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

Muskegon River Youth Home,
Petitioner,

v

MTT Docket No. 324495

Township of Sylvan,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Introduction

Petitioner, Muskegon River Youth Home, appeals ad valorem property tax assessments levied by Respondent, Township of Sylvan, against the real property owned by Petitioner for the 2006 tax year. Robert W. Parker and Gregory R. Kish, attorneys, appeared on behalf of Petitioner. Peter G. Mekas, attorney, appeared on behalf of Respondent. Witnesses appeared on behalf of both parties. They include: George Kelley, Director, Garry Zachritz, MAI for Petitioner, and Roy Kissinger, Certified Michigan Assessor Evaluator III, for Respondent.

The proceedings were brought before this Tribunal on September 27, 2010, to resolve the real property dispute.

The Township of Sylvan has assessed the property on the tax roll at:

Parcel Number: 16-021-002-10

Year	TCV*	SEV	TV
2006	$1,950,400	$975,200	$948,336

* TCV = true cash value; SEV = state equalized value; TV = taxable value

Petitioner's attorney believes that the values of the subject property are:

Parcel Number: 16-021-002-10

Year	TCV	SEV	TV
2006	$1,100,000	$550,000	$550,000

The Tribunal finds the values shall be[1]:

Parcel Number: 16-021-002-10

Year	TCV	SEV	TV
2006	$1,937,129	$968,564	$941,882

Background and Introduction

At issue is the true cash value for a residential treatment and detention facility for youths from age 10 to 18 years. The subject property consists of several separate buildings. Petitioner states that the subject property is located on approximately ten acres with five structures. Petitioner, however, selected the two dormitory buildings as overvalued. The subject property fronts on M-66. Petitioner contends that the cost less depreciation approach is the appropriate technique to value the subject property. Petitioner's initial filing included an appraisal, which was abandoned at the hearing. Petitioner determined that the 6,100 square foot women's unit and the 10,512 square foot detention facility were incorrectly calculated by Respondent. In addition, Petitioner states that the value of the sprinklers added to the women's facility are also incorrect. Petitioner's third issue is the allegation that the economic condition factor ("ECF") utilized by Respondent was

[1] The ratio of taxable value to true cash value is applied to the true cash value of the deduction for sprinklers.

not sufficiently supported by sales. Petitioner requests the Tribunal to utilize the County's ECF of 0.9 instead of Respondent's 1.22 ECF.

Respondent's valuation disclosure, in the form of the 2006 property record card and calculations, indicates how the subject property was assessed.

Petitioner's Arguments

Petitioner believes that the true cash value of the subject property for the tax years at issue should be reduced based on Petitioner's correction of Respondent's records.

Petitioner's admitted exhibits:

P-1 Respondent's property record cards.
P-2 Osceola County Equalization 2006 ECF.
P-3 Valuation opinion letter from Zachritz, dated September 13, 2010.

Petitioner's first witness was George Kelley, Muskegon River Youth Home Director, who is also a licensed builder and a general contractor. He has been the general contractor in all of the building projects at the subject property.

He explained that the Muskegon River Youth Home was formed in 1996 initially to assist teenage boys from the ages of 10 through 18 to get them on track for probate courts throughout the State of Michigan. The property has developed into substance abuse treatment, criminal sexual offender's treatment, and girls have been added to the program.

When the subject property was purchased in 1996 it consisted of a residential ranch home and a 24 by 32 foot pole barn. The original house has been added on to and is used to house 12 boys and the cook. In 1999 a building was constructed for educating the residents. A single-wide trailer was added in 2000 to house staff. The 10,500 square foot detention facility is one of the buildings at issue before the Tribunal. The next building constructed is the 6,700 square foot multipurpose building that houses 12 girls, four classrooms, and some office space, and is also one of the questionable buildings before the Tribunal.

Kelley described the 10,500 square foot detention center as masonry construction, 12-inch block wall, poured solid and then furred on the outside with vinyl siding. It opened in 2003. At one end of the building there are two levels. There are three offices adjacent to the gym. The offices are stick built with drywall and carpeted flooring. The first floor contains 24 individual cells for residents. The cells are sparse with painted concrete block walls, cement floor, one wood frame window with safety glass. Each room has a steel door with a window. Kelley indicated this is considered a secure facility. There are three eight-bedroom pods, with a day area 15 feet by 50 feet. There is a kitchen and dining facility as well as typical mechanical areas. All of the area is electronically monitored.

Kelley described the 6,700 square foot women's unit and school. It opened in 2005. There are three bedrooms that house four girls for a total of twelve. The building is stick-built with vinyl siding and masonry crawl space. The walls are painted drywall and

the floors are carpeted. In addition to the bedrooms, the building also includes four classrooms, three offices, a control room to monitor behavior, and two staff and two client bathrooms. The classroom is the only unsecure portion of the building.

Kelley stated that the individual rooms are akin to a “cell” as that is a more accurate description of the furnishings and finishes in the bedrooms.

Roy Kissinger CMAE 3, assessor for Sylvan Township, was called as an adverse witness for Petitioner. He completed a 2007 reappraisal of the township and then became the assessor. He was not the assessor who did the original assessment that is under appeal; however, he did inspect the subject property in November, 2008. Petitioner’s attorney requested that the 2008 property record card be entered as evidence. Respondent objected and the Tribunal denied the request. The manner in which the property was assessed for the subsequent tax years is simply not relevant to the true cash value of the subject property as of December 31, 2005.

Kissinger was asked if he heard Kelley’s testimony that the women’s unit did not contain sprinklers. He answered yes, however, could not believe that the wards of the state would have no fire protection. Kissinger was not the person who performed the December 31, 2005 assessment of the subject property. He was familiar with the property and adopted the property record card as the basis for the property’s assessment for tax year 2006.

Kissinger explained the 2006 property record card and summary. The depreciated cost of $517,967 means that it (women's unit and school) is 90% good because it was considered to have an effective age of two years. The economic condition factor ("ECF") applied was 1.22. Kissinger did not know what sales were used to determine the 2006 ECF to the property. They are not on file. He explained ECF:

> An ECF is actually an economic condition factor that can be applied to all classes of properties based on--for example, example residential ECF's can be applied to lakefront properties. All different neighborhoods can have different ECF's. And if you don't develop an ECF for state tax, Michigan recommends that you go to surrounding areas or wherever you've got to go to determine what the ECF for that particular class or facility would be. Tr. p 49.

Kissinger testified that subject property was in the commercial class and all of the commercial properties had the same 1.22 ECF applied. Petitioner's question regarding the development of an ECF by taking "the assessed value, you take the sales price, you back out land value and you divide one by the other to come up with a ratio" (TR. p 51) was affirmed by Kissinger. Kissinger stated that the individual sales have to be analyzed and outliers removed before the average is determined.

Osceola County Equalization Department also does a Commercial ECF study. The parties stipulated to P-2, which is Osceola County Equalization Department's Commercial ECF study. Kissinger testified that "The county does a separate ECF study, because there's not enough market of commercial sales, and they'll actually go do an appraisal or study of commercial properties and do an analysis of their own." Tr. p 57.

Garry Zachritz, MAI, was a fact witness for Petitioner. The Tribunal notes that Zachritz was qualified as an expert witness; he was not able to testify as to valuation. Zachritz did not prepare a valuation disclosure. He did review the property record card for the subject property. He summarized his five-page critique in a September 13, 2010 letter (P-3).

Zachritz testified that P-3 is his letter to Petitioner's counsel, with a critique of the property record cards; he included two pages from the STC 1998 cost manual. His letter indicates that he has not conducted a physical inspection of the subject property. Based on a telephone interview, he states that:

1. subject property is classed wrong,
2. sprinklers are added to the women's unit,
3. costs for heating and cooling are double counted,
4. use of an ECF of 1.22 is incorrect,
5. County's ECF of .90 should be used,
6. Depreciation is incorrect.

Zachritz explained that subsequent to the letter he wrote, he did inspect the subject property and found that just the women's dormitory was incorrectly classed. Its construction is akin to an average construction structure, not the good quality category that Respondent used on the property record card.

Zachritz called several assessors to see if one could duplicate the property record using the BS&A[2] assessor software with changes in the class. P-4 is someone's rendition of the women's facility at a class D as good quality dormitory; average quality; and as poor quality construction. All three records contained a wrong county multiplier. P-5 is

[2] The Tribunal notes that the transcripts incorrectly identify BS&A as "ESNA" software.

someone's rendition of the detention center class C with good, average and poor quality construction; it contained an error in the year built that did not affect the effective age.

When questioned by the Tribunal, Zachritz testified that he is required to follow USPAP[3], and that exhibits P-3, P-4, and P-5 do not meet USPAP Standard 3.

Respondent's Arguments

Respondent was allowed latitude with Kissinger's direct testimony because he was called as an adverse witness. Respondent did not additionally present its case independently.

Tribunal's Findings of Fact

The Tribunal finds that Petitioner was not able to successfully carry its burden of proving that the assessments exceed 50% of market value. Petitioner's entire case rested on an opinion from an appraiser who did not see the property before he rendered an alternative cost based upon a telephone call with Petitioner. The Tribunal questioned Zachritz, a member of the Appraisal Institute, if as an MAI, whether he was required to follow USPAP. He answered in the affirmative. He did reply that the document prepared for the Tribunal does NOT meet his own professional standards. He did not have a signed certification, a scope of work, limiting conditions or an indication that the document was actually a review appraisal. The following are from the Uniform Standards of Professional Appraisal Practice ("USPAP"):

[3] The transcripts incorrectly identify USPAP as "use path."

STANDARD 3: APPRAISAL REVIEW, DEVELOPMENT AND REPORTING

In developing an appraisal review assignment, an appraiser acting as a reviewer must identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analyses necessary to produce a credible appraisal review. In reporting the results of an appraisal review assignment, an appraiser acting as a reviewer must communicate each analysis, opinion, and conclusion in a manner that is not misleading.

* * *

Standards Rule 3-1

In developing an appraisal review, the reviewer must:

* * *

3.1(c) not render appraisal review services in a careless or negligent manner, such as making a series of errors that, although individually might not significantly affect the results of an appraisal review, in the aggregate affects the credibility of those results.

* * *

Standards Rule 3-2

3.2(c) identify the purpose of the appraisal review, including whether the assignment includes the development of the reviewer's own opinion of value, review opinion or real property appraisal consulting conclusion related to the work under review;

Comment: The purpose of an appraisal review assignment relates to the reviewer's objective; examples include, without limitation, to determine if the results of the work under review are credible for the intended user's intended use, or to evaluate compliance with relevant USPAP requirements, client requirements, or applicable regulations.

* * *

3.2(h) determine the scope of work necessary to produce credible assignment results in accordance with the SCOPE OF WORK RULE.

> Standards Rule 3-6
>
> 3.6 Each written Appraisal Review Report must contain a signed certification.
>
> Comment: The names of individuals providing significant appraisal, appraisal review, or appraisal consulting assistance who do not sign a certification must be stated in the certification. It is not required that the description of their assistance be contained in the certification, but disclosure of their assistance is required in accordance with Standards Rule 3-5(g).

P-3 was a letter stating that Zachritz did not inspect the subject property, but rendered an opinion that the property record card has errors. The letter also expresses an opinion of value.

TTR 283(3) states:

> Without leave of the tribunal, a witness *may not testify* as to the value of property without submission of a valuation disclosure. This does not however, preclude an expert witness from rebutting another party's valuation evidence or testifying as to the value of the property in issue *IF* the expert witness's value conclusions were adopted by the party and included in the party's valuation disclosure.

Petitioner exchanged a valuation disclosure timely, but did not present it at the hearing. Petitioner instead brought another valuation witness to testify to what he perceived as correct calculations for subject property. Petitioner's review appraisal had value conclusions, but was not timely exchanged, and does not meet the minimum appraisal standards. The Tribunal finds, for the above reasons, that Petitioner's exhibit 3, Zachritz's September 13, 2010 letter, is given no weight and no credibility. Petitioner had the ability to utilize its valuation disclosure that was timely filed and exchanged, yet brought into the hearing a document prepared two weeks prior to the hearing. The

Tribunal finds no weight is given to Petitioner's exhibits P-4 and P-5. The letter written two weeks prior to the hearing based on a "telephone" interview, and in violation of USPAP Standard 3, does not, in this Tribunal's opinion, rise to any standard of competent material or substantial evidence.

Petitioner fails to convince this Tribunal that an improper cost category was utilized for subject property.

The issue to be addressed is Petitioner's argument that the County's .90 ECF should be used. It obviously results in a substantially lower market value. Neither party was able to determine the basis for the prior assessor's 1.22 ECF multiplier that was used for every commercial property. However, it makes less sense for this Tribunal to use the County's ECF that is used when the county does appraisals for inclusion in their sales studies for the different classifications of property, or in an instance where a local unit of government is not able to calculate an ECF. The Tribunal finds there is insufficient cause to disallow the application of the 1.22 ECF that was applied to all properties within Sylvan Township that were classed as Commercial properties.

Petitioner's assertion that the depreciation allowance is incorrect is unfounded. There was testimony from Kelley that the women's building did not have sprinklers. The testimony from Kissinger that they should have sprinklers in a locked down building makes sense. However, this is the only error that the Tribunal finds in the valuation of

the subject property. The Tribunal amends the true cash value for 2006 to properly reflect that there are no sprinklers in the women's unit.

The remainder of Petitioner's claims, that a different costing class be applied or an ECF developed by the county, are not accepted based on lack of evidence that the true cash value of the subject property should be amended, except for the exclusion of sprinklers.

The prior assessor was not available due to a health reason.

The Tribunal notes that due to a loud overhead fan in the court room the court reporter stated in several places "(Off the record interruption)." The noisy also resulted in typographical errors in the transcript.

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 the assessment, being the price which could be obtained for the property at private sale, and not 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 (1974), has also held that true cash value is synonymous with fair market value.

In that regard, the Tribunal is charged in such cases 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 (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. A petitioner does, however, have the burden of establishing the property's true cash value. See MCL 205.737(3) and *Kern v Pontiac Twp*, 93 Mich App 612 (1974).

> 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...exceed 50%....; and for a system of equalization of assessments. For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value. Const 1963 Art IX , Sec 3.

The Michigan Supreme Court, in *Meadowlanes Limited Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 483-484; 473 NW2d 363 (1991), acknowledged that the goal of the assessment process is to determine "the usual selling price for a given piece of property." In determining a property's true cash value or fair market value, Michigan courts and the Tribunal recognize the three traditional valuation approaches as reliable evidence of value. See *Antisdale v City of Galesburg*, 420 Mich 265, 276; 362 NW2d 632 (1984)

"The petitioner has the burden of establishing the true cash value of the property . . . ." MCL 205.737(3); MCL 211.27(1); *Meadowlanes Limited Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 483-484; 473 NW2d 363 (1991). "This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party." *Jones & Laughlin Steel Corp* v *City of Warren*, 193 Mich App 348; 483 NW2d 416 (1992) at 354-355, citing: *Kar v Hogan*, 399 Mich 529, 539-540; 251 NW2d 77(1976); *Holy Spirit Ass'n for the Unification of World Christianity v Dept of Treasury*, 131 Mich App 743, 752; 347 NW2d 707(1984).

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. *Meadowlanes*, at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968); *Antisdale*, at 276. The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale*, at 277.

Under MCL 205.737(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal may not automatically accept a respondent's assessment but must make its own finding of fact and arrive at a legally

supportable true cash value. *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979). The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 377 NW2d 908 (1985). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. *Meadowlanes*, at 485-486; *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980); *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982).

In this case, the Tribunal concludes that the evidence, testimony, and law indicate that subject property is properly assessed at 50% of market value. An appraisal of fair market value requires a determination of the property's "highest and best use," which is "the reasonably probable and legal use of vacant land or an improved property that is legally permissible, physically possible, financially feasible, and that results in the highest value." Appraisal Institute, *Appraising Residential Properties*, (Chicago, 3rd ed., 1999), p 211. The Tribunal received no valuation evidence from Petitioner.

The Tribunal is charged in a valuation appeal to determine the true cash value of the subject property as of each tax year at issue. Petitioner was able to prove by a preponderance of its evidence that the assessment of the subject property should be modified to exclude the sprinklers in the women's unit.

JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the tax year at issue are MODIFIED as set forth in the *Introduction* section of this Final Opinion and Judgment.

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 90 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 this Order within 28 days of the entry of this Order. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. 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 the Tribunal's order. As provided in 1994 PA 254, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest rate of the 94-day discount treasury bill rate for the first Monday in each month plus 1%. As provided in 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after January 1, 1996 at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 1995 at the rate of 6.55% for calendar year 1996, (ii) after December 31, 1996 at the rate of 6.11% for calendar year 1997, (iii) after December 31, 1997 at the 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, (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, and (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010.

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

MICHIGAN TAX TRIBUNAL

Entered: November 04, 2010 By: Victoria L. Enyart