

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

AFR Enterprises, Inc.,
Petitioner,

v

MTT Docket No. 402616

Kimball Township,
Respondent.

Tribunal Judge Presiding
Preeti Gadola

OPINION AND JUDGMENT

INTRODUCTION

Petitioner, AFR Enterprises, Inc., appeals the ad valorem property tax assessment levied by Respondent, Kimball Township, against the real property owned by Petitioner for the 2010 tax year (parcel numbers: 74-25-013-3006-200, 74-25-024-3001-000, 74-25-024-1002-100). L. Rider Brice, attorney, represented Petitioner; Respondent did not appear at the hearing. Petitioner's witness was Buolus (Paul) Ghraib, 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.

Respondent, Kimball Township, assessed the property as follows:

Parcel No. 74-25-013-3006-200

Year	TCV	AV/SEV	TV
2010	\$1,611,400	\$805,700	\$660,117

Parcel No. 74-25-024-3001-000

Year	TCV	AV/SEV	TV
2010	\$1,126,200	\$563,100	\$141,888

Parcel No. 74-25-024-1002-100

Year	TCV	AV/SEV	TV
2010	\$792,800	\$396,400	\$98,583

Petitioner’s contentions of true cash value (“TCV”), state equalized value (“SEV”), and taxable value (“TV”) for the tax year in question are as follows:

Parcel No. 74-25-013-3006-200

Year	TCV	AV/SEV	TV
2010	\$111,000	\$55,500	\$55,500

Parcel No. 74-25-024-3001-000

Year	TCV	AV/SEV	TV
2010	\$495,000	\$247,500	\$141,888

Parcel No. 74-25-024-1002-100

Year	TCV	AV/SEV	TV
2010	\$256,000	\$128,000	\$98,583

SUMMARY OF JUDGMENT

Based on the evidence, testimony, and case file, the Tribunal finds that the TCV, SEV, and TV of the subject property for the year under appeal are as follows:

Parcel No. 74-25-013-3006-200

Year	TCV	AV/SEV	TV
2010	\$348,300	\$174,150	\$174,150

Parcel No. 74-25-024-3001-000

Year	TCV	AV/SEV	TV
2010	\$495,000	\$247,500	\$141,888

Parcel No. 74-25-024-1002-100

Year	TCV	AV/SEV	TV
2010	\$380,000	\$190,000	\$98,583

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 properties prepared by Buolus (Paul) Ghraib, State Licensed Appraiser, as evidence that Respondent overvalued the property.

PETITIONER'S ADMITTED EXHIBITS

P-1 Restricted Use Appraisal Report

PRESENTATION OF PETITIONER'S ARGUMENT BY ITS WITNESSBuolus (Paul) Ghraib

Mr. Ghraib testified that he has been a licensed appraiser since 1991. He is certified by the American Society of Appraisers and has appraised thousands of vacant land parcels in his career. His appraisal firm values approximately 300 commercial properties per year.

(Transcript, pp. 6-7.)

Mr. Ghraib prepared an appraisal giving the value of the properties as of December 31, 2009, as \$111,000 (Parcel No. 74-25-013-3006-200), \$495,000 (Parcel No. 74-25-024-3001-000), and \$256,000 (74-25-024-1002-100). (P-1). He testified that Parcel No. 74-25-013-3006-200 (Referenced as "parcel one" by the witness) consisted of 28 acres (25.8 buildable acres) with a structure on it. (Transcript, p. 9, P-1.) Mr. Ghraib testified that the structure consisted of metal bridges and some walls, had no roof, and was in poor condition. (Transcript, pp. 16-17.) In his appraisal report, Mr. Ghraib indicated that the structure was a 118,772 square foot, partially completed ice arena. (P-1.) The subject property also had restricted access to any major freeway,

which made it less desirable as a commercial, retail property as he determined was its highest and best use. (Transcript, pp. 15-16.)

With regard to determining the true cash value of the property, Mr. Ghraib testified that he prepared an appraisal with four comparable sales. As he determined that the highest and best use of the property required it be vacant due to the condition of the structure, he compared the subject property to four vacant parcels of land. (Transcript, pp. 16-19.) Mr. Ghraib further testified that as a result of the decline in the market and lack of vacant land sales, it was difficult to find comparable sales. He did a thorough search of his databases, multi-lists, and other websites, and came up with the best sales comparables he could find. (Transcript, p. 19.)

Mr. Ghraib testified that comparable one was a land contract sale of a vacant parcel of land with good access to a major freeway. He testified that he made adjustments of 15% for land contract and 20% for the availability of highway access for a final determination of value of \$12,445 per acre. He also testified that, in his professional opinion, an adjustment for land contract sale vs. cash sale was warranted. (Transcript, pp. 20-21.)

Comparable two received a 20% adjustment for good highway access presenting a per acre dollar amount of \$12,757. (Transcript, p. 22.) Comparable three received the same 20% adjustment for good highway access for a per acre dollar amount of \$15,240. Comparable four was a smaller parcel of land than the subject (4 acres vs. 28.5 acres), and also had available highway access. Mr. Ghraib determined a total adjustment of 64% for good access and also for the size of the parcel, presenting a per acre dollar amount of \$13,433. (Transcript, pp. 22-23.)

Mr. Ghraib took the mean dollar amount per acre of the four comparables to come up with a dollar amount per acre for the subject property of \$13,500. He multiplied that amount by

the acreage of the subject, determined a market value of the property as vacant, and subtracted from that market value the cost of demolition of the unusable structure on the property.

(Transcript, p. 23.) Mr. Ghraib presented a true cash value of the property of \$348,300 before demolition (Transcript, p. 23.) He utilized the Marshall and Swift cost publication to determine the demolition cost of the structure. He calculated the cost for demolishing a similar, finished structure to be between \$2.90 to \$4.79 per square foot. The subject property structure, however, was incomplete and Mr. Ghraib determined a \$2.00 per square foot demolition cost would be accurate. (Transcript, p. 24.) He multiplied the \$2.00 per square foot demolition cost by the square footage of the subject structure to come up with a total demolition cost of \$237,544. Finally, Mr. Ghraib subtracted the cost of demolition from the previously determined market value of the property as vacant, to present a final determination of value of \$111,000. (Transcript, p. 25.)

Mr. Ghraib testified that Parcel No. 74-25-024-3001-000 (referred to as “parcel two” by the witness) consists of a 99-acre vacant parcel of land with a highest and best use of commercial, retail. (Transcript, p. 25.) Mr. Ghraib again had trouble finding comparables, but chose the same four (as utilized in parcel one) that he determined to be the best vacant parcel sales in the appropriate time frame. (Transcript, p. 25.) After his analysis of the comparable sales, he presented a mean dollar amount per acre of \$5,000. He multiplied that amount by the acreage of the property to determine its true cash value to be \$495,000.

With regard to Parcel No. 74-25-024-1002-100 (referred to as parcel four by the witness, as parcel three in the appraisal is not before us in this matter), Mr. Ghraib testified that it consisted of 85.35 vacant acres of land, zoned residential. He again compared the subject

property to four comparable vacant land sales (sales with a residential highest and best use) and adjusted them to be consistent with the characteristics of the subject property. Mr. Ghraib’s final determination of the market value of parcel four was \$256,000. (Transcript, pp. 28-32.)

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 properties consist of a 25.8-acre parcel of land with a partially completed structure upon it, zoned commercial (Parcel No. 74-25-013-3006-200); a 99-acre vacant parcel of land, zoned commercial (Parcel No. 74-25-024-3001-000); and an 85.35-acre vacant parcel of land zoned residential (Parcel No. 74-25-024-1002-100).
2. The properties are located in Kimball Township, St. Clair County, Michigan.
3. The properties are classified as commercial vacant (Parcel Nos. 74-25-024-3001-000 and 74-25-024-1002-100), and commercial improved (Parcel No. 74-25-013-3006-200.)
4. Respondent, Kimball Township, assessed the property for the 2010 tax year as follows:

Parcel No. 74-25-013-3006-200

Year	TCV	AV/SEV	TV
2010	\$1,611,400	\$805,700	\$660,117

Parcel No. 74-25-024-3001-000

Year	TCV	AV/SEV	TV
2010	\$1,126,200	\$563,100	\$141,888

Parcel No. 74-25-024-1002-100

Year	TCV	AV/SEV	TV
2010	\$792,800	\$396,400	\$98,583

5. Petitioner presented an appraisal of all three parcel numbers that are the subject of this appeal, each with four comparable sales of vacant land, adjusted to be consistent with the subject properties.

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 PROPERTIES

Petitioner presented the Tribunal with an appraisal of the subject properties prepared by Buolus (Paul) Ghraib, State Licensed Appraiser, in support of its valuation of the properties. The appraisal presents four sales of properties comparable to the subject, for each parcel number, with adjustments consistent with the characteristics of the properties.

Parcel 74-25-013-3006-200

Mr. Ghraib presented the true cash value of the property to be \$111,000. The valuation amount was determined by Mr. Ghraib by comparing the property to four vacant land sales and adjusting them to be consistent with the characteristics of the subject property. After determining the market value of the property by the sales comparison approach, Mr. Ghraib subtracted the demolition cost of the structure situated on the property to establish the true cash value of the property as vacant.

The flaw with Mr. Ghraib's approach is that the true cash value of a property is determined as it exists on tax day. MCL 211.2(2) states:

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. . . .

MCL 211.29(3) states: “The [tax] roll shall be reviewed according to the facts existing on the tax day.” In other words, if the structure existed on the property on December 31, 2009, it will be assessed as such.

Mr. Ghraib testified that he determined the fair market value of the property under the sales comparison approach to be \$348,300. The Tribunal finds his appraisal to be probative in its determination of the true cash value of the property for the 2010 tax year. With regard to Mr. Ghraib’s methodology of subtracting the demolition costs of the structure on the property in order to determine its “true” fair market value, the Tribunal does not find such methodology to be probative.

By determining a true cash value of the property as vacant for tax year 2010, Mr. Ghraib has already attributed zero dollars in value to the structure. Furthermore, it should be noted that the future use of the subject property cannot be contemplated at this time. Any purchaser of the property may purchase it with an eye to rebuilding the structure situated on it or with an eye to demolishing it or holding it for some other purpose. Mr. Ghraib’s own appraisal states that the highest and best use of the property is “Commercial/Retail (**when market improves or permits**).” (P-1, p. 10.) (Emphasis added.) He further testified that the market for vacant land is declining and that very few sales of land exist. (Transcript, pp. 19, 25.) From Mr. Ghraib’s testimony, it seems unlikely that the property will be sold and developed anytime soon; therefore, its true cash value, without demolition costs, is an accurate determination of the fair market value of the property for tax year 2010.

Parcel No. 74-25-024-3001-000

The Tribunal finds that Mr. Ghraib's appraisal introduces the best evidence in determining the true cash value of the subject 99-acre vacant parcel of land. The comparables are highly adjusted for the differences in such as compared to the subject; however, given the lack of sales and lackluster market, the Tribunal finds those sales to be the best evidence presented. Mr. Ghraib testified that he utilized all his sources of sales comparables and chose the sales he determined to be most comparable to the subject property.

Parcel No. 74-25-024-1002-100

The Tribunal once again determines that the appraisal put forth by Mr. Ghraib is the best evidence available (with one caveat) to it in defining the fair market value of this 85.35-acre vacant parcel of land. The comparables had relatively small adjustments as weighed against Parcel No. 74-25-024-3001-000. The adjustments to the analogous properties were for size and access.

The Tribunal observed upon review of Mr. Ghraib's appraisal that he computed an incorrect, adjusted value per acre of comparable number four. The sale price of the comparable property was \$525,000 and he adjusted it by (34%) to make it consistent with the characteristics of the subject property. Thirty-four percent of \$525,000 is \$178,500 and subtracting that amount from \$525,000 and dividing it by the number of acres, relates to a value per acre of the property of \$6,794. Mr. Ghraib took the mean dollar per acre of the comparable sales to determine the fair market value of the subject property per acre to be \$3,000. (Transcript, p. 23, P-1.) However, the mean and median dollar value per acre of the comparables should properly be presented as

\$4,500. Thus, \$4,500 per acre multiplied by 85.35 acres (the size of the subject property) can be rounded to \$380,000 in true cash value.

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. Given that Respondent did not present any evidence to support its valuation of the subject properties, the Tribunal finds that Petitioner's appraisal is the best evidence available to it in shaping its independent determination of the true cash value of the properties for the tax year in question.

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 properties are assessed in excess of 50% of market value for the 2010 tax year. The subject property's true cash value (TCV), state equalized value (SEV), and taxable value (TV) is as stated in the Summary of Judgment section above.

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, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998, at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, and (xiii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, and (xv) after December 31, 2009, at the rate of 1.23% for

calendar year 2010 (xvi) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (xvii) after December 31, 2010 at the rate of 1.12% for calendar year 2011, and (xviii) 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 30, 2012

By: Preeti Gadola