

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

Scott and Brenda Wilson,
Petitioners,

MTT Docket No. 355732

v

Township of Hill,
Respondent.

Tribunal Judge Presiding
Rachel J. Asbury

FINAL OPINION AND JUDGMENT

INTRODUCTION

On December 11, 2008, the Tribunal entered an Order of Default in the above-captioned case, placing Respondent in default for failure to file an answer and required Respondent to file an answer to the petition and a motion to set aside the default within 21 days of the entry of the Order. Respondent did not cure the default. On January 28, 2009, the Tribunal entered an Order scheduling a default hearing, which was held on March 26, 2009. Petitioner was represented by Thomas A. Basil, Jr, Shinnery, & Cook, PC. Respondent was not represented.

Respondent's contentions of true cash value, assessed value, and taxable value, as confirmed by the Board of Review, are:

Parcel Number	Year	TCV	AV	TV
006-014-012-000	2007	\$161,200	\$ 80,600	\$47,714
	2008	\$236,400	\$118,200	\$81,611

Petitioners' contentions of true cash value, assessed value, and taxable value are:

Parcel Number	Year	TCV	AV	TV
006-014-012-000	2008	\$160,000	\$80,000	\$80,000

Petitioners filed a motion to amend to add the 2009 assessment on March 11, 2009. The Tribunal denied Petitioners' motion as the 2009 tax roll had not yet been finalized and final values for the subject property had not been established at the time the motion was filed.

PETITIONERS' POSITION

Petitioners purchased the subject property on February 22, 2008 for \$160,000. Petitioners appealed Respondent's assessment of the property for the 2008 tax year to Respondent's 2008 March Board of Review. The Board of Review confirmed the assessment and Petitioners appealed that determination to the Tribunal. Petitioners assert that the purchase price reflects the true cash value of the property.

Petitioner, Scott Wilson, testified that he had at one time been a joint owner of this property with his mother. Prior to the transfer in February 2008, Mr. Wilson quit claimed his interest to his mother, the property was placed in a trust, and sold to Mr. Wilson.

Mr. Wilson asserts that the sale was an arms-length transaction as he negotiated extensively with his mother and stepfather on the price. Mr. Wilson testified that they were ready to place the property on the open market if his offer was not what they believed the property was worth. Mr. Wilson testified that he believed that the sale price he paid was the best indicator of the true cash value, or market value, of the subject property.

Mr. Wilson testified that no additions were made to the subject property for the 2008 tax year.

In support of their contention of value, Petitioners presented an appraisal by Todd Herzog, Herzog Appraisal, which provided “my (our) opinion of value, as defined, of the real property that is the subject of this report is \$178,000, as of 2/25/2009, which is the date of inspection and the effective date of this appraisal.”¹ Mr. Herzog testified that he conducted an interior and exterior inspection of the subject property and an external inspection of each comparable property. Mr. Herzog testified that the income method of valuation was not appropriate in this matter as the subject property is not rented or leased to others. It is used by Petitioners. Mr. Herzog further testified that the cost approach would have established an excessively high value, not in line with the true value of the property.

Mr. Herzog testified that he reviewed 5 or 6 sales for inclusion in his market comparable analysis. He used sales that occurred during calendar year 2008. There were very few sales of homes with 40 acres of land for use as comparables. Mr. Herzog testified that the value conclusions he reached would be applicable to a 2009 or 2010 estimate of value and, based upon his experience in the township and surrounding area, the 2008 estimate of value might have been a little higher. However, he would not speculate on the amount of adjustment that might be appropriate.

RESPONDENT’S POSITION

Respondent did not file an answer or any other documentation or evidence in this matter. Nor did Respondent file a response to the Tribunal’s Order placing Respondent in default. Respondent’s record card indicates a transfer of ownership occurred in 2008. Respondent increased the taxable value for the 2008 tax year and increased the state equalized value and assessed value for the 2008 tax year as well.

¹ Petitioners’ valuation disclosure, p 2

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 Petitioners were the owners of the subject property for the tax year at issue and properly appealed the tax year 2008 assessment to Respondent's Board of Review. This is a second, recreational home for Petitioners and does not have a principal residence exemption.

The Tribunal takes notice that Respondent's property record card indicates that the date of transfer to Petitioners was "2/22/2008." However, the taxable value of the subject property was increased for the 2008 tax year from \$47,714 for 2007, to a taxable value for 2008 of \$81,611. There was no testimony or reliable evidence submitted indicating any addition to the property during the 2007 calendar year. Petitioner testified, under oath, that no construction permits were taken and no additions were made to the property during the 2007 calendar year. As such, the increase in taxable value for the 2008 tax year is limited to the applicable CPI or 5%, whichever is less, as provided by statute and the constitution.

Petitioners' purchase price was \$160,000 in 2008. Petitioners' appraiser estimates the market value of the subject property as \$178,000 effective February 25, 2009. Respondent's true cash value for the subject property for the 2007 tax year was \$161,200.00. Respondent's state equalized value for the 2008 tax year increased to \$118,200, indicated a true cash value of \$236,400. No evidence was presented or provided to support this 46% increase in true cash value.

The Tribunal finds the valuation methodology that is most accurate and bears a reasonable relationship to the property's true cash value to be Petitioner's appraisal. The appraisal supports Petitioners' purchase price, even though the sales transaction was between family members.

CONCLUSIONS OF LAW

TTR 205.1247 provides:

- (1) If a party has failed to plead, appear, or otherwise proceed as provided by these rules or as required by the Tribunal, then the party may be held in default by the tribunal on motion of another party or on the initiative of the Tribunal. A party placed in default shall cure the default as provided by the order placing the party in default and file a motion to set aside the default accompanied by the appropriate fee within 21 days of entry of the order placing the party in default or as otherwise ordered by the Tribunal. Failure to comply with an order of default may result in the dismissal of the case or the scheduling of a default hearing as provided in this rule.
- (2) For purposes of this rule, "default hearing" means a hearing at which the defaulted party is precluded from presenting any testimony or submitting any evidence not submitted to the Tribunal before the entry of the order placing the party in default and may not, unless otherwise ordered by the Tribunal, examine the other party's witness.

As such, the Tribunal decides this matter based only on the file and testimony and evidence presented by Petitioners at hearing.

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 theories, or it may utilize a combination of both in arriving at its determination.

Further, MCL 211.27a provides:

- (2) Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:
- (a) The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994.

Based upon the file, testimony and evidence presented at hearing, and the applicable case law and statutory provisions, the Tribunal concludes that the taxable value of the subject property was improperly increased for the 2008 tax year. There was no evidence or testimony presented to show that additions had been made to the property for 2008 assessment purposes nor that a transfer had taken place during the 2007 calendar year.

JUDGMENT

IT IS ORDERED that the property's true cash, assessed, and taxable values for the tax year at issue are:

Parcel Number	Year	TCV	AV	TV
006-014-012-000	2008	\$161,200	\$80,600	\$48,811

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 value 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 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 after December 31, 2007, at the rate of 5.81% for calendar year 2008, and after December 31, 2008, at the rate of 3.31% for calendar year 2009.

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

MICHIGAN TAX TRIBUNAL

Entered: March 31, 2009

By: Rachel Asbury