

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

WCY Realty, LLC,
Petitioner,

v

MTT Docket No. 358540

Fairhaven Township,
Respondent.

Tribunal Judge Presiding
Marcus L. Abood

FINAL OPINION AND JUDGMENT

Introduction

Petitioner, WCY Realty, LLC, appeals the assessed value, taxable value, and true cash value levied by Respondent, Fairhaven Township, against the real property owned by Petitioner for the 2008, 2009, 2010, and 2011 tax years. Gordon S. Gold, attorney, appeared on behalf of Petitioner. Peter Goodstein, attorney, appeared on behalf of Respondent. Witnesses appeared on behalf of both parties. They include: Ross Champine, real estate appraiser, and Tavis Osentoski, real estate agent for WCY Realty, LLC; Valerie McCallum, assessor for Fairhaven Township.

The proceedings were brought before this Tribunal on October 10, 2011, to resolve the real property dispute.

At issue before the Tribunal is the determination of the assessed value, taxable value, and true cash value of Petitioner's real property.

- A. The property's state equalized value (SEV), assessed value (AV), and taxable value (TV), as confirmed by the Board of Review or on the assessment roll:

Parcel Number 3208-021-002-00

Year	SEV	AV	TV
2008	\$408,400	\$408,400	\$408,400
2009	\$403,600	\$403,600	\$403,600
2010	\$405,000	\$405,000	\$402,389
2011	\$350,700	\$350,700	\$350,700

B. Respondent's revised contentions of the property's True Cash Value (TCV), SEV, and TV:

Parcel Number 3208-021-002-00

Year	TCV	SEV	TV
2008	\$816,795	\$408,397	\$408,397
2009	\$807,249	\$403,624	\$403,600
2010	\$810,063	\$405,031	\$402,389
2011	\$701,301	\$350,650	\$350,650

C. Petitioner's contentions of the property's True Cash Value (TCV), SEV, and TV:

Parcel Number 3208-021-002-00

Year	TCV	SEV	TV
2008	\$313,700	\$156,850	\$156,850
2009	\$298,500	\$149,000	\$149,000
2010	\$295,000	\$147,500	\$147,500
2011	\$296,000	\$148,000	\$148,000

D. The Tribunal finds the values shall be:

Parcel Number 3208-021-002-00

Year	TCV	SEV	TV
2008	\$388,200	\$194,100	\$194,100
2009	\$383,600	\$191,800	\$191,800
2010	\$387,000	\$193,500	\$191,224
2011	\$335,100	\$167,550	\$167,550

Background

At issue for the tax years is the true cash value, assessed value, and taxable value for the property located at 1262 Schuch Road, Sebawaing, Michigan. The subject parcel of land is located in Fairhaven Township, Huron County, and has a Sebawaing mailing address. The

subject property is comprised of a residential dwelling with 1,800 square feet, constructed in 1987, and is also improved with a 40' x 64' detached pole barn. The property was purchased by Petitioner from Charles Bourdo for \$797,500 on September 24, 2004.

Petitioner's initial appeal was filed under Docket No. 327937 for 2006 and 2007. On May 19, 2008, Petitioner filed a motion to include subsequent tax year 2008. The Tribunal granted this motion. On January 12, 2009, the Tribunal entered an Order Severing the 2008 Tax Year and assigning Docket No. 358540. Petitioner filed motions to amend to include subsequent tax years 2009, 2010, and 2011 in Docket No. 358540, which were granted by the Tribunal.

Petitioner's Arguments

Petitioner is relying on the appraisal prepared by Ross Champine, real estate appraiser, on behalf of Action Appraisal Services dated May 18, 2011, to determine the fair market value of the subject property. Based on the analysis of comparable sales and listings, the assessed and taxable values of the subject property are higher than the comparable properties.

Petitioner's first witness was Mr. Champine, called to discuss the valuation of the property. Mr. Champine is a state licensed real estate appraiser in the state of Michigan. He has over 15 years of experience in residential appraising, primarily for banks and lending institutions.

Mr. Champine initially inspected the subject property on April 18, 2011. He described that the market conditions are declining as a result of the economy and the real estate market.

Mr. Champine described various elements of the subject site, as well as the building improvements. Various photographs were described to illustrate the physical nature of the building improvements. The subject dwelling is a one-story home with a crawl space and slab foundation. Mr. Champine contended that, overall, the subject dwelling is in average condition.

Mr. Champine described the subject site in relationship to the lakefront, indicating that the subject site does not have a beach area. A large marsh area, owned by the State of Michigan, separates the water's edge from the subject property.

Mr. Champine testified to the steps he took in appraising the subject property: He inspected the interior and exterior of the subject property. Regarding the initial analysis, he considered the cost approach; however, this approach was not developed because of the age of the dwelling. The income approach was not developed, as the subject is not an income-producing property. The sales comparison approach was developed to arrive at a final conclusion of value for the subject property.

Within the sales comparison approach, two residential sales and one listing were analyzed to the subject property. In addition, in testimony, Mr. Champine referenced two other listings for his analysis. "The listings were used due to the fact that there were few sale comparables in the relevant years due to the economy and the fact that Fairhaven was not as desirable an area as opposed to further north on the bay." (Petitioner's Brief, p 4)

From the sales and listing data, Mr. Champine derived a price per front foot and a price per acre for adjustment purposes. He developed an extraction method by deducting the improvements from the sale price of each comparable. The remaining amount is attributed to the land value for each comparable. Lastly, he divided the land value of each comparable by its corresponding front footage. A calculated average price per front foot of \$200 was used for adjustment purposes.

Comparable 1 is located at 556 Kuhl Road and sold in 2009 for \$289,000. This property consists of 5.45 acres with 379 feet of marsh waterfront footage. The adjusted sale price of this comparable was \$382,000. Mr. Champine questions the assessment of this property by

Respondent. From 2004-2007, this property was assessed on a price per acre basis with a state equalized value of \$85,700. Starting in 2008, this property's state equalized value increased to \$201,200 and was based on a price per front foot basis.

Comparable 2 is located at 3050 Myers Road and sold in 2006 for \$400,000. This property consists of 59 acres with 1550 feet of marsh waterfront footage. The adjusted sale price of this comparable was \$217,500.

Comparable 3 is a listing located at 5180 Gotham Road in Akron Township. This property has been listed for seven years, starting in 2004 for \$572,500. The property is currently listed for \$275,000, but at the time of Mr. Champine's appraisal, this property's list price was \$329,000. This property consists of 10.21 acres with 939 feet of marsh frontage. The adjusted sale price of this comparable was \$285,500.

Mr. Champine averaged the three adjusted comparable sale prices to arrive at a value of \$295,000 for 2010. "He then calculated fair market value for years 2008, 2009 and 2011 based on the percentage differences used by the Fairhaven Township Assessor in her SEV calculations for those years for the subject property." (Petitioner's Brief, p 6)

Petitioner's second witness was Tavis Osentoski, licensed real estate broker, called to discuss the marketing and listing of the subject property. He is part of a family-owned real estate company and has experience selling residential property in the subject market area for six years.

Mr. Osentoski testified to the decreases in property values, sales of second (recreational and vacation) homes, and the stronger marketability and appeal of homes in the Caseville and Port Austin areas.

"Mr. Osentoski also agreed with Mr. Champine that the subject site is not waterfront property, but 'water-view', as the property itself is not contiguous with the lake, but is separated

by the substantial marsh area, due to the receding lake, owned by the State of Michigan.”

(Petitioner’s Brief, p 8)

If WCY Realty, LLC were to engage Mr. Osentoski, he would suggest a list price range between \$250,000-\$275,000 at the present time.

Petitioner acknowledges that both parties recognize the lack of sales data and the scarcity of comparable sales in the subject market.

WCY contends that the lack of sales in and of itself is significant in showing a severely declining residential market, consistent with the State of Michigan and most of the U.S. as a whole. The Township does not concede the obvious, however, as when Ms. McCallum was asked why she thought there had been no recent sales in the subject area, she responded, “I can’t testify to that.”
(Petitioner’s Brief, p 9)

Petitioner next reviewed the written and oral testimony of Respondent’s only witness, Valerie McCallum, assessor for Fairhaven, Dwight, and Hume Townships.

Petitioner contends Ms. McCallum had not seen the subject property since 2005 and was not familiar with property line stakes. Further, she has given different waterfront footage in her valuation disclosure, assessors cards, and testimony. “She also acknowledged that before she began valuing the property on a lakefront footage basis in 2005 (right after the 2004 sale to WCY for \$797,500 – including a \$72,500 auctioneer fee), the property had been assessed on a per acre basis and described as swampy.” (Petitioner’s Brief, p 10)

Petitioner argues that Respondent’s description of market conditions for the years under appeal is contradictory. Respondent states, “The burst of the housing market did not affect shoreline properties as quick and as hard as other areas, and through late 2000, values remained relatively stable with notable decreases not occurring until 2010.” (TR, p 198) Respondent did not provide any sales data from the Fairhaven area to support the conclusions of value.

Petitioner indicates that Respondent's lack of sales data is not an indication that the market values remained constant, but instead, declined in Fairhaven Township. (TR, p 215) "Despite implying in her current valuation disclosure that the housing burst has not greatly affected the subject property, Ms. McCallum did testify as far back as 2007 that there was a decline in the current economy such that there was a notable slowdown in the pace of property sales."

(Petitioner's Brief, p 12)

Petitioner further contends that Respondent's use of sales located in Caseville, Hume, Lake, and Port Austin Townships is not appropriate. Sales in those townships are superior in overall marketability and appeal; those property shorelines have sandy beaches. Respondent's sales data is significantly older (2000-2006) and has astronomical adjustments of 700-800%. Even if some of the sales were deemed relevant, Respondent sets forth adjustment grids without the benefit of any explanatory narration. Finally, Respondent derives a time adjustment from matched paired sales analysis. The analysis, however, involves a property that sold in 2002 and 2005 to arrive at an adjustment for the change in market conditions. For these reasons, Respondent's sales comparison approach is not reliable or credible.

Petitioner also argues that Respondent's analysis and calculations in developing an adjustment for lake front footage is confusing and unresponsive. Respondent identifies a standard frontage size for lots in the Valley Island development. Standard lot sizes in the subject development are smaller than the subject site. Respondent's assessor has set forth increments of front footage to a price per front feet. (Petitioner's Brief, p 16) These units of comparison, however, are not consistent to the assessor's determination of a standard frontage of 90 feet and an adjustment of \$1,000 per front foot.

Overall, the lack of current sales data is a reflection of a declining market. This is a further indication of the difficulty in selling the subject property based on the current assessments. “The township’s valuation disclosure is an after the fact attempt, using selective, contrived and unexplained data, often without back-up, to support the exaggerated SEVs and taxable values assigned to WCY’s property.” (Petitioner’s Brief, p 18)

Petitioner’s Admitted Exhibits

- P-1. Valuation Disclosure/Appraisal of Ross Champine.
- P-2. Listing of 5180 Gotham Road from Osentoski Realty.
- P-3. Surveys of subject property and 5180 Gotham Road.
- P-4. Assessor’s Field Cards for the years 2008-2011.
- P-5. House Assessment Video (DVD).
- P-6. Blow-up photographs (viewable upon request).
- P-7. Pleadings and documents of record with the MTT (viewable upon request).
- P-8. Township records of subject property (viewable upon request).

Respondent’s Arguments

This matter involves an appeal of the 2008, 2009, 2010, and 2011 state equalized values of residential real property. Respondent believes its valuation disclosure supports the accuracy of the existing assessed values and state equalized values.

Respondent contends Petitioner initially submitted an outdated appraisal form that is typically used for non-lending situations. On the day of the hearing, however, Petitioner resubmitted an appraisal report on a newer non-lending form. Petitioner’s resubmitted report has

two effective appraisal dates of December 16, 2009, and December 31, 2009. Petitioner's appraiser, Mr. Champine, admitted that he had never appeared before the Tribunal, has no knowledge of the General Property Tax Act, and does not know when tax day is in the state of Michigan.

In *Kurt A Weber v City of Pleasant Ridge* [MTT Docket No. 327730] the Tribunal dealt with an appraisal prepared by a person who was unaware of the tax day and ignorant of the General Property Tax Act. In that case the Tribunal stated "(T)hat 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." That conclusion is equally valid here. (Respondent's Brief, p 5)

Respondent argues that Petitioner's appraiser should have been cognizant of the Tribunal's corrected Final Opinion and Judgment in the first appeal of the subject property. In the prior opinion, the Tribunal concluded that the majority of the sales used by Petitioner were not comparable to the subject. These referenced sales are the same comparables used by Petitioner's appraiser in the present appeal. Respondent stated:

It is common for parties to an appeal to differ about how comparable parcels used by either side are to the subject. What is not common is for a petitioner to use as comparables in a second appeal of the same property parcels the Tribunal previously determined were not comparable to the property whose assessment is being appealed again. Not only did Champine do that, he made no effort to even explain why the Tribunal was wrong in the first appeal. (Respondent's Brief, p 7)

Respondent further contends Petitioner's appraiser had no basis for any of his adjustments to the comparable sales that he analyzed. After arriving at a conclusion of value for 2010, Petitioner's appraiser relies on percentage changes to the subject parcel's state equalized values to estimate values for 2008, 2009, and 2011. Petitioner's appraiser was unclear as to how he calculated these percentage changes. Moreover, Respondent contends that the appraiser was

uncertain whether this was a recognized methodology. “In short, what Petitioner submitted as an appraisal was utterly and completely without value. To call Champine’s appraisal junk science would be an insult to both junk and science.” (Respondent’s Brief, p 9)

Respondent’s only witness was Valerie McCallum, assessor for Fairhaven Township. Ms. McCallum is also the assessor for Hume Township and Dwight Township. She has been the assessor for Fairhaven Township since 2004. She has taken several assessing courses and is a Michigan Certified Assessing Officer.

Ms. McCallum testified to various corrections to her original valuation disclosure, as well as corrections to her corrected valuation disclosure. She developed the cost and sales comparison approaches to value. The income approach was not developed in the valuation disclosure.

Ms. McCallum briefly described the subject property’s location. “The property is basically an island with water view and water access but it’s accessible by land so it’s not actually an island.” (TR, p 134). The subject is located on a portion of Saginaw Bay known as Wildfowl Bay. Ms. McCallum last viewed the *interior* of the subject in February, 2005, and most recently viewed the *exterior* of the subject in July, 2011. She photographed the subject property from an airplane as well as from a kayak.

Ms. McCallum analyzed four vacant land sales to derive a price per front foot adjustment in the sales comparison approach. Next, she analyzed four improved sales located on Valley Island for the sales comparison approach. She then adjusted the comparable sales for time and front footage. The adjusted comparable sales were reconciled to determine values for the four years under appeal. Respondent stated in its Post hearing Brief:

There is no question McCallum made large adjustments to her comparables in

order to estimate the subject's true cash value. McCallum acknowledged as much; however, most lake lots have significantly less frontage. What she used were, in her opinion, the best comparables available. Certainly better than the properties claimed to be comparable by Petitioner. (Respondent's Brief, p 11)

Respondent asserts that Ms. McCallum's opinions, analyses, and conclusions are reliable.

"Respondent's evidence and conclusions, . . . were the result of recognized methodologies properly applied." (Respondent's Brief, p 13)

Respondent's Admitted Exhibits

- R-1. Respondent's Valuation Disclosure.
- R-2. DVD entitled "12 Acres on Saginaw Bay" depicting subject property (included in Respondent's Valuation Disclosure).
- R-3. Calculation corrections to Respondent's Valuation Disclosure.
- R-4. Photo of subject property from canal.
- R-5. Photo of channel access for subject property from bay to canal.
- R-6. Photo of subject property from bay.
- R-7. Aerial photo of subject property.
- R-8. Aerial photo of subject property.
- R-9. Aerial photo of Valley Island (Comps 2, 5, 6, 7 & 8).
- R-10. Aerial photo of Valley Island, south channel and north end of subject property.
- R-11. Aerial photo of Valley Island.
- R-12. 2009 Warranty Deed between Douglas and Marilyn Fournier and WCY Realty, LLC, for North Island Property ID No. 3208-121-001-50.
- R-13. Record card for 3208-121-001-50.

- R-14. Aerial photo of North Island.
- R-15. Aerial photo of North Island.
- R-16. Photo of North Island shoreline.
- R-17. Photo of North Island shoreline.
- R-21. Aerial photo of Petitioner's Comp 1.
- R-22. Photo of Petitioner's Comp 1.
- R-23. Photo of Petitioner's Comp 1.
- R-24. Aerial photo of Petitioner's Comp 2.
- R-25. Aerial photo of Petitioner's Comp 2.
- R-26. Photo of Petitioner's Comp 2.
- R-27. Photo of Petitioner's Comp 2.
- R-28. Aerial photo of Petitioner's Comp 3.
- R-29. Aerial photo of Petitioner's Comp 3.
- R-30. Photo of Petitioner's Comp 3.
- R-31. Photo of Petitioner's Comp 3.
- R-32. Photo of Respondent's Comp 1.
- R-33. Photo of Respondent's Comp 3.
- R-34. Photo of Respondent's Comp 4.
- R-35. Photo of Respondent's Comp 3.
- R-36. Photo of Subject Property.
- R-37. Photo of Subject Property.
- R-38. Photo of Subject Property.
- R-39. Record card(s) for additional comparables.

Tribunal's Findings of Fact

The subject property is located at 1262 Schuch Road, Fairhaven Township, Huron County, Michigan. The subject property is further referenced as parcel 3208-021-002-00. Specifically, the subject property is located on Valley Island and on Wildfowl Bay, which is part of Saginaw Bay. There are a total of 35 parcels on Valley Island. The subject is a residential use property improved with a dwelling, an attached carport, and a detached pole barn. The subject dwelling is between 1,806 and 1,836 square feet. The detached pole barn has dimensions of 40' x 64' or 2,560 square feet. The subject site has 13.23 acres and is bounded by Saginaw Bay to the north, a canal to the south, and a channel to the east.

The subject property is zoned R-1, Residential; both parties conclude that the highest and best use of the property is as residential.

Petitioner purchased the subject property in 2004 for \$797,500.

Petitioner presented a valuation disclosure in the form of an appraisal report. Petitioner's appraiser, Ross Champine, is a state licensed real estate appraiser in the state of Michigan. Respondent's valuation document is noted as a valuation disclosure. Respondent's appraiser, Valerie McCallum, is a Michigan Certified Assessing Officer in the state of Michigan.

Petitioner has developed two sales and one listing for its sales comparison analysis:

Comparable 1 - 556 Kuhl Road, Fairhaven Township, sold December, 2009 for \$289,000.
Comparable 2 - 3050 Myers Road, Sebawaing Township, sold April, 2006 for \$400,000.
Comparable 3 - 5180 Gotham Road, Akron Township, currently listed for \$329,000.

Respondent has developed eight comparables for its sales comparison analysis:

Comparable 1 – 11577 Joseph Drive, Fairhaven Township, sold November, 2001 for \$275,000.
Comparable 2 – 1276 Valley Island Road, Fairhaven Township, sold August, 2000 for \$100,000.

Comparable 3 – 4150 Port Austin Road, Lake Township, sold January, 2004 for \$975,000.

Comparable 4 – 7310 Port Austin Road, Caseville Township, sold November, 2006 for \$550,000.

Comparable 5 – 1198 Valley Island Road, Fairhaven Township, sold December, 2003 for \$198,000.

Comparable 6 – 1268 Valley Island Road, Fairhaven Township, sold June, 2004 \$122,000.

Comparable 7 – 1286 Valley Island Road, Fairhaven Township, sold July, 2003 for \$165,000.

Comparable 8 – 1313 Valley Island Road, Fairhaven Township, sold June, 2005 for \$270,000.

Conclusions of Law

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value. 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 the assessment, being the price which could be obtained for the property at private sale, and not forced or auction sale. See MCL 211.27(1). The Michigan Supreme Court in *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450 (1974), has also held that true cash value is synonymous with fair market value.

In that regard, the Tribunal is charged in such cases with finding a property's true cash value to determine the property's lawful assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767 (1981). The determination of the lawful assessment will, in turn, facilitate the calculation of the property's taxable value as provided by MCL 211.27a. A petitioner does, however, have the burden of establishing the property's true cash value. See MCL 205.737(3) and *Kern v Pontiac Twp*, 93 Mich App 612 (1974).

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%....; and for a system of equalization of assessments. For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall

not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value. Const 1963 Art IX, Sec 3.

The burden of proof in a tax matter encompasses two concepts: “(1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party.” *Great Lakes Div of Nat’l Steel Corp*, 227 Mich App 379, 404-409; 576 NW2d 667 (1998). The Tribunal has a duty to make its own independent determination of true cash value only when the plaintiff has met its burden of going forward with the evidence. *Id.* at 410.

In this instance, Petitioner has provided a valuation disclosure to show that the subject property was improperly assessed. This valuation disclosure was presented as an appraisal report that is purported to comply with professional standards and ethics. The appraisal report is communicated as a “summary appraisal report.” Specifically, the appraisal report develops one approach to value – the Sales Comparison Approach. Petitioner did not simply ignore other approaches to value. The Income Approach and Cost Approach were considered but omitted from analysis. The Income Approach is not applicable because the subject is not an income-producing property. The Cost Approach is not applicable because the subject is older and calculating depreciation is more difficult.

Petitioner’s sales comparison approach utilizes two sales and one listing for analysis. Petitioner’s appraiser, Mr. Champine, testified that there is a significant lack of sales data for the particular years under appeal. Respondent refutes Petitioner’s use of the two sales and one listing contending that these properties are not comparable to the subject property. Respondent

argues that these properties do not have lake access or lake views. Respondent contends Petitioner's analyzed properties are too far removed from the shoreline and are not comparable to the subject.

In general, Petitioner's sales comparison approach presents a reasonable and logical application of available data. For example, the comparable data is bracketed to the subject in acreage and dwelling square footage. Similarly, the adjusted sale prices of the comparables are bracketed to the subject. In other words, Comparable 1 has positive net adjustments and Comparables 2 and 3 have negative net adjustments. While the data is not perfect in comparison, Petitioner demonstrates necessary aspects of analysis and application.

Petitioner's Comparable 1 (556 Kuhl Road) is located in Fairhaven Township. This sale is appropriate for analysis because it is the most recent sale out of all of the sales and listing data. In the absence of comparable sales similar to the subject in all regards, Comparable 1 is reasonable for analysis. Respondent's refutation that this property does not have water frontage or access is not enough to exclude the use of this sale. Petitioner describes the subject as water view and not as lake frontage. Likewise, a marshy, vegetated area separates Comparable 1's property line from the shore line. The subject has water access by way of a canal and a channel. Comparable 1 does not have lake frontage or direct lake access. Nevertheless, this recent sale is otherwise similar to the subject in location.

Petitioner's Comparable 2 (3050 Myers Road) is located in Sebawaing Township. This sale has 59 acres, which is much larger than the subject's acreage. In addition, this is a significantly older sale that occurred in better market conditions. Petitioner has applied a market conditions adjustment; however, Comparable 2 is less reliable in the comparison analysis than Comparable 1.

Petitioner's Comparable 3 (5180 Gotham Road) is a current listing located in Akron Township. Testimony indicates this property has been exposed to the market for a lengthy period of time. While an offered property is an indication of market intentions, its impact does not take the place of a closed sale of a property. The Tribunal is uncertain whether this current listing was adjusted downward for an eventual sale or adjusted downward retrospectively to the relevant tax day. Therefore, this comparable is given minimal consideration in the final analysis.

Upon closer examination, Petitioner's concluded analysis is flawed. Specifically, the range of adjusted sales prices is \$217,500 to \$382,000. This wide range is an indication of the lack of truly comparable sales data to the subject property. Yet, Petitioner's appraiser does not explain this variance through the appraisal report or through testimony. Mr. Champine's only statement of resolution for the adjusted comparable sales is "Equal emphasis is placed on all comps. averaged." (Petitioner's Exhibit P-1, p 2) This all-encompassing statement does not support the decision to give equal weight to two sales and one listing. Further, averaging the adjusted sale prices negates the overall adjustments made to the sales data. The measures of central tendency (mean, median, and mode) may serve as useful tools in final reconciliation, but the final value opinion does not simply represent the average of different value opinions."

Appraisal Institute, *Appraising Residential Properties*, (Chicago: 4th ed, 2007), p 370.

Averaging adjusted sale prices is not an acceptable shortcut for the reconciliation, especially when the data includes a current listing and an older sale. The appraiser's varied data, as well as wide range of adjusted sale prices, cannot be reconciled by calculating an average. "The final value opinion does not simply represent the average of the different value indications derived.

No mechanical formula is used to select one indication over the others." Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p 560.

In the overall analysis, Petitioner's Comparable 1 provides the most reasonable comparison to the subject property. Mr. Champine admits that Comparable 1 is incorrectly adjusted for market conditions. Comparable 1 sold one day before the December 31st tax date. The \$5,000 downward adjustment must be corrected. Mr. Champine testifies, "Yep, and I am going to tell you what, that adjustment was made in error. I will say it was made in error. That adjustment shouldn't have been made on there." (TR, p 88) Comparable 1 has an unadjusted sale price of \$289,000. With the correction of the market conditions adjustment, the adjusted sale price of Comparable 1 is \$387,000. Again, this is a recent sale based on otherwise market-supported adjustments including acreage and front footage. Comparable 2 is an older sale that is adjusted for market conditions. Regardless, this sale is not as reliable as Comparable 1. Comparable 3 is a listing that has been offered on the market for several years. A listing is not the equivalent of a closed sale in which there is an accord between a buyer and a seller. Comparable 3 is not as reliable as Comparable 1. Therefore, the Tribunal relies on Comparable 1 for the 2010 true cash value.

Respondent has developed a sales comparison approach to value. Respondent did not simply ignore the income approach to value. The income approach was considered but omitted for the same reasons as indicated by Petitioner. Respondent developed the cost approach, which was supported by the sales comparison approach.

Respondent's undated valuation disclosure was submitted to the Tribunal on June 9, 2011, and was admitted as Respondent's Exhibit R-1. Respondent's Exhibit R-3 was admitted showing calculation corrections to specific pages from Respondent's valuation disclosure. Further, Respondent's witness then made corrections to the corrections in testimony.

Respondent's cost approach was developed in determining the original assessments. "A cost approach is included as used and computed by Assessor through the BS&A Software Assessing Program based upon the 2003 State Tax Commission Manual as updated and applicable year land values and ECF's." (Respondent's Exhibit R-1, p 3) This approach to value is not reliable based on the subject's age of improvements (existing structure and subsequent addition). Further, the cost approach was developed on a mass appraisal basis and not on the valuation of a singular property. Therefore, Respondent's cost approach is not given any weight or consideration in this opinion.

Respondent's sales comparison approach analyzes a total of eight comparable sales occurring between August, 2000 and November, 2006. Four improved sales were used to create a vacant land analysis. Next, Respondent developed a market conditions adjustment from one of the comparable sales. Specifically, Comparable 4 (7310 Port Austin Road) sold in November, 2002 for \$225,000 and sold again in June, 2005 for \$270,000. From this change, Respondent calculates a percentage increase of 0.6451 per month. Respondent tracks a positive change in market conditions from 2002 to 2005 from this particular sale. Respondent then renders further paired sales analysis to track a market decline from 2005 to 2010. "Two additional paired lakefront sales were used from another lakefront township for the purposes of establishing a market trend reflective of decreasing values." (Respondent's Exhibit R-1, p 12) Parcel number 3213-017-037-00 sold in May, 2007 for \$450,000 and sold again in June, 2010 for \$399,000. Parcel number 3213-019-051-00 sold in September, 2005 for \$360,000 and sold again in May, 2009 for \$300,000. Respondent's appraiser calculates percentage decreases per month of

-0.3150 and -0.3830 respectively. Lastly, Respondent concludes to a downward market conditions adjustment of .00349 per month (.04188 per year) to the comparable sales for 2008 through 2011.

The presentation of this second paired sales analysis lacks transparency or intelligibility. The two lakefront properties from another township are only referenced by parcel numbers. There is no written or oral testimony that describes these two properties that were used by Respondent's appraiser. Respondent has set forth no underlying basis to assume that these vaguely referenced properties are applicable for analysis. The Tribunal is unable to discern the comparability or compatibility of these two sales in the framework of paired sales analysis.

Next, Respondent analyzes Comparables 5, 6, 7, and 8 for its sales comparison approach. The sale prices for these properties are \$198,000, \$122,000, \$165,000, and \$270,000, respectively. Further, these sales occurred between December, 2003 and June, 2005. These four properties are located on Valley Island Road and are located in the same development as the subject property. Each property is significantly smaller than the subject in site size. Respondent has applied site size adjustments based on frontage and depth differences to the comparables and in turn creates very large upward adjustments. While other adjustments were made for the differences in amenities and improvements, Respondent's site adjustments are the most striking. The overall effect of Respondent's adjustments skews the adjusted sale prices. The four comparables are adjusted upward (between 602-847%) for the four years under appeal. Respondent rationalizes that the lack of sales data results in the utilization of older comparable sales located in the subject development. The reasoning for the use of these older sales does not excuse the magnitude of adjustments. Larger adjustments are an indication of less comparability. "Comparables that require few adjustments are considered more reliable."

Appraisal Institute, *Appraising Residential Properties*, (Chicago: 4th ed, 2007), p 350.

Respondent forgoes any other sales of lakefront properties on Saginaw Bay. Respondent's discretionary actions are not logical or reasonable relative to the monumental adjustments made to the comparable sales. Respondent's sales comparison approach is not a reflection of the actions of buyers and sellers in the real estate market. Therefore, the Tribunal places no reliance or credibility on Respondent's revised opinions of value.

The Tribunal finds that Petitioner was able to show that the property was over-assessed for 2010 tax year. As such, and in light of the above, the Tribunal finds that Petitioner has succeeded to meet its burden of going forward with competent evidence on the issue of true cash value, assessed value, and taxable value. Petitioner has provided credible documentary evidence and testimony to support the subject property's value for the 2010 tax year at issue and, as such, the Tribunal finds Petitioner's sales comparison approach to value fair and reasonable.

The Tribunal will determine the subject property's 2008, 2009, and 2011 true cash values by applying the percentage of change from Respondent's revised assessments to the new 2010 true cash value. The percentage change in these assessments is reflective of a market change relative to the subject property. These true cash value indications will be rounded to the nearest hundred.

Judgment

IT IS ORDERED that the original assessments at issue are MODIFIED.

IT IS FURTHER ORDERED that the property's values for the tax years at issue shall be as set forth in the *Introduction* section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the

property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Order within 28 days of the entry of this Order. 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 the Tribunal's order. As provided in 1994 PA 254, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest rate of the 94-day discount treasury bill rate for the first Monday in each month plus 1%. As provided in 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after January 1, 1996 at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 2006 at the rate of 5.42% for calendar year 2007, (ii) after December 31, 2007 at the rate of 5.81% for calendar year 2008, (iii) after December 31, 2008, at the rate of 3.31% for calendar year 2009, (iv) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (v) after December 31, 2010, at the rate of 1.12% for calendar year 2011, and (vi) after December 31, 2011, at the rate of 1.09% for calendar year 2012.

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

MICHIGAN TAX TRIBUNAL

Entered: February 16, 2012 By: Marcus L. Abood