

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

Michael Schnepel,
Petitioner,

v

MTT Docket No. 457376

City of Westland
Respondent.

Tribunal Judge Presiding
David B. Marmon

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Michael Schnepel, appeals ad valorem property tax assessments levied by Respondent, City of Westland, against Parcel No. 026-01-0001-000 for the 2013 and 2014 tax years. Shawn G. Jappaya, Attorney and Randall P. Whately, Attorney, represented Petitioner, and Keith W. Madden, Attorney, represented Respondent.

A hearing on this matter was held on September 29, 2015. Petitioner's witnesses were himself and Joyce Johnson, GLA. Respondent's sole witness was Carl Giroux.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values ("TCV"), state equalized values ("SEV"), and taxable values ("TV") of the subject property for the 2103 and 2014 tax years are as follows:

Parcel No.	Year	TCV	SEV	TV
026-01-0001-000	2013	\$123,000	\$61,500	\$61,500
026-01-0001-000	2014	\$185,000	\$92,500	\$92,500

SUMMARY OF PARTIES' CONTENTIONS

Year	Petitioner			Respondent		
	TCV	SEV	TV	TCV	SEV	TV
2013	\$95,000	\$47,500	\$47,500	\$175,000	\$87,500	\$87,500
2014	\$151,000	\$75,500	\$75,500	\$200,000	\$100,000	\$100,000

PETITIONER'S CONTENTIONS

Petitioner contends that the subject was purchased in October 2012 in distressed condition for \$100,000. The property had significant condition issues for tax year 2013, including mold, water damage, foundation issues, unusable bathrooms, drainage issues, wet property, and an unfilled hole where a pool used to be. Petitioner also contends that the subject's location on a busy road negatively impacts the property, and that the nature preserve it borders does not outweigh the road's effect; especially since the park was full of refuse. Petitioner also alleges that the subject was improperly built under electrical wires which also negatively impact the property.

PETITIONER'S ADMITTED EXHIBITS

- P-1 Invoice from Foundation Systems of Michigan
- P-2 Joyce Johnson appraisal for 12/31/12
- P-3 Joyce Johnson appraisal for 12/31/13
- P-5 MLS sheet for 38530 Warren
- P-6 MLS sheet for 39185 Hayward
- P-7 MLS sheet for 8208 Parkside
- P-8 MLS sheet for 39154 Hayward
- P-9 MLS sheet for 8170 St. Johns
- P-10 MLS sheet for 7739 Cherrywood

PETITIONER'S WITNESSES

Petitioner Michael Schnepel testified on his own behalf. He testified as to the listing history. The subject was originally listed at approximately \$160,000 and eventually dropped to \$119,000, at which time his father made an offer. His father purchased the subject in late 2012 for \$100,000, and sold it to Petitioner in January 2013 for \$90,000. He testified that the house was in bad shape when his father purchased the property. The basement had water and mold throughout. There was water damage in the living room due to a leak in the roof. The carpet was unusable. There was no furnace, stove, refrigerator, washer, dryer, or air conditioning. The kitchen had missing and damaged cabinets, and only one light fixture, which was broken. Both bathrooms had issues with mold and rot. As to the basement, Petitioner testified:

Yeah, about the basement. The reason I had to have all this done is because the wall on the side of the neighbor's house, it was tilted in. I had to have beams put up to hold it so it wouldn't move anymore. I think those were about \$8,000. And the basement, I had to rip up the two rooms, get rid of all the mold, which I still don't know if it's all gone, but it -- it's a good start. When you walked around the perimeter of the basement, you could actually -- water would squirt in when you'd step on the outside, and it would, like, squish, and you could see water squirting in the basement. So they put a drainage system all the way around and it leads to a sump pump. And they put up an antibacterial covering over all the walls, and if anything ever comes through the walls, it'll go down to the drainage and out the sump pump to the storm drain. That was my best option, and I had to do that or the house was going to fall apart really quick.¹

Petitioner further testified that he paid Foundation Systems of Michigan \$21,421, not including the tear out. He estimates it will take another \$3,000 to fix the drainage issue caused by the neighbor's driveway. As to exterior drainage he testified:

Because I live next to the woods. It's called Holiday Park. I'm at the bottom of a hill and all the water drains down. There's a storm drain that goes in the back of the house that leads to a drain, goes to the woods and goes all the way down along the woods. And like I said, there was no -- when they built that cement, put that cement in there, there's no drainage system so it just comes right on my property. And if it was built properly, if it was even really supposed to be there, if they built it properly, they could have drained the water to the storm drain, which they didn't, so I have to pay the price.²

As to the conditions of the bathrooms, Petitioner testified:

Well, the bedroom bathroom honestly I never wanted to get into the shower but I had to. Because once I started having problems in the hallway bathroom I had it gutted at the same time that the basement was gutted. Same people did it. But I didn't -- I completed that bathroom right before Christmas last year, and that cost me about \$5,000. And right after the new year the guy that gutted it he gutted my -- I had problems with ants for the first two years. And I figured out the problem. It was under the shower, which I didn't want to use in the bedroom bathroom. It was all rotted out underneath. I had ants every spring. They'd just start coming out and I'd be spraying, and finally I seen where they were coming. Because I ended up having mushrooms growing in my closet next to that bathroom the water problem was so bad. They were growing right out of the wall. And so I end up having that gutted. It was just like going back and forth just to be able to take a shower. I finally got the hallway bathroom done.³

¹ T. p. 14

² T. p. 14-15

³ T. p. 17

He further testified that the repair of the hallway bath was completed in 2014. The other bathroom off the master bedroom is still not complete.

Petitioner also testified regarding the placement of electrical power lines on his property:

I have another issue with power lines in front of my house, which they're not in code. I actually – the building department, they told me code is ten feet and 14 feet in the air, and they're six feet away from my house, probably about 12 feet in the air. And they tell me that they can't do anything about it. I have to call DTE. And I spoke to DTE twice, two times, because they pull up right on my line. There's a power line that goes right through the woods. And if a tree falls power goes out, and what if someone's standing under that wire on my property? They could get killed, my house could burn down. And they tell me that the house should have never been put there. I mean, what am I supposed to say to that?

Q. So DTE has no intention of moving those power lines?

A. No.

Q. I notice in the picture of your home you have a basketball hoop. How does that work out?

A. It don't work out. You know, I mean, myself -- I'll go out there and shoot baskets, but, like, my sister won't even let her kids come over and play basketball because it's dangerous. It's that close. You can't even shoot a free throw without hitting a power line. It's pretty bad.⁴

Petitioner further testified regarding a hole left in the backyard where a swimming pool used to be that needed filling with 20 yards of dirt by hand; a bobcat couldn't be used because the yard was too wet. He also testified that he removed 50 garbage bags out of the park, which were left there by the original contractor. He estimated that the property needed over \$50,000 of repairs to get it into average condition as of December 31, 2012.⁵ He also testified that \$26,000 worth of repairs were necessary as of December 31, 2013.⁶

Petitioner's second witness was Joyce Johnson, who performed an appraisal on the subject for both tax years. She noted that the subject was on the market in 2012 for 131 days prior to its sale, and it was her opinion that the subject's "condition was the driving factor," resulting in the sales price dropping from \$162,000 to \$100,000, rather than the fact that the seller was a bank.⁷

⁴ T. p. 21-22

⁵ T. p. 23-24

⁶ T. p. 25

⁷ T. p. 43

She testified regarding her condition ratings used in her sales grid:

Yes. A condition rating, a C1, C2, C3, C4, C5. A C1 is a new home, and C2 is a home that is just one or two years old that has very little deferred maintenance, almost none. A C3 is a home that's been updated and upgraded and has -- most of the components of the home have been replaced, you know, even depending on whatever age it is, the components have been replaced. C4 is an average home. It could be dated, but it needs -- some components have not been replaced, and that's a C4. C5, which is what I rated the home, is -- it affects the livability of the home, there's rooms that were not complete, such as the bathroom. And I verified it through the pictures so that they had one bathroom that just had a toilet in it. And -- and, you know, the water damage, the mold, the problems that this home had would rate it a C5. Not average. It would not be average.

Q. Why is it important that you put a condition rating on these properties?

A. Well, they came out with these -- Fannie Mae came out with these condition ratings because they wanted to uniform the whole country as to give appraisers and readers, you know, a more uniform way to -- you know, instead of good, very good, they came out with these ratings and they spelled it out for us. So it was clearer for us to rate these homes.⁸

She added that the condition ratings were a Fannie Mae requirement, and that the subject would probably not be given a mortgage.⁹

Regarding her choice of comparables for 2013, Johnson testified as follows:

Well, I investigated sales that were -- I had a hard time with this one. This was a difficult appraisal due to the fact that here we have a condition property that is poor. And I looked at, you know, what the -- what the home was listed at, and I used up to 170,000. You know, that was my cap. You know, I verified all the information, you know, and all the sales and so forth. And I could not find a lot of homes that were built during that time, and, you know, that -- that was very difficult because you want to use homes of similar age and so forth, and I tried to use, you know, the best comparables that I could find at the time.¹⁰

* * *

The primary larger adjustments, which caused my net and gross to be out of whack, were the view adjustments, the traffic, and the condition. I used \$20,000 for condition, and I used \$10,000 for the view. The other adjustments were for, you know, age, square footage, site, because this was a larger site, so I added for the smaller sites and so forth.

⁸ T. p. 49-50

⁹ T. p. 51

¹⁰ T. p. 44-45

I was never really happy with my -- my comparables, because, I mean, I wasn't -- I mean, we would like to have apples to apples all the time, and when you don't have that, you know, there's more adjustments required.¹¹

As to the subject's location, she picked comparables which were in the same school district. Regarding its location on a busy road, and also being on a park, she described her weighting of these factors as follows:

Q. And then do you want -- can you talk a little bit -- you just touched upon how busy Hix Road is and how that compares to homes in subdivisions.

A. Well, if you're in a subdivision you mainly are purchasing interior lots for a tranquil type of situation, you know, where kids can play and just and -- that's average. But when you purchase a home on a medium to heavy road, you're going to have a medium to heavy road, and it is always going to be like that. And so to me that's a major issue.

Q. Over the potential buyers out there, do you think families would be interested in living in a home on --

A. It's a smaller pool of buyers, I believe.

Q. A lot smaller or -- because there's no children, basically?

A. That would be a concern to any potential buyer to live on a major -- live on a medium to heavy street.

Q. And how does it affect the value of the home with that condition?

A. It does affect the value. No one would purchase on the medium to heavy street if there was an exact home inside a subdivision, I wouldn't believe, unless they absolutely wanted that home. But -- so I think that, you know, the heavy traffic is an issue.

Q. Do you think living next to that park offset the fact that he lived on a busy road?

A. I do not. I believe that the park has value. But it -- it is not -- it is not an even situation. Traffic is traffic. And you have some trees next to you and it's a park and it's -- but you have the traffic, so --

Q. So the traffic trumps any --

A. Yes, absolutely. I believe it does.¹²

For tax year 2014, Johnson rated the subject C-4, average, and no condition adjustment,¹³ and concluded to a substantially higher value.

¹¹ T. p. 51

¹² T. p. 47-48

¹³ T. p. 62

On cross, Johnson conceded that her comparables had gross adjustments in excess of 15%; were primarily much older homes, located over a mile away, and with one exception for 2013, and 2 for 2014, were not ranches.

RESPONDENT'S CONTENTIONS

Respondent contends that Petitioner's appraisals were flawed, and that the valuations prepared by Carl Giroux were a better indicator of the subject's true cash value.

RESPONDENT'S ADMITTED EXHIBITS

P-4 Valuations performed by Carl Giroux

RESPONDENT'S WITNESS

Carl Giroux was qualified as an expert in assessing.¹⁴ He critiqued Johnson's appraisal for setting a cap on comparables that excluded properties of the same age, style and nearly the same location. He criticized Johnson's Comparable 5 as a foreclosure sale, when foreclosures were a small part of the Westland market. He criticized her use of sales comparables that had gross adjustments (for 2013) between 45 and 69 percent, when USPAP guidelines are 25%.¹⁵

He then testified regarding his own valuation. Giroux first found comparables that were in average condition, and made adjustments as if the subject were in average condition. After concluding to a value, he then reduced that value by \$15,000 for condition for 2013. He explained that limited adjustment as follows:

Q. Okay. Now, we've been talking about costs earlier and things that had to be fixed or repaired. If someone makes a -- spends money on a particular repair or cost does that necessarily dollar for dollar change market value of the property?

A. No, absolutely -- absolutely not. Some things certainly would be considered maintenance. A good example would be a repair of the roof. It could be several thousand dollars to repair a roof, but when a potential purchaser purchases that property they expect the roof to be in good repair. They're not going to -- they're not going to pay you any more because -- or, recognize the fact that you just recently replaced your roof. The same thing could be said somewhat for a basement repair, especially for waterproofing.

Q. So you can spend \$20,000 in repairs but it doesn't necessarily mean that the market value increases \$20,000; correct?

A. That's correct.¹⁶

¹⁴ T. p. 90

¹⁵ T. p. 91-99

¹⁶ T. p. 103-104

Giroux testified regarding the location of the comparables he chose. He testified that they were all built within two years of construction date of the subject, were all ranch style homes, and were all in close proximity to the subject. He testified as follows regarding his first comparable:

Well, as you can see in the grid, comp number one is in very close proximity. It's in the same development as the subject property. It's virtually just around the corner there on Warren Avenue. And in addition to the proximity it was selected specifically because it's impacted by the same locational features. It's on a traffic road. Actually, it's more of a traffic volume in general than the road that the subject property faces on Hix. And it also backs up to the same natural wooded area, the park, as the subject property.¹⁷

Giroux testified that his gross adjustments were well within USPAP guidelines, ranging from 4.2% to 10.2%.

On cross, Giroux was confronted with MLS sheets showing various upgraded features in his comparables which were not adjusted. In his 2013 appraisal, Respondent's first comparable did not show a finished basement, even though it was marketed as having a finished basement.¹⁸ Giroux conceded that a finished basement would result in an adjustment for comparable 1 between -\$4,000 to -\$5,000. Comparable 1 was also marketed as having an updated kitchen. Giroux testified that an updated kitchen would result in an additional -\$4,000 adjustment to the subject. For Respondent's Comparable 2 for 2013, Giroux was confronted with an MLS sheet showing it to have a partially finished basement.¹⁹ Giroux testified that a partially finished basement would result in a negative -\$2,000 to \$3,000 adjustment. Similarly, Respondent's third comparable was marketed as if having a finished basement and a basement bathroom.²⁰ Giroux opined that the finished basement would again be adjusted -\$5,000 to -\$6,000, and the basement bath would result in an additional -\$2,500 adjustment.²¹ For 2013, that would reduce his adjusted sales prices, (not including the condition adjustment) from \$193,000, \$186,000 and \$188,000 to \$185,000, \$180,000 and \$185,000.²²

¹⁷ T. p. 105-106

¹⁸ See P-5, MLS sheet for 38530 Warren

¹⁹ See P-6, MLS Sheet for 39185 Hayward.

²⁰ See P-7. MLS sheet for 8208 Parkside

²¹ T. p. 143-146

²² T. p. 149

Similarly, Giroux was confronted with MLS sheets for his three comparables used in his 2014 valuation. For his Comparable 1, he was shown the MLS sheet for 39154 Hayward, showing a partially finished basement with a wet bar.²³ Giroux opined that he would adjust this comparable an additional -\$3,000 for this feature. For his second comparable he was shown that the property was marketed with an updated kitchen, including granite counters and a breakfast bar.²⁴ Giroux testified he would adjust this comparable by an additional -\$3,000 to \$4,000. For his third comparable, he was shown the MLS sheet for 7739 Cherrywood, showing it to be marketed with a finished basement and bar, full bath, oak cabinets and a snack bar, and new Weatherguard windows.²⁵ Giroux testified that these improvements would result in a -\$12,000 adjustment to comparable 3. Giroux testified as follows as to how these adjustments would affect his 2014 conclusions:

Q. And considering we've reduced the value for all three comps, how would that change your final reconciled value?

A. Well, since I did put the most weight on comp number three, and I think in -- in our examination of additional evidence pertaining to the upgrades and so forth and the finished basement, it comes in at around 198 or so for it. I don't believe that would necessarily change my value. It's estimated at \$200,000, and I believe it would be approximately the same.

Q. The other two comparables we also discussed amenities that were not found in your appraisal, so those would lower, as well?

A. Yes.

Q. If you use the same methodology you use in coming up with your \$200,000 value and now you found \$12,000 in additional amenities, wouldn't that logically reduce your value by \$12,000?

A. No, not necessarily, because I was -- you know, I was relatively conservative. If you'll look at my final estimate of value, comp number three, the one that the most weight was put on was 210. Comp number two was 210. Comp number one was almost 200. I was conservative in my value, in my estimation. I did not take into account -- I didn't average these or pick out the -- you know, or decide on using the highest value. I could have easily said that this home was worth 205 or 210, and I could have justified it based on the final value estimate that I have here. I was initially conservative. And the fact that we pointed out some obviously -- obvious things here that were done to those properties that weren't

²³ Exhibit P-8

²⁴ Exhibit P-9, MLS sheet for 8170 St. Johns

²⁵ Exhibit P-10

recognized in this appraisal report or this valuation, but it still -- it still came in close to \$200,000.

So you're asking me what would my -- what would my estimate of value be based on those changes, and it still would be approximately \$200,000.²⁶

FINDINGS OF FACT

1. The subject property is a 1,883 square foot ranch built in 1998, located at 6655 N. Hix in the City of Westland, with Livonia schools and bordering a wooded preserve.
2. The subject was purchased by Petitioner's father from a bank for \$100,000 on September 28, 2012, after 131 days on the market and an initial listing price of \$162,720.
3. Per Petitioner, the subject suffered from having water issues, including a bowed foundation, wet basement, mold and rot in the basement and bathrooms, a leaky roof, a gutted kitchen, missing HVAC, bad carpeting, an open hole in the back yard where a swimming pool used to be located, and drainage issues coming from his neighbor's driveway.
4. Petitioner spent \$21,421 for the basement and foundation issues, and conservatively estimated that an additional \$26,000 needed to be spent after tax day 2014 to bring the home into average condition.
5. Per Petitioner, and Joyce Johnson, the subject has power wires running in front of the home that are too low and too close to the structure.
6. Per Petitioner, he removed 50 garbage bags of refuse from the adjacent nature area, and filled in areas with drainage issues.
7. Petitioner purchased the subject from his father in January 2013 for \$92,000.
8. Per Petitioner, the subject currently has only one fully functional bathroom, and that bathroom was not completed until 2014.
9. Joyce Johnson retroactively appraised the subject property as of December 31, 2012 and December 31, 2013.
10. Johnson rated the condition of the subject for tax year 2013 as a C-5, and concluded to a value of \$95,000
11. Regarding tax year 2013, Johnson used 7 sales comparables, all rated C-4 in condition.

²⁶ T. p. 156-158

12. Johnson's 2013 unadjusted sales prices ranged from \$75,000 to \$130,000, while her adjusted prices ranged from \$65,700 to \$99,059
13. Johnson's comparables for 2013 had gross adjustments ranging from 44.5% to 89%; 6 of 7 comparables were multi-level rather than ranch, 6 of 7 were 58 years or 59 years old, while the subject was 17 years old.
14. For 2014, Johnson valued the subject as if in C-4 condition, and valued the property at \$151,000.
15. For 2014, Johnson again used 7 sales comparables, all rated C-4.
16. Johnson's unadjusted sales prices ranged from \$109,900 to \$174,000, while her adjusted prices ranged from \$109,176 to \$177,750.
17. Johnson's comparables for 2014 had gross adjustments ranging from 14.8% to 48.1%, and only Comparable 1 located at 1611 Cherrywood was within a mile of the subject.
18. Only two of Johnson's 2014 comparables were ranches, with the rest being multi-story homes.
19. Four of Johnson's seven comparables for 2014 were 55 years or older.
20. Carl Giroux prepared valuations for tax years 2013 and 2014 using three comparables for each year.
21. For 2013, after concluding to a value as if the subject was in average condition, he adjusted this value by -\$15,000 to account for the subject's condition.
22. For 2013, Giroux concluded to a value of \$190,000, as if the subject was in average condition, and then adjusted this figure by -\$15,000 to reflect the cost to cure, valuing the subject at \$175,000.
23. For both years, all of Giroux's comparables were located within a mile of the subject, all were ranches, and all were built within two years of the subject.
24. For 2013, Giroux's unadjusted sales ranged from \$174,900 to \$184,900, and his adjusted sales prices ranged from \$186,400 to \$193,000.
25. For 2013 Giroux's Comparable 1 located at 38530 Warren is .1 mile from the subject, also on a busy road, backs up to the same nature preserve, is a ranch and was built in 1996, within 2 years of the subject.

26. Each of Giroux's comparables for both years were marketed with various features including updated kitchens and finished basements, which were neither reflected, nor adjusted for in Giroux's sales grid.
27. For 2014, Giroux used 3 sales comparables, with unadjusted prices ranging from \$185,000 to \$199,000, and adjusted prices ranging from \$198,500 to \$210,000.
28. Giroux testified that even though his grid did not contain negative adjustments for various updates found in the MLS sheets, he would not change his conclusion of value for 2014 at \$200,000.
29. Petitioner's Exhibits 5 through 10 show updated amenities for each of Giroux's comparable sales, which per Giroux would result in additional negative adjustments.

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.²⁷

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. 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 percent. . . .²⁸

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.²⁹

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."³⁰

"By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property

²⁷ See MCL 211.27a.

²⁸ Const 1963, art 9, sec 3.

²⁹ MCL 211.27(1).

³⁰ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

assessment.”³¹ The Tribunal is not bound to accept either of the parties' theories of valuation.³² “It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case.”³³ In that regard, 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.”³⁴

A proceeding before the Tax Tribunal is original, independent, and *de novo*.³⁵ The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”³⁶ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”³⁷

“The petitioner has the burden of proof in establishing the true cash value of the property.”³⁸ “This burden encompasses two separate 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.”³⁹ However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.”⁴⁰

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.⁴¹ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”⁴² 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

³¹ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

³² *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

³³ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

³⁴ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

³⁵ MCL 205.735a(2).

³⁶ *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

³⁷ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

³⁸ MCL 205.737(3).

³⁹ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

⁴⁰ MCL 205.737(3).

⁴¹ *Meadowlanes*, *supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff'd* 380 Mich 390 (1968).

⁴² *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances.⁴³

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁴⁴

The valuation problem in this case for 2013 is how to value a residence in below average condition. Petitioner did not contend that the 2013 purchase price was the best indicator of value. The purchase price is not the presumptive price, although the Tribunal is not prohibited from considering it.⁴⁵ The Tribunal declines to accept the purchase price as a valid indicator of value for 2013 for two reasons. First of all, it was a bank sale, which may add elements of motivation that would not render it an arm's length transaction. Even if one is to accept Johnson's opinion that the sales low price was due to condition, rather than the seller, the evidence presented indicated that some of the subject's problems were cured by the end of the year. Specifically, Petitioner testified that the subject needed another \$50,000 to cure as of December 31, 2012. The lack of furnace, HVAC and kitchen were not included in that sum, and presumably, were already cured prior to the valuation date. Petitioner instead urged the Tribunal to accept the conclusions of its valuation witness, Joyce Johnson.

Appraiser Joyce Johnson looked to condition first in selecting her comparables, and adjusted for differences to conclude to a value. She testified that she placed an upper limit on her search for comparables at \$170,000, based upon the property's condition, and the original listing price by the seller in 2012. The result was to use seven comparables which were distant in location, decades older than the subject and mostly multi-level; all requiring significant gross adjustments. Included in her adjustment was a -\$20,000 for condition between a C-4, and a C-5. Tellingly, Johnson stated:

I was never really happy with my -- my comparables, because, I mean, I wasn't -
- I mean, we would like to have apples to apples all the time, and when you don't
have that, you know, there's more adjustments required.⁴⁶

⁴³ *Antisdale, supra* at 277.

⁴⁴ See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁴⁵ Petitioner's purchase price of the subject from his father is perhaps an even more unreliable indicator of value, as it was not an arm's length transaction, being between two related parties.

⁴⁶ T. p. 51

Even though she searched for properties based upon condition, she still wound up adjusting each comparable by -\$20,000 for condition, and therefore frustrated the very reason she picked those comparables.

Respondent's witness Carl Giroux took a different tact in tackling this assignment. Rather than search by sales price or condition, Giroux found close by comparables of the same style and vintage, and assumed that the subject and the comparables were all in average condition. After concluding to an initial value, he then adjusted that value by -\$15,000 to take into account "the cost to cure." He justified the \$15,000 cost, stating:

Some things certainly would be considered maintenance. A good example would be a repair of the roof. It could be several thousand dollars to repair a roof, but when a potential purchaser purchases that property they expect the roof to be in good repair. They're not going to -- they're not going to pay you any more because -- or, recognize the fact that you just recently replaced your roof. The same thing could be said somewhat for a basement repair, especially for waterproofing.⁴⁷

The Tribunal has considered both methods, and holds that Respondent's comparables are better indicators of value than Petitioners' comparables. Giroux's comparables are more like the subject in terms of style, age, and location. However, the Tribunal does not agree with several of his adjustments. His 3% per annum time adjustment was not substantiated over the course of the years under appeal. His +\$3,000 size adjustment for comparable 1, which is slightly more than 100 square feet smaller was also without justification. Further, the fact that his size adjustments for the following year are significantly higher per square foot also calls their validity into question;⁴⁸ especially when all of the 2013 comparables are smaller than the subject. The Tribunal accepts Respondent's size adjustment for Comparables 2 and 3, but rejects it for Comparable 1, which is only 110 square feet smaller. The Tribunal also disagrees with Giroux's +\$1,500 adjustment for comparables 2 and 3 on the basis that the subject's location on a busy road adjoining a nature area is superior to an interior subdivision lot. The Tribunal agrees with Johnson's statement that the property's location on a busy street eliminates the subject from consideration for families that have children. On the other hand, Respondent's comparable 1 shows that the busy road is not as big a detriment as Johnson concluded to. Adding in the low

⁴⁷ T. p.104

⁴⁸ Giroux adjusted his 2012 sales by \$25/ft., and his 2013 sales by \$30/ft.

hanging wires close to the house, the Tribunal finds that the busy street and wires cancel out the abutting park in terms of any location adjustment versus a subdivision lot.

Respondent also failed to take into account updates which also render these comparables superior to the subject. By his own admission, Giroux would have adjusted each comparable for updated kitchens, granite counters, finished basements and extra basement bathrooms. Specifically, Giroux would have adjusted the price for its Comparable 1 at 38530 Warren an additional -\$8,000 to -\$9000. He would have adjusted the price for Comparable 2 at 39185 Hayward an additional -\$2,000 to -\$3,000, and his comparable 3 at 8208 Parkside by -\$5,000 to -\$6,000.⁴⁹

The Tribunal however, finds that Respondent's adjustment for condition of -\$15,000 is severely inadequate. While the Tribunal agrees that a seller is unlikely to be rewarded dollar for dollar for upgrading a roof, or kitchen, or even drying out a basement, Respondent's argument that a condition adjustment of a mere \$15,000 for an uninhabitable home does not hold water. While a seller is unlikely to be rewarded dollar for dollar for an upgrade, because the buyer can still use the house as a home without it, a seller is likely to be punished when the residence is no longer usable as such, and has no utility. This is particularly true when the subject's condition crosses the threshold where it is disqualified from government insured financing, thus narrowing the market for those who consider the property to those who have cash. Petitioner testified that the basement and foundation problem was so bad that water would squish in when he walked near the walls. He testified that there were mushrooms growing in the closet next to the shower. He estimated that as of December 31, 2012, he needed to spend \$50,000 to cure the defects. That sum did not include the hours of sweat equity he already spent in replacing missing cabinets, furnace and air conditioning components, tearing out rotted drywall in the basement, tearing out bathrooms, back-filling the lot by hand, and cleaning out 50 bags of garbage from the adjoining park. On top of that, curing a severe mold condition is not always a sure thing, and arguably, a seller must disclose this condition under the Seller Disclosure Act.⁵⁰ The Tribunal finds that \$50,000 as a cost to cure is likely to be on the low side to bring this property up from uninhabitable to average, and in cases affecting habitability, a rational buyer would only pay

⁴⁹ T. p. 143-147

⁵⁰ MCL 565.951 et seq.

market value as if average, reduced by the cost to cure. That cost should also include an additional component to compensate a buyer for the trouble and delay in enjoying this home, versus the purchase of a comparable home already in average condition. The Tribunal estimates that the cost to cure would increase under these circumstances by an additional 10%, or \$5,000.

Accordingly, for 2013, the Tribunal calculates the subject's true cash value by taking the unadjusted purchase price of Respondent's three comparables, and accepting the following adjustments from Giroux's valuation or testimony:

Item	Subject	Comp 1	Comp 2	Comp 3
address	6655 N. Hix	38530 Warren	39185 Hayward	8208 Parkside
Purchase price		\$189,000	\$174,900	\$177,000
Site/View		(\$2,000)	(\$3,500)	(\$3,500)
size above grade			\$7,500	\$7,500
porch/deck		\$1,500	\$2,000	\$1,500
finished basement		(\$5,000)	(\$3,000)	(\$6,000)
remodeled kitchen		(\$4,000)		
basement bath				(\$2,500)
Total		\$179,500	\$177,900	\$174,000

Because Comparable 1 is most similar to the subject, being a neighboring property on a busy street, abutting the same park, the Tribunal gives this comparable twice the weight of Comps 2 and 3, and finds that the true cash value for the subject in average condition is \$177,725, or \$178,000 rounded. Reducing this figure by the cost to cure of \$50,000 and an additional \$5,000 to compensate the buyer for time and trouble, the true cash value for 2013 is \$123,000.

For 2014, both Johnson and Giroux treated the subject as in average condition. While the subject still requires some repairs, it no longer falls below the threshold of uninhabitable. Therefore, the cost to cure analysis used above for 2013 is no longer appropriate for a home in average condition.

Again, Giroux's comparables are superior to Johnson's in that each is of the same style, all are within a mile of the subject, are of the same age as the subject, and have much lower gross adjustments than Johnson's comparables. Johnson used five colonials along with two ranches as comparables, while Giroux used three ranches. While Johnson's Comparable 1 at 7611 Cherrywood is within a mile of the subject, the rest of her comparables are 1.02 miles, 2.34

miles, 3.74 miles, 3.93 miles, 4.02 miles and 5.48 miles. While Johnson's Comparable 1 and 2 are 17 years old, the same age as the subject, Comp 3 is 24 years, Comp 4 is 55 years, Comp 5 is 56 years, Comp 6 is 58 years and Comp 7 is 58 years. Her gross adjustments are also much larger than Giroux's, ranging from 14.8% for Comp 1 to 48.1% for Comp 7. In contrast, Giroux's adjustments ranged from 5.5% to 9.1%. Accordingly, the Tribunal will use Giroux's comparables as a starting point for valuing the subject for tax year 2014.

The Tribunal again rejects Giroux's positive time adjustment as unsupported, and likewise rejects his positive adjustment for subdivision lots. The Tribunal accepts his adjustments for site/view. The Tribunal also finds that his gross living area adjustment for 2014 is 20% larger than the same adjustment for 2013. The Tribunal finds this revised level of adjustment to be unsupported, and will substitute the size adjustment of \$25.00 per square foot used in 2013. The Tribunal also accepts Giroux's adjustment for the porch.

Additionally, the Tribunal holds that Giroux's comparables should be adjusted for additional amenities found in the MLS sheets, using the adjustment factors testified to by Giroux. The Tribunal also finds that the comparables should undergo an additional adjustment for the still unfinished master bathroom, and as of December 31, 2013, the unfinished hallway bath. Per Petitioner's testimony, the neither bath as of December 31, 2013 had a functional shower. Accordingly, each should be valued as a half bath, and discounted accordingly. Per Giroux's testimony, a full bath was worth \$4,000, and a half bath perhaps \$2,000.⁵¹ Accordingly, the Tribunal will discount the unfinished baths by an \$2,000 each. The table below summarizes these adjustments.

⁵¹ T. p. 155-156

Item	Subject	Comp 1	Comp 2	Comp 3
address	6655 N. Hix	39154 Hayward	8170 St. Johns	7739 Cherrywood
Purchase price		\$185,000	\$191,900	\$199,000
Site/View		(\$6,500)	(\$3,000)	(\$3,000)
size above grade		\$7,500	\$7,500	\$4,700
porch/deck		\$1,500	\$1,500	
finished basement		(\$3,000)		(\$6,000)
remodeled kitchen			(\$4,000)	(\$4,000)
remodeled bath				(\$2,000)
basement bath				
unfinished baths		(\$4,000)	(\$4,000)	(\$4,000)
Total		\$180,500	\$189,900	\$184,700

The Tribunal agrees with Respondent that Comparable 3 is most similar, and accordingly, gives it double the weight of Comp 1 and Comp 2. After rounding, the Tribunal finds that the true cash value for the subject for tax year 2014 is \$185,000. As the property sold in 2013, taxable value now equals state equalized value, per MCL 211.27a.

The subject property's TCV, SEV, and TV for the tax year(s) at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax year(s) at issue are AFFIRMED/MODIFIED 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 within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and 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, 2009, at the rate of 1.23% for calendar year 2010; (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011; (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09%; and (iv) after June 30, 2012, through December 31, 2015, at the rate of 4.25%.

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

APPEAL RIGHTS

If you disagree with the Tribunal's final decision in this case, you may either file a motion for reconsideration with the Tribunal or a claim of appeal directly to the Michigan Court of Appeals ("MCOA").

A motion for reconsideration with the Tribunal must be filed, by mail or personal service, with the \$50.00 filing fee, within 21 days from the date of entry of this final decision.⁵² A copy of a party's motion for reconsideration must be sent by mail or electronic service, if agreed upon by the parties, to the opposing party and proof must be submitted to the Tribunal that the motion for reconsideration was served on the opposing party.⁵³ However, unless otherwise provided by the Tribunal, no response to the motion may be filed, and there is no oral argument.⁵⁴

A claim of appeal to the MCOA must be filed, with the appropriate entry fee, unless waived, within 21 days from the date of entry of this final decision.⁵⁵ If a claim of appeal is filed with the MCOA, the party filing such claim must also file a copy of that claim, or application for

⁵² See TTR 257 and TTR 217.

⁵³ See TTR 225.

⁵⁴ See TTR 257.

⁵⁵ See MCR 7.204.

leave to appeal, with the Tribunal, along with the \$100.00 fee for the certification of the record on appeal.⁵⁶

By: David B. Marmon

Entered: October 22, 2015

⁵⁶ See TTR 213 and TTR 217.