

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

O.I.L. Energy Corporation,
Petitioner,

v

MTT Docket No. 16-001835

Bagley Township,
Respondent.

Tribunal Judge Presiding
Marcus L. Abood

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, O.I.L. Energy Corporation, appeal ad valorem property tax assessments levied by Respondent, Bagley Township, against Parcel No. 69-012-900-015-453-03 for the 2016 tax year. Michael F. Matheson, Attorney, represented Petitioner, and Robert C. Kerska, Attorney, represented Respondent.

A hearing on this matter was held on June 5 and July 21, 2017. Petitioner's witness was Michael Coy. Respondent's witness was Jason Woodcox.

Based on the evidence, testimony, and case file, the Tribunal finds the true cash value ("TCV"), state equalized value ("SEV"), and taxable value ("TV") of the subject property as follows:

Parcel Number: 69-012-900-015-453-03

Year	TCV	AV	TV
2016	\$578,400	\$289,200	\$289,200

PETITIONER'S CONTENTIONS

Petitioner points to its vast ability and experience in the valuation of oil and gas properties relative to the value of the subject personal property.¹ In support of its contention of value, Petitioner also references its valuation disclosure as well as a report prepared by Ryder Scott for the valuation of 276 wells.²

¹ Tr., Day 2, 22-23.

² Tr., Day 2, 24-25.

PETITIONER'S ADMITTED EXHIBITS

In support of its value contentions, Petitioner offered the following exhibits, which were admitted into evidence:

- P-1: Valuation Disclosure, O.I.L. Energy Corp., as of December 31, 2015.
- P-2: Department of Environmental Quality permit reports.
- P-3: Bagley 30 Project map.
- P-8: Schematic of Typical Antrim Gas Well.
- P-9: Well Bore Diagram.
- P-11: Ryder Scott Report.

PETITIONER'S WITNESS

Petitioner's witness, Michael Coy, has been the president of O.I.L Energy Corporation since 2001.³ He describes his accounting background and involvement in several oil and gas projects as well as sale transactions. Petitioner refutes Respondent's calculations for depreciation and multipliers to the personal property.⁴ Petitioner claims a capitalization analysis is not applicable to the value of oil/gas reserves. Instead, Petitioner relies on cash values based on a discount rate of 10% which is an industry standard.⁵

RESPONDENT'S CONTENTIONS

Respondent contends the subject personal property was identified through Petitioner's Personal Property Statement (PPT) Form 632. Further, Respondent asserts depreciation and multipliers were properly applied to arrive at the true cash value of the personal property. Respondent considered all 3 approaches to value and relies upon a mass appraisal methodology which is supported by the State Tax Commission.⁶ Respondent refers to the informal term of "fair and equal" regarding the assessments but asserts the formal nature of all assessments is conducted on the basis of uniformity.⁷

³ Tr., Day 2, 9.

⁴ Tr., Day 2, 73.

⁵ Tr., Day 2, 97.

⁶ Tr., Day 2, 101.

⁷ Tr., Day 2, 123.

RESPONDENT'S ADMITTED EXHIBITS

In support of its value contentions, Respondent offered the following exhibit, which was admitted into evidence:

R-1: Personal Property Statement (Form 632).

RESPONDENT'S WITNESS

Respondent's witness, Jason Woodcox, testified to the general location of the subject personal property and his reliance on Petitioner's PPT Statement to determine the market value of the subject property.

FINDINGS OF FACT

1. The subject personal property is located in Bagley Township and within Otsego County.
2. The subject personal property is identified as "Bagley 30" which is a unitized project comprising 10 wells.⁸
3. Petitioner's personal property was specifically identified on its Personal Property Statement.
4. Petitioner sold the subject personal property to Riverside in February 2017.⁹
5. Michael Coy's background is as an accountant.¹⁰ Petitioner's witness was not qualified or offered as an expert witness.
6. Petitioner submitted a valuation disclosure in the form of an unsigned document denoting the subject personal property.
7. In testimony, Petitioner disclosed that Brandon McDowell, Benjamin Croftchik and Petitioner's counsel were involved in the preparation of Petitioner's valuation disclosure.¹¹
8. Third party reserve reports are required by lending institutions in the transaction of oil and gas properties.¹²
9. In testimony, Coy admits he negotiated the agreement for the sale of the subject personal property to Riverside.¹³
10. Regarding Petitioner's valuation disclosure, Coy states, "Well, it was a representative report prepared by the company, and I guess didn't – didn't think to include the names."¹⁴
11. Petitioner's valuation disclosure does not include any explanatory narration, signed authors, or analysis for supposed valuation methodologies.

⁸ Tr., Day 2, 11.

⁹ Tr., Day 2, 20.

¹⁰ Tr., Day 2, 12, 14-18.

¹¹ Tr., Day 2, 21, 92.

¹² Tr., Day 2, 26.

¹³ Tr., Day 2, 26.

¹⁴ Tr., Day 2, 29.

12. In testimony, Coy admits that he was involved in several oil/gas property sales but none of those sales are included in Petitioner's valuation disclosure.¹⁵
13. Petitioner's referenced report, the Ryder Scott reserve analysis, does not include a breakout of separate components.¹⁶ In other words, the report is a cash flow analysis for approximately 276 oil/gas wells.
14. The valuation of the 276 oil/gas wells was developed on the basis of a "going concern" value.¹⁷
15. The Riverside (Ryder Scott Report) valuation disclosure was prepared for M Bank and lending/financing purposes.¹⁸
16. Petitioner's Ryder Scott Report was prepared by Richard J. Marshall who was not identified on Petitioner's witness list.
17. Petitioner relies on a cash flow analysis of future gross revenues with a 10% discount rate for the value conclusion.¹⁹
18. Within Petitioner's valuation description, Coy refers to "fair value" for the subject property²⁰ relative to the Financial Accounting Standards Board (FASB).
19. Coy admits that the Ryder Scott Report does not identify the specific value of the subject personal property.²¹
20. Petitioner's determination of value for the subject personal property is based on a 10% allocation factor from the total combined projects.²²
21. In testimony, Petitioner admits that the derived value for the subject personal property is "salvage value".²³
22. In testimony, Petitioner admits it did not prepare its own studies for depreciation and multipliers to the subject personal property.²⁴
23. In testimony, Coy admits to having an interest or stake in prior oil/gas sale transactions.²⁵
24. Respondent submitted a valuation disclosure in the form of Petitioner's PPT Statement.
25. Petitioner's PPT Statement is signed and attested to by Petitioner under the penalty/perjury of law.
26. Respondent considered the sales comparison approach but did not have any sales for a comparative analysis.
27. Respondent considered the income approach but did not have any lease data for an income analysis.
28. Respondent relied on Petitioner's personal property, specifically identified on Petitioner's PPT Statement, to render a cost approach analysis.
29. Respondent inspected the subject site but was unable to inspect the subject personal property because it was located below ground.²⁶

¹⁵ Tr., Day 2, 31.

¹⁶ Tr., Day 2, 36.

¹⁷ Tr., Day 2, 52-54, 60, 88, 89.

¹⁸ Tr., Day 2, 38.

¹⁹ Tr., Day 2, 41-44.

²⁰ Tr., Day 2, 49.

²¹ Tr., Day 2, 53.

²² Tr., Day 2, 54.

²³ Tr., Day 2, 94.

²⁴ Tr., Day 2, 95.

²⁵ Tr., Day 2, 98.

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.²⁷

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. 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 percent. . . .²⁸

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.²⁹

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”³⁰

“By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment.”³¹ The Tribunal is not bound to accept either of the parties' theories of valuation.³² “It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case.”³³ In that regard, 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.”³⁴

A proceeding before the Tax Tribunal is original, independent, and de novo.³⁵ The Tribunal's factual findings must be supported “by competent, material, and substantial

²⁶ Tr., Day 2, 108-109.

²⁷ See MCL 211.27a.

²⁸ Const 1963, art 9, sec 3.

²⁹ MCL 211.27(1).

³⁰ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

³¹ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

³² *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

³³ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

³⁴ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

³⁵ MCL 205.735a(2).

evidence.”³⁶ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”³⁷

“The petitioner has the burden of proof in establishing the true cash value of the property.”³⁸ “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.”³⁹ However, “[t]he assessing agency has the burden of proof in establishing the ratio of the 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.”⁴⁰

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.⁴¹ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”⁴² 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.⁴³

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁴⁴

Petitioner links its TCV contention with a plethora of concepts and methodologies of which none are germane to this tax appeal matter. First, stipulations for other personal property owned by Petitioner are not relevant to the market value of the subject personal property. More specifically, the comparisons from other real/personal property based on their stipulations for consent judgment are not the equivalent of market based sales comparisons. The Tribunal is not

³⁶ *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

³⁷ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

³⁸ MCL 205.737(3).

³⁹ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

⁴⁰ MCL 205.737(3).

⁴¹ *Meadowlanes*, *supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff’d* 380 Mich 390 (1968).

⁴² *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

⁴³ *Antisdale*, *supra* at 277.

⁴⁴ See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

privity to parties' behind the door negotiations and settlements. Second, an entity is not the equivalent of an individual in the development and communication of a valuation disclosure. Unlike an individual, an entity cannot not author, sign or testify to a document.⁴⁵ The authenticity of Petitioner's documents is not at issue. However, the question of who prepared a document and whether the purported/alleged methodologies are acceptable in valuation practice and theory is at issue. Informally attributing authorship to an alleged valuation disclosure does not fulfill the fundamental necessity of common sense or the Tribunal's rules of practice and procedure.⁴⁶ Third, conclusory statements regarding residuals⁴⁷, absorptions⁴⁸, reserves⁴⁹, cash flows⁵⁰, and discount/yield rates⁵¹ did not culminate in cogent or consistent analysis in the market value⁵² for the subject personal property. The lack of any mention for arm's length market influences was not found in Petitioner's testimonial or documentary evidence. Fourth, the synonymous nature of true cash value and market value does not invite such terms of salvage value⁵³, liquidation value⁵⁴ or use value⁵⁵. Further, Petitioner's reference to royalty incentives as having an impact on the subject's value and sale transaction reflects a "going concern" value. The General Property Tax Act, the Michigan Tax Tribunal Act and the Michigan Constitution are quite clear regarding the most probable selling price of real and personal property in a tax appeal matter. Fifth, Petitioner's development of a yield capitalization methodology does not appear to be objective especially given Coy's involvement in the subject sale transaction.⁵⁶ Further, his testimony did not properly separate or distinguish from all other accounting entries to the Bagley 30 project. Clearly, Coy's testimony reflects his position as an involved accountant to the various oil/gas projects. Likewise, testimony into the areas of accountancy, engineering and valuation were not solidified with the offering of a witness as an expert in these

⁴⁵ Tr., Day 2, 29.

⁴⁶ R 792.10255(2).

⁴⁷ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 6th ed, 2015), p 199.

⁴⁸ *Id.*, p 1.

⁴⁹ *Id.*, p 198.

⁵⁰ *Id.*, p 33.

⁵¹ *Id.*, p 66.

⁵² *Id.*, pp 141-142.

⁵³ *Id.*, p 207.

⁵⁴ *Id.*, pp 132-133.

⁵⁵ *Id.*, p 241.

⁵⁶ Tr., Day 2, 44.

areas of expertise.⁵⁷ Coy's extensive background and experience clearly proved his competence in handling oil/gas projects in the realm of accountancy. However, this is not to be confused with valuation practice and theory in the market value of personal property in an impartial, objective and unbiased manner. Therefore, for these reasons, Petitioner's testimonial and documentary evidence is given no weight or credibility in the independent determination of market value for the subject personal property.

Regarding the consideration of a sales comparison approach, Petitioner's concerns over Respondent's lack of a comparative analysis is quite disingenuous considering Petitioner's own lack of specific sales comparisons. Similarly, Petitioner's argument that Respondent's valuation disclosure was not signed by Respondent is without merit. Again, Respondent's valuation disclosure is Petitioner's signed PPT statement which properly identifies Petitioner's personal property.

Regarding the consideration of a cost approach, Petitioner does not dispute the specific personal property identified on PTT statement but rather disputes Respondent's depreciation and multiplier factors. Petitioner, however, did not present any factors (i.e. market supported) to apply to this personal property as part of a burden responsibility. Petitioner's PPT statement was the opportunity for Petitioner to apply and support depreciation and multipliers to the subject property that it deemed relevant. Instead, Petitioner merely criticizes/challenges Respondent's application. Petitioner's claim of having no control over such factors is not persuasive.⁵⁸ Therefore, Petitioner's PPT statement (as submitted by Respondent) is the most reliable evidence in the determination of market value to the subject personal property.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject property was not over-assessed for the tax years at issue. The subject property's TCV, SEV, and TV for the tax year(s) at issue are as stated in the Introduction section above.

⁵⁷ Petitioner's witness presented the persona of a jack of all trades and a master of none.

⁵⁸ Tr., Day 2, 51.

JUDGMENT

IT IS FURTHER ORDERED that the property's state equalized and taxable values for the tax year(s) at issue are MODIFIED as set forth in the Introduction section 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 property's true cash and taxable values 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 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, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, and (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%.

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

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.⁵⁹ Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.⁶⁰ A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.⁶¹ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.⁶²

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."⁶³ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.⁶⁴ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.⁶⁵

By Marcus L. Abood

Entered: October 5, 2017

⁵⁹ See TTR 261 and 257.

⁶⁰ See TTR 217 and 267.

⁶¹ See TTR 261 and 225.

⁶² See TTR 261 and 257.

⁶³ See MCL 205.753 and MCR 7.204.

⁶⁴ See TTR 213.

⁶⁵ See TTR 217 and 267.