

Note: The document for which this chapter was submitted was never published as planned.

## **CHAPTER 17 BOARD OF REVIEW**

### **1. Introduction and history**

The purpose of this chapter is to provide an overview of the local property tax board of review (“board” or BOR). This includes its statutory aspects such as authorization, organization, duties, purposes, functions and any penalties under law established to ensure the purposes of the board. It will include requirements promulgated through court decisions and communications from the State Tax Commission. It will include miscellaneous guidelines and information that may be helpful to those persons serving on, or working with, local property tax boards.

For the reader’s convenience, in a few cases where it is helpful to view both the text of this chapter and language of an existing law, the text will be followed with a specific quote from the General Property Tax Act (GPTA, PA 206 of 1893) or other appropriate source. It is intended that this work include publications of the Michigan Department of Treasury and State Tax Commission by reference.

This chapter is designed to focus on major issues of relevance to the creation and operation of the local property tax board of review in the state of Michigan. In doing so, the text may discuss intimately connected property tax concepts such as specific exemption statutes, methods for estimating property value and a number of principles of property taxation. The reader is encouraged to review all other chapters of this entire volume for more detail, or explication of specific points of interest lying outside the domain of the BOR as discussed herein.

#### **History**

The current status of property taxation and local boards of review evolved from conditions set in 1835 when Michigan was a territory. Michigan became a state in 1837 and incorporated some existing financial circumstances into its accouterments as a new state. Among them was a large debt (for the time) of about \$5.3 million. Unfortunately, 1837 was the year a severe banking panic swept across the U.S. A bank in Pennsylvania, acting as temporary custodian and sale guarantor for almost \$4 million of Michigan’s bonds, failed before full payment from the sale of the bonds was received. Innocent bond purchasers were hurt and the state’s credit was harmed. The state paid off its debt. However, later constitutions of the state of Michigan would reflect the negative impact of this unfortunate fiscal episode.

For example, except for repelling invasion, state debt was limited to \$50,000. Furthermore, the 1850 constitution prohibited granting state credit to any private

party, subscription or stock company and state involvement or interest in works of internal improvements.

Tax laws, enacted while Michigan was still a territory were carried forward into the constitution of 1850. Vestiges of that early tax structure exist today.

During life as a territory, when fees and the federal government paid territorial expenses, local governments were permitted to pay expenses through a local tax levy. The expenses of local government were coordinated at the county level. At “quarter sessions” of the county court, expenses of the county were estimated. Judges appointed commissioners who apportioned taxes among the townships. Township assessors apportioned the tax against individuals in proportion to their wealth and ability to pay in kind or in money. The county sheriff collected the tax.

The 1850 constitution provided for a uniform rate of taxation on all property, the continuation of specific existing taxes and the use of assessments predicated on the tax value of property.<sup>1</sup>

Contemporary boards of review are permitted to modify an assessment based upon the wealth of individuals (poverty exemption) and in doing so scrutinize for their ability to pay based upon available cash and an “asset test.” To this day property taxes are coordinated at the county level and the “county equalization” process is mandated to assure uniformity in the assessment process.

### **The BOR review today**

The contemporary property tax BOR is an interesting creature; created to do “whatever is necessary to make the roll comply” MCL 211.29(2) with the General Property Tax Act. A BOR is staffed by citizens of the local community, holds public meetings, modifies (as necessary) the roll presented by the assessor, certifies its actions by the signatures of a majority of its members and delivers the certification and assessment roll to the assessor upon completion of those duties. The assessor must timely deliver the completed assessment roll with certification to the equalization director.

The power of a local property tax board of review is unique. If one thinks of the property tax formula (*Property Tax = millage rate times value*) in terms of governments, millage rates may be levied by many government units and many government agencies and related entities. Of all these taxing entities, a BOR review exists only in two. The determination of value (*assessing function*) for use in calculating the property tax is limited to only the township and municipality.

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<sup>1</sup> The historical information of this portion of the chapter was taken from the “student handout” provided by Barbara Moss, Instructor of the Michigan State Assessors Board 3 Hour assessor renewal program (2001), titled: History of Property Tax/Local Government Finance

The board of review exists to enforce compliance of content required by the GPTA of the assessment roll.<sup>2</sup> That is, the premier function of the BOR is to assure the correctness of details posted to the assessment roll MCL 211.29(3). To that end, one purpose of a board of review is to ensure facts can be heard from the public regarding any detail posted on the assessment roll. For good reason, the board can order changes in property value, it can order properties to be exempted or exempted properties to be taxed.<sup>3</sup> A BOR may correct errors and make changes as a result of mutual mistakes of fact. It may decide hardship and other exemptions, in part, or in full. It can require truthfulness and administer binding oaths of compliance. The BOR is an oversight entity.

The local property tax board of review is far more important to the property taxation process than is often realized. The board of review does not exist to defend the assessment. It exists to assure that everything which should be placed on the assessment roll is and, to ascertain as best possible, that the details of what is placed on the assessment roll are accurate.

*The BOR is the first appellate venue* for a taxpayer dispute. Under the General Property Tax Laws there are two valuation dispute venues: the local board of review and the Michigan Tax Tribunal.

Appeals to Michigan's Court of Appeals and the Supreme Court are made concerning property tax disputes, but those appeals are questions of law; not questions of value. They might impact value, but only as a result of a court ordered interpretation of a law. Questions as to whether or not the MTT or BOR acted within the law are the domain of the state's superior courts. Factually based valuation decisions are the domain of the BOR and MTT.

### **Importance of the modern BOR**

The importance of the local property tax board of review to the taxation process is evidenced by laws "compelling" actions or prohibiting actions.

When a quorum of board members cannot be achieved due to absences "it shall be the duty" of the supervisor or another board member to immediately notify the absent members and "it shall be the duty" of the absent member to immediately attend the meeting. The law also permits the board to compel testimony under oath. Laws assign criminal behavior to specific conduct by BOR members and persons filing documents with, or appearing before, the BOR. BOR members intentionally acting in certain ways can be fined and be sent to jail. Where a board member's intentional actions are criminal and cause injury, the board member may be held liable for damages. Here is some documentation illustrating these points:

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<sup>2</sup> In re Dearborn Clinic & Diagnostic Hospital, 342 Mich 673, 71 NW2d 212 (1955)

<sup>3</sup> See In re Dearborn Clinic & Diagnostic Hospital

**211.116 Assessment or review willfully erroneous; penalty.**

Sec. 116. If any supervisor or other assessing officer of any township or city shall willfully assess any property at more or less than what he believes to be its true cash value, he shall be guilty of a misdemeanor, and on conviction thereof he shall be punished by imprisonment in the county jail not exceeding 1 year, or by fine not exceeding 300 dollars, at the discretion of the court. If any board whose duty it is to review the assessment of an assessing officer shall willfully assess property at more or less than its cash value, the members voting in favor of such action shall severally be guilty of a misdemeanor and on conviction shall be punished by imprisonment in the county jail not exceeding 6 months, or by fine not exceeding 300 dollars, at the discretion of the court.

**211.118 Perjury.**

Sec. 118. Any person who, under any of the proceedings required or permitted by this act shall willfully swear falsely, shall be guilty of perjury and subject to its penalties.

**211.119 Wilfully neglecting or refusing to perform duty; intentional, arbitrary, or capricious violations; penalties.**

Sec. 119. (1) Except as provided in subsections (2) and (3), a person who willfully neglects or refuses to perform a duty imposed upon that person by this act, when no other provision is made in this act, is guilty of a misdemeanor, punishable by imprisonment for not more than 6 months, or a fine of not more than \$300.00, and is liable to a person injured to the full extent of the injury sustained.

(2) A member of a board or a commission who intentionally violates sections 10c(2), 29(6), 34(1), or 149(2) shall be subject to the penalties prescribed in Act No. 267 of the Public Acts of 1976.

(3) If a board or commission arbitrarily and capriciously violates sections 10c(3) or 146, the board or commission shall be subject to the penalties prescribed in Act No. 442 of the Public Acts of 1976.

**211.120 Claim for exemption; prohibited conduct; violations; penalties; enforcement; applicability of penalty provisions.**

Sec. 120. (1) A person claiming an exemption under section 7cc shall not do any of the following:

(a) Make a false or fraudulent affidavit claiming an exemption or a false statement on an affidavit claiming an exemption.

(b) Aid, abet, or assist another in an attempt to wrongfully obtain an exemption.

(c) Make or permit to be made for himself or herself or for any other person a false affidavit claiming an exemption or a false statement on an affidavit claiming an exemption, either in whole or in part.

(2) A person who violates a provision of subsection (1) with the intent to wrongfully obtain or attempt to obtain an exemption under section 7cc is guilty of a misdemeanor punishable by imprisonment of not more than 1 year and punishable by a fine of not more than \$5,000.00 or public service of not more than 1,500 hours, or both.

(3) In addition to the penalties provided in subsection (2), a person who knowingly swears to or verifies an affidavit claiming an exemption under section 7cc, or an affidavit claiming any exemption under section 7cc that contains a false or fraudulent statement, with the intent to aid, abet, or assist in defrauding this state or a political subdivision of this state, is guilty of perjury, a misdemeanor punishable by imprisonment of not more than 1 year and punishable by a fine of not more than \$5,000.00 or public service of not more than 1,500 hours, or both.

(4) A person who does not violate a provision of subsection (1), but who knowingly violates any other provision of this act with the intent to defraud this state or a political subdivision of this state, is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00 or public service of not more than 500 hours, or both.

(5) The attorney general and the prosecuting attorney of each county of this state have concurrent power to enforce this act.

(6) The penalty provisions set forth in subsections (2), (3), and (4) do not apply to a violation of subsection (1) or any other provision of this act occurring before December 31, 1995

## Conclusion

The local property tax board of review is an important component of our democratic society. Members of these boards are often unpaid (or nominally paid) citizen volunteers doing a duty for community. They may not think of themselves as patriots or exceptional, but in the American scheme of things they are truly a critical resource. Boards work to assure there is a correct tax roll and a venue for fair treatment of both the citizen and the assessor. Boards sit in judgment at a place where government and its citizens interact in a fundamentally important way – over money!

Local property tax collections across Michigan's eighty-three counties exceeded \$14 Billion in fiscal year 2008-2009<sup>4</sup>. The property tax is essential for educating the state's children and the functioning of about 1600 local government units, but it can be a terrible financial burden. For the majority of the state's citizens, the local property tax board of review is the only appeal for relief they'll experience. By the same token, a board of review validates the efforts of a hard working assessor faced with complex property tax legislation. For those involved in property taxation, taxpayer or administrator, knowledge of the BOR is very important.

## 2. Authority and composition

The board is a creature of the people, who through their constitution authorized the levying of taxes and delegated that function to the legislature.

**Article 9, Section 3.** The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not, after January 1, 1966 exceed 50 percent; and for a system of equalization of designated real and tangible personal property in lieu of general ad valorem taxation. Every tax other than the general ad valorem property tax shall be uniform upon the class or classes on which it operates.

Through the General Property Tax Act, the legislature authorized township and city assessors to determine the value of property to be taxed. The board of review is a check and balance on property values placed within the assessment roll.

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<sup>4</sup> Kleine, Robert J., Annual Report for Michigan State Treasurer, pg 21, published June 2010

A BOR is composed of local persons, some owning property in the jurisdiction. With minor exceptions, township board membership and terms of service and meeting dates are governed directly by statute. Members of township BOR must be electors of the township. An elector is defined as a U.S. citizen of at least 18 years of age who has resided in the township for at least 30 days.

A caution is raised about a potential conflict between the definition of an elector for BOR purposes as found at MCL 211.28(1) and that found in the Michigan Election Law as amended by PA 218 of 1999. The conflict is over whether or not a member of the BOR must be a land owner of the township. STC's legal counsel believes MCL 211.28 prevails. Affected persons are urged to proceed with caution.

Municipalities, through their charters, are given more latitude than townships to modify these rules. Modifications affect composition of boards, meeting times and membership eligibility. In contrast to the independence of local jurisdictions to modify the aforementioned three rules, appellate functions of all boards are governed by state law and are to be consistently applied by each. For example, all decisions must be based upon fact and may not be arbitrary.

The term of office for townships boards begins following the oath of office on each odd numbered year. Terms are for two years. Municipalities have authority to modify the appointment terms. The following quote is from the City of Saginaw's municipal charter. It shows a BOR appointment of a duration limited by the pleasure of the council and a BOR without either 3, 6, or 9 members.

#### **Board of Review**

Section 37. the council shall appoint a board of review of five (5) citizens who are taxpayers on real property, who shall hold office at the pleasure of the council. The council shall fix the compensation of the members of the board of review.

There are no statutory requirements as to skills and training or experience for an appointee to the board. It is important the appointees have good judgment, the ability to listen to both sides of an issue and an ability to handle a wide variety of petitioner behaviors.

It is wise to appoint individuals to the board who know, or are willing to become familiar with, rules for conducting public meetings and persons who are familiar with the local real estate market and property tax assessing and equalization. Appointees would be wise to become familiar with property tax maps, valuation principles and various state publications including various FAQs, bulletins and training manuals.

Here are relevant rules from the GPTA addressing formation of a BOR

**211.28 Board of review for *township or city*; appointment, qualifications, and terms of members; vacancy; eligibility; quorum; adjournment; deciding questions; board of review committees; meetings; size, composition, and manner of appointment of board of review; alternate members; endorsement of assessment roll; duties and responsibilities contained in MCL 211.29.**

Sec. 28. (1) Those electors of the township appointed by the township board shall constitute a board of review for the township. At least 2/3 of the members shall be property taxpayers of the township. Members appointed to the board of review shall serve for terms of 2 years beginning at noon on January 1 of each odd-numbered year. Each member of the board of review shall qualify by taking the constitutional oath of office within 10 days after appointment. The township board may fill any vacancy that occurs in the membership of the board of review. A member of the township board is not eligible to serve on the board or to fill any vacancy. A spouse, mother, father, sister, brother, son, or daughter, including an adopted child, of the assessor is not eligible to serve on the board or to fill any vacancy. A majority of the board of review constitutes a quorum for the transaction of business, but a lesser number may adjourn and a majority vote of those present shall decide all questions. At least 2 members of a 3-member board of review shall be present to conduct any business or hearings of the board of review.

(2) The township board may appoint 3, 6, or 9 electors of the township, who shall constitute a board of review for the township. If 6 or 9 members are appointed as provided in this subsection, the membership of the board of review shall be divided into board of review committees consisting of 3 members each for the purpose of hearing and deciding issues protested pursuant to section 30. Two of the 3 members of a board of review committee constitute a quorum for the transaction of the business of the committee. All meetings of the members of the board of review and committees shall be held during the same hours of the same day and at the same location.

(3) A township board may appoint not more than 2 alternate members for the same term as regular members of the board of review. Each alternate member shall be a property taxpayer of the township. Alternate members shall qualify by taking the constitutional oath of office within 10 days after appointment. The township board may fill any vacancy that occurs in the alternate membership of the board of review. A member of the township board is not eligible to serve as an alternate member or to fill any vacancy. A spouse, mother, father, sister, brother, son, or daughter, including an adopted child, of the assessor is not eligible to serve as an alternate member or to fill any vacancy. An alternate member may be called to perform the duties of a regular member of the board of review in the absence of a regular member. An alternate member may also be called to perform the duties of a regular member of the board of review for the purpose of reaching a decision in issues protested in which a regular member has abstained for reasons of conflict of interest.

City's (municipalities) may create their own rules for the composition, term and size of their board of review.

(4) The size, composition, and manner of appointment of the board of review of a city may be prescribed by the charter of a city. In the absence of or in place of a charter provision, the governing body of the city, by ordinance, may establish the city board of review in the same manner and for the same purposes as provided by this section for townships.

(5) A majority of the entire board of review membership shall indorse the assessment roll as provided in section 30. The duties and responsibilities of the board contained in

section 29 shall be carried out by the entire membership of the board of review and a majority of the membership constitutes a quorum for those purposes.

### **3.0 Meetings, notice of, dates, appearance before and duties**

#### **Meetings**

The board of review must convene in a public meeting at specific times and in specific places. March meetings must be held both during the day and in the evening. Boards usually hold their initial session the second Monday in March but alternative dates within the week are permitted. Municipalities are permitted by charter to provide meeting dates which vary from those cited in the statute.

Board members are required to choose a chairperson and they are encouraged to establish procedures for appearances by petitioners. These might include standard time limits for petitioner presentations and requirements for appearing.

The chairperson has several duties: (1) to call meetings order, calling for motions and votes and all other actions necessary to open, run and close a meeting; (2) to assure an orderly conduct during the meeting; (3) to see that orders and procedures are adopted; and (4) to conduct official duties on behalf of the board (e.g. administer oaths and sign documents). To assure that all persons can be heard in a reasonable fashion, it is important the chairperson keeps hearings on schedule when a schedule exists.

Notice of meetings and conduct of the meetings must comply with the Open Meetings Act. All review of assessments must be completed by the first Monday in April. If convened, the July board is to meet on the Tuesday following the third Monday in July and the December board is to meet the Tuesday following the second Monday in December. MCL 211.53b was modified by PA 122 of 2008 to permit alternative dates: the 3<sup>rd</sup> Monday in July and the 2<sup>nd</sup> Monday in December. Unlike the March meetings, the meetings of the board in July and December may start and end at times established by the BOR.

The board must start its first session in March between 9am and 3pm and continue the session for six hours. It must meet again in the same week for another six hours and three hours of these required meetings must be held after 6 pm. In total, the board must meet at least twelve hours during the week of the second Monday in March. After the board makes a change in an assessed value, tentative taxable value or adds property to the roll, it must schedule a final meeting. The board may change a value or add a value to the roll by its own motion, provided that the taxpayer whose property has been changed is promptly notified and has an opportunity to be heard at the meeting where the change was made or at a subsequent meeting.

## **Right to be heard and truthfulness**

The second meeting of the board of review is to give persons who have filed a protest an opportunity to be heard.<sup>5</sup> Any person, or their agent, appearing at a scheduled meeting, or a scheduled appointment, must be heard. However, if a taxpayer neither, makes an appointment to see the board nor, has evidence of an attempt to appear before the board, that person cannot sustain the argument his constitutional rights to be heard were violated --- even if the meeting times of the board of review do not meet requirements stated in the GPTA.<sup>6</sup>

Representatives who are not the owners of property being appealed can be required to bring proof in the form of a written document that they are authorized to represent the owner. This requirement should be established as a policy prior to commencement of the annual BOR meetings.

The board may require testimony under oath and any board member can administer the oath. Non-resident taxpayers are not required to appear in person; instead filing by letter is acceptable. The governing body of a township or municipality may by resolution permit residents to file a protest by letter without an appearance by the taxpayer or agent. MCL 211.107 provides that cities and charter townships may require that the taxpayer appeal to the assessor as a prerequisite to an appearance before the BOR.

The Court of Appeals found that an ordinance requiring an appeal before the board of assessors prior to an appeal to the BOR was enforceable and that the tax tribunal does not have jurisdiction to hear an appeal if the petitioner fails to comply with the local ordinance.<sup>7</sup> Furthermore, the court found that if forms are a prerequisite for filing an appearance before the BOR and the taxpayer refuses to use the forms, then the taxpayer has given up a right for an appearance.<sup>8</sup>

## **Exempt records**

Some records, though provided to the BOR review at a public meeting may not be made public. Some records provided to the assessor may not be made public. Some records that otherwise might be confidential can be made public if the right conditions are met. The board should seek legal assistance in deciding such matters. However, general guidelines can be offered.

Exempt records include information of a personal nature that if disclosed might constitute an unwarranted invasion of the persons right to privacy. Some records, such as personal property statements, are specifically exempt by

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<sup>5</sup> Auditor General v Stone, 190 Mich 93, 155 NW 713 (1916)

<sup>6</sup> Pollack v Southfield Township, 167 Mich App 323, 421 NW2d 676 (1988)

<sup>7</sup> Fink v City of Detroit, 124 Mich App, 333 NW2d 376 (1983)

<sup>8</sup> AERC of Mich., LLC v. City of Grand Rapids, 266 Mich. App. 717, 702 N.W.2d 692 (2005)

statute. Financial records, if given on a promise of confidentiality, are to be regarded as confidential.

In the alternative, some records may not be confidential. For example, 211.10a requires that all assessment rolls and property tax cards be available to the public for inspection. The board should never alter a property record card.

### **Duties and the hearing**

The board has a duty as an appellate body empowered to assure individual property values placed upon the assessor's roll are appropriate. It must examine the assessment roll and may add to, delete from, or adjust individual values on the roll. Adjustments may be made for several reasons including: appeals from taxpayers, error correction, petitions for exemptions and all other actions permitted by the GPTA. The board may not act to affect the entire roll, but instead looks at individual assessments.<sup>9</sup> The board may act on an assessment of its own volition and do whatever is necessary to comply with the GPTA.

The BOR cannot act on millage rates or because a tax is too high. Petitioners may raise such issues during an appeal, but the board has no authority to act (except, a "poverty" or other exemption, may be triggered by a property tax burden). It is not a duty, but it is wise for a board to familiarize itself with solutions to common petitioner concerns. For example: where to file a complaint for abandoned buildings or how to petition for partial payments of the property tax or how to file a deferment of summer taxes.

Petitioners do not always have the resources or wherewithal to offer written documents as evidence. There is nothing wrong with the board listening and giving credibility to verbal testimony when warranted.

Appeals of the property classification follow rules that both are identical to and vary from the general ad valorem appeal. The board, may hear a classification appeal, and in making its decision it should attempt to comply with guidance from the GPTA and any publications of the Department of Treasury or State Tax Commission. Appeals of a classification decision are not made to the MTT, but instead are made to the State Tax Commission.

*Following a hearing, a BOR must make decisions with a quorum present and decisions based upon evidence and fact. All decisions are to be based upon conditions existing on; tax day (December 31 preceding the hearing). Decisions of the board can be made at the meeting in front of the petitioner or they can be delayed for some later time (usually at a meeting called specifically to make decisions.*

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<sup>9</sup> City of Negaunee v State Tax Commission, 337 Mich 169; 59 NW2d 136 (1953)

The actions of the board must be recorded in a specific manner and format. The documentation includes minutes, a copy of the form 4035 and the 4035a (whenever the Board of Review makes a change that causes the Taxable Value to change) and a Board of Review Action Report. Specific details are required in these documents. They include:

- For form 4035, a detailed reason why the board made its determination
- Minutes must include:
  - Day, time and place of meetings
  - Members present and members absent, name of elected chairperson and notation of any correspondence received
  - A log identifying the hearing date, the petition number, the petitioner's name, the parcel number, the type of appearance, the type of appeal and the action of the board
  - Actual hours in session should be recorded daily along with the time of the daily adjournment. Date and time of the final annual session should be recorded.

Persons making a protest, request or application are to be notified in writing of the board's action, no later than the first Monday in June and provided with a statement of the right to appeal to the tax tribunal. The statement must include an address and notification of the final date for appeal to the tax tribunal.

The members of the board shall complete the review of the roll and by a majority shall endorse it and sign a certification to the effect that the roll is the assessment roll for the year it has been prepared and reviewed. The roll, along with certification, is turned over to the assessor.

**211.29 Board of review of township; meeting; submission, examination, and review of assessment roll; additions to roll; correction of errors; compliance with act; review of roll on tax day; prohibitions; entering valuations in separate columns; approval and adoption of roll; conducting business at public meeting; notice of meeting; notice of change in roll.**

Sec. 29. (1) On the Tuesday immediately following the first Monday in March, the board of review of each township shall meet at the office of the supervisor, at which time the supervisor shall submit to the board the assessment roll for the current year, as prepared by the supervisor, and the board shall proceed to examine and review the assessment roll.

(2) During that day, and the day following, if necessary, the board, of its own motion, or on sufficient cause being shown by a person, shall add to the roll the names of persons, the value of personal property, and the description and value of real property liable to assessment in the township, omitted from the assessment roll. The board shall correct errors in the names of persons, in the descriptions of property upon the roll, and in the assessment and valuation of property. The board shall do whatever else is necessary to make the roll comply with this act.

(3) The roll shall be reviewed according to the facts existing on the tax day. The board shall not add to the roll property not subject to taxation on the tax day, and the board shall not remove from the roll property subject to taxation on that day regardless of a change in the taxable status of the property since that day.

(4) The board shall pass upon each valuation and each interest, and shall enter the valuation of each, as fixed by the board, in a separate column.

(5) The roll as prepared by the supervisor shall stand as approved and adopted as the act of the board of review, except as changed by a vote of the board. If for any cause a quorum does not assemble during the days above mentioned, the roll as prepared by the supervisor shall stand as if approved by the board of review.

(6) The business which the board may perform shall be conducted at a public meeting of the board held in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. Notice of the date, time, and place of the meeting of the board of review shall be given at least 1 week before the meeting by publication in a generally circulated newspaper serving the area. The notice shall appear in 3 successive issues of the newspaper where available; otherwise, by the posting of the notice in 5 conspicuous places in the township.

(7) When the board of review makes a change in the assessment of property or adds property to the assessment roll, the person chargeable with the assessment shall be promptly notified in such a manner as will assure the person opportunity to attend the second meeting of the board of review provided in section 30.

### **Distinctions: March, July and December boards**

Each board in the state is required to meet in March of each year and, if there is business to conduct, in July and/or December of each year. The first meeting of the board in March is termed an “organizational meeting.” At this meeting the board receives the tax roll and proceeds to examine it. The BOR is not required to receive and hear taxpayers at this meeting; however it may receive and consider written protests for assessment change.<sup>10</sup> At all other required meetings of the BOR, the board receives written protests and allows for personal appearances.

There is a difference between the actions that may be taken at the March Board of Review and those that may be taken at the July and December meetings. As a general rule, the Board of Review may exercise its full powers during the March meeting – except that it may not hear certain exemption appeals; those where there is an application for a new exemption and the filing deadline for the exemption falls after the dates of the BOR (May 1<sup>st</sup>). The board may not hear a petition which it has already heard earlier in the year. July and December meetings are held for limited purposes.

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<sup>10</sup> Boards of Review, Michigan State Tax Commission, Pg 2, Issued December 20, 2007

There are situations where an application for an exemption has been filed at a March or July BOR and it is discovered the petitioner may later in the year, either receive substantial income or encounter a formidable financial hardship, that would materially affect his/her qualification for the exemption. Some boards have permitted the applicant to formally withdraw the petition and return to a later board hearing when the financial issues may be resolved.

The July and December BOR meetings are held to hear appeals of the Principle Residence Exemption, Qualified Agricultural Property Exemption, Hardship Exemption, clerical errors and mutual mistakes of fact. Either the assessor or a taxpayer may petition for consideration. It should be clear that the July and December BOR have no authority over exemption disputes other than they may hear petitions for applicants of new exemptions pursuant to the limitations listed next.

Bulletin 13 of 2009, developed by the Department of Treasury, was issued concerning the July and December boards of review. It said: "Beginning in 2010 the authority of the July and December Boards of Review will revert back to the correcting of clerical errors and mutual mistakes of fact. In certain circumstances, the July or December Board of Review has authority to grant poverty exemptions, principle resident exemptions, qualified agricultural exemptions" ... "or incorrect uncappings of value."<sup>11</sup> M.C.L. 211.53b provides for the correction of clerical errors and mutual mistakes of fact.

The Michigan Court of Appeals<sup>12</sup> clarified the meaning of the term clerical error and Bulletin 13 of 2009 articulates the definition stating: the July and December Boards of Review are allowed to correct clerical errors of a typographical or transpositional nature. The July and December Boards of Review are NOT allowed to revalue or reappraise property when the reason for the action is that the assessor did not originally consider all the relevant information. "...even if the root of the assessor's error may have been a ministerial mistake such as the filing of a document."<sup>13</sup> For example, a personal property statement filed after the close of the March Board is not cause for a hearing and adjustment of the property value at the July or December meetings of the BOR.

In Bulletin 13 of 2009, the department reiterates the Michigan Supreme Court's definition of the phrase "mutual mistake of fact"<sup>14</sup> as: "an erroneous belief, which is shared and relied upon by both parties, about a material fact that affects the substance of the transaction."

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<sup>11</sup> Bulletin 13 of 2009, Michigan Department of Treasury, Pg 1, December 4, 2009

<sup>12</sup> International Place Apartments v Ypsilanti Township, 216 Mich 104; 548 NW2d 668 (1996)

<sup>13</sup> Bulletin 13 of 2009, pg 2

<sup>14</sup> Ford Motor Co v City of Woodhaven, 475 Mich 425, 439-440; 716 NW2d 247 (2006)

## 4.0 Completion of tasks, presumption of validity and appeals

The decision of the board, unless overruled by higher authority, stands. “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.” M.C.L. 211.30(c) Appeal to the MTT may not be made if there was no appearance before the local BOR. MCL 207.735(1). The assessment roll is conclusively presumed valid after it has been endorsed by a vote of the BOR and certified<sup>15</sup> MCL 211.31. If the endorsement is omitted the roll will remain valid.<sup>16</sup> MCL 211.31.

It is important to note a Court of Appeals case published in 1982, because the court decided a question of law relative to the presumption of validity of the assessment roll (following completion of the BOR duties). The court said:

First, the Tax Tribunal in its opinion and judgment referred to a presumption of validity, apparently relying for such principle upon the language of M.C.L. 211.31; M.S.A. §7.31, which provides that upon completion of an assessment roll it shall be conclusively presumed to be valid. Such statutory language by its terms is subject to an exception for ‘causes hereinafter mentioned.’ We determine that the conclusive presumption of validity as to an individual assessment arises only after an appeal is decided or the time for appeal has expired with respect to such parcel.<sup>17</sup>

### Appeals from BOR

Property values contained in an assessment roll presented to the BOR are subject to a number of modifications. They include a change by the BOR, a change through a county equalization factor, a change through state equalization, a change from potential appeals to the MTT and potential changes ordered on remand from the Court of Appeals or Supreme Court. It is only after the opportunity for each of these events to happen, or the right to access them has expired, that an individual property value found on the assessment roll is presumed valid.

Because equalization may affect the decision of the March BOR long after the session is completed, petitioners have a long time to decide if they want to appeal to the MTT. They may request a hearing until at least June 30<sup>th</sup>.<sup>18</sup>

It is well settled that a BOR appearance enables further appeal and, in the alternative, unless a property has been appealed before the board of review, the

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<sup>15</sup> City of Detroit v Jones and Laughlin Steel Corp, 77 Mich App 465, 258 NW2d 521 (1977)

<sup>16</sup> Hayes v City of Jackson, 267 Mich 523; 255 NW 361 (1934)

<sup>17</sup> Alhi Development Co v Township of Orion, 110 Mich App 764, 767-768; 314 NW2d 479 (1982)

<sup>18</sup> Cameron, John G., Michigan Real Property Law: Principles and Commentary, 2<sup>nd</sup> Edition, Vol. 2, pg 1285, Institute of Continuing Legal Education, Ann Arbor, MI

MTT lacks authority to hear a further appeal of the property.<sup>19</sup> The same is true of claims of exemption.<sup>20</sup>

There is a line of appeal to the State Tax Commission rather than the Michigan Tax Tribunal. If an assessor discovers an error after the December BOR completes its business, the assessor may petition the Michigan Tax Tribunal for a stipulation order. A “stipulation” is drafted and it must be signed by both the taxpayer and the assessors. The MTT will review the stipulation and if everything is in order, the MTT will issue a consent judgment.

## **5.0 Determinations required of the BOR**

What kind of determinations must the board of review make? What information is to be considered? Must the board judge the assessment procedure and methodologies employed by the assessor? What level of evidence is needed to make a “determination?” The answers relate to the most fundamental actions of the board of review.

This portion of the text will address those questions. Following the discussion the chapter text turns to references and information that might be helpful in understanding the determination process.

### **Actions of the board**

The BOR is charged with “doing whatever else is necessary to make the roll comply with this act.” MCL 211.29(2) It may do so on its own motion, or on sufficient cause being shown by a person. It may add to the roll the names of persons, the value of personal property, the description and value of real property liable to assessment and omitted from the assessment roll; it shall correct errors in the names of persons, in the description of property upon the roll and in the assessment and valuation of property. The board may not add property to the roll which is not subject to taxation and it may not remove property that is subject to taxation MCL 211.29(3). The board may not hear appeals of taxable value; although there are circumstances where a property’s taxable value may be changed due to actions of the BOR.

In short, the BOR must make decisions about specific details; what belongs on the assessment roll and what does not. For example the BOR must:

- Examine individual assessments and decide – should they be placed on the roll or not

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<sup>19</sup> Johnson v State, 113 Mich App 447, 317 NW2d 652 (1982)

<sup>20</sup> For broad discussion see: Parkview Memorial Association v City of Livonia, 183 Mich App 116; 454 NW2d 169 (1990)

- The board examines the roll to ensure details are accurate: names, addresses, ownership, roll numbers, legal descriptions et cetera
- Examines values, those protested and those that for other reasons appear questionable, and determines for each the value to be posted on the assessment roll
- Decides exemptions, partial or full and causes the appropriate value to be posted on the assessment roll

### **Discovering what needs changing**

Assume the board examines a specific entry on the roll. The board's job is to ask about every detail, is this information right or wrong?

That would be a tedious task, but it is lessened because there is a presumption that the assessor has performed his or her duties appropriately. The assessor is required to act lawfully. Even though the board can act of its own volition to assure the roll complies with the GPTA, it may not adjust the entire assessment roll as a single entity. It is only when a reason, or some good cause, arises to question a detail for posting that the board is required to decide what should be posted. The GPTA requires public hearings and an opportunity for petitions to the BOR so objections to what is preliminarily posted on the roll arise. MCL 211.30

Many taxpayers take advantage of the opportunity to protest to the BOR which triggers further inquiry. This is the essence of the duty of the board members - circumstances arise which cause the BOR to make determinations as individuals regarding exactly what is to be posted on the assessment roll. If a quorum votes for a change to what has been presented by the assessor, the change is made.

### **A closer look at decisions of the BOR**

Most details, such as ownership, name, mailing address, legal description et cetera, are based upon facts that are either known or easily ascertainable. Sometimes, new information becomes available during the March BOR that provides a reasonable cause for change. An example would be the receipt of a late personal property statement. If acceptable, the statement permits a verification of ownership and other details; after a series of routine calculations are performed it also produces a value for posting to the assessment roll.

Other details (property value, level of exemption etc.) are not simple. They require the presentation of facts and other evidence for a proper determination. In order to determine what goes on the assessment roll, board members must individually be convinced of the correct detail and then, by a quorum, approve the proposed change to the roll. These types of circumstances consume most of the time expended by boards annually.

The assessor's, or the petitioner's, conclusion of value, methodology or any other aspect of their respective arguments are not what is being judged directly in the hearing. The determination of the board is simpler. Individual members weigh facts presented to them so they can decide through a motion, presented by a member of the board and based upon a quorum vote, the correct entry for the assessment roll. Sometimes the board's independent decision corresponds to the opinion presented by the assessor or petitioner; many times the decision agrees with neither.

Unlike the blank slate referred to in judicial hearings where decisions must be based only upon what was written on the slate during the hearing, board members are to use the facts presented plus their personal knowledge and reasoning powers to arrive at a decision. They are a local body comprised of people who have some level of intimacy with local conditions. Michigan's Court of Appeals has acknowledged and endorsed the value of such knowledge in at least one decision involving a local review board.<sup>21</sup>

Thus, while it is true the BOR holds hearings in which the debate is specifically about a property value; the role of the BOR is not to decide whether the petitioner or assessor was wrong or right, but rather, exactly what value should be posted on the assessment roll. In valuation appeals, Michigan Tax Tribunal decisions may also be independent of the conclusion of the parties to the dispute. Elements from either argument may be used or rejected. The board's independent decision is based upon facts, testimony under oath and where the greatest weight of evidence sits.

Such a process is clearly distinguishable from the decision process where one of the two parties prevails. The function of the local property tax BOR is to make its independent decision of the propriety of each entry of the tax roll it reviews. "The board shall pass upon each valuation and each interest, and shall enter the valuation of each, as fixed by the board, in a separate column." MCL 211.29(4).

### **Suggestions for decision framework or rationale**

It must be repeated that the board of review is not required to use any formal framework for its decision making process. However, there are time tested methods of resolving disputes that could be helpful as guides for BOR decisions.

The first is simply, perspective. How should the dispute and its relevant issues be approached? One could look to published decisions of the Michigan Tax Tribunal and the various courts of law for ideas.

Court and MTT decisions provide legal perspective and an associated framework for arriving at conclusions. There are many published decisions that board members can review, Two primary sources are available at no cost. First,

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<sup>21</sup> Szluha v Avon Charter Twp, 128 Mich App 402, 410; 340 NW2d 105 (1983)

Michigan's Supreme Court and the Court of Appeals, publish decisions on the internet. These can be accessed by topic and by name of the parties involved and in other way. A link to court decisions is: <http://coa.courts.mi.gov/resources/asp/fs.asp>. MTT decision are posted at: [http://www.dleg.state.mi.us/ham/tax/sr\\_recdec.asp](http://www.dleg.state.mi.us/ham/tax/sr_recdec.asp).

## **Structure of court and MTT written documents**

With some variation depending upon the court and the nature of the case, court decisions follow a general format: (1) a brief statement of case and decision of court; (2) Introduction of facts, or procedural history or background information; (3) an analysis of the claims; (4) findings (if applicable); (5) Conclusion or decision. The focus in the court case is one of interpreting and applying legal principles.

The Michigan Tax Tribunal seeks to arrive at an independent decision of value or a tax regulation and the format of its written decision are not identical to those of the courts. With some variation, MTT decision have a format such as: (1) Introduction; (2) Petitioner's contentions; (3) respondent's contentions; (4) Findings of fact; (5) conclusions of law; (6) judgment/decision.

Written decisions are not required of the board but a BOR must provide the reasoning for its decision on Form 4035. It is clear that if the board: asks four or five fundamental questions, contemplates the claims of both parties to any dispute or petition, and if it relies upon existing rules, regulations or other legal mandates made known to it; the board most likely will be able to determine what facts are material and competent and arrive at a reasonable judgment or decision.

In addition to this framework for the overall decision process, there is a framework which helps one analyze individual issues of the overall process. It breaks down the decision process for each issue into four standard components.

## **IRAC**

Sometimes law students are taught to consider questions in a special perspective. It is intended to help them arrive at conclusions when issues are complex. The acronym for this process is IRAC.

IRAC represents four components of a decision making process: (1) Clearly understand the issue under consideration; (2) determine what existing rules apply; (3) analyze the issue in terms of the rules; and (4) arrive at a conclusion.

A simple example would be an application for a hardship or poverty exemption. The issue is: does the applicant meet all tests required so he/she may be

granted a poverty exemption? Rules that might apply consist of a requirement that the applicant may not exceed the federal poverty guidelines; that he/she has fewer assets than the maximum provided in local ordinances designed to test for poverty required by state statute; and that the resident own the property for which the exemption is being granted. The analysis would require a factual determination of how many persons reside in the household; what income each may have if any; what assets are available and which if any can be excluded from the asset test. The conclusion would consist of a grant or denial of the exemption request that is predicated upon the facts that were found and rules existing that would affect the decision.

### **Is that logical? Misleading arguments**

An understanding of the logic behind some arguments can help in the decision process too. Again, scholars have addressed the way in which decisions are made and arguments that are commonly used to persuade. Some arguments are false arguments.

The famous question of: “when did you stop beating your wife” falls into a category of false or misleading arguments. The question as posed, contains high emotional content with little factual basis.

Without factual support, it is clear the question is an attempt at manipulation. The question implies wife beating had been going on. Maybe there was and maybe there wasn't. In this example, it is conceivable the person or persons making judgments will be so persuaded that the alleged wife beater is in fact a horrible person, that they are far more likely to disbelieve anything that might give the benefit of a doubt to the alleged wife beater. It can also be true that besides not giving the person credit for anything good, people may be far more willing to believe bad things about the alleged wife beater. Like gossip, or any comment by one person against another not supported by evidence, the question tarnishes character.

False arguments seem at first glance to support the facts or conclusion, but upon further examination, they do not. Some are totally inapplicable from a rational point of view, but carry high emotional content. In similar ways, there is a whole group of standard arguments which may sound reasonable, but are misleading, that we confront often in life and they are sure to appear in dialogues with a board of review. The problem presented by false arguments has been stated in this way by a group of academicians:

A primary rule of sound reasoning is that all the evidence or argument presented in support of a conclusion should be relevant --- that is, it should bear upon the issue at hand. To present any kind of evidence, therefore, which is not directly related to the point at issue is to commit an error of irrelevance. ... Errors of irrelevancy, or failure to come to grips with the issue, are many and varied, but

for convenience of discussion we may group them under seven general headings.<sup>22</sup>

## Seven misleading forms of argument

- (1) The first of these false arguments is labeled as **diversion**. In this form, information that is not relevant to the issue at hand is presented. Politicians often don't answer questions directly, but instead offer all kinds of comments that take up time and divert one's attention from the point of the question or dispute. That is one key to identifying this fallacy. You'll want to tell the person to stick to the point. You may also see the benefit of this argument in military battles or personal confrontations. If the diverter is successful, the opponent responds to the diversion, leaving themselves open to an unexpected attack from another area.
- (2) Sometimes, an individual attempts to avoid the issue with another form of diversion. In this form, a condition is **exaggerated** so that attention is diverted to the exaggeration, or the exaggeration becomes the point of dispute and the original point is neglected. This is a situation where the intent is present the opposing argument in the worst possible light. In politics it might be that a party suggests a small increase in taxes. It is very easy (and common) for opponents to exaggerate the effects of the slight increase so that it appears people will starve or other nefarious things will happen. By definition, this dispute was over a small or slight increase in a tax. The opposing party easily exaggerated the impact because they know how hated taxes can be.
- (3) **Humor** can easily destroy the focus of an audience. They forget relevant points. Sometimes it can destroy the credibility of the opposition. Making a point with humor is a wonderful skill. However, listeners must not let the humor affect the fundamental argument. For example, a story is told about a meeting of a board of education. In this meeting the board members were doing well in convincing the audience that it would be wise to consolidate several smaller schools into one large school. An audience member opposed to sending his children to a new school stood up and told a version of an old joke. He said, "All this reminds me of a story. First, God made idiots. That was for practice. Then he made school boards." Some members of the audience laughed heartily. Further persuasive arguments by board members were discredited by the humor.
- (4) Sometimes, **lack of evidence** is used to argue a case. This takes place when something cannot be explained and people are urged to use the lack of an explanation (evidence) to arrive at another conclusion. In the 1700s in the northeastern part of the U.S. there were a number of women burned alive because their odd behavior convinced local citizens they were witches. In the late 1900s, scientists examining samples of grain used to make bread during that time period discovered some of the grain

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<sup>22</sup> Little, Winston W., Wilson, Harold W., Moore, Edgar W., Applied Logic, pg 21, The Riverside Press, Cambridge, MA (1955)

the women were working with contained mold spores which caused hallucinations in humans. It turned out that the uncooked grain, kneaded and worked by the women's hands, enabled the hallucinogens to seep into their bodies. Once cooked the bread was harmless. Women working with batches of the affected raw dough may have acted oddly, but it wasn't because they were witches. They were declared witches because there was no evidence to oppose the proposition, not because there was credible evidence to support it. The same form of argument is often made for anything mysterious; where there is a lack of evidence to establish the full truth. Many examples from antiquity exist including: the earth is flat and the sun revolves around the earth.

- (5) **Threats of force** are another form of fallacious argument. Effective but still false. This type of argument has been called the "appeal to a club" or Argumentum ad Baculum. When the stakes are high, a powerful corporation may use its highly skilled legal team to coerce decision makers into adopting the corporation's point of view. Cults often use the combination of controlling information available to their members and coercion to convince members of the truth of the cult's beliefs. The threat of personal action against a government official or the threat of appeals and lawsuits does not change the facts and rationale for a decision.
- (6) Destroying the credibility of a person can be very effective as a way to win an argument. However, whether or not a person is a "slum landlord" does not affect the value of the property being appealed. Instead of showing the person was a slum landlord, if it could be shown the person is often untruthful, then the attack on the person may have merit at a hearing where truthfulness is paramount. An argument to destroy the credibility of a person is formally known as an **Argument Ad Hominem**. A version of the argument surfaces when someone has poor language skills or clearly is not educated. Simply because they express themselves poorly, does not mean what they are saying lacks credibility.
- (7) There is also a form of argument that is brought into almost every session of BOR hearings. This form is known as **Pettifogging**. It is the nitpicker. The person who quibbles over every little point, who evades some arguments and unfairly uses words with double meanings. Their arguments are not materially relevant, but they persist in making them.

Good questions by individual members of the board will help ferret out and highlight areas of questionable reasoning. Board members with experience in judging arguments will often ask questions which highlight misleading testimony. This is an especially helpful circumstance for members of a BOR who are not familiar with an issue being scrutinized.

In the alternative, it is sometimes the member when, realizing they do not grasp the argument, asks a seemingly simple question. Asking the simple question causes everyone to recognize the "elephant in the room," a point not yet stated.

This circumstance is much like the statement blurted out in an old fairytale, “the emperor has no clothes.”

Asking questions and developing good listening skills aids everyone.

### **Deference to actions of the BOR and the taxpayer**

When examining the general body of law including statutes, court decisions, decisions of the Attorney General and rules promulgated by agencies such as the State Tax Commission, it is apparent there is widespread recognition local boards of review are comprised of ordinary citizens and deference to their actions exists. In the quote which follows, such deference can be seen. It should be noted that the board being referred to is a local zoning board and not a property tax board. Nevertheless, the quote is illustrative.

“The primary reason for this deference to the findings of the board of appeals is obvious—its members are local residents who reside in the township and who possess a much more thorough knowledge of local conditions, current land uses, and the manner of future development desirable for those who reside in the township.”<sup>23</sup>

Courts recognize that board members have talents and limitations. There is also common knowledge that the petitioner/taxpayer is many times unskilled in matters related to property appeals and cannot be expected to conduct herself or himself as a practitioner would. After all, BOR hearings are a forum for the taxpayer. The end result is, *the test of a BOR decision is whether or not the decision was arbitrary*, not if they are lawyers or judges or assessors.

Some BOR members become concerned with regard to penalties for not doing the job right (such as that found in the chapter “Introduction”). The introduction cited statutes designed to prevent overt, willful acts that may cause harm to the taxpayer or the integrity of the system). Board members who rely upon facts presented to them, who don’t act in a criminal manner, who do use their judgment and act reasonably will have met the standards required for their task.

## **6.0 Guidelines, FAQs and miscellaneous information**

Experience has demonstrated that responsible board members feel compelled to do the best job they can. Fortunately for them, considerable effort has been put forth to create guidelines and make them available. The next portion of the chapter will provide information on aids for decision making.

Bulletins issued by the State Tax Commission some guidelines and related publications are granted special recognition by Michigan’s courts. While they do not have the power of law, the courts will sometimes defer to them and even

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<sup>23</sup> Szluha v Avon Charter Twp, 128 Mich App 402, 410; 340 NW2d 105 (1983)

make decisions based upon their content. An example, would be the Court of Appeals use of an STC bulletin, to resolve of a case involving property transfers. In the decision the court said the bulletin “does not have the force of law because it is not a properly promulgated administrative rule,” but it does provide “guidance on those matters that will constitute a transfer of ownership under the STC’s interpretation of the law.”<sup>24</sup>

Let us first address the idea of exemptions. The issue of exemptions from the GPTA, both, in part and in full, is covered in Chapter 12 of this manual. Some information presented in this chapter is provided from the “Frequently Asked Question” (FAQ) materials provided by the Michigan Department of Treasury. A wonderful source of detailed information is available at:

[http://www.michigan.gov/treasury/0,1607,7-121-1751\\_2228-167657--,00.html](http://www.michigan.gov/treasury/0,1607,7-121-1751_2228-167657--,00.html).

Readers are urged to also review material available (including STC bulletins) found at:

[http://www.michigan.gov/treasury/0,1607,7-121-1751\\_2228---,00.html](http://www.michigan.gov/treasury/0,1607,7-121-1751_2228---,00.html)

### **Begin short extracts from miscellaneous sources**

Perhaps the first guide or rule to remember is the declaration that the board is prohibited from willingly assessing “property at more or less than its cash value” MCL 211.116.

Keeping MCL 211.116 in mind, if a BOR wants to place a value on the assessment roll which they believe will be neither too high nor too low, where do they begin? They begin with the General Property Tax Act.

In order to determine the proper value to place on the assessment roll, there must be a determination of the market value or “true cash value” of the property in question. This is because (with limited exception) the BOR may only act on the state equalized value (SEV) of a property and because, the GPTA defines the SEV, in terms of true cash value.

State equalized value represents 50 percent of a property’s “true cash value.” The assessed value is the foundation for state equalized value. The assessed value becomes the state equalized value through the equalization process.

Therefore, the board begins by examining the definition of true cash value. It is defined in the GPTA at MCL 211.27(1) as:

“the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale”

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<sup>24</sup> Moshier v Whitewater Twp, 277 Mich App 403, 408 n 2; 745 NW2d 523 (2007)

Then another guideline is provided for BOR decision as the statute amplifies language for the term “usual selling price.

“The usual selling price may include sales at public auction held by a nongovernmental agency or person if those sales have become a common method of acquisition in the jurisdiction for the class of property being valued. The usual selling price does not include sales at public auction if the sale is part of a liquidation of the seller’s assets in a bankruptcy proceeding or if the seller is unable to use common marketing techniques to obtain the usual selling price for the property. A sale or other disposition by this state or an agency or political subdivision of this state of land acquired for delinquent taxes or an appraisal made in connection with the sale or other disposition or the value attributed to the property of regulated public utilities by a governmental regulatory agency for rate-making purposes is not controlling evidence of true cash value for assessment purposes”  
MCL 211.27(1)

### **Which methodology is to be accepted**

Michigan’s courts provide the next guideline. The court’s comments deal with the many types of analyses that are used to determine a property value.

Some appealed values are based upon income producing properties or newly built properties or existing properties up for resale. Board members will hear many representations of the proper process to use at estimating a property’s true cash value. How does a board member decide which formula or process is best for determining a value to be placed on the assessment roll? *There is no set formula for a determination of value by the board of review. The rule is, the decision cannot be arbitrary.*<sup>25</sup>

Of course, best practices of a profession should be considered as should the applicability of a solution method to the problem at hand and any other competent and material evidence.

The board is required to hear all the evidence submitted and use the judgment of a quorum of its members to decide which way the scales of justice tip in the dispute.

In at least one instance, the GPTA provides a specific method of determining an impact on value. At 211.34, the act speaks directly to the issue of contaminated properties:

“(iv) A decrease in taxable value attributable to environmental contamination existing on the immediately preceding tax day. The department of environmental quality shall determine the degree to which environmental contamination limits the use of property based on information on information in the existing

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<sup>25</sup> National Bank of Detroit v City of Detroit, 272 Mich 610; 262 NW 422 (1935); City of Ironwood v Gogebic County Board of Commissioners, 84 Mich App 464, 269 NW2d 642 (1978)

department of environmental quality records or information made available to the department of environmental quality if the appropriate assessing officer for a local tax collecting unit requests that determination.” ...

## **Time**

Another guide relates to “time” and which facts may be accepted as valid. Case law dictates the board must make a decision, based upon facts existing on the tax day preceding the appeal and to record the basis for each decision in its minutes.<sup>26</sup> It is important to consider only conditions as they existed on tax day. The “facts existing on tax day” criteria is to be strictly interpreted. Here is an example of such facts using a most extreme situation: if a structure were to burn down on the day after tax day and a petitioner requested a reduction due to fire damage, the proper value to be placed on the assessment roll would be the value of the undamaged structure as it was on tax day.

## **Presumption of validity**

A presumption of validity means that under the law, everything will be presumed to be correct unless there is sufficient evidence to cast doubt upon the action or conclusion. Existence of a “presumption” requires higher levels of evidence. There is more than one “presumption of validity” associated with property taxation.

A “presumption” that the assessor performed his or her prescribed duties lawfully exists. When there is an assertion the assessor did something incorrectly, the burden of proof lies with the petitioner. He or she must convincingly persuade the board of the validity of the assertion.

Different circumstances exist for questions of value. There is no presumption the value is correct at the time of the Board of Review hearing. The Court of Appeals has ruled that in de novo proceedings before the Michigan Tax Tribunal (new proceedings where the burden of proof is on the petitioner), the presumption of the validity of the assessment is not accomplished until after an appeal is decided or the time to appeal has expired.<sup>27</sup>

Submission of an appraisal (deemed valid for the property appeal) is one way in which a property owner may attempt to prevail in a value dispute. The petitioner might also prevail by providing evidence of a condition unknown, or not considered, by the assessor. This often occurs in appeals of personal property where a required form has not been submitted to the assessor, but is properly submitted at the BOR hearing. The assessor can then make computations based upon factual information; the result often being a change in assessment.

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<sup>26</sup> MCL 211.29(3) and MCL 211.29(4)

<sup>27</sup> *Alhi Development Co v. Orion Twp*, 110 Mich App 764; 314 NW2d 479 (1981)

## **Guide for quality of evidence and standard for amount of evidence**

A key to making a good decision, is to weigh the evidence presented against a standard of some sort, and determine if, in the aggregate, the evidence makes the case. Does it persuade sufficiently to require a change in the posted value?

There is a standard for evidence in an appeal to the Michigan Tax Tribunal. The courts look to see if factual portions of Michigan Tax Tribunal decisions were supported by competent, material, and substantial evidence on the record.<sup>28</sup> Substantial evidence is evidence that a reasonable mind would accept as adequate to support a decision.<sup>29</sup> Substantial evidence is more than a mere scintilla of evidence, but it may be less than a preponderance of the evidence.<sup>30</sup> MCL 211.29(2) merely requires a review “according to the facts.”

The standard for acceptable evidence used on appeal from the board of review is that evidence accepted was “competent” and “material” to the dispute. The amount or quantity of evidence required is “substantial.” An amount of evidence greater than evidence that meets no standard at all (a scintilla) and a “preponderance” of evidence (more likely than not – an amount that would tip the scales of justice slightly in one direction or the other).

## **Begin short extracts from Frequently Asked Questions – warning: these are included in chapter test**

Source: (2007) Department of Treasury publication: Boards of Review

### **Board Rules**

- Townships are limited to appointing either 3, 6 or 9 electors to a BOR
- If 6 or 9 electors are appointed, they are divided into boards of 3 members each for the purposes of hearing and deciding
- 3 member committees must remain intact and the members may not transfer to another committee
- Cities may appoint members based upon their city charter
- There may be alternate appointees to the board, but no more than 2 and they must be property owners having qualified by taking the oath of office
- Alternate members may fill in for absent members and they may perform the duties of a regular member who wishes to abstain for conflict of interest reasons
- 2/3 of township BOR members must own property in the township
- There may be a meeting of the board in July or December if there is business to conduct

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<sup>28</sup> STC, Inc v Dep't of Treasury, 257 Mich App 528, 533; 669 NW2d 594 (1994)

<sup>29</sup> Dignan v Michigan Public School Employees Retirement Bd, 253 Mich App 571, 576; 659 NW2d 629 (2002) and Galuszka v State Employees Retirement Sys, 265 Mich App 34, 45; 693 NW2d 403 (2004)

<sup>30</sup> City of Lansing v Carl Schlegel, Inc, 257 Mich App 627, 630; 669 NW2d 315 (2003)

- A qualified error is clerical error relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes
- The Court of Appeals states that the July and December BOR are allowed to correct clerical errors of typographical or transpositional nature only (see Treasury bulletin 13 of 2009)
- A mutual mistake of fact was defined by the Supreme Court as: “An erroneous belief, which is shared and relied on by both parties, about a material fact that affects the substance of the transaction.” (see Treasury bulletin 13 of 2009)
- The township supervisor is required to serve as secretary to the BOR and in his or her absence, the BOR may appoint one of its members
- Only the March BOR can hear classification appeals. Notification of a denial of an appeal must include Form 2167 used to appeal a classification decision to the State Tax Commission
- A BOR does not have the authority to alter, evade or defeat an equalization factor assigned by the county or state
- A BOR hears appeals of the assessed value. However, there are times when changing the assessed value causes a change in the taxable value
- A BOR cannot raise or lower a taxable value unless they also raise or lower the assessed value and/or the capped value. An exception can occur if there was a “transfer of ownership” on a property in the prior year and the assessor had not uncapped the taxable value or if the opposite occurred.
- The BOR has authority over the land assessment for a property with an Industrial Facilities Tax Roll Certificate. The March BOR may adjust the IFT roll assessment of a “New” Industrial Facilities Tax Certificate.
- The BOR has no authority to alter an IFT assessment where a “Rehabilitation” certificate or a “Replacement” certificate has been issued.
- The authority of the BOR over properties located within tax capturing authorities such as Downtown Development Authorities, Brownfield Authorities, Local Development Financing Authorities et cetera, is the same as its authority over any ad valorem parcel on the assessment roll. Property located within an authority is not removed from the ad valorem roll. They are not placed on rolls for a “specific tax” as are certain abatements such as the IFT and Neighborhood Enterprise Zone.
- The BOR is embodied to hear petitions that challenge a decision of the assessor. It is the BOR responsibility to make an independent judgment based on the facts and on law
- A BOR may not reject or prepare an assessment roll but must only consider the assessment roll prepared by the assessor
- All board of review meetings are subject to the Open Meetings Act (PA 267 of 1976)

## **Content Required**

- Petitioners must receive written notification of the board's actions by the first Monday in June. Notification must include MTT appeal deadlines and an address
- The State Tax Commission is requiring all BOR to maintain appropriate documentation of their decisions. This includes: minutes, a copy of Form 4035, a copy of the Form 4035a whenever the Taxable Value changes and the BOR action report which will be submitted to the STC annually by the assessor.
- Form 4035 must contain a detailed reason why the board made its determination
- The State Tax commission states that actual hours the board is in session should be recorded daily and the time of daily adjournments recorded. Date and time of closing of the final annual session should be recorded
- The BOR action report is a report summarizing the actions of the BOR. It must include a total assessed and taxable value changed, assessed and taxable value change by classification, total poverty exemption appeals made and the number approved and the total number of classification appeals made and the number of classification changes made

## **Dates**

- The March BOR must finish its work on or before the first Monday in April
- Appeals from denial of a PRE exemption must be made within 35 days from the decision

## **Exemptions**

- The March Board cannot make decisions on the Principle Residence Exemption or the Qualified Agricultural Property Exemption
- Homestead exemptions are properties qualified as homesteads also called the Principle Residence Exemption. Properties so qualified are exempt from some school operating taxes (usually 18 mills)
- July and December BOR have authority to grant a PRE for up to three prior years plus the current year.
- March, July and December BOR can hear poverty exemptions (hardship exemptions).
- The BOR shall follow the policy and guidelines of the local assessing unit in granting or denying a poverty exemption unless the BOR determines there are substantial and compelling reasons why there should be a deviation from the policy and guidelines and the substantial and compelling reasons are communicated in writing to the claimant.
- The asset level test for poverty exemptions arises from PA 390 of 1994 which requires an asset test be included within the poverty exemption guidelines of the governing body of the local assessing unit. An asset test

means the amount of cash, fixed assets or other property that could be used, or converted to cash for use in the payment of property taxes.

- The March BOR has authority to consider and act on protests for the current year regarding discontinuance of the immediately preceding year's Qualified Agricultural Property Exemption
- If an assessor denies a current year Qualified Agricultural Property Exemption because the property does not qualify as of May 1, the owner may appeal that denial to the July or December BOR

## **Forms**

- State Tax Commission Bulletin 14 of 1994 addresses how BOR changes should be noted on the assessment roll. The BOR column on the assessment roll must be large enough to accommodate changes to the Assessed Value, the Capped Value and the Tentative Taxable Value. Changes to each of these must be recorded separately on the roll in ink. The bulletin suggests using an "A" behind a revised Assessed Value, a "C" behind a revised Capped Value and a "T" behind a revised Tentative Taxable Value
- The State Tax Commission states that a "log" should be kept of BOR actions and the log should include: the hearing date, the petition number, the petitioner's name, the parcel number, type of appearance, type of appeal and the action of the board
- Minutes and documentation should be filed with the clerk of the local unit of government

## **Miscellaneous**

- Michigan law continues to require that all property be uniformly assessed at 50% of the usual selling price, sometimes called the true cash value. Each year assessors prepare an assessment roll that contains "traditional" assessed valuations at 50% of true cash value
- Taxable value is the lower of: the state equalized value or the "capped value" for the parcel.
- On March 15, 1994 the voters of the state of Michigan approved a constitutional amendment that has come to be widely referred to as Proposal A. Prior to Proposal A, property taxes were based on state equalized value. Proposal A created a new "taxable value" which is to be used in calculating taxes

## **Post Appeals**

- MCL 211.30c requires that when the March BOR 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

- BOR are cautioned that the “Basis” for an assessment does not necessarily become the assessment. The fact that an assessment reduced by a BOR may become the “basis” in the next year’s assessment is not, in and of itself, a legitimate reason for a BOR to reduce an assessment
- MCL 211.30c only applies to 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 2007 assessment appeal isn’t held until 2008, the resulting assessment does not have to be used as the basis for the 2008 assessment. It does however, become the basis for assessment in 2009.
- July and December boards may hear appeals of PRE and Qualified Agricultural Property exemptions as well as clerical errors and mutual mistakes of fact
- After the board has finished its work, a majority of the board must sign an endorsement that the roll is the assessment roll for the township or city for the year in which it was prepared and approved

## **7. SAMPLE DOCUMENTS**

This section contains samples of:

Form 4035

Form 4035a

Cover page from BOR minutes

Detail page from BOR minutes

A sample court decision

A sample MTT decision

MARCH 2010

Petition#: \_\_\_\_\_

**PETITION TO BOARD OF REVIEW  
TO BE COMPLETED BY OWNER OR OWNER'S AGENT**

If agent: Authorization letter must be attached.

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Petitioner Name (owner of property)  
OWENS, JAMES W

Mailing Address 3551 TATHAM RD  
SAGINAW MI 48601

Township or City  
CITY OF SAGINAW

County  
SAGINAW

The undersigned protests the assessed value and/or the tentative taxable value and/or the property classification and/or the qualified agricultural property exemption of the following described property:

Parcel Number: 10 1388 00100	Property Address: 2085 E GENESEE AVE Neighborhood Code: 318	Current Property Class: 201 (COMMERCIAL)
---------------------------------	---	---

Check box for item being protested:  Assessed Value  Tentative Taxable Value  Classification  Qualified Agricultural Property Exemption

**1. PROTEST OF ASSESSMENT** (Complete this section for a protest of assessed value and/or tentative taxable value)

Assessed Amount 27,370	Owner's Estimated True Cash Value x 17,900	Tentative Taxable Value 27,370	Year 2010
---------------------------	---	-----------------------------------	--------------

**2. PROTEST OF CLASSIFICATION** (Complete this section for a request to change the classification. The Board of Review must make their decision regarding classification in accordance with Section 211.34o of the Michigan Compiled Laws. The Board of Review shall not be influenced by the effect that a particular classification has on that property's status as a homestead or qualified agricultural property.)

Classification of property on this year's assessment roll:

Classification should be: (Please check, if disputing current)	2010 Assessment Notice	2009 PRIOR	2010 CURRENT	CHANGE
<input type="checkbox"/> AGRICULTURAL <input type="checkbox"/> INDUSTRIAL	TAXABLE VALUE (TENTATIVE):	27,929	27,370	-559
<input checked="" type="checkbox"/> COMMERCIAL <input type="checkbox"/> RESIDENTIAL	ASSESSED VALUE:	27,929	27,370	559
<input type="checkbox"/> REAL <input type="checkbox"/> PERSONAL	SEV (TENTATIVE):	27,929	27,370	-559

HOMESTEAD PERCENT: 0.0000 % THERE WAS/WAS NOT A TRANSFER OWNERSHIP ON THIS PROPERTY IN 2009: WAS NOT

**3. REASON FOR PROTEST**

State reason(s) for protest of assessed value and/or the tentative taxable value and/or classification and/or qualified agricultural property exemption.

Reason for Protest X THIS PROPERTY HAS BEEN VANDALIZED 10 OR 12 TIMES THEY AND STEAL ALL TOOLS METEORALS BUT AFB&D POLICE WILL DO NOTHING

Phone No. 2394113  
Address 3551 TATHAM  
Signature JAMES W OWENS

**DISPOSITION BY BOARD OF REVIEW**

PROTEST DENIED  PROTEST APPROVED  HARDSHIP EXEMPTION  (record says only)

TTV CHANGED TO: 25000 APPROVED  DENIED  CLASS CHANGED TO: \_\_\_\_\_

SEV CHANGED TO: 25000 HOMESTEAD % GRANTED \_\_\_\_\_

DENIED  APPROVED

REASON FOR ACTION BOARD ADJUSTED BASED UPON OWNER'S TESTIMONY THAT PUMPING AND HEAT ARE GONE

Chairperson's Signature Joseph M. Jurna Date MAR. 19, 2010

If you disagree with the decision of the Board of Review regarding tentative taxable value, further appeal may be made to the Michigan Tax Tribunal, P.O. Box 33232, Lansing, MI 48909 by May 31 for Commercial Real, Industrial Real, Developmental Real, Commercial Personal, Industrial Personal and Utility Personal Property; by July 31 for Agricultural Real, Residential Real, Timber-Cut Over Real, and Agricultural Personal Property. Property Classification appeals ONLY may be appealed to the State Tax Commission, P.O. Box 30471, Lansing, MI 48909.

**2010 Taxable Value Calculations Worksheet**

Parcel No. 18 0139 00000

Issued under authority of P.A. 209 of 1995. Filing is

Petition No. 2010-0161

This form must be completed by the Board of Review (B of R) and made part of the Board of Review Record whenever a change is made to an individual parcel of real property which causes Taxable Value to change.

Complete Section 1 if the B of R changes Capped Value.

SECTION 1	By Assessor	By B of R
2009 Taxable Value as set by Assessor, Board of Review or Michigan Tax Tribunal (Enter number into column labeled "By Assessor.").....=	54,432	54,432
Amount of Losses .....=	0	0
(See page 11 and 12 of STC Bulletin #3 of 1995 for formulas)		
Amount of Additions .....=	0	0
(See pages 8-11 of STC Bulletin # 3 of 1995 for formulas. IMPORTANT: See STC Bulletin No. 3 of 1997 for change to formula for Replacement Construction).		
<b>2010 Capped Value = ( 2009 Taxable Value - Losses) X CPI + Additions</b>		
= ( <u>54,432</u> - <u>0</u> ) X <u>0.997</u> + <u>0</u>		
= <u>54,268</u> <span style="float: right;">By the B of R</span>		
<b>2010 Capped Value = <u>54,268</u></b>		

Complete Section 2 if the B of R changes Assessed Value.

Section 2	By Assessor	By B of R
2010 Assessed Value ..... =	49,533	45,932
Tentative SEV = 2010 Assessed Value X 2010 Tentative Equalization Factor		
= <u>45,932</u> X <u>1.000</u>		
= <u>45,932</u> by B of R		
<b>2010 Tentative SEV = <u>45,932</u></b>		

2010 Tentative Taxable Value is the lesser of the 2010 Capped Value or the 2010 Tentative SEV

2010 Tentative Taxable Value = 45,932

Signature of Secretary, Board of Review	Date
	03/17/2010

Minutes of a Board of Review – Cover Page

2010 MARCH BOARD OF REVIEW CITY OF SAGINAW, MI MARCH 08-19, 2010

BOARD MEMBERS  
JOSEPH M. TURNER, CHAIR  
KARLA MATUZAK  
DIANE M. BEARSS  
CLARA KINCH  
ROBERT J SZCZYPKA

MEETING IN ROOM 104, CLERK'S CONFERENCE ROOM  
ALL SUPPORT DOCUMENTS, LOGS OF APPEARANCES,  
PETITIONS, AND CORRESPONDENCE ATTACHED HERETO  
OR ANNOTATED ARE TO BE CONSIDERED PART  
OF THESE MINUTES

THE BOARD MET PURSUANT TO ADJOURNMENT, AND WAS CALLED TO ORDER BY MR. JOSEPH M. TURNER, CHAIRPERSON OF THE BOARD OF REVIEW.

MINUTES OF THE DECEMBER 2009 BOARD OF REVIEW WERE SUBMITTED AND APPROVED UNANIMOUSLY. MEMBERS NOMINATED AND VOTED UNANIMOUSLY THAT MR. JOSEPH M. TURNER SHALL AGAIN SERVE AS CHAIRPERSON OF THE BOARD FOR THE 2010 CALENDAR YEAR.

APPLICATIONS FOR ADJUSTMENTS WERE RECEIVED FROM THE FOLLOWING, AND ON MOTION, ADJUSTMENTS WERE SUSTAINED OR ADJUSTED. ALL MEMBERS VOTING AYE ON ROLL CALL, EXCEPT WHERE NOTED: THE BOARD CONVENED OVER A TWO-WEEK PERIOD, FROM MONDAY, MARCH 08, 2010 THROUGH FRIDAY, MARCH 19, 2010; FOLLOW-UP SESSION CONVENED ON TUESDAY, MARCH 23, 2010.

MEMBERS: ATTENDANCE AS FOLLOWS:

- MONDAY, MARCH 8TH: JOE TURNER PRESENT FROM 9AM TO 10:30AM, AT WHICH TIME CHAIRPERSON DUTIES WERE ASSUMED BY DIANE BEARSS, MR SZCZYPKA WAS ABSENT; ALL OTHER MEMBERS PRESENT FROM 9AM TO 12 NOON.
- TUESDAY, MARCH 9TH: DIANE BEARSS PRESENT FROM 9AM TO 11:15AM; ALL OTHER MEMBERS PRESENT 9AM TO 12 NOON.
- WEDNESDAY, MARCH 10TH: CLARA KINCH WAS ABSENT; DIANE BEARSS PRESENT 3PM TO 5PM; ALL OTHER MEMBERS PRESENT 3PM TO 9PM.
- THURSDAY, MARCH 11TH: CLARA KINCH AND DIANE BEARSS ABSENT; ALL OTHER MEMBERS PRESENT 9AM TO 12 NOON.
- FRIDAY, MARCH 12TH: CLARA KINCH AND DIANE BEARSS ABSENT; ALL OTHER MEMBERS PRESENT 9AM TO 12 NOON.
- MONDAY, MARCH 15TH: DIANE BEARSS ABSENT; ALL OTHER MEMBERS PRESENT 9AM TO 12 NOON.
- TUESDAY, MARCH 16TH: DIANE BEARSS ABSENT; ALL OTHER MEMBERS PRESENT 9AM TO 12:30PM.
- WEDNESDAY, MARCH 17TH: KARLA MATUZAK AND DIANE BEARSS ABSENT; ALL OTHER MEMBERS PRESENT 9AM TO 12 NOON.
- THURSDAY, MARCH 18TH: DIANE BEARSS ABSENT; ALL OTHER MEMBERS PRESENT 9AM TO 12:30PM.
- FRIDAY, MARCH 19TH: DIANE BEARSS ABSENT; ALL OTHER MEMBERS PRESENT 9AM TO 1PM.
- TUESDAY, MARCH 23TH: DIANE BEARSS ABSENT; ALL OTHER MEMBERS PRESENT 9AM TO 12NOON.

ON FRIDAY, MARCH 19TH, 12:45PM, JOE TURNER TURNED OVER CHAIRPERSON DUTIES TO KARLA MATUZAK, AND ABSTAINED FROM DISCUSSION AND VOTING, IN ORDER TO PRESENT EVIDENCE TO THE BOARD ON THE TITTABAWASSEE AND SAGINAW RIVER CONTAMINATION ISSUE.

THE HOUR OF 11AM, TUESDAY, MARCH 23, 2010, HAVING ARRIVED AND THERE BEING NO FURTHER BUSINESS, THE BOARD OF REVIEW ADJOURNED BY MOTION BY MR. JOSEPH M. TURNER, SUPPORTED BY CLARA KINCH, APPROVED UNANIMOUSLY.

2010 March Board of Review Minutes are submitted:

*Joseph M. Turner*  
Mr. Joseph M. Turner, Chairperson to the Board of Review

*Ann D. Brown*  
Ms. Lori D. Brown, City Assessor

# Minutes of Board of Review – details following cover page

CITY OF SAGINAW  
2010 MARCH BOARD OF REVIEW MINUTES

Parcel #	Owner name	Address	Date	Petition #	Reason	Previous Class	Current Class	Assessor SEV	MBOR SEV	Change SEV	Assessor TV	MBOR TV	Change TV
01 0212 00100	CONSUMERS ENERGY	1037 N 7TH ST	3/8/2010	2010-0043	PRTA	301	301	1,146	1,146	-	1,146	1,146	-
01 0137 00000	RAMON, BERNARDO JR	1413 N 10TH ST	3/16/2010	2010-0032	PE APPROVED/NO BENEFIT	401	401	6,485	6,485	-	6,485	6,485	-
01 0138 00000	RAMON, BERNARDO JR	1407 N 10TH ST	3/8/2010	2010-0020	PE APPROVED/NO BENEFIT	401	401	562	562	-	562	562	-
01 0555 00000	SAGINAW COUNTY LAND BANK AUTHORITY	918 N WASHINGTON AVE	3/8/2010	2010-0070	LAND BANK	201	201	2,856	-	(2,856)	2,856	-	(2,856)
01 0556 00000	SAGINAW COUNTY LAND BANK AUTHORITY	926 N WASHINGTON AVE	3/8/2010	2010-0072	LAND BANK	201	201	1,078	-	(1,078)	1,078	-	(1,078)
01 0557 00000	SAGINAW COUNTY LAND BANK AUTHORITY	928 N WASHINGTON AVE	3/8/2010	2010-0073	LAND BANK	201	201	539	-	(539)	539	-	(539)
01 0572 00000	SAGINAW COUNTY LAND BANK AUTHORITY	1020 N WASHINGTON AVE	3/8/2010	2010-0074	LAND BANK	201	201	1,544	-	(1,544)	1,544	-	(1,544)
01 0702 00000	SAGINAW COUNTY LAND BANK AUTHORITY	1314 N WASHINGTON AVE	3/8/2010	2010-0075	LAND BANK	401	401	658	-	(658)	658	-	(658)
01 0723 00000	GENERAL MOTORS CORPORATION	1629 N WASHINGTON AVE	3/23/2010	2010-0375	APPR RECOMMEND	301	301	7,300,794	3,404,671	(3,896,123)	7,300,794	3,404,671	(3,896,123)
01 0939 00100	CENTRAL FOUNDRY	1300 N WASHINGTON AVE	3/23/2010	2010-0377	APPR RECOMMEND	301	301	174,669	134,960	(39,708)	174,669	134,960	(39,708)
01 0944 00000	CENTRAL FOUNDRY	1610 N 5TH AVE	3/23/2010	2010-0376	APPR RECOMMEND	301	301	884,477	508,050	(376,417)	884,477	508,050	(376,417)
01 0946 00100	CONSUMERS ENERGY	700 N WASHINGTON AVE	3/8/2010	2010-0044	PRTA	301	301	2,958	2,958	-	2,958	2,958	-
02 0119 00100	SAGINAW COUNTY LAND BANK AUTHORITY	714 N FRANKLIN ST	3/8/2010	2010-0077	LAND BANK	201	201	447	-	(447)	447	-	(447)
02 0121 00000	SAGINAW COUNTY LAND BANK AUTHORITY	718 N FRANKLIN ST	3/8/2010	2010-0078	LAND BANK	201	201	463	-	(463)	463	-	(463)
02 0122 00000	SAGINAW COUNTY LAND BANK AUTHORITY	722 N FRANKLIN ST	3/8/2010	2010-0079	LAND BANK	201	201	460	-	(460)	460	-	(460)
02 8008 20000	SAGINAW HOCKEY CLUB INC	303 JOHNSON ST	3/8/2010	2010-0082	LATE FILING	251	251	58,500	76,000	17,500	58,500	76,000	17,500
03 0078 00000	SAGINAW COUNTY	1 TUSCOLA ST	3/8/2010	2010-0110	RECALC	201	201	312,898	287,241	(25,657)	312,898	287,241	(25,657)
03 0404 00000	CABLES OF GRASSY MEADOWS II LLC	709 LARBER AVE	3/8/2010	2010-0087	RECALC	201	201	89,236	50,522	(38,714)	89,236	50,522	(38,714)
03 0452 00000	SAGINAW COUNTY LAND BANK AUTHORITY	808 E GENESEE AVE	3/8/2010	2010-0080	LAND BANK	201	201	4,429	-	(4,429)	4,429	-	(4,429)
03 0453 00000	SAGINAW COUNTY LAND BANK AUTHORITY	816 E GENESEE AVE	3/8/2010	2010-0081	LAND BANK	201	201	3,670	-	(3,670)	3,670	-	(3,670)
04 0346 00000	MCDRAY, MARK V & GENA	1223 LARBER AVE	3/19/2010	2010-0369	DEPRECIATION	201	201	12,845	6,118	(6,727)	12,845	6,118	(6,727)
04 0572 00000	NEW LIFE BAPTIST CHURCH	1426 FEDERAL AVE	3/8/2010	2010-0089	CHG CAPPED VALU	401	401	790	-	-	687	790	103
04 0581 00000	LAWSON, MICHAEL L	116 N 5TH AVE	3/8/2010	2010-0102	PE APPROVED	401	401	3,479	-	(3,479)	3,479	-	(3,479)
04 0582 00000	LAWSON, MICHAEL L	122 N 5TH AVE	3/8/2010	2010-0103	PE APPROVED	401	401	959	-	(959)	959	-	(959)
05 0230 00000	ROSS, MITTIE A	125 N 14TH ST	3/12/2010	2010-0238	POOR CONDITION	401	401	5,378	3,029	(2,349)	5,195	3,029	(2,166)
06 0130 00100	CONSUMERS ENERGY	1401 WALNUT ST	3/8/2010	2010-0045	PRTA	301	301	1,338	1,338	-	1,338	1,338	-
07 0107 00000	HARRIS, WILLIAM D & LOZELLA	914 CHERRY ST	3/8/2010	2010-0195	RECALCULATE	401	401	14,297	13,823	(474)	13,624	13,270	(354)
07 0125 00000	MARSHALL, TERRY	541 S PARK AVE	3/11/2010	2010-0106	PE APPROVED	401	401	16,972	5,856	(11,116)	16,972	5,856	(11,116)
07 0380 00000	CONSUMERS ENERGY	325 S BAJUM ST	3/8/2010	2010-0046	PRTA	301	301	20,949	20,949	-	20,949	20,949	-
07 0419 00000	CARRINGTON, LEVANTE	303 S JEFFERSON AVE	3/19/2010	2010-0339	PARTIAL ASMT	401	401	16,994	9,529	(7,465)	15,535	9,529	(6,006)
07 0441 00000	KRUPA, KENNETH L	520 S JEFFERSON AVE	3/11/2010	2010-0323	ASBMT	401	401	21,317	11,597	(9,720)	18,034	11,597	(6,437)
07 0442 00000	SMITH, ROBERT L & DIANE M	509 OHEN ST	3/8/2010	2010-0101	INSPECTION/PA	401	401	14,428	10,570	(3,858)	14,428	10,570	(3,858)
07 8009 44000	T & M PAINTING INC	215 HAYDEN ST	3/17/2010	2010-0340	LATE STMT	251	251	19,600	4,600	(15,000)	19,600	4,600	(15,000)
08 0144 00000	CARRINGTON, LEVANTE	708 E HOLLAND AVE	3/19/2010	2010-0338	PARTIAL ASBMT	401	401	19,195	7,567	(11,628)	19,195	7,567	(11,628)
08 0156 00000	SAGINAW COUNTY LAND BANK AUTHORITY	800 ATWATER ST	3/8/2010	2010-0082	LAND BANK	401	401	185	-	(185)	185	-	(185)
08 0750 00000	CITY OF SAGINAW	1222 HOWARD ST	3/8/2010	2010-0000	CORRECT TV	401	401	601	-	-	-	601	601
08 0792 00000	MCDUFFY, ROBERT	1418 CEDAR ST	3/15/2010	2010-0251	DEPRECIATION	401	401	21,215	18,707	(2,508)	21,215	18,707	(2,508)
08 0871 00000	NAVARRRETE, FEDERICO & EMMA R TR	805 SHERIDAN AVE	3/19/2010	2010-0363	HOUSE IS UP	401	401	776	9,111	8,335	640	7,754	7,114
08 0917 00100	SAGINAW COUNTY LAND BANK AUTHORITY	2211 RUST AVE	3/8/2010	2010-0081	LAND BANK	301	301	47,712	-	(47,712)	47,712	-	(47,712)
08 0941 00100	CONSUMERS ENERGY	1400 S WASHINGTON AVE	3/8/2010	2010-0047	PRTA	301	301	2,656	2,656	-	2,656	2,656	-
08 0974 00100	CONSUMERS ENERGY	92 E HOLLAND AVE	3/8/2010	2010-0048	PRTA	301	301	5,541	5,541	-	5,541	5,541	-
08 8000 00400	GARBER MANAGEMENT GROUP	999 S WASHINGTON AVE	3/8/2010	2010-0093	LATE FILING	251	251	130,500	133,200	2,700	130,500	133,200	2,700
08 8000 00410	GATEWAY FINANCIAL SERVICES INC	999 S WASHINGTON AVE	3/8/2010	2010-0094	LATE FILING	251	251	71,300	90,300	19,000	71,300	90,300	19,000
08 8000 00500	COMPUTER SCIENCES CORPORATION	401 HOLDEN ST	3/8/2010	2010-0124	LATE FILING	251	251	900	1,000	100	900	1,000	100
08 8001 58800	CINDERELLA INC	1215 S JEFFERSON AVE	3/8/2010	2010-0162	LATE FILING	251	251	143,200	149,300	6,100	143,200	149,300	6,100
08 8006 04500	MEANS INDUSTRIES INC	1640 S JEFFERSON AVE	3/16/2010	2010-0363	LATE FILING	251	251	3,026,400	3,425,600	399,200	3,026,400	3,425,600	399,200
08 8006 35000	COMPUTER SCIENCES CORPORATION	800 S WASHINGTON AVE	3/8/2010	2010-0125	LATE FILING	251	251	466,200	501,800	135,600	466,200	501,800	135,600
08 8007 25100	OWENS, JAMES W	507 S FRANKLIN ST	3/18/2010	2010-0334	LATE FILING	251	251	4,400	1,100	(3,300)	4,400	1,100	(3,300)
09 0042 00000	TURNER, HAZEL J	1602 SHERIDAN AVE	3/11/2010	2010-0146	PE APPROVED	401	401	6,137	-	-	6,137	-	-
09 0225 00000	SAGINAW COUNTY LAND BANK AUTHORITY	828 HOYT AVE	3/8/2010	2010-0083	LAND BANK	401	401	6,009	-	(6,009)	6,009	-	(6,009)
09 0519 00100	DELGADO, JUAN	1309 MOTT ST	3/9/2010	2010-0011	PE APPROVED	401	401	6,978	5,687	(1,291)	6,978	5,687	(1,291)

## Sample MTT Decision

STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH  
MICHIGAN TAX TRIBUNAL

CHRISTOPHER WENZLICK,  
Petitioner,

v

MTT Docket No. 333799

VILLAGE OF OAKLEY,  
Respondent.

Tribunal Judge Presiding  
Kimbal R. Smith III

### DEFAULT OPINION AND JUDGMENT

This case involves the special assessment of a parcel of real property located in the Village of Oakley, Saginaw County, Michigan. Christopher Wenzlick represented himself. Respondent Village of Oakley was not represented nor was it present at the default hearing conducted in this matter on October 19, 2009 since it had previously been placed in default for failure to answer the petition in this matter or take such other action as allowed by law.

This is an appeal of a Special Assessment (SA) for sanitary sewer, levied by the Village of Oakley. Petitioner owns real property in the Village of Oakley correctly identified as parcel #07-09-2-36-0120-600 ("property") and having the address of 308 Main Street, Village of Oakley. As part of the Oakley Sewage Disposal System Special Assessment, Petitioner's property identified by the above tax parcel was assessed the sum of \$44,400. The Tribunal granted Petitioner's motion to amend the property tax identification number which he had unintentionally placed on his original petition to reflect the correct tax parcel number set forth above, being the parcel number reflected in Respondent's Special Assessment billings.

Petitioner requests the Tribunal to invalidate the SA as the sewer assessment amounts are not reasonably proportionate to the benefit to Petitioner's property.

In support of his position that the Special Assessment should be voided by the Tribunal Petitioner introduced 14 Exhibits, all of which were admitted into evidence by the Tribunal, together with the testimony of Petitioner.

The admitted exhibits were as follows:

- P-1 Letter of Protest or Plan to appeal dated April 24, 2007
- P-2 Special Assessment
- P-3 REU definition
- R-4 REU determination
- R-5 Special Assessment Schedule of cost pre REU
- R-6 Special Assessment, Schedule of interest pre REU
- R-7 Special Assessment, Schedule of debt service charge per REU
- R-8 Operation and Maintenance, cost per REU
- R-9 Tax Records for the last 5 years with gallons of water usage
- R-10 Manufacturers manual for washing machine gallon usage
- R-11 2006 Property taxes without Special Assessment
- R-12 2008 Property taxes with Special Assessment
- P-13 Valuation Disclosure
- P-14 Market Valuation-Selleck & Sons Agency, Inc. with comparables  
Market Valuation-Janet Kovach- ABR,CRS,GRI dated May 7, 2007  
Market Valuation-Janet Kovach, ABR,CRS GRI dated 9/8/09
- P-15 Affidavit of M. A. Selleck

**Testimony of Christopher Wenzlick.**

Mr. Wenzlick testified that he and his wife are owners of the subject property, which consists of a small Laundromat and Beauty Shop. The beauty shop operated by Petitioner's wife is open 3.5 days per week and is closed the rest of the week. The Laundromat portion of the building consists of five washing machines. The village of Oakley has a population of 339. The witness

spent much of his testimony attempting to explain the improper allocation of REU's to his property based on an analysis he had done regarding water usage for both the beauty shop and Laundromat. He further stated that the sewer disposal was not completed until sometime during 2008 and that he is required to tap into the system by December 1, 2009. For tax year 2009, the assessed value of the subject parcel increased from \$9,200 to \$17,100 with an increase in taxable value from \$9,200 to \$9,604. The assessed and taxable value for the 2007 and 2008 tax years were \$9,200, respectively, for each year.

#### APPLICABLE LAW

Municipal decisions regarding special assessments are presumed to be valid and generally should be upheld absent a substantial or unreasonable disproportionality between the amount assessed and the value which accrues to the land as a result of the improvements. *Dixon Road Group v City of Novi*, 426 Mich 390, 402-403; 395 NW2d 211 (1986). To effectively challenge special assessments, plaintiffs, at a minimum, must present credible evidence to rebut the presumption that the assessments are valid. Without such evidence, a tax tribunal has no basis to strike down special assessments. *Kadzban v City of Grandville*, 442 Mich 495, 505; NW2d 299 (1993).

The Tax Tribunal must conduct a de novo proceeding at which Petitioner bears the burden of proving the special assessments are invalid. MCL 205.735(1); MSA 7.650(35); *Kadzban, supra*; *Dixon, supra*. If a petitioner fails to meet his burden of proving the special assessments invalid, the Tax Tribunal may not make a de novo determination of benefit and substitute its judgment for that of the municipality. *Kadzban, supra*.

In *Dixon, supra*, the court stated that:

...A determination of the increased market value of a piece of property after the improvement is necessary in order to determine whether or not the benefits derived from the special assessment are proportional to the costs incurred.

The court further stated that:

While we certainly do not believe that we should require a rigid dollar for dollar balance between the amount of the special assessment and the amount of the benefit, a failure by this Court to require a reasonable relationship between the two would be akin to the taking of property without due process of law. Such a result would defy reason and justice. Therefore, we conclude that while decisions made by municipalities with respect to special assessments generally should be upheld, this Court will intervene where there is a substantial or unreasonable disproportionality between the amount assessed and the value that accrues to the land as a result of the improvements. In this case, the cost of the improvements is approximately 2.6 times the increase in the value of the properties and for that reason we hold the special assessment invalid. *Id.* at 402-403.

MCL 123.754 provides in part: "After the confirmation the special assessment roll and all assessments thereon shall be final and conclusive unless attacked in a court of competent jurisdiction 30 days after confirmation."

The advantages and disadvantages of the different permitted approaches in construction of sanitary sewer systems are for the governing body ...to weigh. *Gaut v City of Southfield*, 388 Mich 189; 200 NW2d 76 (1972).

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

At all times relevant to this action Petitioner was the owner of the property identified as tax parcel #07-09-2-36-0120-600, which consisted of one structure occupied by a two-chair beauty shop which was open 3.5 days a week, and a 10-washing machine Laundromat.

The amount of the Special Assessment before interest was \$44,400.

At the time of the creation of the Special Assessment District in 2007, the property had an assessed and taxable value of \$9,200 (true cash value based on the assessment of \$18,400) and in 2009 after the completion of the sewer project an assessed value of \$17,100 (true cash value of \$34,100).

Petitioner presented three market value analyses, the first dated May 7, 2007, which indicated a market value of \$40,000, which the Tribunal notes was before the construction of the sewer system; the second dated September 8, 2009, which indicated a range of value between \$30,000-\$35,500 after the completion of the sewer project; and a third analysis dated September 10, 2009, showing a value of \$30,000, likewise after completion of the sewer system. The Tribunal notes that all three of Petitioner's market value analyses are not appraisals in the common accepted sense. The Tribunal finds, absent any credible evidence to the contrary, that the value of the subject property after the completion of the sewer system is, if anything, less than the value of the property without access to village sewer.

The Tribunal does not need to discuss in detail Petitioner's critique of the method by which the REU's in this case were allocated because the Tribunal determines that, based on the evidence which the Tribunal finds believable and credible, the property has incurred absolutely no benefit whatsoever as a result of the Special Assessment; therefore, the Special Assessment should be declared VOID.

JUDGMENT

IT IS ORDERED that the Special Assessment imposed on the subject property by Respondent is hereby VACATED and declared VOID.

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 the Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, 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, (iv) after December 31, 1998, at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar

year 2005, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (xiii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and after December 31, 2008 at the rate of 3.31% for calendar year 2009.

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

MICHIGAN TAX TRIBUNAL

Entered: October 23, 2009

By: Kimbal R. Smith III

Sample court decision

STATE OF MICHIGAN  
COURT OF APPEALS

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NATHAN KLOOSTER,

Petitioner-Appellant,

v

CITY OF CHARLEVOIX,

Respondent-Appellee.

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FOR PUBLICATION

December 15, 2009

9:10 a.m.

No. 286013

Tax Tribunal

LC No. 00-323883

Advance Sheets Version

Before: BORRELLO, P.J., and WHITBECK and K. F. KELLY, JJ.

PER CURIAM.

In this tax dispute, we must decide, under the circumstances of this case, whether the death of a joint tenant constitutes a transfer of ownership within the meaning of § 27a, MCL 211.27a, of the General Property Tax Act (GPTA), MCL 211.1 *et seq.* We hold it does not. Accordingly, the Michigan Tax Tribunal erred when it found that a transfer of ownership occurred that allowed the taxable value of the real property to be reassessed at a higher value. We reverse.

I. BASIC FACTS

In 1959, James and Dona Klooster, petitioner's parents, acquired title by warranty deed to certain real property located in Charlevoix, Michigan. They held the property as tenants by the entirety. On August 11, 2004, Dona quitclaimed her interest to James. On the same day, James, now as the sole owner, quitclaimed the property to himself and petitioner as joint tenants with rights of survivorship. In January 2005, James died and, by operation of law, petitioner became the sole owner of the property. Subsequently, on September 10, 2005, petitioner executed a quitclaim deed creating a joint tenancy with rights of survivorship with his brother, Charles Klooster.

In 2006, petitioner received a notice of assessment from the city of Charlevoix. It stated that there had been a transfer of ownership in 2005<sup>1</sup> and, thus, it had reassessed the taxable value of the property using its true cash value, or market value, to determine the state equalized value. This process, commonly referred to as "uncapping," increased the taxable value of the property from \$37,802 to \$72,300.

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<sup>1</sup> The assessment notice did not identify the event that caused the "transfer of ownership."

Petitioner appealed this decision to the board of review, which adopted the tax assessor's decision without any explanation of its own. Petitioner appealed the board of review's decision to the Tax Tribunal. The Tax Tribunal affirmed the assessor's determination that there had been a transfer of ownership in 2005. In its view, James's death had caused the transfer of ownership and, thus, the taxable value of the property was properly uncapped. This appeal followed.

## II. APPLICABLE LAW

Historically, real property in Michigan was reassessed according to its true cash value on a yearly basis. However, in 1994, Michigan adopted the "Proposal A" amendment to Const 1963, art 9, § 3. Proposal A limited increases in property taxes absent a transfer in ownership, "(by capping the amount that the "taxable value" of the property may increase each year, even if the "true cash value," that is, the actual market value, of the property rises at a greater rate.)" *Moshier v Whitewater Twp*, 277 Mich App 403, 405; 745 NW2d 523 (2007), quoting *WPW Acquisition Co v City of Troy*, 466 Mich 117, 122; 643 NW2d 564 (2002).

Consequently, the GPTA was amended in order carry out the mandate of Proposal A, and it now governs the processes by which property is taxed consistent with Proposal A's mandate. Thus, under the GPTA, when a transfer of ownership of a parcel of property does not occur, the taxable value of a parcel of property will be the lesser of (1) the property's current state equalized value or (2) the prior year's taxable value less any losses, "multiplied by the lesser of 1.05 or the inflation rate, plus all additions." MCL 211.27a(2). This provision functions to limit, or "cap," property tax increases when there has been no transfer of ownership. However, when there is a transfer of ownership, the taxable value is "uncapped" and a reassessed taxable value is set on the basis of the state equalized value in the year following the transfer of ownership. MCL 211.27a(3); *Signature Villas, LLC v City of Ann Arbor*, 269 Mich App 694, 697; 714 NW2d 392 (2006). "Uncapping" typically results in a higher tax assessment, as is the case here.

Given the foregoing, whether a property's taxable value remains capped is intrinsically linked to whether there has been a "transfer of ownership." The GPTA defines "transfer of ownership" to mean "the conveyance of title to or a present interest in property, including the beneficial use of the property, the value of which is substantially equal to the value of the fee interest." MCL 211.27a(6). The GPTA provides a nonexhaustive list of events that will constitute a transfer of ownership, MCL 211.27a(6), and events that do not constitute such a transfer, MCL 211.27a(7).

Significantly, for purposes of this case, the GPTA includes the creation and termination of joint tenancies amongst those transfers that do not constitute a transfer of ownership, provided certain conditions are met. Specifically, § 27a(7)(h) of the GPTA states that a "transfer of ownership" does not include

[a] transfer creating or terminating a joint tenancy between 2 or more persons if at least 1 of the persons was an original owner of the property before the joint tenancy was initially created and, if the property is held as a joint tenancy at the time of conveyance, at least 1 of the persons was a joint tenant when the joint tenancy was initially created and that person has remained a joint tenant since the joint tenancy was initially created. A joint owner at the time of the last transfer of ownership of the property is an original owner of the property. For purposes of

this subdivision, a person is an original owner of property owned by that person's spouse. [MCL 211.27a(7)(h).]

Accordingly, when there is a transfer between two or more persons that creates or terminates a joint tenancy, it will not constitute a transfer of ownership within the meaning of MCL 211.27a(3) if (1) at least one of the persons was an original owner of the property before the joint tenancy was initially created and, (2) *if the property is held as a joint tenancy at the time of conveyance*, at least one of the persons was a joint tenant when the joint tenancy was initially created and that person has remained a joint tenant since that time. See *Moshier, supra* at 409-410. The second requirement is a conditional requirement: it need only be met in instances where the property was held as a joint tenancy at the time of the conveyance; if the property was not so held, this requirement is inapplicable.

### III. ANALYSIS

Petitioner argues that the Tax Tribunal erred by determining that James's death constituted a transfer of ownership under § 27a(7)(h), MCL 211.27a(7)(h), of the GPTA.<sup>2</sup> We agree. Our review of the Tax Tribunal decision is limited to determining "whether the tribunal erred in applying the law or adopted a wrong principle . . ." *Moshier, supra* at 407. Further, to the extent that we must construe the meaning of the statute, our review is de novo. *Signature Villas, LLC, supra* at 699. Our goal in interpreting a statutory provision is to ascertain the Legislature's intent. *Cain v Waste Mgt, Inc (After Remand)*, 472 Mich 236, 245; 697 NW2d 130 (2005). This is accomplished by first examining to the language used. *TMW Enterprises Inc v Dep't of Treasury*, 285 Mich App 167,172; 775 NW2d 342 (2009). If the language is plain and unambiguous, then we must apply the statute as written to the facts before us. *PNC Nat'l Bank Ass'n v Dep't of Treasury*, 285 Mich App 504,506; \_\_\_ NW2d \_\_\_ (2009). In such instances, judicial construction is neither necessary, nor permitted. *Beattie v Mickalich*, 284 Mich App 564, 570; 773 NW2d 748 (2009).

Here, the first requirement of § 27a(7)(h) is satisfied. James and petitioner created a joint tenancy in 2004 by a quitclaim deed. Before this joint tenancy was created, James was an original owner of the property: He and his wife acquired the property by warranty deed in 1959. Thus, as the parties do not dispute, "at least 1 of the persons was an original owner of the property before the joint tenancy was initially created . . ." MCL 211.27a(7)(h).

With respect to the second conditional requirement of § 27a(7)(h), we conclude that it is not applicable because the condition triggering the second mandate is not present in this matter. Specifically, and contrary to respondent's argument on appeal, James's death does not constitute a "conveyance" within the meaning of § 27a(7)(h). As already noted, under the plain language of § 27a(7)(h), the conditional requirement is only mandated in instances where the property was held as a joint tenancy "*at the time of conveyance . . .*" *Id. (emphasis added)*. The GPTA does not define the term conveyance and, in such instances, we give undefined terms their plain and

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<sup>2</sup> We note that although the tax assessor did not indicate what caused the "transfer of ownership" in 2005, the parties below and on appeal focus exclusively on James's death. Thus, it is not necessary for us to consider whether the creation of the joint tenancy with Charles in 2005 constituted a transfer of ownership. Accordingly, our decision in this matter focuses solely on whether James's death constitutes a transfer of ownership under the statute.

ordinary meaning and we may rely on dictionary definitions. *TMW Enterprises Inc, supra* at 172. We must also be cognizant of legal terms of art, which are to be accorded their peculiar and appropriate meanings. *Priority Health v Comm'r of the Office of Financial & Ins Services*, 284 Mich App 40, 45; 770 NW2d 457 (2009); MCL 8.3a. It is well established, as a legal term, that “conveyance” means every instrument *in writing* which affects the title to any real estate. See MCL 565.35 (defining “conveyance”); *McMurtry v Smith*, 320 Mich 304, 307; 30 NW2d 880 (1948). Further, Black’s Law Dictionary (8th ed) defines “conveyance” as “[t]he transfer of an interest in real property from one living person to another, by means of an instrument . . . [or the] document . . . by which such a transfer occurs.” Accordingly, the term conveyance, as that term is used in the second element of § 27a(7)(h) and giving it its peculiar and appropriate meaning, requires that there be some instrument *in writing* affecting the title of the real property.

James’s death was not a conveyance. While James’s death had a de facto effect on the property’s title, because by operation of law petitioner became the sole owner, the death did not, in effect, create a conveyance because no instrument *in writing* was created that affected title to the subject real estate. Rather, the most recent prior conveyance, as reflected on the record, occurred when the joint tenancy was created between James and petitioner in 2004. And, at that time, the property was not held as a joint tenancy, because James had a sole ownership interest in the real estate.

Respondent provides little support for its contention that James’s death is a conveyance. It merely asserts that James’s death terminated the joint tenancy and, thus, constituted a conveyance and it otherwise fails to provide its own definition of conveyance. We cannot adopt such an overly broad definition of that term, when it is plain that the word “conveyance” has acquired a particular legal meaning. If we were to do so, it would be contrary to the Legislature’s clear intent, because we must presume that the Legislature is aware that the term “conveyance” is a legal term of art and intentionally chose to use it in lieu of some other broader, or narrower, one. See *Priority Health, supra* at 45.

Because the property was not held as a joint tenancy at the time the property was conveyed to James and petitioner, the conditional requirement set forth in § 27a(7)(h) simply does not apply.

#### IV. CONCLUSION

Because petitioner meets the requirements of § 27a(7)(h), there was no transfer of ownership and the taxable value of the property should not have been uncapped under MCL 211.27a(3). The Tax Tribunal erred by affirming the tax assessment. Given our conclusion, we need not address petitioner’s claim that the board of review failed to articulate sufficient reasons for its decision.

Reversed and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello  
/s/ William C. Whitbeck  
/s/ Kirsten Frank Kelly