

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

Lore Silberman Trust under Agreement
dated November 7, 1994,
Petitioner,

v

MTT Docket No. 338863

Township of Eveline,
Respondent.

Tribunal Judge Presiding
Susan Grimes Width

ORDER GRANTING PETITIONER'S MOTION TO AMEND PETITION TO ADD THE 2008
TAXES AS TO TAX PARCEL 15-006-119-014-00 TO DOCKET NUMBER 0338863

FINAL OPINION AND JUDGMENT

A hearing was held in this case commencing January 13, 2009. Petitioner was represented by James T. Ramer, Esq. Respondent was represented by John Vrondran, Assessor.

FINAL VALUES

The Tribunal, having given due consideration to the case file and the testimony and evidence properly submitted, finds that the property's true cash value (TCV), state equalized value (SEV), and taxable value (TV) for the tax years at issue are as follows:

Parcel Number: 15-006-119-014-00

Year	TCV	SEV	TV
2007	\$ 500,000	\$ 250,000	\$ 250,000
2008	\$ 500,000	\$ 250,000	\$ 250,000

BACKGROUND

The property is located in Eveline Township, Charlevoix County, State of Michigan. The property is Parcel Two of Hidden Valley Shores and has 301 feet of frontage on Nowland Lake.¹ The parcel is classified Residential and contains a single-family residence and a pole barn.²

SUMMARY OF PETITIONER'S CASE

Petitioner contends that subject property assessment is unlawfully excessive and requests a refund of taxes paid on the excessive taxable value with interest.³

Petitioner's contentions of TCV, SEV, and TV are:

Parcel Number: 15-006-119-014-00

Year	TCV	SEV	TV
2007	\$ 500,000	\$ 250,000	\$ 250,000
2008	\$ 500,000	\$ 250,000	\$ 250,000

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

- Exhibit P-2 Purchase Agreement for Subject Property
- Exhibit P-3 Closing Statement
- Exhibit P-4 Deed for the Subject Property
- Exhibit P-5 Bill of Sale
- Exhibit P-7 Property Transfer Affidavit
- Exhibit P-8 Real Property Statement
- Exhibit P-9 Notice of Assessment Increases for 2007 and 2008
- Exhibit P-10 Charlevoix County Tax Information for 2007 and 2008 on the Subject Property
- Exhibit P-11 Appraisal by Northern Michigan Appraisal Company of the Subject Property

¹ Exhibit P-4, Deed for Subject Property

² Exhibit R-1, Property Record Card

³ Petition filed June 29, 2007, Paragraphs Ten and Nine.

Petitioner offered the following witnesses:

Witness – Lore Silberman

Lore Silberman, Trustee of Lore Silberman Trust, was called as Petitioner's only witness. The witness testified that the subject property and \$25,000 of personal property were purchased on October 16, 2006.⁴ The witness explained that \$650,000 was borrowed with the subject property and one other piece of real estate as collateral. From these funds the real and personal property was purchased and borrower was left with additional funds.⁵

The witness also testified as to the nature of the purchase. A realtor with whom Petitioner was working brought the listing of the subject property to her attention.⁶ The witness indicated that she wasn't sure of the number of days the property had been on the market.⁷ The witness also indicated that she was not familiar with the seller prior to her introduction to this listing.⁸

SUMMARY OF RESPONDENT'S CASE

The Tribunal entered an Order on February 19, 2008, holding Respondent in default.

Respondent failed to timely cure the default, as required by the Order of February 19, 2008, and this default hearing was scheduled and conducted. Although Respondent was not permitted to present testimony or evidence,⁹ Respondent submitted the following public record at the request of the Tribunal and with no objection from Petitioner:

⁴ Exhibit P-3, Closing Statement

⁵ Transcript p 10, ll 8 – 25; p 11, ll 1 - 14

⁶ Transcript p 17, l 11

⁷ Transcript p 17, ll 14 - 16

⁸ Transcript p 17, ll 8 - 9

⁹ MTT Rule 205.1247 (2)

Exhibit R-1 2009 Property Record Card with the 2007 and 2008 AV and TV reflected

Respondent's contentions of TCV, SEV, and TV are:

Parcel Number: 15-006-119-014-00

Year	TCV	SEV	TV
2007	\$ 615,600	\$ 307,800	\$ 272,567
2008	\$ 632,600	\$ 316,300	\$ 291,104

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 Petitioner protested its property's assessments for the 2007 tax year to Respondent's 2007 March Board of Review and for the 2008 tax year to Respondent's 2008 March Board of Review. Petitioner filed a petition on June 29, 2007 appealing its property's true cash and taxable values for the 2007 tax year and a Motion to amend its petition to include the property's true cash and taxable values for the 2008 tax year on June 25, 2008. Both the petition and the Motion were timely filed, as provided by MCL 205.735a.

The Tribunal also finds that Petitioner submitted an appraisal completed on May 6, 2008 reflecting a market value of \$500,000 as of December 31, 2006. The appraisal consisted of a sales comparison approach detailing the sale of four purportedly comparable properties between December 2004 and September 2005. Of the four purportedly comparable properties, Comparable Nos. 1 and 2 are the most relevant due to the size of the lake on which each is

located. Further, Comparable No. 2, a sale from December 2004, necessitates the fewest gross or net adjustments when compared to the subject property.¹⁰

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 assessment, being the price which could be obtained for the property at private sale, and not at 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.”

The Tribunal is charged 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. MCL 205.737 does, however, provide, in pertinent part, “[t]he petitioner has the burden of proof in establishing the property’s true cash value...[t]he assessing agency has the burden of proof in establishing the ratio of average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.” See *Kern v Pontiac Twp*, 93 Mich App 612 (1974), and *Shaughnesy v Tax Tribunal*, 420 Mich 246 (1984).

¹⁰ Exhibit P-11, p 4

See also *Hoerner-Waldorf Corp v Village of Ontonagon*, 26 Mich App 542 (1970), and *Brittany Park Apartments v Harrison Township*, 104 Mich App 81 (1981).

The Tribunal is also obligated to select the methodology that is accurate and bears a reasonable relationship to the property's true cash value. See *Safran Printing Co v Detroit*, 88 Mich App 376 (1979), *lv den* 411 Mich 880 (1981). Regardless of the valuation approach employed, the final value determined must represent the usual price for which the subject property would sell. *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473 (1991).

The Tribunal finds that the sales comparison method, utilized in the appraisal presented by Petitioner, is the most reliable indicator of the property's true cash value for the tax years at issue. In fact, the strength of the appraisal submitted is sufficient to offset the fact that Petitioner did not submit evidence, only testimony, of the unusual financing of the purchase of the subject property, as the loan of \$650,000 for the purchase of the subject property would imply that the lender had reason to value the property in excess of that amount. The witness, however, testified to the inclusion of another piece of real estate as collateral on the loan. Although that testimony would have been stronger had it been supported by evidence such as a copy of the mortgage, the testimony was sufficiently supported by Respondent's assessment, as that assessment reflected a true cash value less than the amount of loan.

Given the above, Petitioner has met its burden of proof of establishing the property's true cash and taxable values, as required by MCL 205.737.

JUDGMENT

IT IS ORDERED that Petitioner's Motion to Amend Petition to Add The 2008 Taxes As To Tax Parcel 15-006-119-014-00 To Docket Number 0338863 is GRANTED.

IT IS FURTHER ORDERED that the subject property's true cash value, assessed value and taxable value for the 2007 and 2008 tax years 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 (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.

MICHIGAN TAX TRIBUNAL

Entered: January 30, 2009

By: Susan G. Width