

STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Patricia Rizzo,
Petitioner,

v

MTT Docket No. 419686

Township of Benzonia,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Introduction

Petitioner, Patricia Rizzo, appeals the ad valorem property tax assessment levied by Respondent, Township of Benzonia, against the real property owned by Petitioner for the 2011, 2012, and 2013 tax years. Randall P. Whately, attorney, appeared on behalf of Petitioner. Respondent did not appear at the hearing. Petitioner's valuation witness was G. Tobin Heaton, State Certified General Appraiser.

The proceedings were brought before this Tribunal on October 28, 2013, to resolve the real property dispute.

Summary of Judgment

Petitioner contends the values should be as follows:

Parcel No. 10-02-450-400-16

Petitioner			
Year	TCV	SEV	TV
2011	\$27,000	\$13,500	\$13,500
2012	\$27,000	\$13,500	\$13,500
2013	\$27,000	\$13,500	\$13,500

Respondent has assessed the property on the tax roll as follows:

Parcel No. 10-02-450-400-16

Respondent			
Year	TCV	SEV	TV
2011	\$200,000	\$100,000	\$100,000
2012	\$200,000	\$100,000	\$100,000
2013	\$205,416	\$102,708	\$102,708

The Tribunal finds the values shall be:

Parcel No. 10-02-450-400-16

Respondent			
Year	TCV	SEV	TV
2011	\$27,000	\$13,500	\$13,500
2012	\$27,000	\$13,500	\$13,500
2013	\$27,000	\$13,500	\$13,500

Background

At issue is the true cash value for the subject property, a vacant lot located in Stoneridge Lake Views condominium development. This is located on a bluff near the village of Beulah within Benzonia Township. The subject property is 0.25 acre vacant residential lot.

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 appraisal.

Petitioner's Exhibits:

P-1 Appraisal of subject property as of December 31, 2010, 2011 and 2012.

Petitioner's only witness was G. Tobin Heaton, State Certified Residential Appraiser. He prepared an appraisal for Petitioner as of tax day for the three years at issue.

Heaton testified that he inspected the subject property July 2, 2013. The subject property was part of a development marketed around 2006 as an upscale residential community. It is located off of US-31, east of Crystal Lake. There is a steep road that leads up to a bluff where interior streets offer scenic views. Only two homes have been constructed. One is adjacent to the subject property. The local realtor indicated to Heaton that the spec home has been on the market since 2008.

Heaton's appraisal indicates that the development went into foreclosure after the crash of 2008. Some roads are incomplete and amenities such as

the clubhouse and pool were never constructed. A portion of the development is owned by the bank. The bank owns 15.19 acres with 17 vacant lots, 8 duplex lots and commercial vacant land on US-31.

Petitioner's Exhibit 4 is the listing for the 15.19 acres of land. It was listed for \$389,900. Heaton testified that it sold March 15, 2013 for \$200,000.

There were two sales on each side of the subject property. Subject property is Unit 16, Units 12 and 17 sold for \$9,000 each.

Three sales were found by Heaton. He determined that the sale price per square foot was the basis upon which the vacant lots sold. He focused on sales in Benzie County as the best indication of value. The three sales are:

	Subject	Sale 1	Sale 2	Sale 3
Location		Glen Malier	Lakewood	Holiday Ct.
Sale Price		\$115,000	\$40,000	\$35,000
SP/SF		\$5.28	\$2.42	\$2.01
Sale Date		08-2009	06-2011	06-2012
Size	10,890	21,780	16,553	17,424
Topography	Elevated/Slope	Similar	Similar	Similar
Appeal	Good	Similar	Inferior	Similar
Roads	Paved/Base only	Gravel	Gravel	Gravel
View	Crystal Lake	Superior	On Lake	Similar
Adj SP/SF		\$4.38	\$2.86	\$2.07

Sale one was adjusted for its inferior gravel road access and a superior view of Crystal Lake. Sale 2 was adjusted for an inferior location, interior

appeal, inferior gravel access; frontage on Sanford Lake is superior, but the view is inferior. Sale 3 was adjusted for the gravel access.

Heaton found that Sale 3 is most similar to the subject property with its distant views of Crystal Lake. Sale 1 has closer views of Crystal Lake. Sale 3 is given the least weight as it has lake frontage, albeit an unattractive small lake. It is not elevated and does not have any hardwoods.

Heaton concluded to \$2.50 per square foot or \$27,000 true cash value. The same application was applied for all three years of the appeal.

Heaton's report indicates that there was little to no absorption after the housing crisis. Therefore, due to the lack of demand and an unappealing nature of the unfinished development, the values have plummeted.

Petitioner's exhibit 34 is the site map. It indicates the road is only paved up to lot 17, no pool or clubhouse is constructed. The paving is only the base coat. It is not complete. This leaves some of the lots without access as well as added expenses to finish the paving.

Petitioner requested costs. Respondent failed to defend the assessments, did not respond when Petitioner offered to settle the matter. This required Petitioner to present its case at additional costs.

Respondent's Arguments

Respondent believes that the assessment is proper and reflective of the market value of the subject property. Respondent's assessor, Christy Brow, requested through a written document presented to Petitioner prior to the Prehearing to "withdraw and discontinue any further communication concerning this appeal as... [the Township Board is] not willing to fund said appeal."

Tribunal's Findings of Fact

1. The subject property involves a vacant residential condominium lot.
2. The subject property is located along Wild Laurel Lane, Benzonia Township, Beulah.
3. The parcel identification number is 10-02-450-400-16.
4. The Tribunal finds that the subject property has 10,890 square feet.
5. The highest and best use of the subject property as vacant is to hold it for future construction of a single family dwelling.
6. Petitioner presented an appraisal with adjustments for differences in amenities.
7. Respondent did not appear at the Default Hearing.
8. Respondent does not have the burden of proof but the burden of defending the assessment and assuring that it does not exceed 50% of market value.
9. Respondent failed to defend the assessment.

Applicable Law

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value. See MCL 211.27a.

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. 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 percent Const 1963, art 9, sec 3.

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 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. MCL 211.27(1).

The Michigan Supreme Court has determined that “true cash value” is synonymous with “fair market value.” See *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

Under MCL 205.737(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. See *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal is not bound to accept either of the parties' theories of valuation. See *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (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. See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485-486; 473 NW2d 636 (1991).

A proceeding before the Tax Tribunal is original, independent, and de novo. See MCL 205.735a(2). The Tribunal's factual findings are to be supported by competent, material, and substantial evidence. See *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

“Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.” *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

“The petitioner has the burden of proof in establishing the true cash value of the property.” MCL 205.737(3). “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, supra* at 354-355. However, “[t]he assessing agency has the burden of proof in establishing the ratio of the 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.” MCL 205.737(3).

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. See *Meadowlanes, supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd

380 Mich 390 (1968). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. See *Antisdale*. 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. See *Antisdale, supra* at 277.

Conclusions of Law

The Tribunal, having considered the testimony and evidence finds that Petitioner presented a Summary Appraisal that analyzed, discussed the subject property, the history of the development, sales of appropriate comparable lots. Heaton testified that the subject property has drastically declined in value. This was due partially to the market declining in 2008, the condominium project going back to the bank leaving pool, clubhouse and a partially finished road not constructed. The desirability of vacation lots that are on a bluff that has a “view” of Crystal Lake (albeit a mile away) was greatly diminished when the other vacant lots are sold by the bank. The cumulative issues with the project as testified to by Heaton and as outlined in his appraisal indicates that the value of the subject property is over assessed in excess of 50% of market value.

The indicated true cash value by Respondent at \$200,000 for 2011 and 2012 and an increase in 2013 to \$205,416 is not based on the sale of similar lots.

The Tribunal finds that Respondent's assessor, Christy Brow, willfully did not defend her assessment. The Tribunal's Order on October 3, 2013, states:

Contrary to Ms. Brow's contentions, Respondent cannot withdraw from the case as Respondent established the assessment and is technically being sued as a result of that action. Further, Ms. Brow is required, as part of her certification as an assessor, to defend the assessment. More importantly, Respondent's failure to properly prosecute this case has caused both the Tribunal and Petitioner to unnecessarily incur costs in the litigation of this matter. In that regard, Respondent could have agreed with Petitioner to resolve the case and submitted the signed agreement (i.e., stipulation) for entry of a consent judgment prior to conducting the prehearing conference. Instead, Respondent chose to take no action resulting in the conducting of the prehearing conference and the scheduling and possible conducting of a hearing given Petitioner's burden of establishing the property's true cash and taxable values under MCL 205.737.

MCL 205.752 states that "[c]osts may be awarded in the discretion of the tribunal," and the Tribunal adopted this statute in its procedural rules. See TTR 209. This rule allows the Tribunal to order costs be remunerated to a prevailing party of a decision or order. See TTR 145(1). Although the rule does not provide guidelines or criteria by which the Tribunal is to measure whether costs should be awarded, the Michigan Court of Appeals in its unpublished opinion *per curiam* in *Aberdeen of Brighton, LLC v City of Brighton* issued October 16, 2012

(Docket No. 301826), held that the language of TTR 145 (now TTR 209) is unambiguous, and its plain language indicates that a prevailing party may request costs and does not indicate that a showing of good cause or a frivolous defense is necessary. In the instant case, Respondent has “chosen” not to participate or otherwise defend its assessment, which justifies an award of costs for the conducting of the prehearing conference and may justify an award of costs for the conducting of the hearing, including, but not limited to, the cost of the court reporter, witness fees, attorney fees, etc. Therefore,

In the Tribunal’s final analysis, having considered the information and adjustments finds that the subject property’s market value is \$27,000 for all three years at issue.

JUDGMENT

IT IS ORDERED that the property’s assessed and taxable values for the tax year at issue shall be as set forth in the *Summary of Judgment* section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year 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 the Final Opinion and Judgment within 28 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, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, and prior to

July 1, 2012, at the rate of 1.09% for calendar year 2012, and (iv) after June 30, 2012, and prior to January 1, 2014, at the rate of 4.25%.

IT IS FURTHER ORDERED that Petitioner is AWARDED COSTS.

IT IS FURTHER ORDERED that Petitioner shall submit a bill of costs for attending the prehearing conference to the Tribunal and Respondent within 21 days of the entry of this Order.

This Opinion and Judgment resolves the last pending claim and closes this case.

By: Victoria L. Enyart

Entered: Nov. 08, 2013