

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Templeton Properties LLC,
Petitioner,

MTT Docket No. 314294

v

Township of Chesterfield,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Petitioner, Templeton Properties LLC, (also “Templeton”), appeals ad valorem property tax assessments levied by Respondent Township of Chesterfield (also “Township”), against the real property owned by Petitioner for the 2005 tax year. Steven A. Finegood, attorney, appeared on behalf of Petitioner. Lawrence W. Dloski, attorney, appeared on behalf of Respondent.

Witnesses appeared on behalf of both parties. They include: Petitioner’s valuation expert, Leslie M. Perlman, certified appraiser, and Nelson Templeton, owner; Respondent’s assessment expert, Steven Mellen, CMAE4, Equalization Director for Macomb County.

The proceedings were brought to this Tribunal on August 26, 2008, to resolve the real property assessment dispute.

At issue before the Tribunal is the determination of true cash value of Petitioner’s real property for the 2005 tax year. The pertinent information to the contested assessments is as follows:

PARCEL #	AV	TV	PET’S TCV	RESP’S TCV
015-009-030-126-036-00-00	\$681,193	\$511,541	\$822,000	\$1,362,386
015-009-030-126-018-00-00	\$915,105	\$801,181	\$970,000	\$1,830,210

The interested school districts are L'Anse Creuse Public Schools, Macomb Intermediate School District and Macomb Community College.

Background and Introduction

The subject properties are located within the Township of Chesterfield, Macomb County, Michigan, on Gratiot Avenue. There are three buildings located on two parcel identification numbers. Parcel 015-009-030-126-036-00-00 ("036") contains two buildings: a 14,269 square foot industrial building addressed as 48351 Gratiot Avenue, and an 8,400 square foot building addressed as 48361 Gratiot Avenue. Parcel 015-09-030-126-018-00-00 ("018") is addressed as 48401 Gratiot Avenue with a 20,347 square foot building. Both properties are zoned industrial. Site improvements include parking areas, landscaping and lighting.

Petitioner's Arguments

Petitioner states that the issue is the lawful assessment of the properties. Petitioner contends that the market value of subject properties has decreased due to the economy, location and age of the improvements.

Nelson Templeton originally constructed the properties at various times. He testified that he was the general contractor. He purchased the properties in one piece in May, 1986, for \$170,000. He split two parcels because he needed no. 018 with 3.25 acres in order to construct a building in 1998. The second parcel, no. 036, has 3.20 acres and two buildings, the first is the 14,269 square foot improvement built in 1988. The second improvement on parcel 036 is 8,400 square feet improvement constructed in 1991.

Templeton testified that parcel no. 018 is constructed as a pre-engineered building 70 feet by 260 feet with a 30 by 70 foot office designed for the Boring Mill, a 30 ton crane and pits. The Boring Mill consumes thirty percent of the building. The height to the eaves is approximately 45 feet. The Toshiba boring mill has a 20 foot by 40 foot by 20 feet deep pit; the Giddings and Lewis parcel has a 20 foot by 20 foot by 5 feet deep pit. Templeton estimated that in order to sell the property, unless the next property owner has the exact machines, it would be necessary to fill the pits. He estimated that if the pits are just cleaned up and capped with concrete the cost would be \$100,000. If the pits are restored, which involves pulling the rebar, concrete filling with gravel and then concrete, the cost escalates to \$400,000 because the largest pit contains approximately 50 tons of rerod.

Parcel 036 contains 3.25 acres with two buildings. The 8,400 square feet improvement is used for disassembly and reassembly and contains no pits. This building was constructed in 1992 and has 400 square feet of office space.

Templeton stated that the 14,269 square foot building contains two pits 20 feet by 30 feet by 10 feet deep. It would be necessary to restore the pits once the grinders are gone. Templeton estimated that to clean the two pits up would be an environmental issue because they have oil leaks in them so to back fill to floor level is \$50,000 to \$75,000 each. This building was constructed around 1980 and contains 900 square feet of office space. The building has block base and pre-engineered steel above. Templeton testified on cross-examination that the eight foot block did cost more, but it is more durable.

Upon cross-examination, Templeton testified that the building has two machines that require pits, partially for oil lubrication and for foundation support. Both of the mills are one of a kind, one came from Romania and one from Toshiba. It is not unusual to have these machines anchored in a pit. They are similar to large presses.

Templeton advised the court that none of the buildings contain sprinklers. He testified that he was doing his due diligence because Bank One did not want industrial property in their portfolio and requested that he find another bank to finance \$2,000,000 that was owed. He talked to ten banks that would not loan him the amount of money that he requested. He called realtors to determine what other properties were selling for and found sales that were located near his facilities.

Templeton stated that he was familiar with the sales of other industrial buildings. They include 24730 Luckino, 50650 E Russell Schmidt, 51430 Chesterfield Rd, and 52000 Sierra Drive. He considered what the above-mentioned buildings sold for on a dollar per square foot basis.

Templeton testified on cross-examination that the 14,269 square foot building located on parcel no. 036 has two pits necessary for machinery as foundations. The machinery is water-cooled but does leak some of the oil that is used for lubrication. The pits are an extraordinary cost in construction of the building. He paid \$360,000 for the structure, the concrete footings were another \$100,000; electric added \$40,000 for approximately \$500,000 to construct or \$35.04 per square foot. He stated that the \$500,000 estimate did not include land improvement costs. The building does have three cranes; 7.5 ton, 10 ton and 20 ton supported by craneways. The

craneways were built into the engineering cost of the structure. The costs of the cranes were \$12,000 for the 7.5 ton; \$15,000 for the 10 ton and \$40,000 for the 20 ton crane. He stated that he only has one craneway, but the property record card indicates he has three. He did not recall the cost of the paving, but believed it was close to \$30 per yard. He does have security lighting on the side of the building.

Parcel 036 Templeton stated was constructed because he needed it for some work he was doing in the early 1990s. The 8,400 square foot improvement contains a craneway the entire length of the 140-foot building. The building is approximately 26 feet to the eaves. The pre-engineered steel building had some customization. The metal sides are fastened to steel columns for the sixteen 8-ton craneway columns approximately sixteen feet high. This building doesn't contain any pits. It is used for fabricating, welding, assembly and disassembly. There is one 10-ton crane in this building. The package was estimated at \$130,000, plus \$20,000 in concrete and extra for electrical for a total of \$200,000 or \$23.80 per square foot to construct in 1992.

Templeton¹ after looking at sales of the same square footage he opined that the two buildings would be worth \$35 per square foot. He determined that parcel 018 was heavier construction and would be worth \$55 per square foot.

Templeton then testified on each of the comparable sale properties that he found by driving through the general neighborhood. When he saw a "for sale" sign he called the number and

¹ Templeton as the property owner has specific knowledge about his properties and is allowed to opine on the value without a valuation disclosure.

asked questions. He stated that he wanted to be aware of what properties were selling for to determine the value of his industrial buildings. Some of the information was found on the internet.

Petitioner called Steven Mellen as an adverse witness to testify to Petitioner's exhibits, which were not paginated. Mellen testified that R-1, the property records, indicated that only the 8,400 square foot building did not have a charge for sprinklers. R-3 is a May 1, 2007 list of industrial sales. The list contained 39 sales with emphasis on the following sales:

\$1,560,000 May 2004, sale of 27430 Luckino with 33,798 square feet,
\$900,000 February 2004 sale of 51301 Chesterfield with 24,224 square feet, and
\$865,000 March 2004 sale of 50650 E. Russell Schmidt with 28,550 square feet.

Mellen testified that R-3 is just a sales listing, which he did not prepare and does not have any additional information other than what is contained in the exhibit.

Leslie M. Perlman, certified appraiser, was Petitioner's valuation witness. He has appraised various types of properties. The parties stipulated that he is an expert real estate appraiser. He prepared a 29-page document marked as exhibit P-1. He believes that the appraisal does contain his analysis, description of buildings with the two letters of transmittal, sales adjustment grids, and part of the addendum and comparable information that was used to determine his opinion of value. Perlman did state that P-1 is 20 pages from an appraisal report.

Perlman inspected parcel 018 and determined based upon four sales that it has a value of \$970,000. He adjusted for major differences in characteristics. The differences include location,

land to building ratio, square feet, age, appeal, overhead doors, height, parking, craneways, and sprinklers. The adjustments resulted in \$50 per square foot estimate for building and land.

Perlman went through each adjustment and read what the adjustment percentage was for the various differences. The unadjusted sale price per square foot for the sales ranged from \$30.30 to \$51.46. The sale prices per square foot after adjustments were \$31.51 to \$51.46. The percentage of adjustments were +22% for sale one, +4% for sale two, +15% for sale three and -5% for sale four.

Perlman went through the adjustment grid for parcel 036 having the 14,269 square foot building using the same four sales with different percentage adjustments. The adjusted sale prices per square foot were: \$39.24 for sale 1 with -15% adjustments; \$26.36 for sale 2 with -13% adjustments; \$43.86 for sale 3 with -2% adjustments; and \$43.01 for sale 4 with -11% adjustments. Perlman's final adjusted value is \$40 per square foot for land and building.

The 8,400 square foot building also located on parcel 036 was on a separate grid that used the same four sales. Again Perlman used different percentage adjustments. The adjusted sale prices per square foot were: \$32.31 for sale 1 with -30% adjustments; \$20.60 for sale 2 with -32% adjustments; \$39.83 for sale 3 with -21% adjustments; and \$30.93 for sale 4 with -36% adjustments. Perlman's final adjusted value is \$30 per square foot for land and building.

The following grid shows the subject properties and the sales that Perlman used to determine value for the three buildings:

	Subject 1	Subject 2	Subject 3	Sale 1	Sale 2	Sale 3	Sale 4
Location	48401 Gratiot	48531 Gratiot	48361 Gratiot	27430 Luckino	50650 E. Russell Schmidt	51404 Chesterfield	52000 Sierra
Sale Price				\$1,560,000	\$865,000	\$ 900,000	\$1,465,000
SP/SF				\$46.16	\$30.30	\$44.75	\$48.33
Sale Date				May-04	Mar-04	Feb-04	Nov-03
Sq Ft	20,347	14,269	8,400	33,789	28,550	24,224	26,360
L/B Ratio	6.85:1	6.65:1	5.56:1	2.57:1	5.98:1	3.67:1	8.44:1
Age	1998	1988	1991	1998	1986	1990	1996
Cond/Appeal	Gd/Gd	Avg/Avg	Avg/Avg	Avg/Gd	Avg/Avg	Avg/Gd	Avg/Gd
Height	45	26	26	23	24	24	17
Craneways	Yes	Yes	Yes	No	Yes	No	No
Sprinklers	No	No	No	Yes	Yes	Yes	Yes
Doors	One	Two	Two	Two	Two	Two	None
% Office	10.70%	7.00%	5.00%	17.48%	27.80%	26.50%	29.00%

Perlman was not allowed to testify to the additional information that was contained in the entire appraisal because it was not timely submitted to the Tribunal. Therefore, he determined that approximately 20% of the report was not available.

Perlman testified that parcel 018, the 20,347 square foot building that contains the pits, did have a negative \$50,000 adjustment to cure the pits. He stated that the cost to take down the boring mill is what a prospective purchaser would take out of the offering price. Perlman estimated the pits would cost \$100,000 in the open market, but would cost two to three times that much to replace. Perlman said he did not add for the inclusion of the pits in his market value. The reasoning is that the pit dimensions are specific for the current equipment.

Respondent's Arguments

Mellen testified that equalization was a reviewing agency, which includes the sales-study ratios as a basis for increasing or decreasing classes of property within a community. The first Monday

in March is when the assessor has to make assessment changes. Equalization compares the assessment numbers by class of property with the numbers given to the assessors. On July 1, 2008, Petitioner contracted with Macomb County to oversee the assessment process.

Mellen prepared for the hearing by reviewing the valuation disclosure information, including dimensions and sprinklers. The land value is determined by vacant land sales of industrial property. The properties were all assessment on a mass appraisal basis. The cost approach is used to obtain each section and entity in the appraisal. The State Tax Commission Cost Manual is used to determine the class of the property, craneways, and other amenities. The square footage of the building is used for the base cost per square foot and inputted into a computer-assisted appraisal system with all of the adjustments to result in the computer printout for each building.

Mellen stated that based upon Templeton's testimony he believes the sprinklers are in error for parcel 018. Mellen then went through each individual summary with the same methodology used to determine the market value of the properties. The land value will have any land improvements added such as parking and lighting. The building improvements are then depreciated per the guidance in the State Tax Commission Cost Manual, and an economic condition factor is applied. The economic condition factor neighborhood for industrial properties was 1.085.

Mellen answered questions on the proper way to cost a craneway. He stated that the unit-in-place R-6 states that the cost for the craneway rails are for each individual rail. Therefore the 140 lineal foot building would have 280 feet of craneway.

Mellen testified that R-8 is the land values established for the industrial properties. The indication is that both of the parcels would have a \$2.75 per square foot land value. The township appeared to have followed the State Tax Commission guidelines for costing the building improvements, land value, craneways, economic condition factors and depreciation. He stated that all of Respondent's exhibits are applicable for the foundational basis for the assessments.

On cross-examination, Mellen was asked if he agreed with the true cash estimate by Respondent. Mellen stated he was not a valuation witness; he did not prepare the documents. He is familiar with the assessment process and testified about the information that was presented. He testified as to how an assessment was prepared with specific information on the exhibits.

Perlman then testified as a rebuttal witness. He testified that the market approach is a superior method of valuing versus the cost approach. He stated that the market approach measures participation and reaction in the market place and is applicable when it is available. He would not use the cost approach in the older buildings. Older buildings have a declining market that is not always correctly measured in the cost approach. The market approach brings the value to current value based on actual sales within the specific marketplace.

TRIBUNAL'S FINDINGS OF FACT

The Tribunal finds that it has minimal information upon which to base a decision. Petitioner had the opportunity to submit an entire appraisal of subject properties and selected 29 pages to defend its value contentions. Respondent's authorized representative was not personally familiar with subject properties and could only testify as to the information contained in the property record cards as printed from the computer-assisted appraisal system. The Tribunal is left to make assumptions based on the testimony and minimal valuation evidence.

Perlman's "appraisal" would not meet USPAP standards. When a party submits a valuation disclosure and chooses to define or label the document as an appraisal and violates USPAP, the proper agency to enforce the proper licensure of an appraiser and compliance with Standards is the Department of Labor and Economic Growth, Bureau of Commercial Services.

The appraisal contains minimal information and was a copy of a copy. Therefore, the black and white photographs of subject properties and the comparable properties are of minor assistance in determining if the subject properties are in fact comparable to the four sales.

The Tribunal finds that the use of the same four sales for three different properties is curious. Perlman uses the same four sales and makes individual adjustments for differences in amenities; however, it is not helpful in the instance of parcel 036 that contains two buildings. It appears as if the land is accounted for twice, i.e., the value per square foot includes land. There is no indication of any adjustment for the two buildings on one lot. Therefore, it has to be assumed that the entire 3.25 acres has been included in the sale price per square foot for both the 8,400

and 14,260 square foot buildings. Perlman does not reconcile the information for the two buildings on one parcel and makes large adjustments for the smaller building.

Perhaps if the 14,260 square foot building on parcel 036 were the only building, the adjustments may be applicable but that is not the case. There are two buildings on one parcel. It appears as if the additional information not provided in Perlman's "appraisal" may have been of assistance in determining where the adjustments came from and the basis. There was no testimony that Perlman used a paired-sales analysis to determine the percentage adjustments for the differences in amenities. In fact, there was no testimony that gave any indication where the adjustments came from.

The Tribunal finds that Respondent's property assessment records provide minimal information to determine the true cash value for the subject properties. The information notes that "LK" inspected the properties in 1999. This is several years prior to the current appeal. There is nothing on the property record cards indicating that they were updated. It appears as if parcel 018's building permit dated May 1998 for new construction was the impetus for the November 1999 inspection. It would make sense that the assessor's office would list and measure the new construction for parcel 018.

Respondent provided general documentation for the economic condition factor, land values, industrial calculator cost sheets, commercial and industrial reducing balance depreciation table, State Tax Commission Bulletin 13 of 2004 that indicates the inflation rate multiplier, and

sketches for the properties. The information not available is the actual thought process and adjustments that went into the pricing of subject properties.

Parcel 018 has a land and building true cash value of \$1,830,210 based on the cost approach per Respondent, or \$89.55 per square foot. Petitioner indicates a market value of \$970,000 after cost to cure that equates to \$47.67 per square foot.

The Tribunal finds that for parcel 018 Petitioner's market approach less the cost to cure at \$1,020,000, or \$50.13 per square foot, is a reasonable value for subject property. Petitioner did not prove to the Tribunal that the market would deduct a cost to cure of \$50,000. Therefore, the Tribunal finds that Petitioner has met its burden of proof that the assessment of parcel 018 exceeds its true cash value.

Petitioner's market approach for parcel 036 is not as convincing. Petitioner's use of the same sales without additional support and documentation leaves the integrity of the report somewhat in question in relation to parcel 036. The Tribunal discounts the sales comparison approach for parcel 036 due to the use of properties that do not appear to be comparable to the subject property with two buildings on one 3.25 acre parcel. Having said that, Respondent has the 8,400 square feet at a true cash value of \$39.62 per square foot; and the 14,269 square feet at a true cash value of \$42.43 (both exclude the value of the land). Neither party testified that the \$3.25 per square foot value for land was correct or incorrect. There were no sales presented by either party that indicated what the land value should be. Thus the Tribunal relies upon the property

record card at \$3.25 per square foot for the land. The Tribunal further finds that Respondent's true cash value of the buildings and land at \$1,830,210, or \$60.09 per square foot, is reasonable.

Based upon its examination of the evidence received at the hearing conducted in this matter, the Tribunal concludes the true cash value, state equalized value, assessed value and taxable value of the subject properties for the 2005 tax year are as follows:

PARCEL NO.	TCV	SEV	TV
015-009-030-126-036-00-00	\$1,020,000	\$510,000	\$510,000
015-009-030-126-018-00-00	\$1,362,386	\$681,193	\$511,541

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.

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 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; and (vii) after December 31, 2007, at the rate of 5.81% for calendar year 2008.

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

MICHIGAN TAX TRIBUNAL

Entered: September 17, 2008

By: Victoria L. Enyart