garage was measured at 1,200 square feet.

According to Mr. Babcock, the subject property's highest and best use is its current use, that being as a residence. Pursuant to Mr. Babcock's appraisal, he considered the following appraisal methods in valuing the subject property: the income approach, the sales comparison approach, and the replacement cost approach. Mr. Babcock concluded that the income approach would not be applicable in this case as residences such as the subject property are typically owner-occupied, rather than rented for income purposes. Ultimately, Mr. Babcock utilized both the sales comparison approach and the replacement cost approach to value the subject property. Mr. Babcock gave the most weight to the sales comparison approach.

In performing his sales comparison approach, Mr. Babcock found that there were a limited number of sales of luxury homes over 10,000 square feet in size within the general area of the subject property. From these limited sales, Mr. Babcock selected five properties considered to be the most comparable to the subject property. These comparable sales ranged in size from 5,442 square feet to 11,059 square feet. To adjust for the differences in size, Mr. Babcock added to each comparable sale the sum of \$125 multiplied by the difference in square feet between the subject property and the comparable sale. Mr. Babcock derived the \$125 amount from a study that found that adjustments in size could be made by first obtaining a price per gross living area (sale price divided by total square feet of living area) for each comparable sale, averaging the comparable's price per gross living area, and multiplying by 33%. According to the study, the result of this formula is a value for only the living area and not the other features, such as the land, a pool, etc.

Three of the five comparable sales are located in West Bloomfield, Michigan, while two are located in Bloomfield Hills, Michigan. Mr. Babcock stated that, in his opinion, Bloomfield Hills is a superior location. Given this, Mr. Babcock reduced the sales price of the two comparable sales located in Bloomfield Hills by \$100,000 each in his sales adjustment grid. Mr.

Babcock also reduced the price of two of the West Bloomfield properties by \$50,000 due to an inferior location as these two properties were located on streets with substantially more traffic.

The difficulty in locating comparable sales also required the use of older sales. In particular, sale No. 3 occurred in December 1999. However, no adjustment was made for date of sale. Mr. Babcock reported that the subject property was a brick structure and concluded that there was no difference in value between brick structures and stone structures. Mr. Babcock reported that the property's condition was very good, while the condition of the comparable sales was good. Mr. Babcock made no adjustments for this difference. On the other hand, the sales adjustment grid contained adjustments for the differences between the subject property and the comparables in (1) age of the home, (2) the number of rooms, (3) the number of acres of land, (4) walk-out basement compared to non-walk-out basement, (5) the number of cars per garage, (6) the number of fireplaces and decks, (7) amenities, such as the pool and the carriage house, and (8) the fact that the subject property is located on a gravel road while the comparables are located on paved roads. After making these adjustments, Mr. Babcock arrived at an adjusted sale price for each of the comparable sales. Mr. Babcock gave each sale equal weight and concluded to a 2005 true cash value for the subject property under the sales comparison approach of \$4,000,000.

Mr. Babcock's next step was to value the subject property using the replacement cost approach. In doing so, Mr. Babcock first determined that the subject property's five acres of land should be valued at \$500,000 and the site improvements at \$150,000. Next, using Marshall & Swift, Mr. Babcock determined that the residence should be valued at \$250.00 per square foot, which, given the conclusion of 12,653 square feet, equates to a value for the first, second and third floors of the residence of \$3,163,250. The value of the basement was also determined by using Marshall Swift. Mr. Babcock determined that the correct value was \$35.00 per square foot, which was then multiplied by the size of the basement, being 6,747 square feet, for a value

of \$236,145. Next, Mr. Babcock valued “extras, millwork, plumbing, etc.” at \$500,000 and the three-car garage at \$47,300. Given that the residence was newly constructed, Mr. Babcock did not include depreciation. With this, Mr. Babcock concluded to a 2005 true cash value for the subject property under the replacement cost approach of \$4,600,000.

Even though he valued the subject property using the cost approach, Mr. Babcock stated that he does not believe this to be a valid approach for valuing property like the subject property. (T1, p85) Therefore, Mr. Babcock only used the results from his cost approach to support the conclusion reached under his sales comparison approach. Mr. Babcock’s final conclusion of value was \$4,000,000.

Petitioner submitted the following exhibits, which were admitted into evidence:

P1: Petitioner’s Appraisal, prepared by Mr. Babcock.

P5: ECF Study

RESPONDENT’S CASE

Like Petitioner, Respondent valued the subject property using both the sales comparison approach and the cost approach. However, unlike Petitioner, in its valuation disclosure Respondent utilized the value obtained under the cost approach as its final conclusion as to value. This value was the same true cash value for the subject property derived from Respondent’s 2005 assessment roll. At the hearing, Respondent stated that it wished to change its position and, instead, to utilize the value obtained under the sales comparison approach as its final conclusion as to value. As a result, Respondent’s contention of the subject property’s 2005 true cash value increased from \$4,972,180 to \$5,265,480.

Respondent’s valuation disclosure was prepared by Mr. Daniel Sears and Ms. Lisa Hobart. Mr. Sears is employed by Respondent in the position of Chief Property Appraiser and has held that position for ten years. In addition, Mr. Sears is certified by the State of Michigan as

a Master Assessment Evaluator III, or CMAE III. Mr. Sears is also licensed by the State of Michigan as a real estate agent; he has held that license for 18 years. Based on his training and experience, Mr. Sears was qualified as an expert in the fields of assessing and property valuation.

Ms. Hobart is also employed by Respondent. However, Ms. Hobart's position is that of assessor. Ms. Hobart has an associate's degree in accounting from Macomb County Community College, a bachelor's degree in accounting from Detroit College of Business, and a master's degree in public administration from Central Michigan University. Ms. Hobart is certified by the State of Michigan as a level IV assessor, or CMAE IV, and as an appraiser. Additionally, Ms. Hobart holds a senior designation from the American Society of Appraisers and a personal property specialist designation from the International Association of Assessing Officers. Based on her experience and training, Ms. Hobart was qualified as an expert in the fields of assessing, appraising, and property valuation.

Respondent called Mr. Sears as its first witness. Mr. Sears first testified that, in his opinion, the subject property's total square footage is 13,366 and not 12,653 as reported by Petitioner. Mr. Sears also testified that he disagreed with Petitioner's description of the subject property as being brick. According to Mr. Sears, the subject property has a stone exterior. Based on his inspection of the property, Mr. Sears stated that he believes that there are six full bathrooms and four half-baths, seven fireplaces, an above average number of porches and terraces, heated floors, and interior walls consisting of plaster over drywall.

Mr. Sears testified that both the sales comparison approach and the replacement cost approach are reliable appraisal methods to use in valuing the subject property. In his opinion, the sales comparison approach should be given a little bit more weight. Mr. Sears then testified as to the sales comparison approach presented in Respondent's valuation disclosure. In this approach, sales of four properties were compared to the subject property. All of the sales selected for

comparison were located within the township of West Bloomfield. One of these properties, that of 6001 Middlebelt, is located within the same subdivision in which the subject property is located. This property was also included as a comparable sale in Petitioner's appraiser. Like Petitioner, Mr. Sears was unable to locate sales of property similar in size to that of the subject property. The comparables selected by Mr. Sears ranged in size from 5,071 square feet to 8,893 square feet.

In his sales comparison approach, Mr. Sears made adjustments for differences in total square feet of the residences, age of the residence, exterior composition, number of baths, fireplaces and porches, built-ins, type of basement, size of garage, quality of construction, and miscellaneous items such as the heated floors, in-ground pool, etc. Mr. Sears testified that the amount of each adjustment was determined either through Marshall & Swift or the State Tax Commission's cost manuals.

The difference between the size of the subject property in acres and that of the comparable sales was accounted for through an adjustment determined from sales of eight properties located within the same subdivision as the subject property, that being the Bloomfield Glens subdivision. Each of these sales was adjusted for date of sale and for the value of the residence on the property, if applicable. With these adjustments, the subject property's land value was determined to be \$897,802. Combining the total value of the residence and the land value results in a 2005 true cash value for the subject property of \$5,265,480.

Mr. Sears was then questioned as to the replacement cost approach contained within Respondent's valuation disclosure. Mr. Sears testified that using the cost manual approved by the State Tax Commission, he determined the value of the land improvements to be \$169,642. Mr. Sears further determined that the residence was Class A +60, meaning the value indicated as Class A, multiplied by 60%. (T2, p79) Mr. Sears indicated that even though the residence was

newly constructed, it should be depreciated by 1%. A county multiplier of 1.24 was applied.

With this, Mr. Sears concluded to a value for the residence, the land improvements, and the three-car garage of \$2,857,395. An economic condition factor (ECF) of 1.450 was then applied, resulting in a true cash value of \$4,143,224.

The remaining structure, that being the carriage house, was determined to be a Class A structure. Again, the 1.24 county multiplier was applied, as was a depreciation factor of 1%. The result, being \$114,541, was multiplied by the 1.450 ECF, for a true cash value for the carriage house of \$166,084. Finally, the value of the five acres of land was determined to be \$493,226. With this, Mr. Sears concluded to a total 2005 true cash value for the subject property of \$4,972,180.

Respondent's second witness was Ms. Hobart. Ms. Hobart testified as to economic condition factors (ECFs) and how they are established and utilized. Ms. Hobart also testified as to how the land value in Respondent's sales comparison approach was determined.

Respondent submitted the following exhibits, which were admitted into evidence:

R1: Respondent's valuation disclosure.

STIPULATION OF FACTS

The parties stipulated to the following facts:

1. This case involves the Petitioner's appeal of the assessed values, taxable values and true cash values for the 2005 tax year and the taxable year for the 2006 tax year of the Petitioner's real property and improvements located at 6100 Bloomfield Glens, West Bloomfield, Michigan, 48322, said property having tax identification number 18-25-301-016.
2. The parcel is classified as residential real property and is owned by Brian and Annette Adelman.
3. The Petitioner's property for the 2005 tax year has an assessed value and state equalized value on the roll of \$2,486,090 and a 2005 taxable value on the roll of \$2,270,410.

4. The Petitioner's property for the 2006 tax year has an assessed value and state equalized value on the roll of \$2,627,230 and a 2006 taxable value on the roll of \$2,345,330.
5. The subject parcel is approximately five acres in size.
6. The Petitioner's property is used as a single family residence.
7. The subject property is a custom built house consisting of a two-story Tudor style colonial, three-car attached garage, and two-car detached garage with a carriage house.
8. The Petitioner's property is located in a single family residential zoning district.

At the hearing, the parties stipulated that the highest and best use of the subject property, as developed, is its existing use as a single-family residence. The parties also stipulated that the level of assessment for both the 2005 and 2006 tax years was 50%.

FINDINGS OF FACT

The Tribunal adopts the facts stipulated to by the parties. Additionally, the Tribunal finds that the highest and best use of the subject property, as developed, is residential.

The first floor of the subject property has a two-story foyer, a kitchen with a hearth-room and a fireplace, a family room, a dining room, a living room, a library and two half-baths. The second floor contains five bedrooms, including the master bedroom, each of which has its own bathroom. The master bedroom also has a fireplace and a sitting room. There is a second floor laundry area. The subject property has a third floor loft, approximately 560 square feet in size, with a full bath. The finished walk-out basement is 5,289 square feet in size and contains a bedroom with a full bath, a recreation room, a kitchen and two half-baths. The walkout basement leads to an in-ground swimming pool and hot tub. In addition to five furnaces, the subject property has in-floor heating throughout. The property is cooled with central air conditioning. The walls of the subject property are plaster over drywall. The roof is cedar shake. The property also has a sauna. Construction costs were approximately \$5,500,000.

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:

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

The Michigan Supreme Court has determined that “true cash value” is synonymous with “fair market value.” See *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450; 221 NW2d 588 (1974).

A proceeding before the Tax Tribunal is original, independent and de novo. MCL 205.735(1). The Tribunal’s factual findings must 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 & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

“The petitioner has the burden of establishing the true cash value of the property. . . .” MCL 205.737(3). This burden encompasses two separate concepts: (1) the risk of persuasion,

which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party. *Jones & Laughlin*, pp354-355.

Under MCL 205.737(1); MSA 7.650(37)(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).

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*, pp484-485; *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*, p277.

One of the main issues faced by the Tribunal in arriving at the subject property's true cash value involved the inconsistencies between the information provided by Petitioner's appraiser and Respondent's witnesses. For example, depending on who was testifying or which valuation disclosure was read, the subject property has either 5 fireplaces or 7, the exterior is either brick or stone, the quality is either very good or excellent, the property is either 12,653 square feet in size or 13,366 square feet in size, and there are either 5.5 bathrooms or 6 full bathrooms and 4 half-baths. When Petitioner's testimony is considered, it becomes even more

difficult to determine what is correct and what is not. For example, Petitioner testified that the subject property was approximately 17,000 square feet in size. Petitioner also testified that not all of the second floor bedrooms had a full bathroom. This was not the testimony of Petitioner's appraiser. The only figure the parties appear to agree on is the basement's square footage, being 5,289. Were it not for the pictures, the Tribunal would question whether both parties valued the same property.

Taking this issue into consideration, the Tribunal finds that, because the residence was newly constructed, both the sales comparison approach and the cost approach provide an accurate indication of the subject property's true cash value. However, the Tribunal finds that Respondent's sales comparison approach does not result in a reliable indication of the subject property's value. This is due to the fact that the adjustments made by Respondent were not based on market evidence. Instead, the adjustments were based on price information found in either Marshall & Swift or in the State Tax Commission's cost manual, resources used to calculate value under the cost approach.

Moreover, the Tribunal finds Respondent's land value estimates questionable. The Tribunal understands that there were no sales of vacant land from which to derive a price per acre; however, the Tribunal finds that sufficient evidence was not provided from which to conclude that the values contained within the "2005 Price per Acre/Bloomfield Glens" sales grid, found on page 13 of Respondent's valuation disclosure, are reliable. Specifically, Respondent provided no evidence to support its 3% annual time adjustments for the 2000 through 2005 tax years, or the values assigned to the structures. For these reasons, the value reached under Respondent's sales comparison approach will not be considered.

The Tribunal further finds that Petitioner's sales comparison approach does not result in a reliable indication of the subject property's value, albeit for different reasons. For example, in

Petitioner's sales comparison approach the exterior of the home is described as brick when it is clearly stone. When questioned about this, Petitioner's appraiser made it seem as though this difference did not necessarily result in a difference in value. The Tribunal disagrees.

The Tribunal also disagrees with Petitioner's appraiser's decision not to adjust for the difference between the subject property's "very good" condition and the inferior conditions of the comparable sales. Additionally, Petitioner's appraiser failed to discuss or value some of the subject property's unusual features, such as the fact that the residence has heated floors throughout, or that the walls are plaster over drywall, or that the roofing material is cedar shake and that the residence has a sauna. The Tribunal is also concerned that Comparable Sale #3 was not adjusted for time even though it sold in December 1999, five years before tax day. Clearly, given the fact that property values increased during that period of time, an adjustment was required.

While there are other issues with Petitioner's sales comparison approach, the Tribunal finds that one issue in particular stands out. Specifically, this issue is the adjusted sales price for Comparable Sale #1 versus the subject property's true cash value as ultimately concluded to by Petitioner. Comparable Sale #1 is located close to the subject property and within the subject's subdivision. Comparable Sale #1's residence was built in 1998, is less than half the size of the subject property, and is located on a busy street. However, after making all of the adjustments, Petitioner determined the adjusted sales price of Comparable Sale #1 to be \$4,488,500, while the subject property's true cash value was determined to be \$4,000,000. In other words, Petitioner asserts that Comparable Sale #1, which sold only five months prior to the 2005 tax day, is worth almost \$500,000 more than the subject property in spite of fact that the subject property is newer and clearly a superior property. This makes no sense. For these reasons, the Tribunal lacks confidence in Petitioner's sales comparison approach and, as such, it will not be considered.

Having determined that both Petitioner's and Respondent's sales comparison approaches are unreliable, the Tribunal is left to consider the parties' application of the replacement cost approach. Under this approach, Petitioner valued the subject property at \$4,600,000, while Respondent valued the subject at \$4,972,180, the difference being \$372,180. Of this difference, approximately \$200,000 relates to the residential structure.

The main issue in determining the subject property's value under the cost approach is the varying figures provided as to the size of the residence. As previously discussed, Petitioner, Dr. Adelman, estimated the residence at approximately 17,000 square feet, which included the basement area, Petitioner's appraiser measured the residence at 12,653 square feet, without the basement area, and Respondent asserted that the residence was 13,366 square feet in size, without the basement area. Dr. Adelman's estimate will not be considered as it was unsupported by any documentary evidence. Petitioner's appraiser provided a detailed drawing of the subject property and testified that he personally measured the entire building. On the other hand, while a detailed drawing was including in Respondent's valuation disclosure, Respondent's witness testified that he personally measured only part of the building. Given this, the Tribunal finds Petitioner's assertion of the building's size to be more credible.

As previously discussed, Petitioner challenged Respondent's classification of the subject property as an A+60 structure and Respondent's use of a 1.45 ECF. The Tribunal shared Petitioner's concerns and, in spite of the testimony of Respondent's witnesses, these concerns were not eliminated, especially as to the 1.45 ECF.

For this reason, the Tribunal finds the value concluded to under Petitioner's replacement cost approach to be the most reliable indication of the subject property's 2005 true cash value. Therefore, Petitioner met his burden of proof in establishing the subject property's 2005 true cash value. Because Petitioner did not appeal the subject property's 2006 true cash value,

choosing only to appeal the 2006 taxable value, the subject's 2006 true cash value as originally determined by Respondent remains unchanged. The subject's 2005 and 2006 taxable value are determined pursuant to MCL 211.27a(2)(b).

JUDGMENT

IT IS ORDERED that the subject property's true cash, state equalized/assessed and taxable values for the 2005 and 2006 tax years are those shown in the "Final Values" section of this Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the assessed and taxable values in the amounts as finally shown in the "Final Values" section of this Opinion and Judgment, subject to the processes of equalization, within 20 days of the entry of this Opinion and Judgment. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Opinion and Judgment within 28 days of entry of this 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 Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (ii) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (iii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (iv) after December 31, 2007, at the rate of 5.81% for calendar year 2008, (v) after December 31, 2008, at the rate of 3.315% for calendar year 2009, (vi) after December 31, 2009, at the rate of 1.23% for calendar year 2010, and (vii) after December 31, 2010 at the rate of 1.12% for calendar year 2011.

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

MICHIGAN TAX TRIBUNAL

Entered: June 22, 2011

By: Patricia L. Halm