

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

Inn at Watervale, Inc,
Petitioner,

v

MTT Docket No. 327733

Township of Blaine,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

ORDER DENYING JOINT MOTION TO REOPEN PROOFS

FINAL OPINION AND JUDGMENT ON REMAND

On August 17, 2010, the parties filed a Motion requesting that the Tribunal reopen the proofs in the above-captioned case. In the Motion, the parties' state:

The Michigan Court of Appeals having reversed the Tax Tribunal's decision with regard to the true cash value of petitioner's property and remanded for further proceedings in accordance with its opinion, the parties. . . [have] stipulated that the proofs be reopened in further proceedings.

The Tribunal, having given due consideration to the Motion and the case file, finds that the parties have failed to provide any reason or argument in support of their Motion to have the proofs reopened in this case. Additional proofs are, however, unnecessary. More specifically, the Court of Appeals issued an unpublished decision on May 20, 2010, reversing the Tribunal's Final Opinion and Judgment in this case with regard to the Tribunal's determination as to the true cash value of Petitioner's property and remanded the case back to the Tribunal for further proceedings. The Court of Appeals stated, in pertinent part:

Here, the fact that the Tax Tribunal itself cast serious doubt on the values provided by respondent but then adopted those exact values as its own leads us to conclude that the evidence on which the Tribunal relied was not substantial and competent. The term "competent" means "adequate but not exceptional." [Based on the] Tribunal's own statement that the "values by the assessor may be somewhat incorrect," we conclude that the supporting evidence is not adequate to establish petitioner's true cash value. If the Tribunal did not have adequate evidence to make that determination, then it could have sought additional data from the parties.

The Court's decision overlooks, however, the fact that the parties had notice and a sufficient opportunity to prepare their case for hearing and timely submit their

documentation, as required by TTR 320. The decision also conflicts with other Court of Appeals decisions, albeit unpublished, that indicate that the Tribunal is sometimes left with no alternative but to affirm an assessment, particularly when a petitioner fails to either meet their burden of persuasion (i.e., establish the property's true cash and taxable values) or their burden of going forward with evidence. See *Country Meadows, GP v Township of Macomb*, issued April 1, 1997 (COA Docket No. 182305).

Nevertheless, the Tribunal erred in the entry of the Final Opinion and Judgment as the Tribunal failed to properly explain the basis of its decision in that case. In that regard, the Tribunal's statement in the first paragraph of the first page of the Final Opinion and Judgment relative to "the True Cash Value and allocation of values by the assessor" is misleading. Rather, the Tribunal intended to say that Petitioner's contention of the property's true cash and taxable values, which was allocated by Petitioner purportedly in the same manner as the assessor, may be somewhat incorrect, as the assessor did not allocate value. Rather, the assessor valued each individual parcel. More importantly, the Tribunal's "serious doubts" related to Respondent's income approach and not Respondent's market approach, as reflected by the properties' record cards.

As for Respondent's "market approach," the Court of Appeals stated, in pertinent part:

We also question whether respondent's property record cards, which were generated based on the cost-less-depreciation appraisal methodology, meet the requirements of *Indian Garden Group* as espoused by the Tax Tribunal. In *Indian Garden Group*, the Tax Tribunal specified the process to be used to value property encumbered by an easement. One of the steps in that process was... 'Use comparable market sales data to determine the True Cash Value of the property in accord with the determined Highest and Best Use – as though the Conservation Easement had not been granted (the Before Value).' *Indian Garden Group v Resort Township*, 1995 WL 901434 at 4. It is unclear, based on the record, whether respondent's information was based on comparable market sales data.

Contrary to the Court's statement, "respondent's property record cards" were generated based on both a cost-less-depreciation and market approach, as the value of buildings or other improvements are determined on cost-less-depreciation basis and not land. Rather, the property record cards reflect the land values derived from the land sales studies done by both Respondent (Blaine Township) and the County Equalization Department (Benzie County Equalization Department) and, as such, Respondent's "land value" information was, in fact, based on market sales data.

As indicated above, Petitioner stated on page 60 of Exhibit P-1, "[f]or the purpose of taxation and assigning value, it appears that a reasonable method for allocation of value, for each of the tax parcels, would be an allocation of the overall resort value, based upon the assessor's current distribution of overall value." As such, Petitioner did

not value the individual parcels. Rather, Petitioner valued subject property in its entirety and then allocated the value for each parcel in the same percentage that the assessed value of that parcel was to the entirety of the subject property. Petitioner then applied the individual ratio to its true cash value for an individual value for each parcel. Petitioner also allocated the taxable value in a similar manner. This method of allocating value is flawed, as this method does not consider the individual values per parcel because it assumes that the ratio of assessed to taxable value is the same for all of the properties. Further, a property's taxable values are determined based on the mathematical formula provided in MCL 211.27a and not allocated unless the property is split and then the total taxable value of the single parent parcel is allocated based on the resultant split of the land and not the value of the land.

Unlike Petitioner, the assessor valued each individual parcel according to its unique and specific attributes based upon sales of similar properties each year. Further, Respondent also testified that the percentage easement reduction that had been agreed to and resulted in the entry of the Consent Judgment for the 2003 tax year had been applied to the parcels in each and every tax year thereafter even though the individual land values had increased as a result of market pressures.

Respondent further testified that the land value of properties with Lake Michigan frontage is \$4,500 per front foot, while the land value of properties with Lower Herring Lake frontage is valued at \$3,000 per front foot. More importantly, Petitioner's unadjusted sales of vacant land affirmed Respondent's front foot values for both properties with Lake Michigan frontage and Lower Herring Lake frontage – three sales of properties with Lake Michigan frontage ranging from 126 to 210 front feet for \$3,000 to \$6,000 per front foot and six sales with Lower Herring Lake frontage ranging from 80 to 213 front feet for \$1,500 to \$4,400 per front foot.

As a result, Respondent's land values for the individual parcels were determined as follows:

1. 10-03-001-249-00 is valued at \$3,000 FF for 150 FF and adjusted to 25% of value for Conservation Easement. $\$3,000 \text{ times } 150 \text{ FF} = \$450,000 \text{ times } 25\% \text{ adjustment} = \$112,500 \text{ TCV}$. As well as \$2,390 FF for 150 FF and adjusted to 50% of value for Conservation Easement. $\$2,390 \text{ times } 150 \text{ FF} = \$3,585,000 \text{ times } 50\% \text{ adjustment} = \$1,792,500 \text{ TCV}$. True Cash for both equals 2,540 front feet at \$1,905,000.
2. 10-03-001-258-00 is valued at \$4,500 FF for 2,390 FF and adjusted to 10% of value for Conservation Easement. $\$4,500 \text{ times } 2,390 = \$10,755,000 \text{ times } 10\% = \$1,075,500 \text{ TCV}$.
3. 10-03-001-260-00 is valued at \$4,500 FF for 2,640 FF and adjusted to 10% of value for Conservation Easement. $\$4,500 \text{ times } 2,640 = \$11,880,000 \text{ times } 10\%$

= \$1,188,000 TCV. The property also contains a 1,280 square foot building with an additional TCV of \$78,800.

4. 10-03-001-261-00 is valued at \$4,500 FF for 330 FF and adjusted to 10% of value for Conservation Easement. $\$4,500 \text{ times } 330 \text{ FF} = \$1,485,000 \text{ times } 10\% = \$148,500 \text{ TCV}$. The property contains a 950 square foot building with an additional value of \$34,300.
5. 10-03-001-278-00 is valued at \$5,000 per acre for 25 acres and adjusted to 75% of value for Conservation Easement. $\$5,000 \text{ times } 25 = \$125,000 \text{ times } 75\% = \$93,750 \text{ TCV}$. The assessment is for 50 acres with no value assigned to 25 acres.
6. 10-03-001-280-00 is the actual Inn and buildings. There are nine total buildings for a TCV of \$811,800. 150 FF of land is valued at \$3,000 FF adjusted to 80% of value and 1,335 FF is valued at \$1,500 FF adjusted to 60% of value. $\$3,000 \text{ times } 150 \text{ FF} = \$450,000 \text{ times } 80\% \text{ adjustment} = \$360,000 \text{ TCV}$ and $\$1,500 \text{ times } 1,335 \text{ FF} = \$2,002,500 \text{ times } 60\% \text{ adjustment} = \$1,201,500 \text{ TCV}$.
7. 10-03-001-285-000 is valued at \$87,500 for site Value F (lake influence site) and adjusted 50% for a TCV of \$43,750 for land. This parcel contains a building valued at \$80,200.
8. 10-03-001-285-01 is valued at \$3,000 FF for 98 FF or \$294,000 and a 1,848 square foot building valued at \$65,600.
9. 10-03-0001-286-00 is valued at \$5,000 per acre for 37 acres and adjusted to 75% of value for Conservation Easement. $\$5,000 \text{ times } 37 \text{ acres} = \$185,000 \text{ times } 75\% \text{ adjustment} = \$138,750$. This parcel contains a building valued at \$16,200.
10. 10-03-001-287-00 is valued at \$4,500 FF for 2,310 FF and adjusted to 10% of value for Dunes and Conservation Easement. $2,310 \text{ FF times } \$4,500 = \$10,395,000 \text{ times } 10\% \text{ adjustment} = \$1,039,500$.
11. 10-03-001-288-00 is valued at \$5,000 per acre for 39 acres and adjusted to 75% of value for Conservation Easement. $\$5,000 \text{ times } 39 \text{ acres} = \$195,000 \text{ times } 75\% \text{ adjustment} = \$146,250$. The buildings on this parcel are valued at \$140,800.

Although Respondent presented little other valuation evidence, Respondent did testify that the land value for properties within its taxing jurisdiction were assessed based on the sales of similar property and reflected on the property record card. Respondent also testified that the adjustments for the various easements were calculated based upon a

previous stipulation with Petitioner, as indicated above, and that Respondent used the agreed upon percentage reduction to determine the “after” market value of the land for the tax years at issue.

As for Petitioner, Petitioner “agreed” at the hearing that the parcels should be combined into one parcel under a single parcel identification number, if the Tribunal lowers the taxable value. The Tribunal cannot, however, lower the taxable value unless there is a loss to the property under MCL 211.34d or the property’s state equalized value is reduced below that of the property’s capped taxable value calculation under MCL 211.27a. More importantly, Petitioner’s information was neither sufficient nor reliable to support Petitioner’s contention of value or otherwise support any reduction in the assessments and the adoption of Petitioner’s unsupported value would not result in a reduction in the property’s taxable value as the properties capped taxable calculation would still be less than the revised state equalized value.

Finally, Respondent provided property record cards for each individual property. The property records indicate the property’s market based land values and annual assessment changes and substantiate Respondent’s testimony regarding the properties’ land values and easement adjustments for the tax years.

Given the above, Respondent’s values were documented as to each parcel and properly adjusted to reflect the market impact of the easements property’s true cash and taxable values. More specifically, Respondent’s “information” was, in fact, substantial and competent to support the assessments at issue. As such, the parties have failed to show good cause to reopen for further proofs and the Tribunal adopts the Final Opinion and Judgment, as corrected herein, and once again affirms the assessments at issue as follows:

Parcel No.	TCV	SEV	2006 TV
10-03-001-249-00	\$1,905,000	\$952,500	\$41,586
10-03-001-258-00	\$1,075,600	\$537,800	\$29,501
10-03-001-260-00	\$1,286,400	\$643,200	\$166,363
10-03-001-261-00	\$191,000	\$95,500	\$44,454
10-03-001-278-00	\$93,800	\$46,900	\$14,050
10-03-001-285-00	\$132,400	\$66,200	\$51,241
10-03-001-285-01	\$380,600	\$190,300	\$65,654
10-03-001-286-00	\$165,600	\$82,800	\$18,741
10-03-001-287-00	\$1,039,600	\$519,800	\$32,032
10-03-001-280-00	\$2,197,600	\$1,098,800	\$460,097
10-03-001-288-01	\$287,000	\$143,500	\$80,115
Totals	\$6,270,000	\$4,377,300	\$1,003,834

IT IS SO ORDERED.

MTT Docket No. 327733

Final Opinion and Judgment on Remand, Page 6 of 6

IT IS FURTHER ORDERED that the Joint Motion to Reopen Proofs is DENIED.

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

MICHIGAN TAX TRIBUNAL

By: Victoria L. Enyart

Entered: September 27, 2010