

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

The Founders Group, LLC,  
Petitioner,

v

Township of Custer,  
Respondent.

MTT Docket No. 333646  
(consolidated with 344631)

Presiding Tribunal Judge  
Kimbal R. Smith III

**OPINION AND JUDGMENT**

The default hearing in the above-captioned matter was held on April 1, 2009. Petitioner was represented by William E. Clark and David R. Munroe. Neither Respondent nor Respondent's representative, Robert Ricksgers, Assessor/Supervisor, appeared at the hearing.

At issue in this case is the true cash value and taxable value of Petitioner's real property for the 2007 and 2008 tax years. The property is located in the township of Custer, Antrim County, State of Michigan. The property's tax identification number is: 05-04-013-003-20 and the affected school districts are Mancelona and Traverse Bay Intermediate. Information relevant to the property's contested assessed and taxable values is as follows:

ID# 05-04-013-003-20	AV	SEV	TV
2007	\$102,800	\$102,800	\$102,800
2008	\$104,900	\$104,900	\$104,900

(\*In this proceeding, AV refers to assessed value, SEV to state equalized value, TV to taxable value and TCV to true cash value.)

### FINAL VALUES

Parcel Number	Year	True Cash Value	SEV	TV
05-04-013-003-20	2007	\$109,600	\$54,800	\$54,800
05-04-013-003-20	2008	\$109,600	\$54,800	\$54,800

The property is classified for taxation purposes as commercial and the average level of assessment in effect for the property's classification for the 2007 tax year is 50%. The affected school districts are Bellaire and Mancelona

### PROCEDURAL HISTORY

Petitioner, The Founders Group, LLC, appealed the assessed and taxable value of the subject property for tax year 2007. Petitioner subsequently filed an appeal for tax year 2008 under MTT Docket No. 344631, which was subsequently consolidated with this docket number. On February 26, 2009, as a result of Respondent failing to file its witness and exhibit list or its valuation disclosure pursuant to the Scheduling Order issued by the Tribunal on January 8, 2009, Respondent was placed in default and a default hearing was scheduled pursuant to TTR 247.

### PROPERTY DESCRIPTION

The subject property is an 80-acre undeveloped parcel with no water or electricity.

### Petitioner's Exhibits:

Petitioner's Exhibit 27	Warranty Deed dated March 28, 2006 from Rieth-Riley Construction Co. to Brian Rathke and Brian S. Kroll for the amount of \$90,000
Petitioner's Exhibit 28	Quit Claim Deed dated March 28, 2006 from Brian S. Kroll and Brian K. Rathke and Lisa A Rathke, his wife, to The Founders Group, LLC
Petitioner's Exhibit 30	Building Expenses for Storage Building
Petitioner's Exhibit 31	Notice of Assessment 2007

Petitioner's Exhibit 34            Purchase and Sale Agreement dated January 10, 2006 with attachments

The above exhibits were admitted into evidence.

At the outset of the default hearing Petitioner's representatives stipulated that subsequent to purchase of the property, a shed was placed on the subject property and Petitioner does not dispute the value of \$19,600 set by the assessor for the shed.

Petitioner's Witnesses

Mary Janik testified that she is a licensed realtor and was engaged by Petitioner to act as a buyer's agent in the purchase of the property. She indicated that the property was listed through a real estate broker firm and was actively marketed. The original listing price was \$128,000. During the course of her engagement as Petitioner's agent she became aware that there was a contaminated water plume running through the property, plus there was no electricity connected to the property. To make water available on the property, the property owner would have to connect to a water main located approximately one quarter to one-half mile away from the property at considerable cost.

As a result of Ms. Janik's investigation, Petitioner offered to purchase the property for \$80,000. The offer was initially rejected by the seller with a counter offer of \$104,000, at which time Petitioner countered with an offer of \$90,000. This offer was accepted and the property was transferred on March 28, 2006 for \$90,000.

The witness further testified that the real estate market in the Antrim County area for the balance of 2006 (from March 28 to December 31) was basically flat or somewhat declining as was the market for all of 2007.

### **FINDINGS OF FACT**

The subject property was purchased for the sum of \$90,000 in an arm's-length transaction on March 28, 2006 after that property had been listed and actively marketed for several months. The seller had originally listed the property for sale for \$128,000 and after several offers and counter-offers the sale price of \$90,000 was agreed upon. The property is 80 acres in size with no water or electricity and also had underground water contamination. Subsequent to purchase, Petitioner constructed a shed on the property which, at the time of the hearing, Petitioner stipulated that the true cash value of the shed was \$19,600.

The real estate market in the area of the subject property was flat or somewhat declining from March of 2006 through 2007.

### **APPLICABLE 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, as equalized, and that beginning in 1995, the taxable value is limited by statutorily determined general price increases, adjusted for additions and losses.

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% . . .; and for a system of equalization of assessments. For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value. Const 1963, Art IX, Sec 3.

MCL 211.27a(2) provides:

- (2) Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:
- (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. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994.
  - (b) The property's current state equalized valuation.

MCL 211.34d(1)(b)(iii) provides that "new construction" constitutes an "addition" for the calculation of a property's taxable value and provides in pertinent part:

- (c) For taxes levied after 1994, "additions" means, except as provided in subdivision (c) all of the following:

...

(iii) New construction. As used in this subparagraph, "new construction" means property not in existence on the immediately preceding tax day and not replacement construction. New construction includes the physical addition of equipment or furnishings, subject to the provisions set forth in Section 27(2)(a) to (o). For purposes of determining the taxable value of property under Section 27a, the value of new construction is the true cash value of the new construction multiplied by 0.50.

The Michigan Legislature has defined "true cash value" to mean "the usual selling price."

As used in this act, “cash value” means 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).

“True cash value” is synonymous with “fair market value.” *CAF Investment Co v State Tax Comm*, 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 are to 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 Dep’t 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.” (Citations omitted) *Jones and 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); MSA 7.650 (37)(3). “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.” *Jones and Laughlin* at 354-355, citing: *Kar v Hogan*, 399 Mich 529, 539-540; 251 NW2d 77 (1976); *Holy Spirit Ass’n for the Unification of World Christianity v Dep’t of Treasury*, 131 Mich App 743, 752; 347 NW2d 707 (1984).

“There are three traditional methods of determining true cash value, or fair market value, which have been found acceptable and reliable by the Tax Tribunal and the courts. They are: (1) the cost-less-depreciation approach, (2) the sales-comparison or market approach, and (3) the capitalization-of-income approach.” *Meadowlanes Limited Dividend Housing Ass’n v City of Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991); *Antisdale* at 276-277, n 1. The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. *Antisdale* at 276, n 1. “Variations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to the fair market value of the subject property.” *Meadowlanes*, at 485, referencing *Antisdale* at 277, n 1. “It is the duty of the Tribunal to select the approach which provides the most accurate valuation under the circumstances of the individual case.” *Antisdale* at 277, citing *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966), aff’d 380 Mich 390 (1968).

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 may not automatically accept 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 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* 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.”

#### **CONCLUSIONS OF LAW**

The Tribunal, having considered all the evidence properly before it in this matter and having made its findings of fact based upon evidence that it has found credible, competent and material, concludes that the arm’s-length purchase of the subject property for \$90,000, together with the stipulated value (\$19,600) of the shed that was placed on the property, is the most accurate valuation estimate of the subject property in this case for both tax years 2007 and 2008. The Tribunal finds that the true cash value of the subject property for both tax years is \$109,600.

Having determined the true cash value of each of the subject parcels for both 2007 and 2008, the Tribunal concludes that the assessed and taxable values for each parcel is 50% of the above determined true cash values and is reflected in the final values section of this Opinion and Judgment.

### 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 *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 (i) after December 31, 2006, at the rate of 5.42% for calendar year

2007, (ii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and (iii) after December 31, 2008 at the rate of 3.31% for calendar year 2009.

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

MICHIGAN TAX TRIBUNAL

Entered: April 8, 2009

By: Kimbal R. Smith III