

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL
PROPERTY TAX APPEAL

Donald Parker,
Petitioner,

v

MTT Docket No. 316709

West Bloomfield Township,
Respondent.

Tribunal Judge Presiding
Rachel J. Asbury

FINAL OPINION AND JUDGMENT

ORDER DENYING RESPONDENT'S MOTION TO DISMISS

ORDER DENYING PETITIONER'S MOTION FOR IMMEDIATE CONSIDERATION

ORDER DENYING PETITIONER'S MOTION TO SUBSTITUTE WITNESS

ORDER DENYING PETITIONER'S MOTION FOR COSTS

INTRODUCTION

Petitioner appeals the property tax assessment by Respondent of his property for tax year 2005. A hearing was held in the above-captioned case on August 1, 2007. Petitioner was represented by Scott Aston, Senior Manager, Deloitte Tax LLP. Respondent was represented by Derk Beckerleg (P33628), Secrest Wardle.

BACKGROUND

Petitioner filed a Petition with Tribunal on June 23, 2005, appealing Respondent's tax year 2005 assessment. Petitioner appealed the assessment to Respondent's Board of Review, which reduced the true cash value for 2005 to \$960,000 and the assessed and taxable values to \$480,000. Petitioner contended that the true cash, assessed, state equalized, and taxable values for that tax year were invalid

for the reason that: (a) [t]he equalized assessment thus imposed on the subject property is more than 50% of its true cash value in violation of the applicable statutory and constitutional limitations. (b) The assessment is unlawful and is based upon the application of wrong principles and thereby operates as a fraud upon the taxpayer.¹

Petitioner appealed to the Tribunal to reduce the 2005 true cash value to \$725,000 for the 2005 tax year.

Respondent filed an Answer on July 18, 2005. Respondent asserted that Petitioner failed to “allege specific and sufficient facts to set forth a cause of action[,]... allege specific and sufficient facts to establish fraud, error of law, discrimination, application of wrong principles or illegality on the part of the Respondent[, or] specific and sufficient facts to establish the true cash value, assessed value and taxable value of its property.”²

On May 3, 2007, Petitioner filed a motion to amend to add the 2007 tax year. The Tribunal granted the motion on May 14, 2007. No motion to amend to add tax year 2006 was filed. At the prehearing conference held February 1, 2007, and as reflected in the Tribunal’s prehearing summary, the Tribunal stated that only tax year 2005 would be at issue at hearing. At hearing, Respondent moved to “sever 2007 and not include it in this trial, for the simple reason that we all agreed at the prehearing conference that 2005 was going to be the year we tried.”³ The Tribunal determined that tax year 2007 would be severed and a separate docket number issued.

The subject property is Petitioner’s principal residence. The parties’ contentions of true cash value, assessed value, state equalized value, and taxable value are as follows:

¹ Petition

² Answer

³ Transcript page 6, 115-18

Respondent's contentions, as confirmed by Board of Review:

Parcel Number	Year	TCV	SEV	TV
63-X-18-07-277-044	2005	\$960,000	\$480,000	\$480,000

Petitioner's contentions:

Parcel Number	Year	TCV	SEV	TV
63-X-18-07-277-044	2005	\$710,000	\$355,000	\$355,000

The subject property is located at 2931 Warner, West Bloomfield Township, Oakland County, Michigan. Petitioner and his wife, Julie A. Gonzalez, purchased the property on October 29, 2003. The parties filed a joint stipulation of uncontroverted facts and agree that the subject property is residential real property, used as a single family residence. The property consists of "a single family residence, attached garage, boathouse and other improvements."⁴

PETITIONER'S CONTENTIONS

Petitioner, in support of his position, presented the following exhibits:

- P-1 Petitioner's Valuation Disclosure for tax years 2006 and 2007 (cover letter from Petitioner's Representative and copy of Petitioner's prehearing statement)
- P-2 Petitioner's Motion to Add a Subsequent Year and Valuation Disclosure for tax year 2007

Petitioner offered the testimony of Ms. Sherri Borque. Ms. Borque is a certified appraiser who is co-owner of and employee of Ridener Appraisal Service. Ms. Borque testified that she has appraised "thousands"⁵ of properties "[c]oncentrating on Wayne, Oakland, and Macomb."⁶ In response to the question "how many properties similar to the subject have you appraised?" Ms Borque replied, "Hundreds."⁷

⁴ Joint stipulation, #5

⁵ Transcript page 18, l 22

⁶ Transcript page 19, l 5

⁷ Transcript page 19, ll 7-9

Ms. Borque testified that she conducted a limited appraisal that included interior and exterior inspection. Petitioner moved to admit Petitioner's Exhibit Number One into the Record as it relates to 12/31/04."⁸

Respondent objected to the admission of this exhibit. Respondent argued that "the cover page of that appraisal, it's an appraisal of the subject property reaching a value conclusion as of December 31st, 2005, if you go to Page P1-A of that same appraisal... 'Purpose of this appraisal is to estimate the market value of the subject property as improved. ...In my opinion, the estimated market value of the property as of December 31st, 2005.'"⁹ Respondent further argued that the appraisal conclusions relate to the 2006 tax year and are "not relevant to the ... 2005 tax year, which would have had a valuation conclusion date of 12/31/04."¹⁰

Petitioner asserted that the comparable summary page of the appraisal indicates that the comparables were used "in this appraisal to estimate the value as of 12/31/04, and that is indicated in the summary on that page...so this summary covers 12/31/04 and 12/31/05."¹¹

RESPONDENT'S CONTENTIONS

Respondent moved "to dismiss the case with prejudice and reserve the right to ask for costs by filing a motion at a later date."¹² Respondent asserts that Petitioner's appraisal does not offer an opinion of market value for the tax year at issue.

⁸ Transcript page 21, ll 2-3

⁹ Transcript page 21, ll 6-16

¹⁰ Transcript page 21, l 24 – page 22, l 2

¹¹ Transcript page 23, l 23 – page 24, l 1

FINDINGS OF FACTS

The Tribunal finds that Petitioner filed its valuation disclosure, an appraisal prepared by Ms. Sherri L. Bourque, State Licensed Appraiser, on January 20, 2006. Ms. Bourque is employed by Ridener Appraisal Service, Inc.

Petitioner submitted that same appraisal as Petitioner's Exhibit 1 at hearing. Included as parts of Petitioner's Exhibit 1 were two letters. The first was a cover letter,¹³ signed by Petitioner's Representative, not the appraiser, which states:

NOW COMES the Petitioner, Donald Parker, by and through its representative, Scott Aston and states that attached hereto is a copy of an appraisal prepared by Ridener Appraisal Service, Inc. which is relied upon in determining the Petitioner's contention of true cash value in this matter. Based upon this information, the Petitioner states that the true cash value of the real property which is the subject of this appeal, is as follows:
property

As of December 31, 2004, is no more than: \$710,000
As of December 31, 2005, is no more than: \$675,000

The second letter, signed by the appraiser, follows a transmittal letter attached to Petitioner's valuation disclosure which states "[w]hen an appraisal is completed by Ridener Appraisal Service, it is completed with intent of providing a fair and accurate estimate of value based on recent, similar competing sales in the subject market.... Our goal is to provide fair market value regardless of the purpose of the appraisal." This second letter, signed by Ms. Bourque, states, "[i]n my opinion, the estimated market value of the property as of December 31, 2005 is: \$675,000. The attached report contains the description, analysis and supportive data for the conclusions, final estimate of value, descriptive photograph, limiting conditions and appropriate certifications."

¹² Transcript page 37, ll 16-18

¹³ Petitioner's exhibit P 1-1

On page 2 of Petitioner's Appraisal Report, the appraiser includes the comment, "Greatest weight is given to the sales comparison approach. Subject was inspected 3/9/2006 with an effective date of 12/31/2005."¹⁴ The dates of sale for all comparables were during calendar year 2005. Page 6 of Petitioner's Appraisal indicates with an "effective date of appraisal 12/31/2005 Tax Year" and the appraiser's "APPRAISED VALUE OF SUBJECT PROPERTY" is given as \$675,000.¹⁵

A witness may not testify as to the value of property without submission of a valuation disclosure containing that person's value conclusions and the basis for the conclusions. TTR 283 Although Petitioner's Representative stated a contention as to value for the 2005 tax year in his cover letter, Petitioner's appraisal did not reach a conclusion as to value for that tax year. However, contained in Petitioner's Appraisal was a page with comparable sales for 2004. Page 16 of Petitioner's Exhibit 1, contains the statement,

Summary of Sales Comparison Approach: Comparable sale #7, #8, and #9 are sales from 2004. These sales represent an estimated market value of \$710,000 with an effective date of 12/31/2004. These sales had recorded sale prices of \$1. They were discounted approx 6% to represent the sale price compared to the list price...

Petitioner's Representative asserts that these comparables and this statement indicates "this appraisal covers 12/31/04 and 12/31/05."¹⁶

Based on the conflict in effective years and ambiguity within Petitioner's Exhibit 1, the Tribunal partially sustained Respondent's objection to the admission of Petitioner's Exhibit 1. The

¹⁴ Petitioner's exhibit P 1-10

¹⁵ Petitioner's exhibit P 1-14

¹⁶ Transcript page 23, 1 25 – page 24, 1 1

Tribunal allowed the admission of the Appraisal for information purposes related to comparable sales #7, #8, and #9, leaving to the Tribunal the responsibility to “balance the credibility” of the information provided. The Tribunal made clear to Petitioner’s Representative that Petitioner’s appraiser could testify as to the comparable sales, would be given an opportunity to explain the statement made and to provide an explanation of what appeared to the Tribunal to be a conflict between the statement on page 16 and her conclusions of value. The Tribunal stated, however, that “she (the appraiser) may not make a valuation conclusion, because her certified valuation conclusion is only the one year.”¹⁷

Petitioner’s Representative was given the opportunity to proceed with the examination of Ms. Bourque, and to “question her on the comparables, (#7, #8, and #9).” The Tribunal was clear in its ruling that such testimony would be taken into consideration when determining the outcome of Petitioner’s appeal. Petitioner’s Representative declined to have the appraiser testify. Petitioner’s Representative stated on the record that “[i]f we’re only discussing this one page as opposed to the complete appraisal, I don’t believe that we are going to meet our burden of proof.”¹⁸ Petitioner’s Representative further stated that “I’m not willing to pull out one page of this valuation document, admit that into evidence and disregard the rest.... Either the whole document is admitted or it’s not. And if it’s not admitted, then we can’t possibly meet our burden of proof.”¹⁹

Petitioner’s Representative maintained that the Appraisal, in its entirety, established an opinion of value for tax year 2005. Petitioner’s Representative refused to address the content of page 16

¹⁷ Transcript page 28, ll 20-24

¹⁸ Transcript page 33, ll 10-13

¹⁹ Transcript pabe37, ll 8-14

separately from the remainder of the appraisal. Petitioner's Representative, when asked to explain the apparent conflict between the cover letter assertion of value as of December 31, 2005 and his assertion that, in actuality, the opinion of value was for the 2005 tax year, argued that,

Appraisals cover multiple tax years and just because the cover page and the second page indicates, it reiterates the value as of 12/31/05, it does not make the analysis related to 12/31/04 within this document any less relevant. The comparable 7, 8 and 9 all occurred within the 2004 tax year. Adjustments have been made to those comparables to match the subject property and arrive at a value as of 12/31/04.²⁰

Although Petitioner's Representative declined to allow the appraiser to testify as to comparable sales #7, #8, and #9, the Tribunal did review the data contained on page 16. There was no explanation of the sale price information, "recorded sale prices of \$1,"²¹ no explanation of how Ms. Bourque determined the discounting percentage of 6% for the sales. Further, there were no time adjustments for sales 1 through 4 to reflect that the sales occurred after the tax year at issue. The Tribunal finds this information, as reflected in the appraisal, to be an unreliable indicator of value for the tax year at issue.

The Tribunal found and so stated on the record that "the valuation disclosure does not relate to the year in question.... I can't question Ms. Bourque, her expert opinion and her certified determination of a value conclusion, I have to accept that it is what she wrote and told me, and she said it was for the 2006 tax year. ... I can't say that she certified something other than what she meant, I have to take it at her face value,..."²²

²⁰ Transcript page 24, l 23 – page 25 l 6

²¹ Petitioner's exhibit P 1-16

²² Transcript page 29, l 11-page 30, l 1

Petitioner's Exhibit 2 relates to the 2007 tax year, a tax year not at issue in this matter. Petitioner did not move to have this exhibit admitted into evidence.

Petitioner's Exhibit 2 is an Appraisal of the subject property "[a]s of December 31, 2006" prepared by Sherri L. Bourque of Ridener Appraisal Service, Inc. The Summary Page²³ of the Appraisal, signed by Ms. Bourque, states "In my opinion, the estimated market value of the property as of December 31, 2006 is: \$550,000. The attached report contains the description, analysis and supportive data for the conclusions, final estimate of value, descriptive photograph, limiting conditions and appropriate certifications."

Page 2 of the Appraisal contains the sales comparison data used by the appraiser. The dates of sale for all comparables were during calendar year 2006. At the bottom of page 2, the appraiser states "[b]ased on a complete visual inspection of the interior and external areas of the subject property, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is \$550,000 as of 12/31/2006, which is the date of inspection and the effective date of this appraisal." Page 6 of the Appraisal indicates, with an "effective date of appraisal 12/31/2006," the "APPRAISED VALUE OF SUBJECT PROPERTY" was \$550,000.²⁴

The Tribunal finds that the 2005 tax year is the only tax year at issue in this matter. Petitioner's first valuation disclosure, appraisal, contains the unambiguous statement that the appraiser's opinion of value is effective as of December 31, 2005. Petitioner's second valuation disclosure,

²³ Petitioner's exhibit P 2-4

²⁴ Petitioner's exhibit P 2-10

appraisal, contains the unambiguous statement that the appraiser's opinion of value is effective as of December 31, 2006. On one single page of Petitioner's exhibit 1, the appraiser included an explanatory statement specific to 3 of the 7 comparables utilized in her sales comparison analysis that related to adjustments made based on those sales in determining an estimate of value of \$710,000 for the subject property. However, the appraiser's opinion of value "as of December 31, 2005," based upon her analysis of all of the comparable sales and as stated in her conclusions, was \$675,000.

The Tribunal finds Respondent's assessment to be a reliable indicator of value.

On July 25, 2007, Petitioner filed a Motion for Immediate Consideration, a Motion for Substitute Witness, and a Motion for Costs. Petitioner asserts that:

1. "This case has been set for hearing... August 1, 2007."
2. "[S]ubstituting Ms. Julie Gonzalez for Mr. Donald Parker will not prejudice the respondent."
3. "Petitioner's representative ...may call Mr. Donald Parker to testify" and "Mr. Parker may be required to testify in another case scheduled for August 1, 2007"
4. Ms. Julie Gonzalez is also the taxpayer of record and would be able to provide the same information with respect to the purchase of the subject property."
5. The services of Regency Court Reporting was secured by Petitioner for the reporting of this matter.
6. Respondent has not agreed to Petitioner's request to split the cost of the court reporter.

Petitioner's motion to substitute witness was filed well after the deadline for the filing and exchanging of witness lists and less than a week before the hearing in this matter was scheduled

to begin. The Tribunal finds that Petitioner had sufficient time and opportunity to prepare its case and timely notify the Tribunal and Respondent of potential witnesses. Respondent would indeed be prejudiced by this last minute revelation of a witness without sufficient time to investigate, or conduct discovery of any kind as to, that witness. Further, although Petitioner asserts that Ms. Gonzalez is “the taxpayer of record,” Petitioner did not provide any documentation supporting that assertion or showing that Ms. Gonzalez was an owner of record of the subject property for the tax year at issue. Additionally, the time has long past for immediate consideration of this matter. It has always been contemplated by the Tribunal that the parties share in the cost of the court reporter. The Tribunal finds that Respondent shall pay costs to Petitioner equal to 50% of the cost of the court reporter.

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. The 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).

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 adopt a respondent's assessment but must make its own findings 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 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). A similar position is stated in *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982): The Tax Tribunal is not required to accept the valuation figure advanced by the taxpayer, the valuation figure advanced by the assessing unit, or some figure in between these two. It may reject both the taxpayer's and assessing unit's approaches.

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 Limited Dividend Housing Assn v City of Holland*, 437, 484-485; 473 NW2d 636 (1991); *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (1966); 380 Mich 390; 157 NW2d 293 (1968); *Antisdale v City of Galesburg*, 420 Mich 265, 276; 362 NW2d 632 (1984). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in the marketplace trading. *Antisdale* at 276, n 1. 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.

The evidence of value Petitioner attempted to submit in this matter was for tax years other than the tax year at issue, 2004. The appraisals offered by Petitioner established opinions of value effective as of December 31, 2005 and December 31, 2006. Petitioner's appraiser testified that those dates were the dates intended. Thus, without further supplementation, amendment, or adjustment, the tax years to which the appraisals apply are the 2006 and 2007 tax years. Petitioner offered no such supplemental evidence.

Based upon the file, the applicable statutory and case law, and the testimony and evidence presented, the Tribunal concludes that Petitioner has failed to meet his burden of proving that the true cash value of the subject property is other than that as assessed. Therefore, the Tribunal concludes that the true cash value, state equalized value, and taxable value, as assessed for the 2005 tax year, are affirmed as follows:

Parcel Number	Year	TCV	SEV	TV
63-X-18-07-277-044	2005	\$960,000	\$480,000	\$480,000

JUDGMENT

IT IS ORDERED that the properties' state equalized, assessed and taxable values for the subject property shall be those set forth in the *Conclusions of Law* portion 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 assessed and taxable values in the amounts as finally shown in the “Final Values” section of this Opinion and Judgment, subject to the processes of equalization, within 20 days of the entry of this Order. 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 Final Opinion and Judgment within 90 days of the 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 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 Opinion and Judgment. As provided by 1994 PA 254 and 1995 PA 232, 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 shall accrue at an interest rate set monthly at a per annum rate based on the auction rate of the 91-day discount treasury bill rate for the first Monday in each month, plus 1%. After December 1, 1995, interest shall accrue at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue: (i) after December 31,

2001, at the rate of 5.56% for calendar year 2002; (ii) after December 31, 2002 at the rate of 2.78% for calendar year 2003; (iii) after December 31, 2003, at the rate of 2.16% for calendar year 2004; (iv) after December 31, 2004, at the rate of 2.07% for calendar year 2005; (v) after December 31, 2005, at the rate of 3.66% for calendar year 2006; (vi) after December 31, 2006, at the rate of 5.42% for calendar year 2007; (vii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and (viii) after December 31, 2008, at the rate of 3.31% for calendar year 2009.

IT IS FURTHER ORDERED that Respondent's Motion to Dismiss is DENIED.

IT IS FURTHER ORDERED that Petitioner's Motion for Immediate Consideration is DENIED.

IT IS FURTHER ORDERED that Petitioner's Motion to Substitute Witness is DENIED.

IT IS FURTHER ORDERED that Petitioner's Motion for Costs for 50% of the cost of the court reporter is GRANTED.

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

MICHIGAN TAX TRIBUNAL

Entered: January 30, 2009

By: Rachel J. Asbury