

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

Broughton Development,
Petitioner,

v

MTT Docket No. 315333

Township of Macomb,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Petitioner, Broughton Development, appeals ad valorem property tax assessments levied by Respondent, Township of Macomb (also “Township”), against the real property owned by Petitioner for the 2005, 2006, 2007 and 2008 tax years. Myles B. Hoffert, attorney, appeared on behalf of Petitioner. Lawrence W. Dloski, attorney, appeared on behalf of Respondent.

Witnesses appeared on behalf of both parties. They include: an Officer of Petitioner, Gary D’Elesandro; Petitioner’s valuation expert, David Bur, MAI; and Respondent’s assessor, Marcia Smith.

The proceedings were brought to this Tribunal on October 14, 2008 and January 13, 2009, 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, 2006, 2007 and 2008 tax years. The value on the assessment roll is as follows:

Parcel Number: 08-10-100-019

Year	TCV	SEV	TV
2005	\$ 3,058,460	\$ 1,529,930	\$ 1,529,930
2006	\$ 3,058,460	\$ 1,529,930	\$ 1,529,930
2007	\$ 2,604,480	\$ 1,302,240	\$ 1,302,240
2008	\$ 2,404,140	\$ 1,202,070	\$ 1,202,070

Parcel Number: 08-10-100-020

Year	TCV	SEV	TV
2005	\$ 3,071,700	\$ 1,535,850	\$ 1,535,850
2006	\$ 3,071,700	\$ 1,535,850	\$ 1,153,850
2007	\$ 2,662,020	\$ 1,331,010	\$ 1,331,010
2008	\$ 2,457,360	\$ 1,228,680	\$ 1,228,680

Petitioner's appraisal indicates the following values:

Parcel Number: 08-10-100-019 for tax years 2005, 2006, and 2007 a true cash value of \$2,165,000 with an assessed and taxable value of \$1,077,500. 2008; \$652,162 true cash and \$326,086 assessed and taxable.

Parcel Number: 08-10-100-020 for tax years 2005, 2006, and 2007 a true cash value of \$2,165,000 with an assessed and taxable value of \$1,077,500. 2008; \$647,784 true cash and \$323,892 assessed and taxable.

Background and Introduction

The subject properties are located within the Township of Macomb, Macomb County, Michigan, on Broughton Road, south of 26 Mile Road. The two contiguous parcels are vacant with water and sewer access. Subject properties are both zoned agricultural. The aggregate acreage is approximately 81.03 acres. Respondent reassessed the entire vacant land for the township. The result is an increase in value per acre for the subject properties. Petitioner claims that the purchase price of the properties should be considered as market value. Petitioner also claims that the zoning either changed or the due diligence led the developer to a different density conclusion, although there was no testimony that a request to change the zoning or density was formally

brought before the proper authority. The 2005, 2006, and 2007 appeal was based upon testimony from the developer-owner; Petitioner's 2008 appeal was based upon an appraisal.

Petitioner's Arguments

Petitioner states that the issue is the lawful assessment of the properties. Petitioner contends that the market value of the subject properties has decreased due to the economy, location, and change in density. The subject properties are located in a developing community. The current zoning is agricultural, which, according to Petitioner, may limit the use of the property.

Petitioner's first witness is one of the developers of subject property, Mr. Quirino D'Alessandro. Alessandro is the developer and owner of Broughton Development. He testified that he has developed several developments over the past 15 years. He testified that he closed on subject property in 2004, with a purchase price of \$4,300,000 for both parcels. Epic (land developer) drew plans for 166 residential condos, prior to the acquisition. However, after the sale, Petitioner stated that he couldn't get the zoning that was needed to develop the vacant land. Petitioner informally met with different township employees, but did not formally request a zoning change. Petitioner testified that the subject properties were the first acquisition that required a zoning change. He bought the property zoned agricultural and it remained so as of the date of the hearing. When asked by Respondent, "You bought the property with no contingencies and paid cash?" Petitioner answered "Yes." TR 1, p 42.

Petitioner's valuation expert for the 2008 tax year only is David Bur, MAI, who prepared an appraisal of subject properties. Bur testified that he chose six sales of similar vacant parcels to

determine the value of the approximately 81.03 acres. Information regarding the six comparables are set forth below:

	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6
City	Macomb Twp	Richmond Twp	Shelby Twp	Bruce Twp	Macomb Twp	Armada Twp
Sale Date	Oct-08	Dec-07	Dec-07	Apr-07	Jan-07	Oct-06
Acres	11.00	11.63	33.00	10.03	45.22	23.60
Zoning	Residential	Agricultural	Multi-Family	Residential	Agricultural	Agricultural
SP/Acre	\$38,091	\$8,598	\$58,030	\$14,457	\$26,537	\$8,475
Aft	\$26,016	\$10,662	\$20,696	\$16,031	\$15,545	\$9,029
Conditions			-10%		-15%	
Time	14%	-1%	-1%	-11%	-14%	-18%
Location	-10%	25%	-10%	25%		25%
Size	-15%	-15%	-10%	-15%	-5%	-10%
Zoning			-25%			
Functional	-15%	15%	-15%	-15%	-15%	15%
Gross Adj	54%	56%	70%	66%	49%	68%
Net Adj	40%	25%	60%	25%	20%	30%

Bur provided some testimony as to the reasons why the adjustments were made: Sale 3 and Sale 5 were adjusted for conditions of sale. Sale 3 was purchased by the adjacent property owner for an assemblage. Bur adjusted because the buyer paid a premium for the adjacent property. Sale 5 was purchased by a school district which paid a premium because the specific location was required.

Bur adjusted the sale prices downward by 15% a year because, based on discussions with brokers, land values have declined approximately 50% over the past three years.

Bur states that the subject property is an average location. Sale 1 and Sale 3 are located in more heavily developed areas and were adjusted downward. Sales 2, 4, and 6 are located in rural areas and require an upward adjustment of 25%. Sale 5 is a similar location to subject.

All of the sales were adjusted negatively from 5% to 15% for size. The zoning for the sales also varies from residential, agricultural, with Sale 3 zoned multi-family and thus receiving a negative 25% adjustment.

Bur determined that subject property has approximately one-third of its site in wetlands and is rated fair for functional utility. Sales 2, 4, and 6 do not have public utilities and were adjusted upward by 15%. Sales 1, 3, and 5 received a negative 15% adjustment because they have utilities but no wetlands.

Bur determined that the market value of subject property is \$16,000 per acre or \$1,300,000 for both parcels.

Respondent's Arguments

Respondent agrees that the subject property is over-assessed in excess of 50% of market value, but not to the extent that Petitioner has requested with its appraisal. Respondent reassessed the developmental vacant land within the Township. Petitioner's two parcels can be sold independent of each other. The parcels are zoned agricultural and are located across the street from the Township's Municipal Building.

Respondent's witness is the level IV assessor, Marcia Smith. Smith did a reappraisal of the vacant residential property within the township. Respondent's Exhibit 6 is a spreadsheet reflecting ten sales that were used to determine the value for the subject property for the hearing. Smith used ten vacant parcels that sold from June 2003 to March 2006 to determine the sale

price per year for each of the years in contention. The sales ranged from 4.92 to 39.67 acres in size and were adjusted 13% for 2007 and 20% for 2008. The time adjustments were not cumulative. Sales 5 and 9 did not have water and sewer and were adjusted upward 20%.

The size adjustments were less straightforward. The sales that were adjusted 75% (Sales 1, 2, 10) have 17.38 acres, 5 acres, and 4.9 acres, respectively. The sales that were adjusted 94% for size (Sales 3, 4, 5, and 9) have 37.07 acres, 39.67 acres, 9.754 acres, and 25.93 acres, respectively. Sale 6 has 10 acres with a 90% adjustment; Sale 7 has 37.96 acres with a 95% adjustment; and Sale 8 has 25.99 acres with an 85% adjustment.

Respondent purports the 2005 and 2006 value to be \$75,000 an acre; 2007 value to be \$65,000 an acre and 2008 value to be \$60,000 an acre.

TRIBUNAL'S FINDINGS OF FACT

The Tribunal finds that the subject properties are overvalued. The testimony of the property owner was not of great assistance to the Tribunal. In October, 2004, Petitioner purchased both parcels for \$4,310,000 (\$53,190 per acre). Respondent's 2005 true cash value for the parcels is \$6,130,160. This equates to \$75,652 an acre. Respondent continues to place a \$75,000 per acre value on the subject property for 2005 and 2006.

Petitioner has an appraisal for tax year 2008 indicating the value per acre is \$16,000. The Tribunal finds that as an MAI, Bur should have been more aware of the properties that were selected. Sales 2, 4, and 5 are all located in rural communities that do not have the same market

influences as the subject property, with small parcels that are not comparable to either of the subject properties' 40+ acres. The remaining sales 1, 3, and 5 have the same market influences and were closer in proximity to the subject property's location. Petitioner's sale 1, 3, and 5 are selected as appropriate comparables for the subject property.

Having said that, the Tribunal finds that the 60% adjustments that Petitioner made for location, size, zoning and functional utility appear to be excessive and lead the Tribunal to rely less upon the market value as found by Petitioner.

Petitioner indicated that the subject property has wetlands; however, the only documentation was that which outlined the specific type of wetland that Petitioner has identified. Petitioner has identified a September 2006 Flood Plain as being in an area of minimal flooding, and has highlighted some areas that are approximately one-third of the site. Petitioner reduces all of the sales 15% for functional obsolescence. Petitioner fails to identify the type of wetland on the property or how the remediation will influence the market value of the subject properties.

The Tribunal finds that Respondent's sales indicating a \$75,000 per acre value for 2005 and 2006 and a \$65,000 per acre value for 2007 is reflective of market value. However, the Tribunal finds that the 2008 market value has declined to \$55,000 per acre.

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, 2006, 2007 and 2008 tax years are as follows:

Parcel Number: 08-10-100-019

Year	TCV	SEV/AV	TV
2005	\$3,051,750	\$1,525,875	\$1,525,875
2006	\$3,051,750	\$1,525,875	\$1,525,875
2007	\$2,644,850	\$1,322,425	\$1,322,425
2008	\$2,237,950	\$1,118,975	\$1,118,975

Parcel Number: 08-10-100-020

Year	TCV	SEV/AV	TV
2005	\$3,071,700	\$1,535,850	\$1,535,850
2006	\$3,071,700	\$1,535,850	\$1,535,850
2007	\$2,662,140	\$1,331,070	\$1,331,070
2008	\$2,252,580	\$1,126,290	\$1,126,290

Conclusions of Law

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value. The Michigan Legislature has defined true cash value to mean the usual selling price at the place where the property to which the term is applied is at the time of the assessment, being the price which could be obtained for the property at private sale, and not forced or auction sale. See MCL 211.27(1). The Michigan Supreme Court in *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450 (1974), has also held that true cash value is synonymous with fair market value.

In that regard, the Tribunal is charged in such cases with finding a property's true cash value to determine the property's lawful assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767 (1981). The determination of the lawful assessment will, in turn, facilitate the calculation of the property's taxable value as provided by MCL 211.27a. A petitioner does, however, have the burden of establishing the property's true cash value. See MCL 205.737(3) and *Kern v Pontiac Twp*, 93 Mich App 612 (1974).

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 property's assessed and taxable values for the tax years at issue shall be as set forth in the *Findings of Fact* 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 90 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 (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, and (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009.

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

MICHIGAN TAX TRIBUNAL

Entered: February 25, 2009

By: Victoria L. Enyart