November 17, 2014

Re: Public Legal Opinion Regarding Homeowner Tax Assessment

Mayor and Council:

The Council, by resolution of October 6, 2014, has requested that I provide an updated public legal opinion (initially given on April 2, 2014) regarding the laws governing the manner in which the City Assessor is required to assess homes and the effect of a reduction of the assessment for one year by the Board of Review and/or the Michigan Tax Tribunal ("MTT") on the property tax assessment for the subsequent year. I have reviewed this process in connection with a specific assessment by the City Assessor in 2012 and 2013.

In short, under the law as it currently exists, the reduced assessment by the Board of Review or the MTT affects the ***assessment process*** that the City Assessor must follow for the subsequent year. Thus, when an assessment is reduced by the MTT in the previous year, MCL 211.30c(2) in effect provides for an additional step beyond the general "mass appraisal" process described below. This additional step requires the City Assessor to consider (as set forth below) the previous year's state equalized value ("SEV"), as reduced by the MTT, before finally determining the estimated assessed value of the property in the subsequent year.

However, under the law as it currently exists, the reduced assessment by the Board of Review or the MTT cannot be considered by the homeowner to be a predictor of the assessment that the City Assessor determines for the subsequent year. Nor is the City Assessor legally bound to leave the assessment in the subsequent year at the amount determined by the Board of Review or the MTT.

Finally, because the City Assessor followed the procedures outlined below, the City Assessor's assessment in 2013 of a particular residential property, which is described on pages 8-9 of this opinion, was legally correct.

REAL PROPERTY TAX ASSESSMENT IN GENERAL

An overview of the assessment process is necessary to understand this issue fully. The Michigan constitution and statutes passed by the legislature require property to be assessed each year. Each year, the City Assessor is required to "**estimate**, according to **his or her best information and judgment**, the true cash value **and** assessed value of every parcel of real property" in the City. MCL 211.24(b) (emphasis added).

In this paragraph, I provide a condensed version of the assessment process. **"True cash value"** is the same as "fair market value." The City Assessor's estimated **"assessed value"** is 50% of the City Assessor's estimated true cash value. It should be noted, that the assessment that the City Assessor places on a taxpayer's property is

an **estimate**. The values on a taxpayer's notice of assessment are labeled "tentative" until they go through the equalization process. The Board of Review then hears protests by taxpayers who wish to protest their estimated assessments. After the Board of Review hears the protests and performs all of its other duties, a process called "**equalization**" takes place by the County and the State to ensure that all similar properties are equally and uniformly assessed. If they have been properly assessed, then the "assessed value" becomes the **state equalized value** (SEV).[1] The following paragraphs elaborate on this process.

An assessor's ***tax assessment*** of a house is not the same thing as an ***appraisal*** that a homeowner would obtain for the homeowner's own purposes, such as for obtaining a mortgage. Rather, all city and township assessors determine tax assessments of all properties in a city or township using the "**mass appraisal"** approach. This is in contrast to the "**sales comparison**" approach that an appraiser would use in appraising a single residential house. In performing a mass appraisal the previous year's SEVs of properties are not considered.

The mass appraisal approach is complex and, like all appraisal techniques, to properly perform a mass appraisal requires a great deal of study and testing. In Michigan, all assessors must be certified by the State Tax Commission. Ann Arbor's City Assessor holds the highest level of certification.

The International Association of Assessing Officers ("IAAO"), a recognized authority in assessing, defines "mass appraisal" as "the process of valuing a group of properties as of a given date, using standard methods, employing common data, and allowing for statistical testing." This definition doesn't completely define the methodology, however applying this approach includes conducting numerous sales studies and collecting and analyzing data throughout the year, among other things. Ultimately, the goal is to spread the tax burden fairly between the parcels in the city according to their relative value. The glossary containing this definition and other information is available to the public on the IAAO website: http://docs.iaao.org/media/Glossary_Ed2_Web/index.html.

Proper terminology is often forgotten, but, as indicated above, the very term "state equalized value" reflects the process of **equalization**, which goes beyond what a City Assessor does. The assessor estimates true cash value, 50% of which is the assessed value. The assessor records the assessed values on an "assessment roll," sends notices of the "tentative" assessments to taxpayers, and submits the assessment roll to the Board of Review. MCL 211.24; MCL 211.24c; MCL 211.29. The Board of Review "examine[s] and review[s] the assessment roll" and does whatever "is necessary to make the roll comply with" the tax laws. MCL 211.29. This includes, among other things, making corrections that the Board of Review determines are appropriate based on protests by individual taxpayers. MCL 211.29; MCL 211.30.

[1] For purposes of the scenario described below, the "**assessed value**" and the "**state equalized value**" were equivalent. Therefore, the term SEV is used throughout the scenario described below.

The Board of Review then formally approves the assessment roll and it is delivered to the county equalization director. MCL 211.30. The County Board of Commissioners is then required to "examine the assessment rolls…and ascertain whether the real and personal property in the respective townships or cities has been equally and uniformly assessed at true cash value." MCL 211.34. This results in a "county equalized value." Each county then submits its "county equalized value" to the State Tax Commission. It is not until the state-wide equalization by the State Tax Commission takes place that there is an official "state equalized value" (SEV) of property. MCL 211.34.

In summary: Property tax assessment is a massive undertaking in which the City Assessor's mass appraisal of all properties in the City results in a tentative true cash value and SEV for each property. But this is only a first step. The legislature has established procedures that recognize there will inevitably be occasions when mass appraisal does not produce the best result. Thus, the taxpayer, if unsatisfied with the City Assessor's best estimate, has the option of asking the Board of Review to consider the taxpayer's property individually and make changes based on the taxpayer's arguments and evidence. If unsatisfied with the Board of Review's decision, the taxpayer may file an appeal in the MTT. It is at the MTT stage that both parties are required to present valuation evidence specific to the property at issue. Thus, in the MTT both parties may submit sales comparison appraisals or other similar valuation evidence.

Please note that each year the State Tax Commission issues a Michigan Taxpayer's Guide that describes some of the steps mentioned above, such as equalization, in more detail. This year's guide can be found at:

http://www.legislature.mi.gov/Publications/TaxPayerGuide2014.pdf.

Some previous years' guides contain more detail and are still available on-line also.

THE EFFECT OF A REDUCTION OF THE SEV BY THE MTT ON THE ASSESSMENT PROCESS IN THE SUBSEQUENT YEAR.

Given the established procedure, a taxpayer may obtain a reduction of the SEV at the Board of Review or the MTT. The impact of that reduced SEV is set forth in the state law as follows:

> "(1) If a taxpayer has the assessed value or taxable value reduced on his or her property as a result of a protest to the **board of review** under section 30, the assessor shall use that reduced amount as the basis for calculating the assessment in the immediately succeeding year. However, the taxable value of that property in a tax year immediately succeeding a transfer of ownership of that property is that property's state equalized valuation in the year following the transfer as calculated under this section.

> (2) If a taxpayer appears before the **tax tribunal** during the same tax year for which the **state equalized valuation**, assessed value, or taxable value is appealed and has the **state equalized valuation**, assessed value, or taxable value of his or her property reduced pursuant to a final order of the tax tribunal, **the assessor shall use the reduced state equalized valuation**, assessed value, or taxable value **as the basis for calculating the assessment in the immediately succeeding year**. However, the taxable value of that property in a tax year immediately succeeding a transfer of ownership of that property is that property's state equalized valuation in the year following the transfer as calculated under this section." MCL 211.30c (emphasis added).

Under the law, as it currently exists, the requirement of using the reduced SEV "as the basis" for the subsequent year's assessment does not mean that the assessor is bound by the reduced SEV. The existing law in which MCL 211.30c is discussed consists of an Attorney General letter opinion, which the State Tax Commission has adopted, and the MTT has applied, and now two unpublished opinions of the Court of Appeals issued in 2014.

ATTORNEY GENERAL LETTER OPINION, STC BULLETIN, MTT CASE

As stated above, the requirement in MCL 211.30c(2) to use the reduced SEV "as the basis" for the subsequent year's assessment does not mean that the assessor is bound by the reduced SEV. This was first addressed in a 1996 Attorney General letter opinion, which the State Tax Commission adopted in 1996 and the MTT applied in a 1999 opinion.[2]

The AG letter opinion, STC, and MTT concluded that, while MCL 211.30c(2) required the assessor to use the reduced SEV "as the basis" for the subsequent year's assessment, the assessor is still also required annually to "estimate, according to his or her **best information and judgment**, the true cash value and assessed value of every parcel of real property" in the City. MCL 211.24(b) (emphasis added). As explained above, the assessor does this by doing a mass appraisal of all properties in the city.

When an assessment is reduced by the MTT in the previous year, MCL 211.30c(2) provides for an additional step beyond the "mass appraisal" assessment by requiring the assessor to consider (as set forth below) the previous year's SEV, as reduced by the MTT, before finally determining the assessed value of the property in the subsequent year.

[2] The AG letter, in particular, is difficult to find so I have attached a copy along with this opinion. Copies of an excerpt from a 2006 STC Bulletin (the most recent iteration of the STC's adoption of the AG letter opinion in 1996), and an MTT opinion are also attached.

However, it is recognized by these authorities that an assessor **may have good cause for disagreeing with the prior year's assessment made by the Board of Review or the MTT**. The assessor's disagreement may be based on information not considered by the Board of Review or the MTT in the previous year. The assessor's disagreement may also be based on the fact that the data provided to the Board of Review or the MTT by either the taxpayer or the City may have been weak or incomplete.

The sales evidence presented to the MTT in the previous year by the taxpayer or the City Assessor's office to support their respective contentions of the house's true cash value for the previous year is not necessarily the best or only evidence that could have been provided. And, the evidence provided in the previous year may not be the best or only evidence of the house's true cash value in the subsequent year. There are no Court of Appeals opinions that examine the analysis by the AG, STC, or MTT.

Thus, when MCL 211.30c(2) applies, the City Assessor must consider the previous year's reduced SEV as determined by the MTT as the beginning basis for calculation, **but the reduced SEV does not bind the City Assessor** (in the sense that the reduced SEV is not necessarily conclusive, as explained above).

After reviewing the MTT's final judgment, the City Assessor may make adjustments to the mass appraisal assessment. But when, in the City Assessor's "best information and judgment," an adjustment to the mass appraisal assessment would result in an assessment that is <u>not</u> 50% of true cash value, not only is the City Assessor not required to make an adjustment but he is also not permitted to do so.

In sum, a previous year's SEV is not an absolute figure that the City Assessor can insert into a mathematical formula to calculate the current year's assessment, even if the previous year's SEV was the result of a reduction by the Board of Review or the MTT.

There are no Court of Appeals opinions **that examine this analysis by the AG, STC, or MTT**. Thus, until the Court of Appeals decides differently (or the AG, STC, or MTT change their position) assessors must heed the current interpretation provided by the AG, STC, and MTT. The Court of Appeals has issued two unpublished opinions in 2014 that discuss MCL 211.30c(2), but neither of these has further examined the analysis by the AG, STC, or MTT cited above.

<u>TWO COURT OF APPEALS UNPUBLISHED DECISIONS ISSUED IN 2014</u>

The two Court of Appeals unpublished opinions issued in 2014 are summarized below. As an initial legal matter, an unpublished opinion of the Court of Appeals is not binding precedent on any entity other than the party in the case. The legal analysis below is made simply because the unpublished cases, in some manner, discuss MCL 2.11.30c(2).

1. *GATT v MARION TOWNSHIP*.

On February 11, 2014, the Court of Appeals issued an unpublished opinion in the case of *Gatt v Marion Twp* (Court Appeals Docket Number 313656). *Gatt* involved a property owner's appeal of his property's 2011 values as determined by the assessor, which were almost 75% greater than the values as reduced by the MTT in 2010.

In *Gatt*, the question was whether in determining the 2011 values, the MTT was bound in any way by its previous decision regarding the 2010 tax year. The Tribunal judge had stated it was not bound by its previous decision. The Court of Appeals agreed that *MCL 211.30c* did not bind the Tribunal (it applies only to assessors), but the Court of Appeals found that under another legal principle the Tribunal could not disregard its previous decision regarding the 2010 tax year. In the Gatt case, the Court of Appeals did not examine the existing legal interpretation of the statute by the AG, STC, and MTT, as applied to assessors. Thus, the applicable legal interpretation that assessors must follow is as set forth by the AG, STC, and MTT.

The Court of Appeals observed in *Gatt* that "MCL 211.30c(2) only binds the assessor," but this "codif[ies] the simple proposition that an assessor is not free to disregard an order of the Tribunal reducing a property's TCV, SEV, or TV." This is consistent with the interpretation by the AG, STC, and MTT that an assessor must use the MTT's reduction for the previous year **as the basis** for the current year's assessment. But *Gatt* does not provide any further guidance. It did not discuss or overturn the conclusion of the AG, STC, and MTT that an assessor may then increase the assessment if, in his/her information and judgment, the reduced amount does not reflect 50% of the current true cash value.

In reviewing the underlying MTT decision in this case (that is, the decision that was reviewed by the Court of Appeals) it is worthwhile to note that MCL 211.30c also did not apply to the assessor in that case because "the Tribunal's final order was issued after the assessment roll was confirmed for 2011 and 2012. Therefore, Respondent was obviously not required to use the Tax Tribunal's valuation determination for 2010 as a basis for its 2011 and 2012 assessments."

2. *SMITH v FORESTER TOWNSHIP.*

On June 19, 2014, the Court of Appeals issued an unpublished opinion in the case of *Smith v Forester Township* (Court of Appeals Docket No. 315480). *Smith* involved a property owner's appeal of his property's 2012 values as determined by the assessor. In a previous case, the property owner had appealed the 2009 assessment, for which the property owner had obtained an appraisal in 2008 to submit as evidence that his 2009 assessment was too high. By the time the MTT ruled in the previous case, tax years 2010 and 2011 had been added to it. In the previous case, the Tribunal reduced the assessments for all three years. However, when the property owner received the 2012 assessment, the values were almost 50% greater than the 2011 values as

reduced by the MTT. Thus, the property owner again appealed to the Tribunal for the 2012 tax year.

In the 2012 case, the property owner again submitted as evidence the 2008 appraisal that he had obtained for the previous case. The property owner also submitted the MTT's 2011 final judgment as evidence. The township assessor presented as evidence records that had not been corrected to reflect the 2011 values as reduced by the MTT's final judgment. That is, the township's records incorrectly listed the 2011 figures that the township assessor had argued for, and lost, in 2011.

At the MTT hearing, the property owner argued that the assessor had not used the 2011 values as the basis for calculating the 2012 assessment in violation of MCL 211.30c(2) The MTT ruled against the property owner, concluding that MCL 211.30c(2) did **not** require the township assessor to use the 2011 values, stating as follows:

> "MCL 211.30c(2) **only relates to** the "calculation" of assessed values or across the board increases or decreases in such values, and not a new valuation of the subject property as of the relevant tax date. As such, Respondent [the township assessor] was only required to utilize the Tribunal's revision to the property's true cash value for the 2011 tax year to "calculate" the property's true cash value for the 2012 tax year **if** the values for that classification of property in the area were increased or decreased by an across the board percentage in 2012." (The words in **bold print** are as they appear in the Tribunal's judgment).

In its final judgment, the MTT concluded that the property owner had not presented any evidence of the property's 2012 value. The MTT, therefore, adopted the 2012 assessments on the township's records as the property's 2012 value.

In Smith, the Court of Appeals found that the MTT had committed several errors. First, the Court of Appeals found that the MTT had wrongly concluded that the assessor was not required to use the 2011 reduced values as "the basis" for calculating the 2012 values. The Court of Appeals stated the plain text of MCL 211.30c(2) reflected clearly that "the Legislature made the assessor's duty to use the reduced values as 'the basis' for assessing the property in the immediately succeeding year 'mandatory and imperative.'" The Court found the words "the principal constituent" to be equivalent to the words "the basis," because the former was the dictionary definition of "the basis." The Court of Appeals found that it was clear that the assessor had not complied with MCL 211.30c(2) because the 2011 values on the records the township had presented were not the values as reduced by the MTT in the previous case.

Another error that the Court of Appeals found that the MTT had committed was the MTT's conclusion that the property owner "did not provide evidence of value for the subject property," when in fact the property owner had provided an appraisal and the MTT's 2011 judgment as evidence. Even though the appraisal was from 2008, the Court of Appeals said it could be used as evidence because certain aspects of the

property had not changed in the intervening years and the same was true of the MTT's 2011 judgment, which was also evidence.

In the end, however, the Court of Appeals did not conclude that MCL 211.30c(2) meant that the reduced values as finally determined by the MTT for the previous year conclusively established the values for the current year. The Court of Appeals did not instruct the MTT to adopt the 2011 values as the MTT's final judgment on the 2012 values. The Court of Appeals noted that the property owner **did not claim "that the subject property's TCV in 2011 conclusively establishes its TCV in 2012."** The Court of Appeals implicitly confirmed that the prior year's reduced values do not bind the assessor to reaching the same TCV for the current year, but rather that "the tribunal's prior findings of fact are certainly relevant and probative in determining its value in the following year."

The Court of Appeals sent the case back to the MTT "for proceedings consistent with this opinion." This means that the MTT must now arrive at a new final judgment of value by: (1) recognizing that the assessor had not "use[d] the reduced values as 'the basis' for assessing the property in the immediately succeeding year" in violation of MCL 211.30c(2); (2) "mak[ing] its own factual findings leading to a legally supportable TCV"; and, (3) considering evidence that the MTT had ignored.

The Court of Appeals did not provide any guidance specifically as to what the "legally supportable TCV" should be. It only instructed the MTT to make its new judgment as to value without making the errors it had previously made. The case is now back in the MTT, but the proceedings are not yet final.

The Smith decision doesn't analyze the AG letter opinion (adopted by the STC and applied by the MTT.) Nor has the AG, the STC, or the MTT altered their analysis based on the Smith decision.

APPLICATION OF THE LAW TO A SPECIFIC ACTION BY THE CITY ASSESSOR

The full process of an assessment and an appeal process and a subsequent assessment is set forth below:

- In 2012, the City Assessor's tentative assessment of a taxpayer's house was $131,300 SEV ($262,600 true cash value because property is assessed at 50% of true cash value);

- The homeowner protested the tentative assessment to the Board of Review in March 2012 and the Board of Review reduced it to $125,000 SEV ($250,000 true cash value);

- The homeowner was not satisfied with the Board of Review's reduction and therefore appealed to the MTT. (In this case, the homeowner appealed to the

Small Claims Division of the MTT which "utilizes an informal hearing process" where "parties typically represent themselves."
See http://www.michigan.gov/taxtrib).

- After considering evidence provided at an informal hearing in 2012, a small claims hearing referee issued a proposed opinion, which the MTT adopted as a final judgment in 2012, of $113,000 SEV for 2012 ($226,000 true cash value)

- The taxpayer expected the 2013 SEV would be around $120,910 (the MTT's judgment of $113,000 SEV increased by 7%, which the taxpayer had independently concluded was the percentage by which assessments were rising annually).

- In 2013, the City Assessor performed a mass appraisal as required by law, which resulted in the City Assessor's tentative assessment of the taxpayer's house at $140,900 SEV ($281,800 SEV) for 2013. As required by MCL 211.30c(2), the City Assessor then considered as a basis the 2012 SEV of $113,000 as determined in the MTT's final judgment.

- However, in the judgment of the City Assessor, based on information gathered in the process of mass appraisal, the 2013 SEV of $140,000 estimated by mass appraisal reflected the best estimate of the 2013 true cash value and therefore no adjustments were made to the 2013 SEV as a result of the MTT's judgment in the previous year.

- The taxpayer protested the 2013 assessment to the Board of Review, which reduced the assessment to $125,000. The taxpayer, however, did not appeal to the MTT.

CONCLUSION

In the case above, the City Assessor properly followed the requirements under the law for estimating the 2013 SEV of the taxpayer's house. The City Assessor assessed the true cash value of the taxpayer's house as part of a mass appraisal of all properties in the City, considered the previous year's reduced SEV as a basis for the 2013 assessment, and determined that no adjustment was appropriate. The City Assessor thus followed the direction of the AG, the STC, and the MTT. The City Assessor would not have had the 2014 unpublished Court of Appeals decisions when he made this determination in 2013. But in any case, as set forth above, these decisions would not have altered the assessment in any case.

As outlined above, the process of finally determining a property's SEV only starts with the City Assessor's estimate of assessed value. The taxpayer can seek reductions from the Board of Review and the MTT, but a reduction by either one does not mean that the City Assessor improperly estimated the true cash value or assessed value of the

property. Rather, when making a reduction, the Board of Review or the MTT considers the taxpayer's and assessor's evidence (or lack of evidence) specific to that parcel of property at a hearing and reaches a different conclusion of value for that specific year.

When the MTT does elect to make a reduction for a certain year, MCL 211.30c(2) provides for an additional step in the following year, which is that the City Assessor must consider the previous year's reduced SEV, as determined by the MTT, as the basis for calculation. However, **the reduced SEV does not bind the City Assessor** (in the sense that the reduced SEV is not necessarily conclusive, as explained above). After reviewing the MTT's final judgment for the prior year, the City Assessor may make adjustments to the mass appraisal assessment as appropriate. For example, the City Assessor's action in the above scenario followed the correct process.

Finally, for completeness, I need to address one aspect of Council's October 6, 2014 Resolution. It stated: "The City Attorney's April 2, 2014 public opinion provided an analysis that attempted to predict what Michigan courts would do if presented with a question regarding the impact of a State Tax Tribunal reduction of a property's assessed value on subsequent assessments." This Whereas clause mistakenly stated the scope of that opinion, and this clause was inadvertently left uncorrected when the Resolution was approved. That opinion, and this updated opinion, only discuss the state of the law at the time they are written. The law is always subject to change. The Court of Appeals at any time could issue an opinion that clearly changes this entire analysis. That is the inherent evolving nature of the law. (Likewise the AG, the STC, and the MTT could provide different analysis in the future.) The prior opinion and this updated opinion specifically state that the Court of Appeals could make such a change in the future. These opinions are not attempts to predict what Michigan courts would do in the future.

That is why these opinions are limited in scope and to the date they are submitted.

Respectfully submitted,

Stephen K. Postema
Ann Arbor City Attorney

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

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FRANK J. KELLEY
ATTORNEY GENERAL

February 21, 1996

Mr. Roland C. Andersen
Executive Secretary
Michigan State Tax Commission
Treasury Building
Lansing, MI 48922

Dear Mr. Andersen:

The Attorney General has asked me to respond to your inquiry whether the recent addition of section 30c to the General Property Tax Act, MCL 211.1 et seq; MSA 7.1 et seq, as added by 1994 PA 297 and amended by 1994 PA 415, mandates that local assessors use the assessments for property taxes determined by local boards of review and the Michigan Tax Tribunal for a prior year as the assessment for the immediately succeeding year, adjusted only for changes in value between the prior year and the subsequent year.

Section 30c of the General Property Tax Act, which addresses the effect of reductions in assessed value by a board of review or the Michigan Tax Tribunal on the next year's assessment, now provides:

> If a taxpayer has the assessed value or taxable value reduced on his or her property as a result of a protest to the board of review under section 30, the assessor shall use that reduced amount as the basis for calculating the assessment in the immediately succeeding year. If a taxpayer appears before the tax tribunal during the same year for which the state equalized valuation, assessed value, or taxable value is appealed and has the state equalized valuation, assessed value, or taxable value of his or her property reduced pursuant to a final order of

> the tax tribunal, the assessor shall use the reduced state equalized valuation, assessed value, or taxable value as the basis for calculating the assessment in the immediately succeeding year. This section applies to an assessment established for taxes levied after January 1, 1994. This section does not apply to a change in assessment due to a protest regarding a claim of exemption. [Emphasis added.]

Thus assessors must use the reduced values determined by the local boards of review or the Michigan Tax Tribunal as the "basis" for "calculating the assessment in the immediately succeeding year." The word "basis" is neither defined in section 30c nor is it defined elsewhere in the General Property Tax Act. The word "basis" is not a word that has acquired a specialized meaning in the administration of the property tax. Thus, resort to a dictionary for assistance in determining its meaning is appropriate. Murco, Inc v Dep't of Treasury, 144 Mich App 777, 782; 376 NW2d 188 (1985).

As provided in the Second College Edition of The American Heritage Dictionary (1982) the word "basis" means:

1. A supporting element; foundation;
2. The chief component of something;
3. The essential principle.

Initially it is clear that, under section 30c of the General Property Tax Act, the reduced amount of the assessed value is not the assessment in the next year. Rather, it is the "basis" for "calculating the assessment."

Moreover, section 27a(1) of the General Property Tax Act still requires that "property shall be assessed at 50% of its true cash value" in implementing the constitutional mandate of "uniform general ad valorem taxation" found in Const 1963, art 9, § 3.

In addition, under section 24(1) of the General Property Tax Act, each assessor is required to annually "estimate, according to his or her best information and judgment, the true cash value and assessed value" of each parcel of real property.

In construing these sections of the General Property Tax Act, we must, if possible, harmonize the various provisions so as to give effect to every word of the statute. Dussia v Monroe County Employees Retirement System, 386 Mich 244, 248; 191 NW2d 307 (1971). This may be done by requiring assessors, when

they are establishing assessments under section 30c of the General Property Tax Act in the next year after a decision by either the local board of review or the Michigan Tax Tribunal, to use the reduced amount of the assessment as the starting point in calculating the next year's assessment. Further, assessors must not disregard corrections of errors of fact or law made in the prior year by a local board of review or the Michigan Tax Tribunal. This is consistent with the legislative history of 1994 PA 297, which added section 30c to the General Property Tax Act. That legislative history provides:

> Further, it must be remembered that the bill [SB 288 which became 1994 PA 297] would not prohibit assessments from being increased; rather, it would designate a level at which an assessment would have to start. [Emphasis in original.]

Senate Legislative Analysis, SB 288, July 7, 1994.

Next, the assessor would only raise the assessment if, in the assessor's information and judgment, the reduced amount of assessment from the prior year did not reflect 50% of the current true cash value of the parcel in question. If an assessor disagrees with the assessment made in the prior year by the local board of review or the Michigan Tax Tribunal and the assessor has the necessary information to support an increased valuation, the assessor may establish an assessment for the property that the assessor believes achieves uniformity of assessments at 50% of true cash value. This construction also gives meaning to sections 27a(1) and 24 of the General Property Tax Act. In addition, the assessor may, of course, consider changes in value between the prior year and the subsequent year.

I trust this information is helpful to you.

Sincerely yours,

Stanley D. Steinborn
Deputy Attorney General

E) Public Act 297 of 1994 (as amended) (MCL 211.30c)

MCL 211.30c requires that when the March Board of Review or the Michigan Tax Tribunal reduces the assessed value or taxable value of a property, that reduced amount must be used as the BASIS for calculating the assessment in the immediately succeeding year.

IMPORTANT NOTE: This only applies to MICHIGAN TAX TRIBUNAL CHANGES when the MTT hearing is held in the same calendar year as the year of the assessment being appealed. Therefore, if the MTT hearing for a 2005 assessment appeal isn't held until 2006, the resulting assessment does not have to be used as the basis for the 2006 assessment.

Boards of review are cautioned that the "BASIS" for an assessment does not necessarily become the assessment. The dictionary defines basis as the base, foundation, or chief

supporting factor of anything. Assessments still have to be at 50% of True Cash Value and uniform. Also, the fact that an assessment reduced by a Board of Review may become the "basis" of the next year's assessment is not, in and of itself, a legitimate reason for a Board of Review to reduce an assessment.

Attached to this bulletin is a copy of a letter opinion by Deputy Attorney General Stanley D. Steinborn, which indicates the importance of achieving fifty percent of true cash value and uniformity when annually e stablishing assessments, notwithstanding the provisions of MCL 211.30c as added by 1994 PA 297, and amended by 1994 PA 415 and 1996 PA 476. This letter opinion also stresses the importance of "harmonizing" the requirements of MCL 211.30c with the requir ements of MCL 211.27a(1) and MCL 211.24(1).

MCL 211.27a(1) requires that "property shall be assessed at 50% of its true cash value."

MCL 211.24(1) requires an assessor to annually "estimate, according to his or her best information and judgment, the true cash value and assessed value" of each parcel of real and personal property.

Docket # 226142

STATE OF MICHIGAN
MICHIGAN TAX TRIBUNAL
SMALL CLAIMS DIVISION

Michael & Sharon Medwid,
Petitioner,
v
Township of West Bloomfield,
Respondent.

MTT Docket No. 226142

Tribunal Judge Presiding
R. Conrad Morrow

ORDER DESIGNATING DECISION AS PRECEDENT

Pursuant to MCL 205.765, the Michigan Tax Tribunal declares the decision rendered in this case, and entered the same date as this Order, precedential for defining "new construction" as an "addition" in the computation of taxable value, pursuant to MCL 211.27a(2) and MCL 211.34d(1)(b)(iii).

The procedure employed in this designated Opinion and Judgment is useful for cases where construction is ongoing, the state of "new construction" is expressed as a percentage of completion, specific improvement costs are not in evidence, and year-to-year comparison data is available.

MICHIGAN TAX TRIBUNAL

Entered: 03/05/99 By:

RCM:226142.or2 Michael A. Stimpson, Tribunal Chair

OPINION AND JUDGMENT ON REHEARING

Location of Rehearing: Pontiac, Michigan

Date of Rehearing: June 26, 1998

I. SYNOPSIS

This case is a rehearing of 1995 and 1996, with tax years 1997 and 1998 statutorily included. The issues include true cash values and the resulting assessments, with emphasis upon taxable values. Subject property is a single-family residence, located on Middle Straits Lake, under construction during the years of appeal. The parties have stipulated to the percentages of partial completion for each year of appeal, ranging from 70 % in 1995 to 86% completed in 1998. The residence under construction is substantially larger and of higher quality and detail than is typical for the area, with both parties in agreement that an issue of overimprovement is involved.

Of particular dispute in this case is the manner in which the "new construction" is calculated as a taxable value "addition" pursuant to MCL 211.27a and MCL 211.34d(1)(b)(iii). Petitioners claim that an informal letter opinion by a Deputy Attorney General, pertaining to the meaning of "basis" in MCL 211.30c, requires that a prior MTT Opinion (not appealed) on this same property for tax year 1994 be considered as the "last adjudicated value," and be treated as "basis" in subsequent year computations. Petitioners applied that theory by treating the prior MTT Opinion for 1994 value as the foundation for both true cash value and taxable value computations in each year of appeal. In computing taxable value, the new construction amount was found as the difference between current and prior year values for the residence.

Respondent agreed in part with Petitioners' use of the 1994 MTT Opinion as the "basis" for the initial taxable value in 1995, but for each year of appeal applied the stipulated percentages of completion to revised values for the residence, as determined by market appraisal. Respondent argued that the opinion letter upon which Petitioners relied was not precedential. Further, Respondent claimed that there was no statutory support for Petitioners' incorrect procedure of using a prior year's "basis" for finding true cash value in a manner similar to that used for finding taxable value. Respondent's taxable value calculation also used the year-to-year value change of the residence as its method of determining new construction.

The Tribunal rejected both parties' contentions of true cash value, and taxable value methodology, and rendered an independent determination. In particular, the Tribunal found Petitioners' assertions on the law as to "basis" under MCL 211.30c to be misunderstood, and its reliance upon the Deputy Attorney General's informal opinion letter to be non-precedential and misapplied. Both parties were correct in their initial application of "basis" in the taxable value computation, but beyond that point, each wandered well off course. Of general note, Petitioners' failure to rely on market proofs as the main thrust of their case, caused a serious absence of true cash value input necessary to both the assessment and the new construction valuations.

To Petitioners' credit, the calculation of new construction in taxable value attempted to identify a significant procedural hazard, overlooked by Respondent's presentation. The effort to exclude value from prior years, as not being permissible in the current year's new construction value, was well- taken in concept, but was seriously flawed in its application. Petitioners' flawed applications also extended to using a 1994 MTT valuation as the "basis" for both its "new construction" computations and true cash values in each year of appeal, a process which wholly ignored changing market values for subject residence in subsequent years. That failing was not assisted by Petitioners' prior hearing data including the valuation reports of an independent appraiser. The Tribunal found those reports unconvincing in the selection of market data, and incorrect in the consideration of overimprovement. Procedurally, in addressing their burden of proof, the appraisals made no significant contribution to Petitioners' revised contentions, since the appraisals were not utilized in the final value exhibit of conclusions (Exhibit H-1) introduced at rehearing. Accordingly, Petitioners' value contentions are without any market support other than that of the 1994 MTT Opinion, and Petitioners' misplaced legal arguments.

Respondent's case presented a more insightful use of market data and analysis, employing lakefront data from other nearby lakes, improved with residences more similar to subject in size and quality of finish. Importantly, Respondent made an effort to recognize subject's overimprovement through a minus adjustment in the market analysis grid. The Tribunal found the adjustment an acceptable estimate, but that additional analysis was required to further temper the limits of overimprovement absorption in the market. The Tribunal's finding of true cash value also required adjustments and corrections to the market data grid. In calculating taxable value, the 1994 MTT Opinion was correctly used as the "basis" in the 1995 taxable value formula. Additionally, Respondent employed market analysis for the new construction taxable value computations in subsequent years. Despite Respondent's market data effort, the Tribunal disagreed with the process and conclusions of Respondent's work, making it necessary to set aside the taxable value work as flawed, and to employ existing evidence to develop other calculations. Respondent's taxable value computations had failed in a significant aspect. The statute defining "new construction," MCL 211.34d(1)(b)(iii), requires a true cash value standard, but is limited to only the contribution of the current year's construction value. While Respondent attempted to apply that standard, in fact, the methodology permitted value increase beyond that attributable solely to new construction. By using a year-to-year comparison method for the extracted value of the residence (as did Petitioners), Respondent inadvertently incorporated market changes from the prior year, requiring the Tribunal to reject the analysis.

The Tribunal's independent determination included a comprehensive true cash value analysis, necessary to both assessment revisions, and calculation of the "addition" component in taxable values. Important to the taxable value

determination was the need to outline a method which, employing data in evidence, assured that the "new construction" excluded value from other sources. The method developed in this Opinion outlines the market-based mathematical procedure for determining the correct "new construction" as an "addition" in the taxable value formula. The procedure is useful in cases, such as this matter, where the state of "new construction" is expressed as a percentage of completion, where specific improvement costs are not in evidence, and the primary available evidence of "new construction" true cash value is year-to-year market value difference.

II. FINDINGS OF FACT

A. REPRESENTATION

Petitioner Sharon Medwid appeared and was represented by Myles B. Hoffert, attorney.

Respondent appeared and was represented by Derk W. Beckerleg, attorney. Also appearing from the Township Assessor's office was Daniel L. Sears, Chief Property Appraiser.

B. RULINGS

1. This matter is a rehearing of tax years 1995 and 1996, for which the prior Opinion and Judgment entered January 10, 1997, is hereby vacated.

2. Additional years for which the assessment has been established are added automatically under provision of 1993 PA 21, MCL 205.737(5), except upon leave of the Tribunal a party may request that any subsequent year be excluded from appeal at the time of the hearing. Neither party moved for exclusion, both being in agreement that tax years 1997 and 1998 were to remain in the appeal.

3. The matters for rehearing will be as in the original hearing: true cash value, assessed value, and taxable value for years 1995 through 1998. Petitioners noted that the primary issues of appeal are the taxable values for each year, and requested limitation of issues to taxable value only. Respondent objected, arguing that there had been no stipulation or other agreement to limit issues prior to hearing. The Tribunal ruled that the matters of the original hearing for 1995 and 1996 related to true cash value, assessed value, and taxable value; that there had been no prior written or oral motion or stipulation amending the issues of the original appeal; and that those same issues would be reheard for 1995 and 1996, and extended to the statutorily added years 1997 and 1998.

4. The parties orally stipulated that the states of completion and percentages of partial value for the subject new residential construction were 70% for tax year 1995, 77% for 1996, 77% for 1997, and 86% for 1998. The Tribunal accepted that stipulation as a reasonable measure of completion, and the corresponding percentage of partial value, for the new residence under construction during the years of appeal.

5. The existing residence on the site was reported to have been demolished March 1997, and the parties agreed at rehearing the structure did not exist for the 1998 tax year. For purposes of their valuation analysis, both parties also agreed that the minimal value of the existing residence was $12,000 in each tax year prior to its demolition, and used that figure in their valuation analyses. In the same manner, the parties employed a value of $20,000 for site improvements. The source of both figures was the 1994 MTT Opinion and Judgment in this matter (see section E, listing Petitioners' and Respondent's evidence). Both figures are a reasonable approximation of market contribution. For clarification of the record, however, the Tribunal rejects an earlier file reference by Respondent, that the value of the existing residence was "value-in-use." The existing structure does have interim "value-in-exchange" during transitional construction, although limited mostly to its rental value for temporary housing, and a final salvage value. Both the $12,000 value for the existing residence, and the $20,000 for existing site improvements, excerpted from the 1994 MTT Opinion, and in which the parties are in agreement, are reasonable estimates of market value contribution in this case.

6. Both parties submitted revised assessment and taxable value calculations at hearing, to which there was no objection by the opposing party. The first admitted at hearing was marked "Petitioners' Exhibit H-1" consisting of ten pages summarizing calculations for 1994 through 1998, labeled on the first page as "1994 Calculation of Assessment." The second admitted was marked "Respondent's Exhibit H-1," labeled on its singular page as "Corrected

Summary,"consisting of a sheet printed sideways, summarizing conclusions with tabulations, and additional handwritten entries in red ink.

7. Not admitted into evidence was Respondent's data dated June 19, 1998, stamped as having been received by the Tribunal on June 24, 1998, and not processed for placement in the Tribunal's file in time of commencement of rehearing. Neither had the packet been filed with the Tribunal within 14 days of the scheduled rehearing, nor did it contain evidence that it had been served upon the opposing party within that same time, both acts being required by TTR 342(2). The eight-page packet consisted of land and building comparable data and adjustments identical to prior data already submitted except for decreased land value, a cover letter summarizing value conclusions, and a "Corrected Summary" of conclusions similar to "Respondent's Exhibit H-1" presented at rehearing. The Tribunal observed that no reference was made to this packet at rehearing, which may be attributable to the contents appearing to be similar in most respects to other data submitted June 13, 1998 (see item B8 following), except for a decrease in subject site value already in evidence in "Respondent's Exhibit H-1" (see item B6 above). Nevertheless, under the circumstances described, and particularly absent evidence of service upon the opposing party, admission of the evidence holds potential for unfair advantage. For that reason, the Tribunal rules for exclusion of the evidence.

8. For clarification purposes, not affected by the ruling of item B7 above, other appraisal materials of Respondent dated June 13, 1998, were offered and admitted into evidence. Those materials, an extensive assembly of market and supporting material, were served eleven days prior to hearing with permission of the Tribunal, upon good cause (family illness) having been presented. Although the material was filed and served less than the fourteen days required by TTR 342(2), at hearing there was neither objection nor indication of unfair surprise or advantage. In a similar manner, Petitioners' data of June 15, 1998, filed and served less than the fourteen days required by TTR 342(2), have been admitted into evidence for the same absence of objection or indication of unfair advantage.

9. Prior to the scheduled rehearing date, Petitioners filed its "Motion for Leave to Employ Court Reporter and to Commence the Hearing at 8:30 A.M.," with Proof of Service dated June 17, 1998. The Tribunal received the motion June 22, 1998, leaving less than the fourteen days permitted for response by the opposing party under TTR 230(1). In that the June 26, 1998, scheduled date of rehearing was imminent, the Tribunal issued its ruling without receipt of Respondent's reply in its "Order Denying Petitioners' Motion for Court Reporter," entered June 23, 1998, with duplicate notice by facsimile. The Tribunal's Order noted that where cases are of such complexity that additional resources are required, "a timely motion for transfer [to the Entire Tribunal] was permitted under TTR 315(1)." In partial accommodation to the extensive factual details, the Tribunal permitted deviation from the standard 45 minutes allocated to rehearings, and used an adjournment in another matter to permit 90 minutes for case presentation.

C. ASSESSMENT DATA

The property is located in Oakland County at 3538 Winterberry, West Bloomfield, Michigan.

Petitioners first protested to the Board of Review for tax year 1995.

The assessments in issue cover tax years 1995 through 1998.

The property is classified for taxation purposes as residential real property.

The average levels of assessment for this property's classification for the years in issue are at 50%.

The interested school districts are Walled Lake Public (#270), Oakland Intermediate Schools, and Oakland Community College.

In this proceeding, use of the symbol "AV" refers to Assessed Value, "SEV" refers to State Equalized Value, "TV" refers to Taxable Value, and "TCV" refers to True Cash Value.

The following chart presents information pertinent to the contested assessments:

Property Identification No. 18-07-326-020

YEAR	1995	1996	1997	1998
Assessed Value	$399,044	$762,390	$813,030	$892,720
Level	50%	50%	50%	50%
State Equalized Value	399,044	762,390	813,030	892,720
Taxable Value	399,044	552,814	570,864	637,904
Petitioners' TCV* (1):	521,160	556,270	556,270	601,420
Petitioners' TCV* (2):	469,000	515,900	515,900	576,200
Petitioners' TV**< b>	272,471	292,347	300,364	330,748
Respondent's TCV***(1):	967,900	1,062,300	1,431,100	1,665,700
Respondent's TCV***(2):	895,920	992,570	1,190,310	1,348,680
Respondent's TV****	384,415	443,060	468,800	513,600

*Petitioners presented two sets of TCV. The first set (1) was based on "Petitioners' Exhibit H-1" presented at rehearing. The second set (2) of TCV's was presented orally based on the 1994 MTT Opinion at $670,000 (rounded) total land and buildings, applied to the stipulated percent of completion for each year.

**Petitioners' TV is based on "Petitioners' Exhibit H-1" presented at rehearing, with "new" being the difference between each year's building at percent of completion, employing the 1994 MTT building value throughout.

***Respondent presented two sets of TCV, both summarized on "Respondent's Exhibit H-1" presented at rehearing. The first set (1) was based on the market value mean, using revised land values, and the Sales Comparison Approach. The second set (2) of TCV's also incorporated revised land values, and was the average between the market value mean stated in the first set, and recalculated assessment figures.

****Respondent's TV was based on "Respondent's Exhibit H-1" and figures in red, with the "new construction" being the difference between each year's building at percent of completion, employing 1994 MTT building value only for the 1995 difference. TV in black type is based on a recalculation of assessment for 1994; Respondent stated this method was incorrect.

D. PROPERTY DESCRIPTION

The subject property consists of a new single-family residence under construction, and an older existing residence to be demolished, both located on the same lot overlooking Middle Straits Lake. The new residence, located on the lake view side of the lot, is briefly described as consisting of a 1 and 2-story structure, English Tudor style, stone exterior, wood shingle roof, unfinished walk-out basement, air conditioning (not connected), quality construction and detail, 3-car attached garage, 2 fireplaces, deck, and approximately 5,386 square feet (SF) of living area*. Construction was begun in 1991, with subsequent states of completion being 70% on 12-31-94, 77% on 12-31-95 and 12-31-96, and 86% on 12-31-97. The existing residence, located near the road, is a 1 and 2-story colonial single-family residence, part basement and slab, aluminum siding, no air conditioning, attached 2-car garage, covered porch, built about 1936, and approximately 2, 233 SF living area. The existing residence was demolished in 1997. The site has 104.46 front feet (FF) on the lake side, 105.14 FF on Winterberry, and depth of 345.61'/355.42', with approximately 30' of Westacres Subdivision Outlot "L" land between the subject lot and the waters of Middle Straits Lake (the "easement" referenced by Petitioners).

*Petitioners claim the gross living area is 4,829 SF, Respondent claims 5,386 SF, while architectural building plans in Petitioners' valuation exhibit note 4,939 SF.

E. CONTENTIONS OF THE PARTIES AND EVIDENCES SUBMITTED

l. Petitioners contend that the main focus of this case is taxable value, Respondent's calculations of which are unlawfully contrary to provisions of MCL 211.27a, and MCL 211.34d(1)(b)(iii) pertaining to "additions" for "new construction."

Additionally, Petitioners contend that Respondent failed to apply a Deputy Attorney General's opinion letter of February 21, 1996, pertaining to MCL 211.30c, the application of which would make mandatory the use of a prior Tribunal decision on this same property as the basis of future assessments. The prior MTT Small Claims Division Opinion and Judgment to which Petitioners refer, and rely upon as the initial basis for true cash value and taxable value, was an appeal of tax years 1993 and 1994 (Mike & Sharon Medwid v West Bloomfield Township, Docket No. 181383, entered December 19, 1994). Petitioners' case asserts that the combination of statute, letter opinion, and prior MTT case, requires that (a) the basis for subject new residence is $501,660 as-if-completed; (b) that figure is to be used in each year of appeal for applying the stipulated percent of completed construction; and (c) in calculating the taxable value, the prior year's partial construction may not be increased more than the inflationary rate in the subsequent year.

Secondarily, Petitioners challenge the true cash values, and the assessments as unlawfully exceeding 50% of the subject property's true cash values. Included in the valuation claim is that the subject size should be 4,829 SF as determined by its appraiser Babcock; that the home is an overimprovement for the area; that the land value is diminished by the subdivision outlot easement; for each year the land value is $150,000; and the value of the home as-if-completed is $501,660 for all years, based on the prior Medwid Opinion of December 19, 1994.

At the rehearing, Petitioners made no claim for lack of uniformity within the assessing district, nor did that issue appear in the Hearing Referee's Opinion and Judgment for the original hearing which preceded the granting of a rehearing. Certain file data pertaining to market sales and assessments of neighboring properties was presented in the context of a claim for subject being an overimprovement for the area, but no other link was made at rehearing for lack of uniformity.

2. Petitioners' evidence presented at the hearing: summary of case and facts by Mr. Hoffert, Petitioners' attorney; appraisal by Howard A. Babcock, SRA, on subject property for 1994 tax year, concluding at $600,000 x 50% complete = $300,000, form and narrative appraisal, three sales with market adjustment grid, sketch and living area calculations, maps, photographs of subject and sales; similar appraisal by Babcock for 1995 tax year, adding a listing to the three prior market sales, concluding at $600,000 x 70% complete = $420,000; revised Babcock appraisal for tax year 1996, similar to prior reports, three different sales, concluding at $650,000 x 80% complete = $520,000; plat map showing 30' subdivision outlot easement at water's edge; owner's letter to subdivision association regarding use of a 30' easement; Respondent's Answer to Small Claims petition; sales agent print-out of 1994-95-96-97 sales for subject Westacres Subdivision and two other subdivisions, with several pictures; 1998 assessment record cards and photographs of four nearby homes on Winterberry; assessment record card for subject years 1996 and 1998; two architectural plan sheets for subject new residence, first and second floors; assessor's prior appraisal report for 1995 and 1996; memorandum stating fact, law, and taxable value procedure (author not identified); MTT Small Claims Opinion and Judgment for tax years 1993 and 1994, (Medwid); "Petitioners' Exhibit H-1," calculations of assessment and taxable value for 1995 through 1998, ten pages; plat map noting land and building sizes, and 1996 values for subject and 7 nearby properties; 1996 assessment record cards for 7 nearby properties; subject assessment record cards for 1995-96; owner's 6-point fact and position statement; Court of Appeal's *per curiam* Opinion, Beachcomber Motel v Mackinaw Township, Docket No. 183672, unpublished, January 14, 1998.

3. Respondent contends, based on a revised valuation analysis, that the assessment for 1995 is less than 50% of true cash value, but the assessments for year 1996-97-98 are in excess of 50% of true cash value and should be reduced. Respondent contends that its market appraisal of subject for each year supports the revised valuations based on assessment methodology. Relating to taxable value, revised calculations recognized the 1994 MTT Opinion at 50% completion for the new residence, but used that figure as a comparison to revised market value only in 1995 to determine the true cash value of "new construction." For each subsequent year of appeal, the new residence value would recognize current market levels at the stipulated state of partial completion, with the "addition" for "new construction" being the difference between the current year value and the prior year value. The result of revised calculations is a contention for reduced taxable values in each year.

In rebutting Petitioners' legal issue regarding the Deputy Attorney General's letter and the prior Medwid MTT decision, Respondent states that it did comply with the letter and prior decision by employing the 1994 assessed value totaling $216,400 in making the taxable value additions for 1995. However, Respondent argues, the AG opinion letter is not precedent, not a formal opinion, and not binding. Respondent knows of neither statute nor case law requiring that the true cash value (for AV/SEV) determination start with the taxable value figure. In defense of its true cash values and assessed

values, Respondent states that the waterfront easement does not diminish land value; that the building size is 5,386 SF based on remeasurement of the structure; that the quality and extent of finish, changed to A+60 based on its best judgment, will be better determined when the structure is completed; that the new residence appears to be an overimprovement for the area, with external obsolescence recognized as a minus 25% neighborhood adjustment in the appraisal.

4. Respondent's evidence presented at the hearing: summary of case and facts by Mr. Beckerleg, Respondent's attorney; testimony of Township assessing/appraising personnel; "Corrected Summary" admitted at rehearing as "Respondent's Exhibit H-1," stating market and assessment/taxable value data (corrections noted in red ink) for 1995 through 1998. An appraisal and data packet by Daniel L. Sears and Russell H. Galvin included the following data: cover letter of June 13, 1998, summarizing assessed/taxable values; area and plat maps locating subject property; photographs of subject property; tabulation of 1996-97 improved sales on Middle Straits Lake; market analysis grids for 1995 through 1998 with adjustment of four sales each year; photographs of comparable sales; computation of land values for each year; depth factor chart; listing of land sales on Upper Straits Lake relating to comparable land values; sketch of subject existing and new residences; 1995 through 1998 subject assessment record cards for both existing and new residences; assessor's field inspection notes on subject property; permit dated June 6, 1997, for demolition of subject's existing residence; letter of June 11, 1998 from Township Building Director Phil Gentile, stating subject building permit incomplete, and no occupancy permit had been issued; MTT Small Claims Opinion and Judgment, (Medwid); calculation of "new construction" as an "addition" in taxable value computation for each year; "Summary" of market and assessment/taxable value data for 1995 through 1998 (see "Corrected Summary" for data used at rehearing); large plat map of Middle Straits Lake and surrounding subdivisions, noting types of water frontage and sales of property facing lake; Certification of Appraisal signed by Daniel L. Sears and Russell H. Galvin; professional qualifications of Sears and Galvin.

III. CONCLUSIONS OF LAW

In this matter, Petitioners appeal the subject's true cash value and resulting assessment, and particularly challenge the taxable value for each relevant tax year.

At rehearing, Petitioners made no statement or argument that it was challenging the level of assessment (uniformity) for each relevant tax year. Further, although the file contained data from the original hearing which referenced assessments on nearby properties, neither that data nor other information was presented at rehearing in support of a uniformity issue. Support for a uniformity challenge, had it been presented, would have required proofs pertaining to uniformity in the *taxing district* for subject's class, and not in comparison to a small sample of selected properties. Hoerner-Waldorf Corp v Ontonagon, 26 Mich App 542, 545; 182 NW2d 749 (1970). Backus, Curt S & Linda A v Sanilac Twp, 7 MTT 20, 23 (1990). Failure to go forward with evidence on the issue of uniformity leaves the true cash value, assessment, and taxable value issues in contention.

Petitioners' case concerns both assessed value and taxable value, the foundation of which is a legal argument. The Tribunal will first address Petitioners' legal argument before turning to other aspects of this appeal.

A. Petitioners' LEGAL ARGUMENT

In summary, the legal argument is that the assessments in years subsequent to 1994 must be based on the "last adjudicated value" of the Hearing Referee's Small Claims Opinion, and that figure ($501,660 for the new residence, as-if-complete) is also to be used for finding "new construction" in the taxable value computations. Attorney Hoffert argues that the assessor, following issuance of an Opinion of the Tribunal, is bound to base the subsequent year assessments on the 1994 MTT Opinion and Judgment, and cites a letter of opinion, rendered by the Department of Attorney General, as support. Petitioners further employ their legal premise in their version of the taxable value computations presented in a "Memorandum" dated June 11, 1998 (see indexed exhibit, tab 19), and in "Petitioners' Exhibit H-1." Those exhibits demonstrate use of the 1994 Opinion in each of the subsequent year's taxable value as the basis of the "new construction" calculations.

The referenced letter of opinion, discussing MCL 211.30c, and on which Petitioners rely, was issued by the Department of Attorney General (AG), and distributed by the State Tax Commission (STC). Although Petitioners did not provide either a copy of the referenced opinion letter or the STC distribution memorandum, the Tribunal was familiar with the

document, as was Respondent's counsel. The next four numbered sections summarize data referenced by Petitioners' counsel, being the prior MTT Opinion, MCL 211.30c, the AG letter, and the STC distribution. Following the four items, the fifth section will present the Tribunal's summary reasoning in rejecting Petitioners' legal argument for mandatory use of the 1994 MTT Opinion for subject value as-if-complete.

1. MTT Prior Opinion. The prior MTT Small Claims Division Opinion and Judgment to which Petitioners refer was an appeal of tax years 1993 and 1994, involving the same parties as the instant case. The prior case referenced by Petitioners is Mike & Sharon Medwid v West Bloomfield Township, Docket No. 181383, entered December 19, 1994, Hearing Referee Patrick D. Barnes, presiding (not to be confused with the Opinion held before Referee Douglas M. Lasher, entered January 10, 1997, which gave occasion to the instant rehearing, and which has been vacated). The referenced Opinion found no revision for 1993, but revised the values for tax year 1994. The Referee found that Respondent had not submitted evidence to support the value of the new residence under construction. Petitioners' appraisal by Mr. Babcock was accepted as to the Cost Approach after certain modifications, but the Sales Comparison Approach was rejected as lacking credibility in the choice of comparable sales data. The Cost Approach, modified by the Referee, was accepted as the 1994 finding (Opinion, page 3) as excerpted following:

Estimated Site Value $150,000

Half of the Value of New Home (50% complete) 250,830

Site Improvements 20,000

Value of the Old Home 12,000

Value as of December 31, 1993 $432,830*

*TCV was rounded to $432,800, and the Revised Assessment at 50% was $216,400.

2. MCL 211.30c. The three subsections of Section 30c were added by P.A.1994, No. 297, Imd. Eff. July 14, 1994, and were amended by P.A. 1994, No. 415, Imd. Eff. December 29, 1994. It is these Acts to which the AG opinion letter refers. The three 1994 subsections, excluding a 1996 amendment pertaining to transfer of ownership, follow:

(1) If a taxpayer has the assessed value or taxable value reduced on his or her property as a result of a protest to the board of review under section 30, the assessor shall use that reduced amount as the basis for calculating the assessment in the immediately succeeding year.

(2) If a taxpayer appears before the tax tribunal during the same tax year for which the state equalized valuation, assessed value, or taxable value is appealed and has the state equalized valuation, assessed value, or taxable value of his or her property reduced pursuant to a final order of the tax tribunal, the assessor shall use the reduced state equalized valuation, assessed value, or taxable value as the basis for calculating the assessment in the immediately succeeding year.

(3) This section applies to an assessment established for taxes levied after January 1, 1994. This section does not apply to a change in assessment due to a protest regarding a claim of exemption.

3. Attorney General Letter of Opinion. The particular letter to which Petitioners' attorney refers was issued February 21, 1996, by Deputy Attorney General Stanley D. Steinborn, and is an explanatory non-precedential correspondence in answer to an inquiry by Roland C. Anderson of the State Tax Commission. The letter addressed MCL 211.30c, and the statutory requirement that assessors use prior year determination of the local boards of review and the Tribunal as the "basis" for calculating the assessments in the immediately succeeding year. Mr. Steinborn's letter examined the word "basis" as used in the statute, noting the word was "neither defined in section 30c nor is it defined elsewhere in the General Property Tax Act." He gave careful note that section 27a(1) of the Act still requires property to be assessed at 50% of its true cash value, and that section 24(1) requires assessors to "annually 'estimate, according to his or her best information and judgment, the true cash value and assessed value' of each parcel of real property." He also notes that "assessors must not disregard corrections of errors or law made in the prior year."

The conclusion of Mr. Steinborn's opinion is stated on page 3, and is quoted in full.

Next, the assessor would only raise the assessment if, in the assessor's information and judgment, the reduced amount of assessment from the prior year did not reflect 50% of the current true cash value of the parcel in question. If an assessor disagrees with the assessment made in the prior year by the local board of review or the Michigan Tax Tribunal and the assessor has the necessary information to support an increased valuation, the assessor may establish an assessment for the property that the assessor believes achieves uniformity of assessments at 50% of true cash value. This construction also gives meaning to sections 27a(1) and 24 of the General Property Tax Act. In addition, the assessor may, of course, consider changes in value between the prior year and the subsequent year.

4. Distribution and Publication of Attorney General Letter. The AG letter referenced by Petitioners' attorney, not submitted as evidence although it should have been, received distribution and publication sufficient to reach those in assessment administration and the business of appeals. Three sources at which it may be found are: (a) State Tax Commission letter of February 26, 1996, from Roland C. Anderson to Equalization Directors, paragraph (3) referencing MCL 211.30c and attaching the AG letter; (b) The Michigan Assessor, Volume 37, Number 4, April 1996, page 12, reprinting the STC letter of February 26, 1996, from Anderson to Equalization Directors, including the AG letter; (c) STC Bulletin No. 5, January 31, 1997, paragraph "F" pertaining to MCL 211.30c, attaching the AG letter.

5. Tribunal Finding and Reasoning on Legal Issue. Petitioners' legal argument, as stated at rehearing and upon which it relies as the foundation of this case, claims that it is mandatory a subsequent year's value must be based on the "last adjudicated value." The Tribunal disagrees. Although Mr. Steinborn's letter is clearly helpful in its explanation of the statute, the Tribunal finds no support for Petitioners' treatment of the letter as precedential. Further, Petitioners' reliance upon Mr. Steinborn's letter is based upon a misapplication of its content. It is true that the 1994 hearing was also the year of MTT appeal, thereby invoking "basis" for the subsequent year as provided in MCL 211.30c(3). However, as Mr. Steinborn notes, "basis" is not defined in the statute. Its application is not explained in the statute. The Tribunal can find no support for Petitioners' position that "basis" is mandatory in the manner of application Petitioners declare. As to taxable value, Petitioners' position is partly correct in that MCL 211.27a(2)(a) requires use of the prior year's taxable value as a component of the next year's taxable value computation. Petitioners are in error to ignore market value proofs for that part of the taxable value formula which requires a true cash value component, such as the "new construction" addition of MCL 211.34d(1)(b)(iii) applicable to this case. The Tribunal finds Petitioners have failed to make these distinctions. The following presents additional reasoning and findings on this topic.

a. Explanation of Basis. The statutory requirement of MCL 211.30c(2) relative to MTT final orders is time-limited to only those years heard in the same year as the year of appeal. That situation applies to subject as to timing in that the 1994 tax appeal heard August 25, 1994, entered December 19, 1994, would be the "basis" for 1995. However, in relying upon Mr. Steinborn's letter, Petitioners' argument failed to note his statement that there were qualifying conditions under which an assessor may have good cause to not give basis to a prior year's MTT Opinion. As Mr. Steinborn made clear in his non-precedential explanatory letter, while a Tribunal determination from the preceding year is to be the basis of the subsequent year's assessments as to corrections of fact or law, there may be other reasons for variation from the basis. Those reasons noted in the letter included the need to reflect 50% of current true cash value, to achieve uniformity of assessments at 50% of true cash value, and to adjust for year-to-year changes, providing the assessor had the required information and support. Petitioners' argument failed to acknowledge these variations.

The Tribunal agrees with Mr. Steinborn's explanation of the statute in emphasizing the importance of true cash value and uniformity as mandatory concepts. That observation is particularly pertinent in this case in that the Referee's 1994 Opinion acknowledged difficulties in the quality of valuation evidence. It was not strong market data which undergirded the "basis" conclusion in 1994. The Referee turned away from the Sales Comparison Approach in that the comparable data was not representative of subject, and relied solely on the Cost Approach. The land value was unsupported by any market data, the cost analysis was without confirming documentation, the functional obsolescence adjustment was eliminated as not being credible, and the property's complex construction was only half-built at the time. Under such conditions, it would be reasonable to exercise caution in fully relying upon those values in subsequent years, a point passed over by Petitioners, but recognized by Respondent.

b. Petitioners' Misapplication of "Basis." Petitioners have erred by calculating assessed value in much the same

mechanical manner as is required for calculation of taxable value. The taxable value formula in MCL 211.27a and MCL 211.34d has both fixed and variable elements, fixed as to use of the prior year's taxable value and the inflationary multiplier, and variable as adjusted according to statute for certain defined losses and additions, with the result being limited on the downside by state equalized value. Thus, taxable value is constrained by mechanical components, with only partial recognition of true cash value in certain of the loss/addition adjustments. In contrast, assessments are based on 50% of true cash value, being free to seek the appropriate market value level.

In this case, Petitioners' land and as-completed building values were extracted from the 1994 MTT Opinion, and those numbers remained fixed in Petitioners' calculations for subsequent years. No new market data was introduced for any year, in either the calculation of assessed value or taxable value, as evidenced in "Petitioners' Exhibit H-1" admitted at the rehearing. For example, Petitioners' valuation of the new residence, before reduction for the stipulated percent of completion, was based on the Referee's 1994 Opinion. That figure was $501,660 (being twice the 50% completed value of $250,830 in 1994). Petitioners applied that 1994 figure in both assessment and taxable value calculations to all years under appeal, 1995 through 1998. By applying a mechanical methodology from a prior year's value, without consideration of market change, Petitioners incorrectly applied the statutory "basis" provision. By that same incorrect action, Petitioners failed to address the burden to support its contention of true cash value in each year of appeal. "The petitioner has the burden of proof in establishing the true cash value of the property." MCL 205.737(3); MSA 7.650(37)(3).

c. Respondent's Correct Consideration of "Basis." In this rehearing matter, Respondent presented substantial market information in support for variation from the 1994 "basis," pertaining to the quantity and quality of construction, land value, and application of the Sales Comparison Approach. As attorney Beckerleg stated at rehearing, at the time of the prior MTT Opinion in 1994 the subject was at 50% completion, being in the "bare studs" phase of construction, and it was "tough to tell" the extent and quality of finish and detail intended. That uncertainty at the time of the original hearing was the reason Respondent chose not to employ the prior MTT Opinion as "basis" for subsequent true cash values (although 1994 SEV was employed in the 1995 taxable value formula). The Tribunal finds Respondent's explanation as sufficient cause to turn to current market data and analysis in support of a more accurate valuation for the years under appeal. The Tribunal further finds Respondent's reasoning to be in accord with suggested causes for variation from "basis" as defined in the Steinborn letter.

Interestingly, Respondent did not entirely vary from the 1994 MTT Opinion, but did use the prior MTT Opinion as the source of several components. For example, two components Respondent was not able to support with market data, requiring reliance upon the 1994 MTT Opinion as "basis," were the $20,000 value of site improvements, and the interim value of the existing older residence at $12,000. A third component employed as "basis" from the 1994 MTT Opinion was the 50% constructed residence valued at $250,830 and used for comparison purposes in the taxable value formula. The 1994 true cash value of the new residence at 50% complete was subtracted from the 1995 true cash value (as determined by revised market data) of the residence at 70% complete, the difference being Respondent's "new construction" in 1995. Although that process is flawed in part as explained later, use of the prior Opinion as "basis" comports with Mr. Steinborn's explanatory letter and the Tribunal's understanding of the statute.

d. Jurisdiction and Function of the Tribunal. The Tribunal further observes that the "basis" provision of MCL 211.30c pertains to acts of the assessor, as distinguished from the duties of the Tribunal in carrying out its jurisdictional functions. While the principles of true cash value and uniformity are present at all levels of assessment administration and review, it is important to recognize that the requirements of MCL 211.30c pertain specifically to acts of the assessor ("the assessor shall"). The Tribunal's jurisdiction and function, for the years under appeal, are not constrained by the findings of a local board of review or the assessor, although in review, the Tribunal may give weight to such evidence as it deems contributory to its findings.

"A proceeding before the Tribunal is original and independent and is considered *de novo.*" MCL 205.735(1); MSA 7.650(35)(1). A Small Claims Division rehearing is *de novo* as to the Tribunal's independent finding, with a technical exception relating to evidence. Evidence in a rehearing may be a combination of newly submitted data ("valuation disclosure or other written evidence") under provision of TTR 342(2), or re-use of prior evidence from the original hearing ("not be limited to the evidence presented to the hearing officer or hearing referee") under provision of TTR 348(2). With that exception to the *de novo* status, the Tribunal's granting of the rehearing requires an independent

determination.

In the next section, the Tribunal will review the market evidence pertaining to subject's true cash value, adjusting for the stipulated percentage of completion applicable to ongoing residential construction in each year of appeal. Following the true cash value analysis, the Tribunal will turn to calculation of taxable value in Section C.

B. TRUE CASH VALUE

1. Statute and Case Law References. 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 a forced sale." MCL 211.27(1); MSA 7.27(1). "True cash value" is synonymous with "fair market value." CAF Investment Co v State Tax Comm, 392 Mich 442, 450; 221 NW2d 588 (1974).

"The petitioner has the burden of establishing the true cash value of the property." MCL 205.737(3); MSA 7.650 (37)(3); MCL 211.27(1); MSA 7.27(1); Meadowlanes Limited Dividend Housing Association v City of Holland, 437 Mich 473, 483-484; 473 NW2d 636 (1991). "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." Jones and Laughlin Steel Corp v City of Warren, 193 Mich App 348, 354-355; 483 NW2d 416 (1992).

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. 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; 378 NW2d 590 (1985). The Tribunal may accept one theory and reject another, it may reject both theories, or it may utilize a combination of both in arriving at its determination. Meadowlanes, at 485-486. 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 v City of Galesburg, 185 Mich App 458, 462-463; 452 NW2d 765 (1990).

In this matter, the most direct approach to the partially completed state of subject new residential construction is through the Sales Comparison Approach, adjusting for land values and other factors of difference. One of the important adjustments will be use of the stipulated percentage of completion appropriate to each year. As noted in the "Findings of Fact" section under the fourth Ruling, the parties orally stipulated that the states of completion for the subject new residential construction were 70% for tax year 1995, 77% for 1996, 77% for 1997, and 86% for 1998. The stipulated percentages should not be applied to land, site improvements at $20,000, or the interim value of the older existing residence at $12,000.

2. Land Value. Petitioners rely upon the 1994 Opinion for land value at $150,000. As has been already noted, that value was without support in the 1994 Opinion. While Petitioners submitted appraisal reports by Mr. Babcock, that value was also without market data support, merely being a statement of value used in the Cost Approach. Petitioners' reliance upon either the 1994 Opinion, or Mr. Babcock's more recent appraisals, provided no market evidence in support of land value.

Respondent presented two land sales in its data packet, page 22, with both sales located on Middle Straits Lake. One sale (-001) had an easement intervening between the lot and the water's edge, as does subject, had less depth than subject, was 91 FF in width as compared to subject's 104 FF, and sold at $1,703 per FF. The other sale (-011) was absent the intervening easement, was 45 FF in width, included a small structure (see page 11), and sold for $2,694 per FF. These transactions were adjusted for time (market conditions) between the date of sale and each year of appeal. Respondent originally concluded with $2,198 per FF in 1995, but for the rehearing revised that figure to $2,080 per FF in 1995, increasing slightly in value each year. At rehearing, witness Sears testified that the original valuations employed market data and a depth chart, but that a new sale several doors away from subject allowed the values to be revised, and use of the depth chart eliminated. In considering the subject's land value, the Tribunal finds the better indication to be the first sale (-001) in that it had a frontage easement, and required only a modest upward adjustment for subject's depth. The final indication resulted in a land value in the same market range as determined by Respondent, confirming the reasonableness of the assessor's market analysis. Therefore, Respondent's land analysis is found to represent market

value, concluding at $216,320 for 1995, $219,440 in 1996 and 1997, and $224,640 in 1998.

3. Building Size. The parties are in dispute on the building gross (exterior measurements) square feet of living area. Petitioners claim the gross living area to be 4,829 SF based on the calculations contained in the Babcock appraisal, and the prior 1994 MTT Opinion (also based on a Babcock appraisal). Respondent claims 5,386 SF, with the Township's property appraiser, Daniel L. Sears, testifying at hearing that his calculations were based on the plans, and that the exterior of the structure had been inspected and measured. In explaining his calculations, Mr. Sears stated that there was also a 14' x 16' (224 SF) area above the garage which he noted was drywalled, although it was shown on the plans as unfinished. Additionally, the witness testified that the second floor living room bridge was included in his calculations, and that these two differences might account for some of the disparity between the parties' figures.

The Tribunal has no evidence of the accuracy of the square footage noted in Mr. Babcock's appraisal. A drawing has the appearance of a computer sketch, with distances rounded in most cases and not matching dimensions on the building plans. Also of concern to the Tribunal is that the list of computer calculations accompanying the drawing appear to have used a non-standard methodology of adding the various spaces. As an example, one of the entries reads: 1.00 x 1,696.97 = 1,696.97 SF, but there appears to be no area of the drawing which corresponds to these disparate numbers. The Tribunal was unable to decipher the entries and, without benefit of Mr. Babcock's testimony or other explanation of Petitioners, is unable to place confidence in the size calculation.

The Tribunal accepts Respondent's calculations as being surrounded by greater evidence of accuracy. The architectural building plans in Petitioners' valuation exhibit state there to be total space of 4,939 SF, a figure which would represent total finished space. As such, that number would not include the unfinished area above the garage (see plans) and, although uncertain, would not typically include the living room bridge. It is noted that if the two areas in question (room over garage plus bridge) are added to the architectural figure, the result would be close to that calculated by Respondent.

The Tribunal concludes that the more convincing evidence of subject's gross living area is that based on Respondent's testimony of having personally measured and calculated the space at 5,386 SF.

4. Recognition of Overimprovement. The home under construction is not typical of subject's area. However, neither is it untypical for other lake front properties in West Bloomfield Township, where construction is often substantial in size, notable in style, and unusual in the extent of detail. The parties are in agreement that the residence under construction is an overimprovement for the market area, and the Tribunal agrees, based on testimony and market evidence. However, the manner in which overimprovement is to be treated as a valuation issue has not been clearly defined by the parties, and that task has fallen to the Tribunal as part of its independent determination of value.

In addressing the overimprovement issue, Petitioners' appraiser Babcock states an opinion in the narrative section of his appraisals (tabs 1 and 3). He writes: "The subject's size and construction was considered to be an overimprovement." In the Cost Approach Mr. Babcock deducted $100,000 as functional obsolescence, or 20% of the building improvement value, but made no such adjustment in the Sales Comparison Approach. Petitioners' methodology is inconsistent between the Cost Approach and the Sales Comparison methods. Further, his use of lower-priced and lesser-quality sales constituted a pre-determination of the extent of obsolescence, and precluded examination of the value range for better quality properties more comparable to subject.

Respondent's appraisal did not make a definitive narrative statement, although in testimony witness Sears acknowledged the presence of the concept. He stated that he would reserve a final opinion until physical completion of the property, but in the appraisal prepared for this hearing, the superior nature of subject's construction was recognized as not typical for the area. That factor was indicative of external obsolescence, and resulted in his making a minus "neighborhood" adjustment in the market grid analysis. Accordingly, Respondent's Sales Comparison Approach deducted 25% from the depreciated building improvement value of each comparable. As already stated, Petitioners' appraiser Babcock made no such adjustment. Therefore, for purposes of the Sales Comparison Approach, the Tribunal finds the best available estimate of subject's overimprovement status is Respondent's minus 25% market adjustment to lakefront comparable properties possessing superior design and construction features. The intent of that adjustment, however, is not to totally remove the superior features of subject, only to acknowledge diminishing value return. The Tribunal will employ Respondent's adjustment as part of a broader analysis, presented in the following sections.

5. Value Limits on Overimprovement. As used in the context of this case, the overimprovement factor means that, as size of structure and quality of construction increase, so does the required cost of investment. Increasing investment, considering the type of improvements in subject area, would not be supported by the land value and location, and approach a point where cost would fail to result in dollar-for-dollar value. At that point, value-for-cost decelerates and, as discussed in the analysis to follow, is estimated to begin around $700,000 for total property value. That state of decelerating value for additional investment continues until a second point is reached, where the market fails to recognize any further expenditure as increased value. That second point, the valuation limit, is also discussed in analysis to follow, and is estimated to be reached at around $1,200,000 for total property value.

In examining the overimprovement factor from the viewpoint of the permissible upper limit of value, the Tribunal looks to evidence of the value range for properties in subject's area as compared to those in other areas where such superior properties are more commonplace. Both parties provided lists of sales. Neither party specifically provided a sales study of the probable upper level of value appropriate to subject's location. Petitioners did express an opinion at rehearing that the maximum limit was the highest valued sale, but the Tribunal finds this observation to be unsupported. Generally, most neighborhoods can support introduction of limited construction greater than typical, as defining the upper limit of value, and that is particularly true for lake property in Oakland County. To have addressed the issue fully, a study would have been required, sampling the market value of the more substantial existing properties fronting on Middle Straits Lake (including those not having sold), and comparing that data with the experiences of similar waterfront properties on other area lakes. Absent that data, the parties' listings of sales activity placed into evidence are too narrow a band of data to ascertain the upper limit of size, style, and value which can be absorbed on Middle Straits Lake before additional increments of overimprovement value are discounted. Therefore, it is left to the Tribunal, using such data as has been placed into evidence, to make an independent estimate of that value level.

Petitioners list market sales in subject and two other subdivisions (tabs 7, 8, 9, 10), covering years 1994 through 1997, the format appearing similar to a multi-list tabulation. Of the sales tabulated, only two bear a notation of being lakefront property, and another as having lake access. No map was attached locating the sales relative to subject. None of the properties were of subject's size, the square footage range being from 1,177 SF to 3,800 SF. The sales prices ranged from $125,000 to $662,500 with most of the sales in the mid-portion of the range. The brief notations of each sale do not sufficiently describe the properties, or serve to be useful in an analysis of subject's waterfront location, size, features, and construction quality. Importantly, the sales represented only properties which have sold, and tell nothing of the upper valuation limit for superior properties which have not sold. The data is unconvincing, and does not support Petitioners' claim that the upper limit of value is about $600,000. More probable, the data is indicating that just under $700,000 is the place at which increased investment results in decelerating value, rather than being the valuation limit.

The Tribunal finds Petitioners' appraisals by Mr. Babcock to be equally unconvincing. The appraiser approached the overimprovement problem in the sales comparison approach by selecting sales of lesser quality construction to subject. That method pre-determined the outcome, and was entirely insufficient to address the difficult issues of this case. In his search of the market, he states (1996 report, tab 3): "Data of sales similar to the subject in terms of style, size and location were scarce." Mr. Babcock's appraisal acknowledged this dissimilarity in his failure to find properties like subject (1994 report, tab 1; 1996 report, tab 3). In describing the comparables employed in his market analysis, he states: "All three sales differ significantly in quality of construction." The Tribunal questions why, if the appraiser could not find sufficient comparable data in subject's area, he did not extend his search to market data on other nearby lakes, as did Respondent.

Petitioners' appraiser also appears to have based his appraisal on a faulty premise regarding the market value of larger square footage properties. In defending his use of smaller-sized properties with lesser features, the appraiser states (1996 report, tab 3): "A point is reached when additional improvements, for example, larger than typical square footage, brings no corresponding increase in value." The appraiser is describing a valuation limit (see previous discussion), and the Tribunal finds that position to be unsupported. West Bloomfield Township has many locations with quality lake frontage homes, and correspondingly large square footage, resulting in sale prices reflecting those features. Comparable sales data presented in Respondent's appraisal offers examples which clearly demonstrate this observation. Sales possessing superior sizes and features could have been used for examination of the observed overimprovements, and of the market's willingness to accept larger homes and superior features when located on lakefront sites. That was not done. Mr. Babcock's erroneous conclusion resulted from his failure to search the market beyond subject's immediate area, and

examine the extent to which observed overimprovement could be absorbed in the marketplace. Had he done so, the evidence would have clearly demonstrated the error of his assumption regarding large square footage properties. The Tribunal finds Petitioners' appraisal analysis to have inadequately addressed the valuation issues by being based on a self-imposed limitation on both analysis of overimprovement and resulting valuation conclusions.

Respondent's appraisal effort, while not wholly comprehensive, did recognize the critical valuation issues by introducing data which related to substantial lakefront properties, and making adjustments in consideration of subject's overimprovement. A tabulation of sales information (appraisal, p10) lists 13 lakefront sales, all being located on Middle Straits Lake, as is subject property. The highest sale on that list (also noted on Petitioners' list, tab 10) is $662,500, but that home has only 3,222 SF, and was built in 1980. However, the sale does provide the Tribunal with an important clue for Middle Straits lakefront property. Using a simple unit measure, the total sale price (land, building, improvements) per square foot of residence, that transaction indicates $206 per SF, a diminished unit rate when compared to superior locations, but one reflective of subject's location. Using subject's 5,386 SF, the result would be $1,109,500 as an indication of the approximate upper range of price activity for quality lakefront properties in subject area.

Another source for analysis is sales data located on other lakes in Oakland County, where the improvements are similar to subject's size and quality. Seven of those sales are presented in Respondent's appraisal (market grids for 1995-98, pages 11-14), being situated on Upper Straits Lake, Orchard Lake, and Walnut Lake. While these locations represent superior land values, a difference which can be adjusted, the homes are of a size and construction class more representative of subject. Building sizes ranged from 2,634 SF to 6,816 SF, with sale prices from $1,050,000 to $3,700,000. Eliminating the largest comparable as being outside a meaningful range and also the highest sale price (the North Bay property on Orchard Lake, see page 13-14, Comp #4), the remaining range reduces to a maximum size of 6,504 SF and a value from $1,050,000 to $1,950,000 before adjustment. These sales, although superior in certain aspects, are suitable evidence that the market will accept larger square footage at increasing prices, in contrast to Mr. Babcock's summary statement to the contrary noted earlier. Their unadjusted sales data provides a meaningful valuation clue in the lower range around $1,050,000. Additional clues may also be extracted from those Respondent sales using the sale price as a unit rate of building square footage. The seven sales range from $185 per SF to $543 per SF. Eliminating the highest sale (Comp 4) as before, and the lowest, the remaining middle of the range is from $208 per SF to $454 per SF. The lower end of this narrowed range is $208 per SF for other larger quality homes on other nearby area lakes, and supports the earlier observation of around $206 per SF on subject's Middle Straits Lake.

Although the many lakes in Oakland County have distinctive features, there is a scarcity and desirability associated with lake property, accounting for strong upward trends in lakefront values and the willingness of buyers to expend funds beyond properties located off-lake. It is reasonable, therefore, to consider value ranges for competing locations, and that subject's location has sufficient room in the market to tolerate higher values for better properties with lake frontage. Petitioners' appraiser ignored that aspect of value, and failed to examine competitive property values on other lakes in the area. Respondent's appraiser correctly looked to the wider market influence of lakefront property. While the Tribunal does not suggest the highest values, certainly there is support for subject area values to be estimated as occurring at the lower end of the range for competing market properties of quality construction with lake locations. The data and reasoning presented supports a range of value limit to be in the vicinity of $950,000 to $1,200,000 varying with site location and extent of improvements, and as if subject construction were completed. Subject's final value conclusions in this appeal, as presented in the next section, will support values somewhat less, in that construction of the new residence was incomplete for each year of appeal.

6. Final Determination of Subject True Cash Value. The Tribunal takes note, based on an analysis of the evidence as presented in the preceding sections, that Petitioners have failed in their burden of proof on the true cash value of subject. That failure pertains to both of the two valuations offered, one being based on the prior MTT Opinion, and the other on Mr. Babcock's appraisals. Further, failure of Petitioners to meet their burden of proof extends not only to the true cash value and assessed value issues, but also to the true cash value measure of "new construction" in the taxable value formula (discussed later). As to Respondent, its analysis more nearly addresses the issues and presents meaningful market data but, based on the preceding discussion, incorrectly concludes at a higher value than is supported by market evidence.

Therefore, in its independent determination of true cash value, the Tribunal made modifications to Respondent's Sales Comparison Approach (see market grids, pages 11-14 for years 1995-1998). Modifications were: (1) eliminate Comp 4

for 1997 and 1998 as being outside a meaningful range of value; (2) substitute the land values shown for those revised at rehearing (see earlier land discussion), being $216,320 for 1995, $219,440 for 1996 and 1997, and $224,640 for 1998; (3) correct all land value adjustments to reflect the revised figures; (4) change plus $2,000 fireplace adjustment on Comp #2 for 1998 to a minus, since the sale has one more fireplace than subject; (5) delete plus $2,000 fireplace adjustment on Comp #3 for 1998, since the sale and subject each have three fireplaces; (6) change plus $65,080 size adjustment on Comp #2 for 1998 to a minus $67,080 adjustment, since the sale is larger than subject (minus) and the amount is a typographical error; (7) change plus $2,000 bath adjustment on Comp #8 for 1996 to a minus adjustment, to correct for bath/lav differences; finally, (8) calculate the estimated minus 25% overimprovement adjustment against the sale price remaining after deducting land and incomplete construction, as opposed to the assessor's use of depreciated building cost based on assessment data. These modifications result in the adjusted sale prices (rounded) summarized in the chart which follows.

Tax Year 1995				
Comparable	#1	#2	#3	#4
Adjusted SP	$867,800	$992,100	$786,000	$1,129,000

Tax Year 1996				
Comparable	#5	#6	#7	#8
Adjusted SP	$1,030,600	$820,600	$1,208,200	$1,171,000

Tax Year 1997				
Comparable	#1	#2	#3	#4
Adjusted SP	$1,208,200	$906,100	$1,171,000	Delete

Tax Year 1998				
Comparable	#1	#2	#3	#4
Adjusted SP	$1,323,800	$973,700	$1,280,600	Delete

In the correlation process, the Tribunal has considered the factors of similarity and dissimilarity for each of the sales presented, the stipulated states of partial completion, the overimprovement issue, and the resulting adjusted sale prices for each year of appeal. In that the subject is an improvement superior in size and quality to other homes on Middle Straits Lake, the final valuation will be tempered to the lower sector of the valuation range, as discussed earlier in section B(5) titled "Value Limits on Overimprovement." The correlated true cash values include land, the new residence under construction at the various states of completion (1995 = 70%, 1996 = 77%, 1997 = 77%, 1998 = 86%), site improvements, and the interim value of the existing residence except in 1998 (demolished). Having considered the adjusted sale prices in that light, the Tribunal concludes subject true cash values for each year to be as stated in the following chart.

TRUE CASH VALUE CONCLUSIONS				
Tax Year	1995	1996	1997	1998
TCV	**$800,000**	**$925,000**	**$950,000**	**$1,050,000**

C. TAXABLE VALUE

1. Applicable Statutes for Taxable Value Involving "New Construction." This segment of the case involves examination of the lawful taxable value, calculated for an "addition" arising from "new construction." The applicable statutes are found in MCL 211.27a(1) and (2), and MCL 211.34d(1)(b)(iii), cited in part as follows:

Sec. 27a. (1) Except as otherwise provided in this section, property shall be assessed at 50% of its true cash value under section 3 of article IX of the state constitution of 1963.

(2) Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:

(a) The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994.

(b) The property's current state equalized valuation.

Sec. 34d. (1) As used in this section or section 27a, or section 3 or 31 of article IX of the state constitution of 1963:

(b) For taxes levied before 1995, "additions" means, except as provided in subdivision (c), all of the following:

(iii) New construction. As used in this subparagraph, "new construction" means property not in existence on the immediately preceding tax day and not replacement construction. New construction includes the physical addition of equipment or furnishings, subject to the provisions set forth in section 27(2)(a) to (o). For purposes of determining the taxable value of property under section 27a, the value of new construction is the true cash value of the new construction multiplied by 0.50.

2. Petitioners' Methodology and Calculations. "Petitioners' Exhibit H-1" received at the rehearing sets forth the method and figures used in the assessment and taxable value offered in support of its appeal. Additionally, a narrative explanation, also presenting calculations, is contained in Petitioners' evidence submitted June 15, 1998, being the Memorandum of June 12, 1998, filed under tab 19 of the indexed exhibit. At rehearing, Petitioners referenced the narrative theories of the Memorandum, but argued the calculations contained in H-1 rather than those of the Memorandum. In considering Petitioners' evidence, the Tribunal followed the same sequence, by referencing the Memorandum for explanation of methodology, but relying upon the H-1 document for a current version of Petitioners' calculations.

The Tribunal agrees in part with the procedural concept stated on page 5 of Petitioners' Memorandum, but finds the methodology for calculation of the taxable value to be flawed. Petitioners are correct in noting that only the true cash value of the new construction (at 50%), and not the market gain from prior improvements, may be added to the previous year's taxable value as multiplied by the rate of inflation. This is an important observation necessary to properly effect the applicable statutes, MCL 211.27a and MCL 211.34d(1)(b)(iii). However, neither party correctly applied the statutes, a topic which the Tribunal will address later.

The following example for 1995, typical of the process employed for all years, was excerpted from Petitioners' Exhibit H-1, pp 2-3. The 1995 Taxable Value computation provides an example of Petitioners' incorrect process.

1995 Taxable Value

(1994 Assessment Less Assessment of Old Home) x 1.028 +

Assessment Value of Old Home + Additions

(216,400 - 6,000) x 1.028 + 6,000 + 50,180

(210,400) x 1.028 + 56,180

216,291 + 56,180

$272,471

1995 Calculation of Assessment

Total Value

Site Value $150,000

Site Improvement 20,000

*New Home 351,160

True Cash Value 521,160

Assessed Value $260,580

Additions = 1995 Value - (1994 Value - Old Home)

= 260,580 - (216,400 - 6,000)

= 260,580 - 210,400 = $ 50,180

*New Home Value

Value per Tribunal Decision 501,660

x 70%

Value 351,162

Say $351,160

The specific flaws of Petitioners' taxable value methodology are listed following.

a. In an improper procedure, the existing residence was removed from the prior year's value before applying the inflationary factor. As the Tribunal found earlier, the existing residence has interim true cash value of $12,000 for all tax years except 1998 (demolished). However, Petitioners removed the existing residence (see -$6,000 above) from the 1995 through 1997 taxable value. That error was not corrected by subsequently adding the sum back (see + $6,000) into the formula.

b. Petitioners used incorrect inflationary multipliers of 1.028 for 1995 and 1996, and 1.026 for 1998. The correct inflationary multipliers are 1.026 for 1995, 1.028 for 1996 and 1997, and 1.027 for 1998.

c. Petitioners' procedure failed to examine market evidence each year for possible value change affecting the true cash value of new construction. The true cash value of new construction is the result of the stipulated percent of completion (70% in 1995, 77% in 1996 and 1997, and 86% in 1998), multiplied by the value at 100% as-if-completed. Critical to the process is that the 100% completed figure be an accurate true cash value for the respective years. Here, it is not. In error, Petitioners employed the 100% figure contained in the1994 MTT Opinion ($501,660) in each year of appeal, rather than independently determining the current true cash value for each year. Petitioners would have the Tribunal believe that the value of subject residence, as if 100% complete, remained unchanged for the entire period of 1994 through 1998. Not only is that a wrong principle, but its application assures that the true cash value of the new construction, an "addition" element of taxable value, will be suppressed in a rising market, as in this case.

For these reasons, the Tribunal finds Petitioners' methodology to have rendered faulty results in each year of appeal, and rejects it.

3. Respondent's Methodology and Calculations. "Respondent's Exhibit H-1" received at the rehearing presents a "Corrected Summary" of the assessment and taxable value computations. At rehearing, the assessor confirmed that he supported the taxable values as corrected by changes noted in red ink, stating that those were the calculations he believed followed State Tax Commission guidelines. Additionally, the "Calculation of New" chart, contained in Respondent's Appraisal of June 13, 1998, page 46, presented the computation of subject new residence at the stipulated percent of completion.

The following example for 1995, typical of the process employed for all years under appeal, excerpts data from two of Respondent's exhibits: the "1995 Assessed Value" and the "1995 Capped" are from Exhibit H-1; the "Calculation of New - 1995" was taken from page 46 of the Appraisal. The figures in italics are those of the Tribunal for clarity purposes, and to reflect changes resulting from Respondent's corrections (in red ink) to Exhibit H-1. This 1995 taxable value computation provides an example of Respondent's incorrect process.

1995 Assessed Value

1995 Estimated Site Value $216,320

House at 70% Complete 575,620

Site Improvements 20,000

Value of Old Home 12,000

True Cash Value 823,940

Assessed Value $411,970

Calculation of New - 1995

Total Building & Extras $716,068

Depreciation .99

708,907

% Complete .70

496,230

County Multiplier x 1.16

True Cash Value 575,620

Less MTT 1994 at 50% Complete 250,830

TCV Increase '94 to '95 324,790

Assessed Value (New) $162,395

1995 Capped

$216,400 (1994 Taxable)

x 1.026 (CPI)

222,020

+162,395 (New)

$384,415

Respondent's procedure for calculation of taxable value in this matter is closer to correct than Petitioners', but involved several serious flaws inherent in the methodology, which produced unsatisfactory results. The flaws specific to

Respondent's case are as listed following.

a. Respondent's true cash value presented in the Sales Comparison Approach is inconsistent with the values used in the taxable value computation, and the new revised assessment-based figures are unsupported. The valuation issues of this appeal were approached in the correct manner by employing adjusted sales data for each year. In application of the Sales Comparison Approach, Respondent included deductions from value for the percentages of incomplete construction. That process resulted in value indications already reduced for partial value, and not requiring the intermediate step of first estimating value as if 100% complete. Aside from the Tribunal's revisions to the market data indicators, as discussed earlier in the True Cash Value section of this Opinion (see section B), Respondent's initial direction was correct. However, Respondent failed to follow through.

Having introduced market comparables and analysis, the assessor then shifted to a conclusion based on a different set of values than that of the Sales Comparison Approach, and in the taxable value computation chose to apply revised assessment-based figures. Those revised assessment figures are contained in Exhibits H-1, and page 46 of the Appraisal (see above, $716,068 House and Extras, and $575,620 House at 70% Complete). The problem arises in that neither are these revised assessment-based numbers similar to the actual assessment record cards offered into evidence, nor was valuation testimony offered at rehearing in support of the new assessment figures. The outcome is that Petitioners' contended true cash value numbers, as shown in the "Corrected Summary" of Exhibit H-1, and on which the taxable value calculations were based, are without sufficient support for the new residence portion of the value. Respondent faltered at this critical point.

b. The methodology used in this case allowed the "addition" to include true cash value from sources other than "new construction," contrary to the limitations of statute. The system employed was to deduct the value as partially complete in the prior year, from the value of the partially complete new residence in the current year. Respondent used this procedure (as did Petitioners), but without apparent caution as to possible erroneous results. In using the year-to-year comparison process, the statutory provision as to true cash value for the new construction must be respected.

MCL 211.34d(1)(b)(iii) states in part: "As used in this subparagraph, "new construction" means property not in existence on the immediately preceding tax day...the value of new construction is the true cash value of the new construction multiplied by 0.50." (emphasis added). That provision clearly permits only recognition of the true cash value for qualified construction new to the current tax year. True cash value increases from other causes, or from prior years, are to be excluded from current new construction as an addition in the taxable value formula. Respondent's methodology did not limit the addition as defined by statute.

c. Two examples of true cash value to be excluded, applicable to this case, illustrate the manner in which Respondent erred. The first was the increased market value from a prior year's new or existing construction, and the second, increases from a change in valuation methodology or market data. Caution should have been taken not to commingle valid true cash value increase attributable to new construction, with that of other causes, such as the two examples given here. Respondent's valuation work failed to identify this difference when it assumed that all value change for the new residence, from one year to the next, was solely attributable to new construction.

As an example of the first of two exclusions in this case, value increase from a prior year's (previously existing) construction, the Tribunal notes Respondent's Exhibit H-1. A significant clue was available from a comparison of the contended taxable value for tax year 1996 at $443,060, and the taxable value computed at $468,800 for tax year 1997. In that comparison, the land value was unchanged at $219,440 for both years. The stipulated percent of completion was the same at 77% for both years. The only increase should have resulted from the 1.028 inflationary factor. Yet, Respondent calculated that from 1996 to 1997 the "addition" for new construction was $26,680 of true cash value (or $13,340 at 50%). So what happened here? The increase resulted from the process of subtracting the value of the new residence at $671,400 for 1996, from $698,080 for 1997 (see Exhibit H-1, and Appraisal page 46). This value increase was treated as a new construction "addition" in the taxable value formula, despite there being no new construction. Respondent's error was in ascribing the market difference from 1996 to 1997 entirely to (nonexistent) new construction. The assessor failed to identify the source of the market change as arising entirely from the prior year's existing improvements, a source not permissible for inclusion as an addition under the statute.

As a second example of value increase to be excluded from new construction in this case, the Tribunal takes note of the sharp change from tax year 1994 (prior to appeal) to 1995. The value increase between these two years may be identified as partly due to new construction, in that 1994 was at 50%, while 1995 was at 70%. The balance of the difference, as will be demonstrated, was from value change issuing from previously existing construction. Note that in the 1994 MTT Opinion, the Hearing Referee found the new residence to be valued at $250,830 based on the Hearing Referee's adjusted Cost Approach. In Respondent's 1995 valuation work, employing different methodology and supporting market data, the new residence was found to be valued at $575,620 for 70% completion (see above excerpt from Exhibit H-1). If each finding is increased to the 100% level of completion, then the 1994 MTT figure would be $501,660 ($250,830 ÷ 0.50), and Respondent's 1995 figure would be $788,114 ($551,680 ÷ 0.70). If the new residence was 100% complete in each year, 1994 and 1995, the difference in value would be an increase of $286,454 from sources other than new construction. It is clear that merely deducting one year's value from the other will report differences from all causes of true cash value increase, not just that of new construction. These observations make it necessary, where the process is one of subtracting true cash differences between a prior and current year, that steps be taken to isolate true cash value change to only that of new construction. Other sources of true cash value are not to be included as an "addition" under MCL 211.34d(1)(b)(iii).

In summary, Respondent's taxable value calculations are in error and, as was the case with Petitioners' taxable value contentions, the Tribunal finds Respondent's faulty results in each year of appeal must be rejected.

4. Methodology for Finding "New Construction." Under the facts of this case, where new construction is expressed as a percentage of completion, and specific improvement costs are not in evidence, the methodology is limited to a year-to-year difference. In using such a method, special procedural cautions are necessary. A means must be developed for identifying the true cash value attributable to only new construction, separating that sum from all other true cash value change originating from prior year causes. One means of isolating qualifying new construction of the residence, when commingled with value increase from other sources, is set forth in the following procedure, subtopics "a" through "f" and Charts A through C.

Step a. By market evidence, find the true cash value for the entire property, including land, site improvements, the residence as partially complete, and other structures, for the current years of appeal (see earlier section B6, "Final Determination of Subject True Cash Value"). In addition, determine the same data for the prior year, in this case being the 1994 MTT Opinion (see Chart A, row "a").

Step b. For each of the years under appeal plus the prior year (as determined in Step "a"), extract the market value of the residence. This will remove land, site improvements, and other structures. The market value of the residence will be at the percent of partial completion applicable to each year (see Chart A, row "b").

Step c. Convert the partial value of the residence (as determined in Step "b") for the prior and current years to the true cash value as if 100% complete, by dividing each figure with its respective percent of value completion (see Chart A, row "c").

CHART A - EXTRACT TCV OF RESIDENCE AT PARTIAL % AND 100%					
	1994	**1995**	**1996**	**1997**	**1998**
Total TCV (a)	$432,830	$800,000	$925,000	$950,000	$1,050,000
Less Land	- 150,000	- 216,320	- 219,440	- 219,440	- 224,640
Less Site Impr.	- 20,000	- 20,000	- 20,000	- 20,000	- 20,000
Less Old Resid.	- 12,000	- 12,000	- 12,000	- 12,000	Demolished
New-Partial (b)	$250,830	$551,680	$673,560	$698,560	$ 805,360
÷ Partial Percent	50%	70%	77%	77%	86%
100% Compl.(c)	$501,660	$788,114	$874,753	$907,221	$ 936,465

Step d. Compute the percent of value increase of the residence as if 100% complete (as determined in Step "c"), between each prior year and current year (see Chart B, row "d"). That percentage isolates the market change for the residence,

from one year to the next, before further new construction is added. The intent is to identify increase attributable to that which existed in the prior year, as separate from increase attributable solely to new construction for the current year.

Step e. Apply the percent of market value increase (as determined in Step "d") to the prior year's partial value for the residence (as determined in Step "b" above). This result will be the prior year's partial market value, increased for market change, before calculation of the additional value attributable solely to new construction in the current year (see Chart B, row "e").

CHART B - ADJUSTING RESIDENCE PRIOR YEAR FOR MARKET INCREASE				
	1995	**1996**	**1997**	**1998**
At 100% Completion: Residence Market Change In TCV Between Prior and Current Years				
Prior Year (c)	$501,660	$788,114	$874,753	$907,221
Current Year (c)	788,114	874,753	907,221	936,465
Change (d)	57.1012%	10.9932%	3.7117%	3.2235%
Partial Completion: Prior Year's TCV Adjusted for Market Change Before New Construction				
Prior Year (b)	$250,830 (50%)	$551,680 (70%)	$673,560 (77%)	$698,560 (77%)
Change (d)	x 1.571012	x 1.109932	x 1.037117	x 1.032235
Adjusted Prior Year (e)	$394,057	$612,327	$698,560	$721,078

Step f. Subtract the prior year's partial value adjusted for market change (as determined in Step "e"), from the current year's partial market value for the residence including current new construction (as determined in Step "b"). This result is the true cash value of the new construction for the current year (see Chart C, row "f"), reduced in the final row of Chart C to the 50% level required by statute.

CHART C - NEW CONSTRUCTION ABSENT INCREASE FROM PRIOR YEAR				
	1995	**1996**	**1997**	**1998**
TCV Current Year - Partial Construction (b)	$551,680 (70%)	$673,560 (77%)	$698,560 (77%)	$805,360 (86%)
TCV Prior Year Adjusted for Change (e)	-394,057	-612,327	-698,560	-721,078
TCV Current Year New Construction (f)	$157,623	$ 61,233	$ -0-	$ 84,282
50% "Addition" for New Construction	**$ 78,812**	**$ 30,617**	**$ -0-**	**$ 42,141**

5. Observations on Results. The results determined in Chart C, row "f" above, properly measure new construction value for the current year, excluding value from prior years. The method employed by the Tribunal is developed within the available evidence, and avoids the incorrect results presented by the parties' methodology. For example, note that data presented in Chart A indicates $300,850 as the gross value difference between the 50% completed residence in 1994 (per MTT Opinion) at $250,830, and the 70% completed residence in 1995 at $551,680. If that figure were used as being entirely attributable to the 20% increase in new construction value for 1995, it would be in error. In fact, that difference is attributable to both market change and the addition of current new construction. As already stated, the statute permits only true cash value increase caused by new construction. In this case, the increase attributable to market value change from the prior year was $143,227, the result of subtracting the 1994 residence partial value of $250,830 from $394,057, the latter figure being the same figure adjusted for market change in 1995 (see Chart C). That increase of $143,227 for the 50% completed residence between 1994 and 1995 is not ascribable to new construction, and must be subtracted from the gross difference of $300,850. The correct difference is $157,623 (see Chart C) as the true cash value permitted under the statute for new construction.

In hindsight, the prior MTT Opinion for 1994 did not align smoothly with the value transition to 1995, the first year of this appeal. As noted at rehearing by Respondent's attorney, the construction in those earlier years was still in the "bare studs" stage, without the quality of future construction and extent of finish being clearly evident. Additionally, value transitions for property under construction are often not proportionate to the level of completed work. Whatever the

cause, the material matters are only those pertaining to the years under appeal. In that context, important to the instant case is that the Tribunal's calculation of taxable value be as accurate as the facts permit. The method employed here excludes from taxable values under appeal any "catch-up" from prior year causes, and finds true cash value for the current year's new construction.

6. Short Method of Calculating "New Construction." The calculations shown thus far, although necessary to demonstrate the concepts, are ponderous and unnecessary to identify the correct "new construction" true cash value for each year. A short method involves using the true cash value of the residence as if 100% complete (being Step "c" as determined from Chart A above), and applying the percentage of additional construction each year. Since that percentage is applied to current true cash value, and does not involve the prior year's value, there is no need for further calculations to remove market changes from prior years.

It will first be necessary to perform steps shown in Chart A, then, calculate the percentages of new construction value for each year: 20% for 1995 (70% complete in 1995 - 50% in 1994); 7% for 1996 (77% complete in 1996 - 70% in 1996); 0% for 1997 (being 77% complete in both 1996 and 1997); and 9% for 1998 (86% in 1998 - 77% in 1997). Chart D following shows this procedure, with the "new construction" results being identical to those laboriously calculated previously and concluding in Chart C.

CHART D - SHORT METHOD OF CALCULATING NEW CONSTRUCTION				
	1995	**1996**	**1997**	**1998**
Perform Chart A - Enter the TCV of the New Residence as if 100% Complete (c) in next row:				
100% TCV (c)	$788,114	$874,753	$907,221	$936,465
% Added New	x .20	x .07	-0-	x .09
TCV New (f)	$157,623	$ 61,233	-0-	$84,282

7. Final Determination of Subject Taxable Value. The data, analysis, and reasoning presented in the preceding sections results in the following conclusions of subject's taxable value for the years under appeal.

TAXABLE VALUE				
	1995	**1996**	**1997**	**1998**
Prior Year TV	$216,400	$300,830	$339,870	$349,380
Inflat. Factor	x 1.026	x 1.028	x 1.028	x 1.027
Subtotal	222,026	309,253	349,386	358,813
Plus "Addition"	78,812	30,617	-0-	42,141
Capped or...	300,838	339,870	349,386	400,954
SEV	400,000	462,500	475,000	525,000
Taxable Value	**$300,830**	**$339,870**	**$349,380**	**$400,950**

D. SUMMARY OF FINDINGS

From its examination of the evidence received at the rehearing in this matter, the Tribunal concludes that the true cash values, assessments, and taxable values of the subject property are as follows for Property Identification No. 18-07-326-020:

CONCLUSIONS				
	1995	**1996**	**1997**	**1998**
TCV	$800,000	$925,000	$950,000	$1,050,000
Revised AV	400,000	462,500	475,000	525,000

Revised SEV	400,000	462,500	475,000	525,000
Revised TV	300,830	339,870	349,380	400,950

IV. JUDGMENT

IT IS ORDERED that the subject property's true cash, assessed, and taxable values shall be revised for the tax years at issue as provided in the "Conclusions of Law" section of this Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with keeping the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's revised assessed and taxable values as provided in the "Conclusions of Law" section of this Opinion and Judgment within 20 days of the entry of this Order.

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 20 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. 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 Order. As provided in 1994 PA 254 and 1995 PA 232, 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 shall accrue at an interest rate set monthly at a per annum rate based on the auction rate of the 91-day discount treasury bill rate for the first Monday in each month, plus 1%. After January 1, 1996, interest shall accrue at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, and (iv) after December 31, 1998, at the rate of 6.01% for calendar year 1999.

MICHIGAN TAX TRIBUNAL

Entered: 03/05/99 By:

RCM:226142.sc R. Conrad Morrow, Tribunal Judge