

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

Shellborne Park LLC,
Petitioner,

v

MTT Docket No. 359569

City of Battle Creek,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Introduction

Petitioner, Shellborne Park LLC, appeals ad valorem property tax assessments levied by Respondent, City of Battle Creek, against the real property owned by Petitioner for the 2009 tax year. Mark Leipsitz, partner in Shellborne Park LLC, appeared on behalf of Petitioner. Respondent was placed in default on February 17, 2010 for failure to file an answer. This was not cured; therefore, the hearing went forward as a Default Hearing.

The proceedings were brought before this Tribunal on May 4, 2011, to resolve the real property dispute.

The City of Battle Creek has assessed the property on the tax roll at:

Parcel No. 0136-00-118-0

Year	TCV	AV/SEV	TV
2008	\$449,468	\$224,734	\$187,891

Petitioner believes that the values of the subject property are:

Parcel No. 0136-00-118-0

Year	TCV	AV/SEV	TV
2008	\$200,000	\$100,000	\$100,000

The Tribunal finds the values shall be:

Parcel No. 0136-00-115-0

Year	TCV	AV/SEV	TV
2008	\$449,468	\$224,734	\$187,891

Background and Introduction

At issue is the true cash value for a commercial apartment complex in the City of Battle Creek. No detailed information has been provided to this Tribunal and, therefore, the specific address is believed to be 36 Springview, Battle Creek.

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 testimony alone.

Leipsitz testified that he is a partner in subject property and is by trade a contractor, builder, and developer with a degree in engineering.

Leipsitz testified that this is a 24-unit apartment building that was 60% vacant as of December 31, 2008. He stated that it is currently 100% vacant. Petitioner explained that at the time the property was purchased, it had a contract with Summit. The

property was rented to a company that handled housing for the mentally challenged.

The building was totally vacated at the end of 2009 with the property stripped of copper and vandalized. Petitioner estimated that the City of Battle Creek is 30% vacancy since Kellogg farmed out its cereal operations.

Petitioner has owned subject property for approximately six years. The 2008 tax return indicates a loss due to the vacancy. The management company prepared the rent roll for 2008.

Leipsitz stated that the vacancies have caused the property values to plummet increasing expenses because of the maintenance and vandalism.

Leipsitz requested that the Tribunal consider amending the pleadings to include tax years 2010 and 2011. The Tribunal explained that the motions are required to be in writing accompanied by the appropriate fee. The due date for amending the petition to include 2010 has long passed. May 31, 2011 is the final date a motion to amend is due for 2011. However, it is this Tribunal's intention to have the final opinion completed prior to the filing deadline. Petitioner's request to include tax year 2010 was orally denied.

Petitioner pleads that the property is vacant and is not making any income; therefore, the value should be reduced.

Respondent's Arguments

Respondent failed to answer the Petition and file a Motion to Cure the Default.

Respondent did not appear at the Default Hearing.

Tribunal's Findings of Fact

The Tribunal finds that Petitioner was not able to successfully carry its burden of proving that the assessments exceed 50% of market value. Petitioner failed to produce any evidence that substantiates his testimony.

The Tribunal does not have Respondent's evidence before it, and finds that Petitioner's insistence that the valuation disclosure is incorrect is beyond the scope of this Tribunal's jurisdiction. Evidence that is not presented and is not before this Tribunal is simply not considered.

Petitioner provided the Tribunal at the hearing with a rent roll and part of an IRS form 8825, testifying that it was for 2009 and that it indicates that the partnership took a loss for income tax purposes. The rent roll that combines two properties was also provided to the Tribunal. When the Tribunal asked Petitioner what to do with the raw data, Mr. Leipsitz stated that it indicated that the property had a loss which the Tribunal interprets as a loss in market value should also follow. There is insufficient data upon which to calculate any of the three approaches to value. Petitioner provided no split in the information left for the Tribunal between two properties that it owns in the City of Battle Creek that have two separate docket numbers. For Petitioner to leave information without some type of indication of how it should influence the value of property is simply

unacceptable. The Tribunal has no basis to independently determine the market value of subject property without sufficient evidence for a cost less depreciation approach, a sales comparison approach or, in this instance, an income approach, which would be an appropriate method upon which to determine value. The Tribunal is neither required nor able to do an appraisal of subject property. The only option that remains is to affirm the assessment.

The Tribunal is required to determine the true cash value of the subject property in the above-captioned case. The Tribunal, however, contrary to Petitioner's statement, does not have equitable power to consider that Petitioner is over assessed. Based on no exhibit, no income approach, no cost approach or market analysis, the only decision the Tribunal can make is that Petitioner failed in carrying the burden of proof. Furthermore, Leipsitz's testimony did not rise to the burden of persuasion or burden of going forward.

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. A 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).

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%....; and for a system of equalization of assessments. For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value. Const 1963 Art IX , Sec 3.

As used in the General Property Tax Act, "true cash value" means 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).

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

in *Meadowlanes, supra*, acknowledged that the goal of the assessment process is to determine “the usual selling price for a given piece of property.” In determining a property’s true cash value or fair market value, Michigan courts and the Tribunal recognize the three traditional valuation approaches as reliable evidence of value. See *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d (1984).

“The petitioner has the burden of establishing the true cash value of the property....” MCL 205.737(3); MCL 211.27(1); *Meadowlanes Ltd_Dividend Housing Ass’n v City of Holland*, 437 Mich 473, 483-484; 473 NW2d 363 (1991). “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 Steel v City of Warren*, 193 Mich App 348, 483 NW2d, 416 (1992), at 354-355, citing: *Kar v Hogan*, 399 Mich 529, 539-540; 251 NW2d 77(1976); *Holy Spirit Ass’n for the Unification of World Christianity v Dept of Treasury*, 131 Mich App 743, 752; 347 NW2d 707(1984). Petitioner, in this instance, failed to establish the true cash value of the subject property. The value presented by Petitioner was an opinion of value, without sufficient evidence.

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 Comm*, 3 Mich App 170; 141 NW2d 699 (1966), aff’d 380 Mich 390 (1968); *Antisdale*, at 276. 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 Tribunal finds that petitioner did not present a cost approach to value, a sales comparison analysis, or an income approach to value. The most applicable approach in the above captioned case would be an income approach.

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 accept a respondent's assessment but must make its own finding 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 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*, at 485-486; *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980); *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982).

The Tribunal is charged in a valuation appeal to determine the true cash value of the subject property as of each tax year at issue. Petitioner was not able to prove, by a

preponderance of its evidence, that the assessment of the subject property should be reduced for the tax year at issue.

JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the tax year at issue are AFFIRMED as set forth in the *Introduction* section of this Final Opinion and Judgment.

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

MICHIGAN TAX TRIBUNAL

Entered: May 24, 2011

By: Victoria L. Enyart