

Draft
(9/20/10)

Lake Property Tax Assessments—to Appeal or Not?

By Clifford H. Bloom
Law, Weathers

In Michigan, annual property taxes for land (and any dwellings or certain other improvements thereon) are based on a formula. The millage rate is the percentage formula applied by the local taxing authority. One unit of millage is often referred to as a “mill.” Millage rates vary dramatically, depending upon the unit of government involved. Cities tend to have the highest millage rates (due to the significant number of services provided), while townships usually have the lowest millage rates (due to typically limited services). Village millages often are in between. The local unit of government (a city, township, or village) collects not only the property taxes based upon its own millage rates, but also property taxes for other units of government (for example, state, county, school, library, and other applicable units of government).

In order to determine the applicable annual property tax for a given piece of property, the local government tax assessor must first figure out what the property is worth (what it would sell for in a free market, arms-length transaction).

A local municipal tax assessor redetermines the value of each property in the unit of government involved on an annual basis. How is that done? The tax assessor must consider a variety of different factors, including comparable sales, certain state formulas, any on-site improvements, additions or deletions during the prior year, and geographic and economic factors.

In actuality, the local tax assessor must come up with two different property tax valuations or assessments for each property every year. The first annual tax assessment is referred to as the “assessed value.” The assessed value constitutes one-half (50%) of the

assessor's best judgment as to the fair market value of a given piece of property in a particular year. Prior to 1995, the assessed value was the only valuation tracked by local governments and it was simply multiplied by the millage rate to obtain the property tax bill. However, in 1994, the voters in Michigan approved Proposal A, which created a new property tax scheme, as well as something called "taxable value." Generally, in order to determine the annual property tax, the taxable value of a given parcel is multiplied times the millage rate (for example, a city levying a total millage of 20 mills means a rate or multiplier of 2% or \$20.00 of tax for every \$1,000 of property value as assessed) in order to obtain the property tax amount.

Under Proposal A (which is still in effect today), the taxable value of a given property cannot increase by more than 5% or the rate of inflation (whichever is less) on an annual basis. That "cap" is in effect as long as the same property owner owns the land involved, does not add a building or significant improvements to the property, and does not take any action that constitutes a "transfer of ownership" under the Michigan General Property Tax Act. Taxable value is that "capped" or limited annual tax assessment.

Proposal A has effectively created a two-tier property tax valuation/assessment system in Michigan. Waterfront property owners who have owned their riparian property for long periods of time have seen their taxable values grow (and, hence, their property taxes) much more slowly over time than the owners of riparian properties that change ownership frequently. Overall, Proposal A has been a true friend to riparian property owners throughout Michigan as waterfront properties have tended to increase in value over the last decade and a half much more rapidly than nonwaterfront properties.

Every property owner in Michigan receives an annual notification of the change to the property tax assessments for each piece of property owned. That notice lists or "tracks" two different assessments (or property valuations)—"taxable value" and "assessed value."

Remember, the assessed value is the free-floating valuation that supposedly follows market value. Taxable value is the “capped” valuation that, absent a transfer of ownership or other “triggers,” could not have increased annually by more than 5% or the rate of inflation (whichever was less). Until recently, the assessed value for a given piece of riparian property was significantly higher than the taxable value due to the appreciation of waterfront properties over the years where one landowner is involved.

From 1995 to about 2007, assessed value probably mattered little to most property owners who continued to own their properties after Proposal A. Taxable value was what really mattered, as taxable value was the amount to which the millage rate was applied to obtain the actual property tax owed. Once a property was sold, the taxable value “uncapped” or “popped up” to what the assessed value was at the time of sale (generally 50% of the fair market value). Accordingly, over the past 15 years or so, fewer property owners challenged or appealed annual increases in the assessed value as it was seen as a somewhat meaningless number.

A few property owners did continue to challenge annual assessed value increases, even where their taxable value was considerably less than the assessed value. Why? First, some landowners believed that a high assessed value would potentially scare away purchasers of the property, as it was likely that once the property was sold, the taxable value would “uncap” or “pop up” to the assessed value. However, most prospective purchasers knew that anyway. Second, some property owners simply did not understand the difference between taxable value and assessed value. Finally, some sophisticated property owners foresaw a potential time when property values might fall, and the quicker that assessed value fell below taxable value, the quicker one’s property taxes would decrease. Taxable value never falls (even during years that actual property values fall) until and unless the assessed value falls to the level of the taxable value and decreases further. Once assessed value and taxable value “meet,” taxable value will

fall together with assessed value beyond that point. There is effectively a “ratchet down” effect—when assessed value falls below taxable value, taxable value is decreased down to that valuation and a new “cap” is set.

Something has happened the last few years in Michigan that the drafters of Proposal A did not envision—deflation or decreasing property values on a massive scale.

A lakefront property owner can appeal his/her newly-revised annual property tax assessments, but can only do so once a year, and any such appeal must be pursued exactly as required by law. In general, property taxpayers in Michigan receive three notices per year from the local taxing authority regarding property taxes. Two of those notices are simply property tax bills, which are generally received by the landowner in early December (for the winter property tax bill) and June (for the summer property tax bill). The third annual notice is the notice of assessment, which the property owner typically receives in late February or March. It is that last notice (the property tax assessment adjustment notice) that the landowner must carefully review to determine whether or not to appeal the property tax assessments (valuations) for that tax year. A landowner has a relatively narrow window time period within which to file a formal appeal once the notice of assessment has been received.

Typically, the initial assessment appeal must be made by a landowner to the local government’s board of review which meets during March shortly after the new property tax assessment notice has been received. A property owner can either appear in person at the meeting of the local board of review or file a written appeal in a timely fashion before the board of review meets. If the landowner disagrees with the decision by the local board of review, the landowner must promptly file a further written appeal with the Michigan Tax Tribunal.

It should always be remembered that a local board of review (and the Tax Tribunal if a further appeal occurs) has the authority to keep the reassessment as is, decrease the property tax

assessment or (and this is what some property owners forget) actually increase the property tax assessment if an error was made.

Property tax assessment appeals may be advantageous to an unusually large number of lakefront property owners at this time. If lakefront property values in your area have fallen significantly, you may be able to argue that your assessed value has fallen so low that your taxable value should decrease also. Or, even if the local tax assessor has lowered both your assessed value and taxable value, there may be a reasonable argument for further reductions. Remember, once lakefront property values begin to rise again as the economy improves (whenever that might occur in Michigan!), the assessed value and the taxable value will both begin to increase again. Accordingly, it is normally to the benefit of a lakefront property owner to have the taxable value “reset” as low as possible now so that future annual valuation increases will be operating off of a lower reset base.

Why are both taxable value and assessed value linked to one-half of the fair market value? Originally, government officials decided that assessed valuation for property tax purposes would be set at one half of the fair market value as a way of tricking property owners into thinking that their property taxes are less. In actuality, it would have been just as easy to apply one half of the applicable millage rates to a true market valuation (rather than one half thereof). When the property tax system was set up in Michigan, government officials apparently thought that property owners would pay more attention to their assessed valuations (as set at one half of the value) than the millage rates and somehow believe they are getting a “better deal” regarding property taxes. However, time has proven that property owners are not that naïve.

The property tax assessment and collection process in Michigan appears to have been calculated to place most of the burden and criticism on local officials, while letting other governmental units “off the hook.” In Michigan, it is the local unit of government (city, village

or township) and its tax assessor which sets property valuations, applies the millages for all of the taxing units of government, sends out the tax bill (which includes not only the taxes from that local unit of government but also for other units of government such as school districts, counties, the state, libraries, etc.), collects the taxes, and defends the assessments if appealed. Local government must bear the expenses of performing those functions, while receiving little reimbursement for collecting taxes for the other units of government. Thus, while the local unit of government is collecting for all units of government, it also takes most of the criticism for property tax collection.