

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

Lennington Building, LLC,
Petitioner,

v

MTT Docket No. 323040

City of Adrian,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

FINAL OPINION AND JUDGMENT

This case is an appeal of the 2006 true cash and taxable values established by the City of Adrian (Respondent) under the general property tax act (GPTA) for one parcel of real property (the subject property) owned by Lennington Building, LLC (Petitioner). The subject property is located at 1357 Division Street, Adrian, Michigan, and is known as Parcel No. XAO-100-0319-01. The subject property consists of 37.8 acres of land and is improved with a one story, 96,000 square foot, light industrial manufacturing and warehouse facility. The subject property also has 4,200 square feet of office space. For the reasons set forth below, the Tribunal finds that Petitioner did not meet its burden of proof in establishing the subject property's true cash value.

The subject property's 2006 true cash value (TCV), assessed value (AV) and taxable value (TV), as originally established by Respondent are:

Year	TCV	SEV/AV	TV
2006	\$2,000,000	\$1,000,000	\$1,000,000

Respondent's revised values are:

Year	TCV	SEV/AV	TV
2006	\$2,238,168	\$1,119,084	\$1,119,084

Petitioner's contentions of value are:

Year	TCV	SEV/AV	TV
2006	\$1,600,000	\$800,000	\$800,000

FINAL VALUES

The subject property’s 2006 true cash value (TCV), assessed value (AV) and taxable value (TV), as determined by the Tribunal are:

Year	TCV	SEV/AV	TV
2006	\$2,238,168	\$1,119,084	\$1,119,084

PETITIONER’S CASE

Petitioner obtained an appraisal of the subject property from The William Fall Group. This appraisal was offered as Petitioner’s exhibit P-1. However, the appraiser did not attend the hearing. The Tribunal was informed that Petitioner chose not to have the appraiser testify as to his appraisal because the subject property appraised for more money than Petitioner paid for it when it purchased the property only months before the valuation date. Given this, Respondent objected to the admission of the appraisal. Because the only person who may testify as to an appraisal is the person who authored it, the Tribunal agreed with Respondent and P-1 was not admitted.

Petitioner’s only witness was Mr. Gilbert M. Henry. Mr. Henry testified that he has been a real estate agent for 20 years and that he primarily handles industrial properties. Mr. Henry further testified that he has worked with the owner of the subject property, Mr. Jim Brown, for approximately ten years and that one of his responsibilities is as a leasing agent, handling “upwards of two million square feet of lease space. . . .” (Transcript¹, pp4-5) Mr. Henry represented Mr. Brown in his acquisition of the subject property, which occurred in November 2005. According to Mr. Henry, the agent who listed the subject property contacted him to see if he was aware of anyone who would be interested in purchasing the property. Mr. Henry took the

¹ Hereafter, citations to the transcript will be noted as “T.”

listing to Mr. Brown. Mr. Henry testified that the property was listed for three to four months and was not posted for sale “because there was a going business there at the time and they didn’t want to make their employees upset.” (T, pp6-7)

Mr. Henry testified that the sale was a cash sale. When asked if this influenced the property’s value, Mr. Henry stated: “Well, I think it did in this situation, because you had a seller that needed as clean a scenario as possible because they were closing down this segment of their business, relocating a few people, and they wanted a clean sale.” (T, p9) Mr. Henry further testified that because Mr. Brown did not borrow money to purchase the subject property, “there was very little diligence time. It was less than 30 days from the point of signature to the end of the due diligence period.” (T, p9) According to Mr. Henry, an environmental study was not done on the property. When asked if this has an impact on the sale price, Mr. Henry stated: “From a seller’s standpoint. If a buyer buys the property without an environmental study, they are basically taking on all of the past history of that property.” (T, p9) From Mr. Brown’s standpoint, the fact that leases for the property were being negotiated influenced the price he was willing to pay.

Petitioner’s counsel then asked Mr. Henry a series of questions attempting to elicit information from which to piece together a value for the subject property using the income capitalization approach. Because Mr. Henry did not prepare a valuation disclosure and because the only documentary evidence submitted by Petitioner was an accounting of lease payments, Respondent objected to this testimony. The Tribunal agreed, citing TTR 283(3), which states, in pertinent part: “Without leave of the tribunal, a witness may not testify as to the value of property without submission of a valuation disclosure containing that person’s value conclusions and the basis for the conclusions.”

The following exhibits were submitted by Petitioner and admitted into evidence:

1. P2²: Documents relating to Petitioner's purchase of the subject property in November 2005, one of which is the Property Transfer Affidavit that indicates Petitioner purchased the property on November 8, 2005, for \$1,600,000.
2. P3: Documents from G.H. &A. Property Management, titled Account QuickReport, indicating lease payments made from subject property's lessee.
3. P4: A copy of the Lease Agreement between Petitioner and Merillat Industries, LLC, dated November 28, 2005.

RESPONDENT'S CASE

Respondent's only witness was Ms. Maria Irish. Ms. Irish testified that she has been certified by the State of Michigan as a Level IV Assessor and that she is employed as an assessor by the City of Adrian. Ms. Irish has a BA from Adrian College in business administration and a BA from Sienna Heights University in accounting.

Ms. Irish prepared a valuation disclosure in which she identified the subject property as a 37.8 acre parcel of property with a 96,000 square foot building. In 1967, a light manufacturing building, consisting of 57,600 square feet, was constructed. In 1968, 4,200 square feet of office space was added. 38,400 square feet of warehouse space was added in 1986. Ms. Irish testified that the subject property is zoned B1, industrial and is classified for taxation purposes as industrial.

To establish the true cash value of the land, Ms. Irish utilized the sales comparison approach. Ms. Irish testified that she "looked at vacant land sales within the City of Adrian and the surrounding townships." (T, p28) Ms. Irish selected sales of nine parcels of property that

² Petitioner's Exhibits will be denoted by a "P"; Respondent's Exhibits will be denoted by an "R."

were deemed comparable to the subject property. When asked why she selected these specific parcels, Ms. Irish testified that “they are vacant land sales that were used for commercial development, and . . . were within the City of Adrian vicinity, and I felt they were more prevalent in trying to obtain the market value to the subject property.” (T, pp29-30) Ms. Irish testified that while some of the parcels were improved, “[t]he improved parcel’s sales prices were adjusted to reflect demolition costs associated with building removal.” (R1, p1) The sales prices were also adjusted for date of sale. Ultimately, Ms. Irish selected two land sales that she determined best reflected the subject’s market value. Like the subject property, these comparable properties do not have direct access to a primary road.

For comparison to the subject property, which consists of approximately 37.80 acres, it was determined that calculation of the first acre value was appropriate. The first acre value calculation takes into consideration that the first acre of land has more value than subsequent acres, in other words as size increases the price per acre decreases proportionately. (R1, p4)

With this analysis, Ms. Irish concluded to a value for the first acre of land of \$221,400. After reviewing the characteristics of the land, Ms. Irish determined that 35.444 of the 37.8 acres were developable. Given this, Ms. Irish valued only 35.444 acres. Ultimately, Ms. Irish concluded to a land value of \$1,318,100.

The building and land improvements were valued utilizing the replacement cost approach. Under this approach, Ms. Irish concluded to a value for the building of \$787,000 and a value for the land improvements of \$132,000. With the addition of the land value, the subject property’s total 2006 true cash value pursuant to Ms. Irish’s valuation disclosure is \$2,238,168.

The following exhibits were submitted by Respondent and admitted into evidence:

1. R1: Valuation Disclosure.
2. R2: Subject Property Photos.

3. R3: Comparable Sale Map (City).
4. R4: Comparable Sales Maps (Individuals).
5. R5: Comparable Sales Photos.
6. R7: Comparable Sale Deeds.

FINDINGS OF FACT

The Tribunal finds that the subject property's highest and best use as unimproved and improved is industrial. The Tribunal further finds that the subject property is located at 1357 Division Street, Adrian, Michigan, in the county of Lenawee. The property, known as Parcel No. XA0-100-0319-01, is classified as industrial real for taxation purposes. The property contains 37.8 acres of land, of which 35.444 acres are developable. The property also contains a 96,000 square foot building, of which 57,600 square feet is light manufacturing, 38,400 square feet is warehouse space, and 4,200 square feet is office space. For the 2006 tax year, Respondent assessed the subject property at \$1,119,084, for a true cash value of \$2,238,168. The 2006 March Board of Review reduced the property's assessed value to \$1,000,000, for a true cash value of \$2,000,000. Because the property transferred ownership in 2005, the property's taxable value was also set at \$1,000,000.

The Tribunal finds that Petitioner purchased the subject property on November 8, 2005, for \$1,600,000. Petitioner paid cash for the property and did not perform an environmental due diligence analysis. For the reasons set forth below, the Tribunal finds that Respondent's valuation disclosure provides the most credible evidence of the subject property's 2006 true cash value. Given this, the Tribunal finds that the subject property's 2006 true cash value is \$2,238,168 and that its state equalized and taxable values are \$1,119,084.

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).

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 must 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 & 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 risk 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 & Laughlin* at 354-355.

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).

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 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*, p277.

In this case, Petitioner's appraisal was not admitted into evidence because the appraiser did not appear to testify to the document. Thus, the only evidence of the subject property's true cash value offered by Petitioner and admitted into evidence were the Seller's and Buyer's Agreements and the Property Transfer Affidavit filed with Respondent. All three documents indicated that the property sold for \$1,600,000. This price is confirmed by the Limited Warranty Deed transferring the subject property to Petitioner. While this deed was not admitted into

evidence, it was included in Respondent's exhibits as R6. Because the deed was recorded with the Lenawee County Register of Deeds, the Tribunal takes judicial notice of its existence.

Pursuant to MCL 211.27(5), "the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred." In this case, it appears that Petitioner believed that the purchase price was the best indication of the subject property's value.

However, Mr. Henry testified that Petitioner paid cash for the property and that Petitioner did not perform due diligence, both actions that have an impact on the property's selling price.

Moreover, given the testimony regarding how the property was marketed, the Tribunal is unable to state with any certainty that the property was placed on the open market and subject to normal market pressures. For these reasons, the Tribunal finds that while Petitioner met its burden of going forward, it did not meet its burden of proof in establishing the subject property's true cash value.

Given this, it must be determined whether the value established by the 2006 March of Board of Review or the value concluded to in Respondent's valuation disclosure and on the subject property's property record card is the best indication of the property's true cash value. Because the Tribunal has no evidence from the Board of Review hearing, the Tribunal is unable to determine how the Board concluded to a true cash value of \$2,000,000. Therefore, the Tribunal finds that Respondent's valuation disclosure provides not only the most credible evidence but the only evidence of the subject property's value. These values are adopted by the Tribunal and are set forth in the Final Values section of this Opinion and Judgment.

JUDGMENT

IT IS ORDERED that the subject property's true cash, assessed and taxable values for the 2006 tax year are those shown in the "Final Values" section 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 Opinion and Judgment. 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 Opinion and Judgment within 90 days of entry of this 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. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (ii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (iii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, (iv) after December 31, 2008, at the rate of 3.315% for calendar year 2009, (v) after December 31, 2009, at the rate of 1.23% for calendar year 2010, and (vi) after December 31, 2010 at the rate of 1.12% for calendar year 2011.

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

MICHIGAN TAX TRIBUNAL

Entered: May 3, 2011

By: Patricia L. Halm