

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

Cedar Developments LLC,
Petitioner,

MTT Docket No. 317902

v

Parma Township,
Respondent.

Tribunal Judge Presiding
Rachel J. Asbury

FINAL OPINION AND JUDGMENT

ORDER DENYING PETITIONER'S MOTION FOR COSTS

INTRODUCTION

Petitioner, Cedar Developments LLC, appealed its property tax assessment for the 2005 tax year to Respondent's Board of Review on March 14, 2005. The Board of Review denied Petitioner's request for assessment change and Petitioner timely filed an appeal with the Michigan Tax Tribunal on June 29, 2005. Respondent did not file an answer. On August 15, 2005, Petitioner filed a "Request for Default." On November 3, 2005, the Tribunal granted Petitioner's motion for default and required Respondent to file an answer within 14 days of the entry of the Order, and a motion to set aside the default within 21 days of the entry of the Order. Respondent did not cure the default. On October 25, 2007, the Tribunal entered an Order scheduling a default hearing, which was held on December 20, 2007. Petitioner was represented by Dennis DaPra, an owner of Petitioner. Respondent was not represented.

The parties' assertions as to the subject property's 2005 true cash values (TCV), state equalized values (SEV) and taxable values (TV) are as follows:

Year	R's TCV	P's TCV	R's SEV	P's SEV	R's TV	P's TV
2005	\$301,766	\$245,000	\$150,883	\$125,000	\$82,111	\$82,111

PETITIONER'S POSITION

Petitioner offered the following exhibit, which was admitted into evidence:

Exhibit P-1 Appraisal by Guy Braun

Petitioner is a Michigan limited liability company that owns the subject property, parcel number 000-06-26-326-004-05, located in the Township of Parma. The subject property is classified as commercial and consists of two separate buildings of rental property owned by Petitioner. For the 2005 tax year, Respondent determined true cash value of \$301,766, assessed and state equalized values of \$150,883, and taxable value of \$82,111 for the subject property. Petitioner contends that there was “no reason provided to Petitioner by the Respondent for the 2005 tax year increase Assessed Values of said property.”¹ Petitioner further asserts that the “market value of said property was determined by an Appraisal of said property dated October 17, 2003 to be \$245,000.”²

Mr. DaPra testified as to his position and the appraisal. Petitioner purchased the property in August 1984. For the 2005 tax year, the property was assessed at \$165,519, a 30% increase over the 2004 assessment. Petitioner protested to the Board of Review, which reduced the assessed value to \$150,883, which is still a 19% increase over the previous year. Mr. DaPra stated that Respondent's assessor told him that there were no sales in the Township with which to compare the subject property. Mr. DaPra testified that he was not contesting the taxable value, only the assessed and true cash values.

¹ Petition, paragraph 9

² Petition, paragraph 8

RESPONDENT'S POSITION

Respondent did not file an answer or any other documentation or evidence in this matter.

FINDINGS OF FACT

The Tribunal's factual findings must be supported by competent, material and substantial evidence. *Antisdale v Galesburg*, 420 Mich 265; 362 NW2d 632(1984). In that regard, the Tribunal finds that Petitioner owned the subject property for the tax year at issue and properly appealed the tax year 2005 assessment to the Board of Review and subsequently to the Tribunal. Petitioner timely filed this appeal and Respondent did not file an answer to the Petition.

Petitioner offered an appraisal in support of his contentions of value. The appraisal clearly states that it was prepared for mortgage purposes only and for the sole use of "CP Federal Credit Union."³ The appraisal was issued with an effective date of October 17, 2003. No adjustments were made to update the appraisal for 2005, the tax year at issue. Although the appraiser discussed the income approach to value and determined that the subject property "commands \$2,895 per month which appears to be lower than markets rents,"⁴ the appraisal did not include a capitalization rate or an estimate of value based on the income approach.

Petitioner's appraisal determined a true cash, market value, of \$245,000 for the 2005 tax year based on a sales comparison approach. The appraiser used three comparable sales for his sales

³ Appraisal, page 1 of 5, Lender/Client

⁴ Appraisal, page 2 of 5, Final Reconciliation

comparison approach. All of the comparable sales were located in “Jackson” and were 10 to 13 miles from the subject. The subject property is in a suburban area and no adjustments were made for the difference in location for the urban comparables. Additionally, there was no explanation of the basis of many of the adjustments, some of which seemed inconsistent. The appraiser used a value of \$15.32 per square foot to adjust for differences in total square footage. There is no explanation as to how he determined this value. The per square foot amounts for the comparables used ranged from \$34.83 to \$60.45. The properties that were built 35 and 45 years before the subject were both adjusted by \$10,000. There was also no clear pattern to the adjustments for land size. The adjustments for the two comparables with no garages, in comparison to the subject with a 7-unit capacity, were quite low and no adjustment was made for the comparable with a 3-unit garage.

The Tribunal finds that based on the questionable adjustments for purposes of the sales approach, the lack of an estimate of value based on the income approach for income-producing commercial property, and the fact that the appraisal was done for mortgage purposes and not for Petitioner, the appraisal submitted by Petitioner did not offer substantial credible evidence as to the value of the subject property.

At the conclusion of the default hearing, Petitioner asked “one, somehow it be communicated to Parma Township that there needs to be dialogue and communications as to a rationale for changes in assessment. ...[a]nd I would ask that my cost be reimbursed...a \$50 filing fee.”⁵ The Tribunal finds that although Petitioner’s contentions that Respondent failed to adequately

⁵ Transcript, page 11, ll 9-16

prosecute this case are correct, the expenses incurred by Petitioner were of the kind and nature that Petitioner would have otherwise had to incur as it proceeded in this matter.

CONCLUSIONS OF LAW

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value. The Michigan Legislature has defined “true cash value” to mean “the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price which could be obtained for the property at private sale, and not at forced or auction sale.” See MCL 211.27(1). The Michigan Supreme Court, in *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450; 221 NW2d 588 (1974), has also held that “true cash value” is synonymous with “fair market value.”

Fundamental to the determination of a property’s true cash value is the concept of “highest and best use.” It recognizes that the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay. *Rose Bldg Co v Independence Twp*, 436 Mich 620, 623; 462 NW2d 325 (1990).

The Tribunal is charged with finding a property’s true cash value to determine the property’s lawful assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The determination of the lawful assessment will, in turn, facilitate the calculation of the property’s taxable value as provided by MCL 211.27a. MCL 205.737 does, however, provide, in pertinent part, “[t]he petitioner has the burden of proof in establishing the property’s true cash

value...[t]he assessing agency has the burden of proof in establishing the ratio of average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.” See *Kern v Pontiac Twp*, 93 Mich App 612 (1974), and *Shaughnesy v Tax Tribunal*, 420 Mich 246 (1984). See also *Hoerner-Waldorf Corp v Village of Ontonagon*, 26 Mich App 542 (1970), and *Brittany Park Apartments v Harrison Township*, 104 Mich App 81 (1981).

The Tribunal is also obligated to select the methodology that is accurate and bears a reasonable relationship to the property’s true cash value. See *Safran Printing Co v Detroit*, 88 Mich App 376 (1979) *lv den* 411 Mich 880 (1981). Regardless of the valuation approach employed, the final value determined must represent the usual price for which the subject property would sell. *Meadowlanes Ltd Dividend Housing Ass’n v City of Holland*, 437 Mich 473 (1991).

The Court of Appeals in *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348 (1992), on remand ordered that the Tribunal shall make an independent determination of true cash value. The Court further stated:

We note that the tribunal is not bound to accept either of the parties’ theories of valuation. It may accept one theory and reject the other, it may reject both in arriving at its determination. *Meadowlanes Ltd Dividend Housing Ass’n, supra* at 485-486; *Wolverine Tower Association v Ann Arbor*, 96 Mich App 780 (1980).

However, in *Country Meadows et al v Township of Macomb*, unpublished opinion per curiam of the Court of Appeals, decided April 1, 1997 (Docket No. 182305), the Court of Appeals determined that the Tribunal is not required to make an independent determination of true cash value when the petitioner has not met its burden of going forward. The court held:

MCL 205.737(3); MSA 7.650(37)(3) provides that “[t]he petitioner has the burden of proof in establishing the true cash value of the property.” Plaintiff’s sole evidence as to the true value of the property was the price at which the bank had acquired the property in lieu of foreclosure. However, MCL 211.27(1); MSA 7.27(1) specifically excludes from consideration of the price obtained at forced sales from the determination of cash value. Consequently, the tribunal did not err in finding that plaintiffs failed to present any evidence to meet their burden of proof.

Plaintiffs cite *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348; 483 NW2d 416 (1992), for the proposition that even when the plaintiff fails to meet his burden of proof, the tribunal must still make an independent determination of the true cash value of the property in question. However, **unlike the plaintiff in *Jones & Laughlin*, in the present case plaintiffs did not meet their burden of going forward with evidence.** See *id.* at 354-356. **Under the circumstances, the tribunal could not make an independent determination of the true cash value of the property because it had no evidence on which to base such a determination except that provided by defendant. A contrary holding would be tantamount to requiring the tribunal to hire its own appraiser.** (Emphasis added.)

This holding was repeated in *Linn v Township of Alaiedon*, unpublished opinion per curiam of the Court of Appeals, decided September 29, 2000 (Docket No. 218359), wherein the court held:

While the property tax act imposes a burden on the plaintiff to establish a true cash value, it also imposes a duty on the Tax Tribunal to make an independent determination of such value. However, **the Tax Tribunal's duty to make its own independent determination of true cash value arises only when the plaintiff has met its burden of going forward with evidence.** (Citations omitted.) (Emphasis added.)

Given the facts presented, the Tribunal concludes that Petitioner has not met its burden of proof in establishing a TCV and AV other than the values as assessed by Respondent. The Tribunal finds that Respondent’s cost less depreciation method for determining the TCV and AV, as evidenced by its property record card is the best evidence of the true cash and assessed values for the 2005 tax year.

The Tribunal further concludes that Petitioner's motion for costs should be denied.

JUDGMENT

IT IS ORDERED that the property's true cash value (TCV), state equalized value (SEV), and taxable value (TV) are:

Parcel Number: 000-06-26-326-004-05

Year	TCV	SEV	TV
2005	\$301,766	\$150,883	\$82,111

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund 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, and (xiii) after December 31, 2007, at the rate of 5.81% for calendar year 2008.

IT IS FURTHER ORDERED that Petitioner's motion for costs is DENIED.

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

MICHIGAN TAX TRIBUNAL

Entered: July 30, 2008

By: Rachel Asbury