

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

GMO Threshold Timber Michigan, LLC,
Petitioner,

v

MTT Docket No. 409400

Eagle Harbor Township,
Respondent.

Tribunal Judge Presiding
Preeti P. Gadola

OPINION AND JUDGMENT

Introduction

Petitioner, GMO Threshold Timber Michigan, LLC, appeals the ad valorem property tax assessment levied by Respondent, Eagle Harbor Township, against the real property owned by Petitioner for the 2010 tax year (Parcel No. 42-204-12-300-004). The property consists of 28.82 acres of vacant land. Stuart Deming, attorney, represented Petitioner; Respondent did not appear at the hearing. Petitioner's witness was Michael C. Jukuri, appraiser.

Respondent was placed in default on August 2, 2011, for failure to file an answer to the Petition pursuant to TTR 247. Respondent did not file a motion to set aside the default and thus a default hearing was scheduled and occurred on March 7, 2012, before the Tribunal Judge.

The subject property's True Cash Value ("TCV"), Assessed Value ("AV"), and Taxable Value ("TV") on the assessment change notice and affirmed by the 2010 March Board of Review are as follows:

Parcel Number: 42-204-12-300-004

Year	TCV	AV/SEV	TV
2010	\$110,968	\$55,484	\$43,290

Petitioner's contentions of TCV, SEV and TV for the tax year in question are as follows:

Parcel Number: 42-204-12-300-004

Year	TCV	AV/SEV	TV
2010	\$58,000	\$29,000	\$22,625

SUMMARY OF JUDGMENT

Based on the evidence, testimony, and case file, the property's TCV, SEV and TV as determined by the Tribunal for the tax year in question are as follows:

Parcel Number: 42-204-12-300-004

Year	TCV	AV/SEV	TV
2010	\$58,000	\$29,000	\$29,000

PETITIONER'S CONTENTIONS

Petitioner contends that the evidence presented in this case strongly supports a determination that the true cash value of the subject property as presented by Respondent is substantially overstated. Petitioner presented an appraisal of the property prepared by Michael C. Jukuri, State Licensed Appraiser, as evidence that Respondent and its local board of review overvalued the property.

PETITIONER'S ADMITTED EXHIBITS

- P-1 Qualifications of Michael C. Jukuri
- P-2 Appraisal Report of Michael C. Jukuri
- P-3 2010 Notice of Assessment – Grant Township
- P-4 2010 Board of Review Decision

**PETITIONER'S WITNESS PRESENTATION
OF PETITIONER'S ARGUMENT**

Michael C. Jukuri

Mr. Jukuri testified that he is a licensed appraiser with 17 years of appraisal experience for North Country Agency. He further testified that he is an associate real estate broker and designated business appraisal expert through the Michigan Association of Real Estate Appraisers/Northern Michigan University. (Petitioner's Exhibit 1, Transcript pp. 5-6.) Mr. Jukuri testified that he grew up in Northern Michigan, went to college there, and currently resides in the area. (Transcript, p. 5.)

Mr. Jukuri prepared an appraisal giving the value of the property as of February, 2010, as \$58,000. (Transcript, p. 4, P-2.) In determining the market value of the subject property, Mr. Jukuri relied upon the sales comparison approach. (Transcript, p. 8.) He identified three comparable sales that took place in the same market area as the subject property. With respect to each comparable sale, Mr. Jukuri made adjustments for the difference in acreage, electricity and seasonal access as compared to the property. (P-2.)

Mr. Jukuri testified that the subject property is vacant, lake view property. Its zoning is country estate, which allows for residential development. The parcel is five miles from Eagle Harbor, which is a seasonal, waterfront, resort community, and 18 miles from the Calumet-Laurium area where stores, hospital, and general amenities can be found. (Transcript, p. 8.) The property does not have lake frontage; however, it is located on Eagle Harbor Shortcut Road, which leads into Eagle Harbor. The terrain and height of the property allows for a view of Lake Superior. There is also electricity available at the site and it has year-round access. Mr. Jukuri

chose three sales that he considered most comparable to the subject and utilized them, with adjustments, to determine the true cash value of the subject property. (Transcript, pp. 7-9.)

The first sale was located on Eagle Harbor Shortcut Road under a mile from the subject property. (Transcript, p. 9, P-2.) It consisted of 11 acres, sold in June, 2006, and had a sale price of \$44,000 or about \$4,000 per acre. The sales comparable had well and septic, electricity, and also had a driveway constructed. Mr. Jukuri made a negative adjustment of \$20,000 based on his knowledge of the average cost of well, septic, and driveway improvements in the subject property area. (No adjustment for electricity was required as both the subject and the comparable had electricity.) (Transcript, p. 9, P-2.) He also made an adjustment for the difference in acreage between the comparable and the subject property and noted that it had year-round access as did the subject (requiring no adjustment). The adjusted sale price of the property was determined to be \$58,000.

The second comparable sale was also located on Eagle Harbor Shortcut Road was zero miles from the subject property. It consisted of 67.5 acres and had a sale price of \$55,000 on January 15, 2008. (Transcript, p. 10, P-2.) It had an adjusted sale price of \$58,200 and it also had year-round access and electricity, requiring no adjustments. (Transcript, p. 10-11, P-2.)

The third sales comparable was located on Brockway Mountain Drive in Copper Harbor, which is about ten miles east of the subject property. It consisted of 40 acres, had a similar view as the subject, and sold on November 6, 2006, for \$55,000. (Transcript, p. 10, P-2.) Comparable 3 did not have electricity and an adjustment of \$5,000 was made for the cost of a good generator. Mr. Jukuri testified that such generator source of electricity was becoming more common in the subject property area. (Transcript, p. 10.) Mr. Jukuri further testified that he generally does not

make an adjustment to comparables based on seasonal versus year-round access. He finds that properties with year-round access are generally only used until October or November. In this case, however, the only access to the subject property would be by snowmobile in the winter months as Brockway Mountain Drive is not plowed and is turned into a snowmobile trail (other seasonal properties are at least located on plowed roads). Such lack of any real access warranted an adjustment of 10%. (Transcript, p. 11.) The adjusted sale price of comparable 3 was \$53,500 after adjustments for acreage, lack of electricity, and lack of access in the winter months.

Mr. Jukuri chose three comparables that were sold 1-3 years before December 31, 2009.¹ He testified that most of the property in the county is state owned or privately owned timber property, making comparable sales very few and far between. (Transcript, p. 11.) In summation, Mr. Jukuri testified that the sales comparables he used were the best comparables available as adjusted to be consistent with the subject property. (Transcript, p. 10.)

RESPONDENT'S CONTENTIONS, ADMITTED EXHIBITS, AND WITNESSES

Respondent did not appear at the hearing on this matter to provide any contentions, exhibits, or witnesses.

FINDINGS OF FACT

1. The subject property consists of 28.82 acres of vacant land.

¹ MCL 211.2(2) states: (2) The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, any provisions in the charter of any city or village to the contrary notwithstanding. An assessing officer is not restricted to any particular period in the preparation of the assessment roll but may survey, examine, or review property at any time before or after the tax day.

2. The property is located in Eagle Harbor Township, Keweenaw County, Michigan. The tax identification number of the property is 42-204-12-300-004.
3. The property is classified as residential real.
4. Respondent, Eagle Harbor Township (confirmed by the Board of Review) assessed the property for the 2010 tax year as follows:

Parcel Number: 42-204-12-300-004

Year	TCV	AV/SEV	TV
2010	\$110,968	\$55,484	\$43,290

5. Petitioner presented an appraisal of the subject property with three comparable sales of vacant land, adjusted to be consistent with the subject property.

ISSUES PRESENTED AND CONCLUSIONS OF 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.

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%. 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); MSA 7.27(1).

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

Under MCL 205.737(1); MSA 7.650(37)(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 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 Limited Dividend Housing Association v City of Holland*, 437 Mich 473, 485- 486; 473 NW2d 636 (1991).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735(1); MSA 7.650(35)(1). The Tribunal's factual findings are to be supported by competent, material, and substantial evidence. *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Department of Treasury*, 185 Mich App 458, 462-463; 452 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 and Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

“The petitioner has the burden of 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 and Laughlin* at 354-355. However,

“[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessment 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 205.735(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. *Meadowlanes*, at 484-485; *Pantlind Hotel Co v State Tax Commission*, 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. *Antisdale*, p278. 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*, p 277. The Tribunal finds that the appropriate method of determining the true cash value of the subject property for the tax year at issue is the sales comparison approach.

VALUATION OF THE SUBJECT PROPERTY

Petitioner presents the Tribunal with an appraisal of the subject property prepared by Michael J. Jukuri, State Licensed Appraiser, in support of its valuation of the property. The appraisal presents three sales of properties comparable to the subject with adjustments consistent with the characteristics of the property. There were very few adjustments to the comparable properties, such only consisting of the difference in acreage, electricity, and seasonal access to the comparable land. All of the comparable sales were 0-10 miles from the subject and were, therefore, located in the same proximity to shopping, hospital, and general amenities. Mr.

Jukuri's conclusion of true cash value of the property was within the range of the sale price per acre of the comparable properties.

Mr. Jukuri testified that he grew up in Houghton County, Michigan, and currently lives there. Houghton County is directly adjacent to Keweenaw County where the subject property is located. Mr. Jukuri has been a state licensed real estate appraiser for 17 years and the Tribunal finds his testimony to be credible and reliable with regard to determining the true cash value of the property. The Tribunal finds that the appraisal presented by Mr. Jukuri is the best evidence to be relied upon in making its independent determination of the fair market value of the subject property.

Respondent did not appear at the hearing on this matter. Respondent was defaulted for failure to file an Answer to Petitioner's Petition, and failed to cure the default.

JUDGMENT

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner did prove by a preponderance of the evidence that the subject property is assessed in excess of 50% of market value for the 2010 tax year. As such, the property's TCV, SEV and TV are as stated in Summary of Judgment section above.

IT IS SO ORDERED.

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 value 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 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 and (iii) after December 31, 2011, at the rate of 1.09% for calendar year 2012.

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

MICHIGAN TAX TRIBUNAL

Entered: April 2, 2012 By: Preeti P. Gadola