

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

Capital Management Trust of Jana Kirlin Brownell,
u/t/a dated September 27, 1985, as amended,
Petitioner,

v

MTT Docket No. 443497

City of Grosse Pointe Woods,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

FINAL OPINION AND JUDGMENT

Administrative Law Judge Thomas A. Halick issued a Proposed Opinion and Judgment (“POJ”) on November 25, 2014. The POJ states, in pertinent part, that “the parties shall have 20 days from date of entry of this Proposed Order to file exceptions and written arguments with the Tribunal consistent with Section 81 of the Administrative Procedures Act (MCL 24.281).”

On December 15, 2014, Petitioner filed exceptions to the POJ. In the exceptions, Petitioner states that the Tribunal committed two errors. Specifically, while it “agrees that 338 Provencal compares most closely to the Subject Property,” Petitioner states:

(1) [T]he Tribunal rejected[,] without basis[,] the substantial evidence presented through Petitioner’s experts that market conditions declined during the tax years in question, and (2) in comparing the Subject Property to 338 Provencal . . . , the Tribunal erroneously applied an upward adjustment . . . for inferior condition/effective age.

In support of the foregoing, Petitioner states that: (1) its evidence “demonstrated that[,] in the relevant market, values of comparable homes declined from 2012 to 2013 and then increased marginally from 2013 to 2014 but still below 2012 values;” (2) “each party’s expert opined . . . that the true cash value of the Subject Property decreased by \$100,000 from 2012 to 2013” (emphasis and footnote omitted); (3) “even the currently effective assessments report a decline in value from 2012 to 2013 of approximately 13.7%;” (4) “[t]he Tribunal did not discuss Ms. Agney’s testimony about the listing of 280 Provencal or the sales of 290 Provencal, 411 Country Club Drive[,] and 372 Provencal in the Proposed Opinion and Judgment;” (5) although the preceding sales were listed in Petitioner’s Exhibit 3, 4, and 5, which were excluded by the Administrative Law Judge, “[t]he Tribunal . . . can take judicial notice of this information under MRE 201(b)(2) . . . ;” and (6) “[t]he Proposed Judgment and Opinion incorrectly states that Petitioner’s appraiser acknowledged the propriety of the adjustment, but Mr. Babcock actually testified that even though 338 Provencal is an 83 year-old house, its effective age is

approximately 30 years given recent improvements and renovations;” and the “condition . . . is similar to the Subject Property.”

On December 23, 2014, Respondent filed a response to Petitioner’s exceptions. In the response, Respondent states that although the Tribunal “should correct its apparent typo on the bottom of page 3 . . . ,” which erroneously inverts its contentions for the 2012 and 2013 tax years, “the Tribunal was free to accept or reject [the parties’] TCV contentions[,] and the Tribunal’s Proposed Judgment . . . was certainly supported by competent evidence on the record.” Respondent further states that: (1) the “Tribunal simply chose to place greater weight on Respondent’s conclusions that there was simply inadequate data to substantiate a general market decline;” (2) “[d]eclines in sales between specific properties (each with a great deal of adjustments for various factors)[] does not translate to a general market decline;” (3) just because the parties’ experts agree that the subject property’s true cash value for the 2013 tax year is \$100,000 less than the 2012 tax year “does not require the Tribunal to simply subtract \$100,000.00 from any given figure;” (4) “there are numerous factors and adjustments that are made between properties in determining true cash value, and the Tribunal did not err by concluding . . . that the general market was flat during all three tax years in question;” (5) “when compared with the appraisal reports of both experts, Ms. Agney’s testimony can only be described as anecdotal at best;” and (5) “the Tribunal had good reason to reject Mr. Babcock’s opinion that there should be no upward adjustment for 338 Provencal” based on “[t]he photos . . . showing the general outdated condition of [that] property in spite of its architectural detail from the late 1920s.” In sum, Respondent requests that the Tribunal uphold its decision, set forth in the POJ, except that the POJ be modified to correctly reflect Respondent’s contentions of value for the 2012 and 2013 tax years and that Respondent was represented by Charles T. Bershback, not Donald R. Bershback.

The Tribunal has considered the exceptions, response, and the case file and finds that the Administrative Law Judge properly considered the testimony and evidence in the rendering of the POJ.

In addressing Petitioner’s first argument, although Petitioner contends that the Administrative Law Judge erred in not reducing the subject property’s true cash value for the 2013 tax year, based on the documentary evidence provided in this case showing a decline in the market from 2012 to 2013, the Administrative Law Judge was not bound by either parties’ valuation figures or approach.¹ Further, the Tribunal has a duty to *independently* determine a property’s true cash value based on its expertise and the facts presented.² In that regard, although portions of the documentary evidence filed by both parties does *suggest* that the subject’s market experienced a decline from 2012 to 2013, the reliability of this purported trend was controverted by Respondent’s appraiser’s credible testimony and analysis that there were few comparable sales in the subject’s area, and upon expanding his search beyond the Grosse Pointe Area, the results

¹ See *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

² See *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 355-356; 483 NW2d 416 (1992).

actually revealed that the market was mostly stable for comparable properties from 2012 to 2013.³ Respondent's appraiser further highlighted the danger of using just two or three properties to establish any trends in the market by credibly testifying that "[i]t's not standard appraisal practice[, and i]t gives you a very limited idea of . . . what's happening in the market."⁴ Additionally, the Administrative Law Judge's independent determination of the subject property's true cash value for *all* of the tax years at issue is within the range of valuation evidence presented,⁵ and although the economic condition factor ("ECF") utilized to establish the subject property's true cash value, for assessment purposes, may have, likewise, suggested a decline in local market conditions from 2012 to 2013, there was no evidence presented to explain how the ECFs were derived for purposes of localizing the subject property's true cash value via the cost approach for these tax years, and the Tribunal cannot afford presumptive validity to a property's original assessment, including calculations therein.

With that being said, although the Administrative Law Judge failed to document Ms. Agney's testimony regarding the listing of 280 Provencal Road or the sales of 290 Provencal Road, 411 Country Club Drive, and 372 Provencal Road in the POJ, such error is *de minimis* in nature because the inclusion of such testimony in the POJ would not have changed the outcome in this case. Specifically, listings are not considered to be reliable evidence; testimony, without documentary proof to substantiate the same, is merely a hollow assertion; and the Administrative Law Judge properly excluded Petitioner's Exhibits 3, 4, and 5, which contained information regarding the sales of 290 Provencal Road, 411 Country Club Drive, and 372 Provencal Road, because Petitioner's failure to timely exchange such evidence with Respondent denied Respondent the opportunity to adequately consider and evaluate the valuation evidence prior to the hearing. And although the Administrative Law Judge could have taken judicial notice of the fact that the evidence contained in Petitioner's Exhibits 3, 4, and 5 is available to the public on Respondent's own website, judicial notice is discretionary, judicial notice of this fact is irrelevant for purposes of this appeal, and taking judicial notice of this evidence for the purpose for which Petitioner asserts that it should be included in this appeal would be prejudicial to Respondent because Respondent was not adequately apprised that Petitioner was relying on these sales to support its contentions of value for the subject property for the tax years at issue.⁶ Nonetheless, even if the Administrative Law Judge had found this documentary evidence to be admissible, despite Petitioner's failure to follow the Tribunal's June 24, 2014 Scheduling Order in this case, this evidence, too, would have been deemed unreliable because, absent adjustments for elements of comparison, this evidence, like the evidence in P1 and P2, fails to prove that these properties are truly comparable to the subject property to establish trends in the subject's market area or the subject property's true cash value for the tax years at issue.

³ See TR at 126-127. See also R-2 at 5.

⁴ TR at 128.

⁵ See *President Inn Properties LLC v City of Grand Rapids*, 291 Mich App 625, 642; 806 NW2d 342 (2011).

⁶ See MRE 201 and TTR 237.

Next, in addressing Petitioner's second argument, although Petitioner argues that the Administrative Law Judge erred in applying an upward adjustment for the inferior condition/effective age of 338 Provencal Road, as compared to the subject property, the Tribunal disagrees. While the Administrative Law Judge did err in stating that "Petitioner's appraiser acknowledged that an adjustment for condition would be appropriate,"⁷ as the transcript does not reflect such testimony but rather reflects Petitioner's appraiser's unyielding opinion that no adjustment for condition, coupled with age, was warranted,⁸ and although such statement shall be stricken from the POJ, the Administrative Law Judge's finding to the contrary is supported by the evidence presented. Specifically, "[e]ffective age is the age indicated by the condition and utility of a structure . . .,"⁹ and the Administrative Law Judge, in weighing *all* of the evidence presented and in applying his expertise to the facts presented in this case, found that an adjustment for condition, or effective age, based on Respondent's credible testimony and analysis, was, in fact, warranted for 338 Provencal Road. Nevertheless, even if the Tribunal were to extract this upward adjustment, the valuation evidence the Administrative Law Judge found to be reliable in rendering his independent determination of true cash value, as documented on page 17 of the POJ, would still support his final reconciliation of the subject property's true cash value for the tax years at issue.

Notwithstanding the above, and although *de minimis* in nature, the Administrative Law Judge did err, including the *de minimis* error indicated above on page 18 of the POJ, on pages 1 and 3. Specifically, the Administrative Law Judge erred in stating that Respondent was represented by Donald R. Bershback at the hearing on page 1 and in reversing Respondent's contentions of value for the 2012 and 2013 tax years on page 3. As a result, page 1 shall be modified to reflect that Respondent was represented by Charles T. Bershback, as opposed to Donald R. Bershback, at the hearing, and, although correctly stated on page 6, page 3 shall be modified to reflect, as indicated below, Respondent's revised contentions of true cash value for the subject property for the 2012 and 2013 tax years as \$1,755,000 and \$1,655,000, respectively.

Given the above, Petitioner has shown good cause to justify the modification of the Proposed Opinion and Judgment, with regard to the *de minimis* errors identified above only. See MCL 205.762. As such, the Tribunal modifies the Proposed Opinion and Judgment and adopts the modified Proposed Opinion and Judgment as the Tribunal's final decision in this case. See MCL 205.726. See MCL 205.726. The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the Proposed Opinion and Judgment, as modified herein, in this Final Opinion and Judgment. As a result:

- a. The property's TCV, SEV, and TV, as established by the Board of Review for the tax years at issue, are as follows:

⁷ POJ at 18.

⁸ See TR at 72.

⁹ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013) at 600.

Parcel Number: 40-014-99-0006-000

Year	TCV	SEV	TV
2012	\$1,515,400	\$757,700	\$723,287
2013	\$1,307,400	\$653,700	\$653,700
2014	\$1,398,800	\$699,400	\$664,100

- b. Respondent's revised contentions of TCV, SEV, and TV, for the tax years at issue, are as follows:

Parcel Number: 40-014-99-0006-000

Year	TCV	SEV	TV
2012	\$1,755,000	\$877,500	\$723,287
2013	\$1,655,000	\$827,500	\$740,645
2014	*	*	*

*No contentions provided.

- c. The property's final TCV, SEV, and TV, for the tax years at issue, are as follows:

Parcel Number: 40-014-99-0006-000

Year	TCV	SEV	TV
2012	\$1,400,000	\$700,000	\$700,000
2013	\$1,400,000	\$700,000	\$700,000
2014	\$1,400,000	\$700,000	\$700,000

IT IS SO ORDERED.

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 provided 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 within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and 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%; and (iv) after June 30, 2012, through June 30, 2015, at the rate of 4.25%.

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

By: Steven H. Lasher

Entered: Jan 14, 2015

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