

STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH  
MICHIGAN TAX TRIBUNAL

Randall Kohn,  
Petitioner,

v

MTT Docket No. 315243

Township of Columbus,  
Respondent.

Tribunal Judge Presiding  
Susan Grimes Width

**FINAL OPINION AND JUDGMENT**

A hearing was held in this case commencing on February 21, 2008. Petitioner was represented by Donnell L. Robinson, Esq. Respondent was represented by James V. Dubay, Esq.

**FINAL VALUES**

The Tribunal, having given due consideration to the file in the above-captioned case and the testimony and evidence properly submitted, finds that the improvements made by Petitioner to the subject property in 2004 are exempt from being considered as additions per the exemption provided by MCL 211.27 (2).

As such, the property's final taxable value for the 2005 tax year is as follows:

**Parcel Number:** 74-16-029-2020-000

Year	TV
2005	\$166,237

**BACKGROUND**

The subject property is located in the Township of Columbus, County of St. Clair, State of Michigan. The property consists of 21.83 acres located on the east of the Belle River. The property is partially in an area zoned Single-Family Residential and partially in an area zoned Open Space. The property's improvements include four single-family residential dwellings, four

garages, one 8x10 shed and a 20x20 enclosed shelter with no heat or plumbing. In tax year 2005 the subject parcel was classified Residential real property.

*SUMMARY OF PETITIONER'S CASE*

Petitioner offered the following exhibits, which were admitted into evidence with no objection:

- Exhibit P-1 Notice of Assessment, Taxable Valuation & Property Classification for Tax Year 2005.
- Exhibit P-2 Notice of Assessment, Taxable Valuation & Property Classification for Tax Year 2006.
- Exhibit P-3 Mortgage Survey by Kem-Tec Land Surveyors dated September 9, 2003.

Petitioner contends that additions were added to property's taxable value for the 2005 tax year in excess of the appropriate amount. Petitioner claims all the improvements qualify for "Mathieu-Gast" treatment under MCL 211.27(2) and, as such, should not have been added to either the property's TCV or TV for the 2005 tax year. Petitioner also contends that the removal of one garage and its replacement with a new garage in 2005 is the only improvement that should impact the property's true cash and taxable values. Said impact would, however, affect only those values for the 2006 tax year and those values are not pending before the Tribunal, as Petitioner did not file a motion to amend his petition, as required by MCL 205.735.

Petitioner contends that the subject property's TV for the tax year at issue is as follows:

**Parcel Number:** 74-16-029-2020-000

Year	TV
2005	\$166,237*

\*TV reflects 2004 TV of \$162,500 plus maximum allowable increase with no adjustments for additions and losses per narrative in Petition filed by Petitioner on May 26, 2005. Prehearing Statement filed by Petitioner on November 8, 2006, reflected a 2004 TV of \$102,500 as an answer to question 1H. The Tribunal believes this figure to be a typographical error with the intention being to reflect a 2004 TV of \$162,500. The table above reflects the Tribunal's interpretation of the original filing.

**Witness - Randall Kohn**

Petitioner was called as Petitioner's first witness. Petitioner testified that he purchased the subject property on September 30, 2003 for \$315,000. Petitioner also testified that he purchased the property as an investment and for recreational purposes and that he had no intention to treat it as his homestead.<sup>1</sup> At that time he believed the property consisted of twenty-plus acres and included five residential structures and several garages and other outbuildings.<sup>2</sup> After the purchase he realized that only four units were habitable.

Petitioner identified Respondent Exhibit R-11 as consisting of a picture before any improvements were made to home number one and a picture after he replaced the roof and siding and painted.<sup>3</sup> Petitioner identified Respondent Exhibit R-12 as consisting of a picture before any improvements were made to home number two and a picture after he replaced the roof and siding and painted.<sup>4</sup> Petitioner identified Respondent Exhibit R-13 as consisting of a picture before any improvements were made to home number three and a picture after he replaced the roof and siding. Petitioner identified Respondent Exhibit R-14 as consisting of a picture before any improvements were made to home number four and a picture after he replaced the roof, siding, hot water heater, a ceiling fan, and one interior cabinet. Petitioner indicated that painting was also done on this house.<sup>5</sup> Petitioner also indicated that he covered the old deck boards with a plastic or synthetic board that doesn't rot and added a handrail to the deck.<sup>6</sup>

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<sup>1</sup> Transcript p 11, l 17 – p 12, l 3

<sup>2</sup> Transcript p 16, ll 3-6

<sup>3</sup> Transcript p 22, l 21 – p 24, l 14

<sup>4</sup> Transcript p 24, l 16 – p 26, l 4

<sup>5</sup> Transcript p 27, l 11 – p 29, l 7

<sup>6</sup> Transcript p 29, ll 15 -22

Petitioner identified Respondent Exhibit 15 as consisting of two pictures showing the building 5 after he replaced the roof and siding and three pictures showing the interior with drywall partially completed. Petitioner indicated that interior work was in the state seen here when he purchased the property.<sup>7</sup>

Petitioner testified that he obtained a permit in 2005 for the removal of an old garage and construction of a new garage near the residence designated as home number one as illustrated by Respondent Exhibit-19.<sup>8</sup> Petitioner then explained his belief that all the remaining improvements qualified for exemption from assessor's consideration in establishing value under MCL 211.27(2).<sup>9</sup> When asked by Respondent whether he was familiar with the Michigan Department of Treasury - State Tax Commission (STC) Form 865, formerly Form L-4293, the Petitioner indicated that he was not.<sup>10</sup>

**Witness - Susan Hansman**

Petitioner called Respondent's assessor, Susan Hansman, as his second witness. Ms. Hansman identified herself as the assessor for Respondent and two other townships in St. Clair County. Ms. Hansman testified that she is a Level III assessor and that she has worked for Respondent for 17 years.<sup>11</sup>

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<sup>7</sup> Transcript p 25, l 25 – p 31, l 22

<sup>8</sup> Transcript p 32, l 12 – p 33, l 20

<sup>9</sup> Transcript p 36, ll 4-15

<sup>10</sup> Transcript p 82, ll 5-9

<sup>11</sup> Transcript p 126, ll 1-11

Ms. Hansman further testified that less than 1 acre of subject property is zoned Single-Family Residential.<sup>12</sup> The remaining acreage is zoned Open Space. Open Space zoning requires a minimum lot width of 250 feet and 5 acres versus the Single-Family Residential which requires a minimum frontage of 200 feet and 1.5 acres.<sup>13</sup>

Ms. Hansman also stated that she believed that MCL 211.27(2), known as the Mathieu Gast provision, did not apply in this case.<sup>14</sup> Ms. Hansman explained that the provision doesn't apply because the subject property has more than four residential units and is therefore considered commercial not residential.<sup>15</sup> Ms. Hansman further stated that the law was only meant to apply to owner-occupied residences.<sup>16</sup>

Ms. Hansman testified that she took the photographs that have been entered into evidence as Respondent Exhibits 11, 12, 13 and 14 and that these pictures depict the four units currently being rented. She indicated that each of these units has bathroom and kitchen facilities and is hooked up to a septic system.<sup>17</sup> Ms. Hansman also indicated that the pictures entered into evidence as Respondent Exhibit 15 were taken by the building inspector and depict the building in contention as the fifth residential unit.<sup>18</sup>

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<sup>12</sup> Transcript p 129, ll 5-6

<sup>13</sup> Transcript p 131, ll 23-25; p 132 ll 1-2

<sup>14</sup> Transcript p 146, ll 14-17

<sup>15</sup> Transcript p 146, ll 19-25; p 147, ll 1-19

<sup>16</sup> Transcript p 148, ll 9-17

<sup>17</sup> Transcript p 160, ll 16-25; p 161, ll 1-13

<sup>18</sup> Transcript p 161 ll 15-21

Ms. Hansman indicated that Respondent's Exhibit 21, page titled "Residential Building 5 of 5," represents the building depicted in Respondent Exhibit 15. She indicated that the Building Class was designated as "D, the lowest classification I can give it" and that the functional obsolescence was set at 50% to represent the lack of bathroom and heating.<sup>19</sup>

#### *SUMMARY OF RESPONDENT'S CASE*

Respondent offered the following exhibits, which were admitted into evidence with no objection:

- Exhibit R-1 Plat Map
- Exhibit R-2 Randall Kohn Property Transfer Affidavit dated September 30, 2003
- Exhibit R-3 Randall Kohn Warranty Deed dated September 30, 2003
- Exhibit R-4 2005 Petition to Board of Review
- Exhibit R-5 2006 Petition to Board of Review
- Exhibit R-6 Copies of MCL 211.34a from two sources
- Exhibit R-7 MCL 211.27(2)
- Exhibit R-8 Letter from David Hilgendorf, Building Inspector and Zoning Administrator for Columbus Township to Randall Kohn dated September 28, 2004
- Exhibit R-9 Letter from Randall Kohn to David Hilgendorf dated October 12, 2004
- Exhibit R-10 2007 Petition to Board of Review
- Exhibit R-11 Photographs of House One before and after improvements
- Exhibit R-12 Photographs of House Two before and after improvements
- Exhibit R-13 Photographs of House Three before and after improvements
- Exhibit R-14 Photographs of House Four before and after improvements
- Exhibit R-15 Five Photographs of House Five, two exterior showing new siding and roof, three interior showing drywall and wires
- Exhibit R-16 Stop Work Order dated September 27, 2004
- Exhibit R-17 Photographs of House Four, two interior and one exterior
- Exhibit R-18 Three photographs, one of propane tanks for Houses Three and Four, one of gas connection on House Four and one unidentified interior
- Exhibit R-19 Photograph of new garage near House One
- Exhibit R-20 2004 Property Record Card for subject parcel
- Exhibit R-21 2005 Property Record Card for subject parcel
- Exhibit R-22 2006 Property Record Card for subject parcel
- Exhibit R-23 2007 Property Record Card for Parcel No. 7416-029-1006-000, sold on April 14, 2006
- Exhibit R-24 2007 Property Record Card for Parcel No. 7416-001-3001-000, sold on July 5, 2005

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<sup>19</sup> Transcript p 162, ll 24-25; p 163, ll 1-6

- Exhibit R-25 2007 Property Record Card for Parcel No. 7416-033-2001-000, sold on January 10, 2005
- Exhibit R-26 December 9, 2002 Memorandum to Columbus Township Planning Commission regarding conversation with the prior owner about residential development of the subject property
- Exhibit R-27 Columbus Township Zoning Ordinance No.17 and Official Zoning Map
- Exhibit R-28 Michigan Department of Treasury Form, STC 865, Formerly L-4293 with Instructions
- Exhibit R-29 Worksheet of Susan V. Hansman, Assessor, reflecting additions to subject property taxable value

To supplement the above-listed exhibits, the Tribunal requested and received the following public document kept by Respondent in the normal course of business and accessible to Petitioner:

- 2007 Property Record Card for subject parcel
- 2008 Property Record Card for subject parcel
- 2005 Assessor Sketch Worksheets for subject parcel

Respondent contends that MCL 211.27(2) exemptions apply only to owner-occupied residential homesteads.

The taxable value for the subject property, as established by Respondent for the year at issue, is as follows:

**Parcel Number:** 74-16-029-2020-000

Year	TV
2005	\$190,537

**Witness - Susan Hansman**

Ms. Hansman also testified on behalf of Respondent. Ms. Hansman testified that she spoke with the equalization director of Macomb County about the applicability of Mathieu-Gast to the subject property.<sup>20</sup>

**Witness – David Hilgendorf**

Respondent called David Hilgendorf as a witness. Mr. Hilgendorf testified that he has held the position of building inspector for Columbus Township for 26 years and has been zoning administrator for the township for five years.<sup>21</sup> Mr. Hilgendorf identified the contents of several of the photographs that had been submitted as exhibits. Mr. Hilgendorf also reviewed the placement of the residences on Petitioner Exhibit P-3 and confirmed that the exhibit represented the location of the structures correctly.<sup>22</sup>

Mr. Hilgendorf indicated that he took the pictures of the improvement referred to as residence number five in Respondent Exhibit R-15 on January 13, 2005 and that it was not habitable.<sup>23</sup>

Mr. Hilgendorf also indicated that a permit was not needed unless structural alterations were done to a building.<sup>24</sup> He also indicated that the work done by Petitioner, as represented in the Respondent Exhibits 11 through 15 and 17 and 18, did not include structural alterations.<sup>25</sup> Mr.

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<sup>20</sup> Transcript p 198, l 19

<sup>21</sup> Transcript p202, ll 1-18

<sup>22</sup> Transcript p 222, l 15

<sup>23</sup> Transcript p 228, ll 2-25; p 229, ll 1-24

<sup>24</sup> Transcript p 234, ll 2-5

<sup>25</sup> Transcript p 238, ll 1-12

Hilgendorf indicated once again that the building referred to as residence five could not be used as a residential dwelling.<sup>26</sup>

**Witness** – Petitioner, Randall Kohn

During cross-examination, Mr. Kohn answered questions regarding improvements made to the various buildings on the subject property. Mr. Kohn indicated that there is no electric service running to building number five and that it would probably cost \$20,000 to bring electric service to that building.<sup>27</sup> Mr. Kohn also indicated that it is his intention to only rent four units on the subject parcel.<sup>28</sup>

### **FINDINGS OF FACT**

The Tribunal's factual findings must be supported by competent, material and substantial evidence. *Antisdale v Galesburg*, 420 Mich 265 (1984). In that regard, the Tribunal finds that the subject property is located in Columbus Township of St. Clair County in the State of Michigan.

The Tribunal finds that Petitioner filed a Petition on May 25, 2005 appealing the taxable value for 2005. The Tribunal also finds that no amendments to the Petition were filed so tax year 2005 is the only tax year before the Tribunal.

The Tribunal finds that the subject parcel consists of 21.83 acres located on the east side of the river, with approximately 1500 feet of river frontage. The subject parcel is L-shaped with only

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<sup>26</sup> Transcript p 247, ll 10-17

<sup>27</sup> Transcript p 261, ll 6-13

<sup>28</sup> Transcript p 261, ll 20-24

160 feet of frontage on Bauman Road. The Tribunal finds that, although Witness Hansman indicated that less than 1 acre of subject property is zoned Single-Family Residential, 3.3 acres is so zoned.<sup>29</sup>

The Tribunal finds that Petitioner purchased the subject property on September 30, 2003. The Tribunal also finds that Respondent uncapped the subject property on December 31, 2003 and set the assessed and taxable values for 2004 at \$162,500.<sup>30</sup>

The Tribunal finds that Petitioner made repairs to the four inhabitable residential buildings and the one uninhabitable building on the subject property throughout calendar year 2004. The Tribunal also finds that most of those repairs qualify under MCL 211.27(2) as being exempt from being added to the assessed or taxable value. The Tribunal also finds that the addition of flooring and handrails to the deck on home number four does not qualify under MCL 211.27(2). However, since Respondent Exhibit R-22, the 2006 Property Record Card shows a true cost value for the entire deck of \$1,061, the Tribunal finds the improvements to be of *de minimis* value.

### **CONCLUSIONS OF LAW**

MCL 211.27a(2) provides, in pertinent part, that for taxes levied after 1995, the property's taxable value will be the smaller of: "(a) the property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions[; and] (b) [t]he property's current state equalized valuation."

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<sup>29</sup> Petitioner Exhibit 3, Mortgage Survey and Respondent Exhibit 27, Map and Pages from Columbus Township Zoning Ordinance No. 17

<sup>30</sup> Respondent Exhibit 21, Columbus Township 2005 Property Record Card

Respondent has indicated a belief that the so-called “Mathieu-Gast” provision, which exempts certain improvements from being considered “additions,” does not apply to the subject property.

The Tribunal disagrees.

The Tribunal believes that the improvements completed in 2004, with the exception of the *de minimis* deck improvements, qualify as improvements listed in MCL 211.27(2), which states:

The assessor shall not consider the increase in true cash value that is a result of expenditures for normal repairs, replacement, and maintenance in determining the true cash value of property for assessment purposes... This subsection applies only to residential property. The following repairs are considered normal maintenance if they are not part of a structural addition or completion:

- (a) Outside painting.
- (b) Repairing or replacing siding, roof, porches, steps, sidewalks, or drives.
- (c) Repainting, repairing, or replacing existing masonry.
- (d) Replacing awnings.
- (e) Adding or replacing gutters and downspouts.
- (f) Replacing storm windows or doors.
- (g) Insulating or weatherstripping.
- (h) Complete rewiring.
- (i) Replacing plumbing and light fixtures.
- (j) Replacing a furnace with a new furnace of the same type or replacing an oil or gas burner.
- (k) Repairing plaster, inside painting, or other redecorating.
- (l) New ceiling, wall, or floor surfacing.
- (m) Removing partitions to enlarge rooms.
- (n) Replacing an automatic hot water heater.
- (o) Replacing dated interior woodwork.

The Analysis of House Bill 6281<sup>31</sup> lists as one of the “Arguments For” the bill a section titled “Urban blight,” which states:

...the spreading deterioration of residential and business property – contributes heavily to the decay of contemporary cities. People are reluctant to remain in neighborhoods full of ugly, run-down houses, and they dislike doing business in areas where commercial property is not kept attractive. If the bill becomes law, homeowners and landlords would know exactly what they could do to their properties without running the risk of higher taxes, and they would be encouraged to maintain and beautify them. Eventually, people would not feel it is necessary to move out of the cities to find attractive places to live.

In defining the problem the same analysis states “[m]any contend that if the law contained specific instructions concerning what assessors should not consider when setting cash value, property owners would be encouraged to beautify their homes and perform regular maintenance.”

The Tribunal interprets the legislative intent in adopting this amendment to the Property Tax Act as meaning to encourage both owners of homes in which they reside and owners of homes which they rent to others to maintain and improve their properties with no resulting property tax increase. The State Tax Commission in Bulletin 17 of 1995 states “[r]esidential property is not limited to owner-occupied properties.” The Tribunal supports this interpretation.

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<sup>31</sup> House Legislative Analysis Section, Second Analysis, House Bill 6281 (as enrolled) 12-23-76.

## **JUDGMENT**

IT IS ORDERED that the subject property's taxable value for the 2005 tax year is as shown in the "Final Values" 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 as required by the Final Opinion and Judgment within 90 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 at the rate of 2.07% for calendar year 2005, at the rate of 3.66% for

calendar year 2006, at the rate of 5.42% for calendar year 2007, at the rate of 5.81% for calendar year 2008, and at the rate of 3.31% for calendar year 2009.

MICHIGAN TAX TRIBUNAL

Entered: January 30, 2009

By: Susan Grimes Width