

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

Paris Estates, Inc.,
Petitioner,

v

MTT Docket No. 348017

City of Kentwood,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

OPINION AND JUDGMENT

A hearing was held in this matter on December 16, 2010. Petitioner was represented by Dennis R. Danville, CPA. Respondent was represented Crystal L. Morgan (P688017) of Law Weathers law firm.

This matter involves one parcel of real property located in the City of Kentwood, Kent County, State of Michigan, identified by tax parcel number 41-18-30-326-027. Petitioner timely invoked the jurisdiction of the Tribunal for tax years 2007, 2008 2009 and 2010. At issue are assessed, taxable, and true cash values for each of the years for the subject property.

Information relevant to the property's contested true cash, assessed and taxable values on the assessment roll is as follows:

Parcel Number	Year	Respondent's TCV	Respondent's SEV	Respondent's TV
41-18-30-326-027	2008	\$3,267,200	\$1,813,600	\$1,617,861
41-18-30-326-027	2009	\$2,992,600	\$1,496,300	\$1,496,300
41-18-30-326-027	2010	\$2,756,400	\$1,378,200	\$1,378,200

FINAL VALUES

Parcel Number	Year	True Cash Value	SEV	TV
41-18-30-326-027	2008	\$2,361,580	\$1,180,790	\$1,180,790
41-18-30-326-027	2009	\$2,266,687	\$1,133,343	\$ 1,133,343
41-18-30-326-027	2010	\$1,975,558	\$ 987,779	\$ 987,779

THE SUBJECT PROPERTY

The subject property identified as Parcel 41-18-30-326-027 is located at 310 48th Street SE, in the City of Kentwood, Kent County, Michigan. The property is classified commercial and is zoned R-5 Manufactured Housing District. The subject parcel is irregular in shape, contains approximately 23.9 acres upon which are 155 mobile home park pads.

PETITIONER'S CONTENTIONS

Petitioner contends that as of each valuation date the assessed value of the subject property exceeded 50% of its true cash value. In support of its contentions Petitioner introduced two exhibits, which were admitted over the objection of Respondent's counsel. Petitioner's Exhibit #1 was identified as "Paris Estate Mobile Home Park, parcel: 41-18-30-326-027, 2004 to 2009 Statistical Information," which was prepared by Petitioner's representative. Petitioner's Exhibit #2 contained three supposed sales comparables to which Petitioner's representative had attempted to make adjustments. The comparables were admitted but the adjustments were not inasmuch as the Tribunal in response to Respondent's objections determined that Petitioner's representative was not qualified as a real property valuation expert.

Petitioner's representative and only witness testified that Petitioner's exhibit #1 was the actual Financial Information for the subject property (Mobile Home Park) for the 2004 through 2009

calendar years. He explained that the subject's expenses were somewhat larger than the average due to the age and layout of the property. For calendar years 2007-2009 (tax years 2008-2010), he applied a capitalization rate of 12.2% for tax years 2008 and 2009 and a 12.6% capitalization for 2010. Using the subject's actual income and expenses and applying the above-stated capitalization rates, Danville concluded to a true cash value of the subject property of \$2,162,738, \$2,038,803, and \$1,864,456 for tax years 2008, 2009 and 2010, respectively.

Danville did not state nor did Petitioner's Exhibit #1 set forth whether the capitalization rate he utilized was tax loaded. No attempt was made by Petitioner to arrive at an estimate of value of the subject property using either the cost or sales comparison approach.

RESPONDENT'S CONTENTIONS

Respondent contends that the property is assessed at 50% of its true cash value for all years under appeal.

In support of Respondent's contentions, Respondent called one witness, James D. Baker, CMAE III, who prepared Respondent's Valuation Disclosure and introduced two exhibits: R-1, Statement of Qualifications of James D. Baker and R-2, Valuation Disclosure dated August 2, 2010, which concluded to a true cash value for all years under appeal in an amount equal to the assessed values on the tax roll times 2. Both exhibits were admitted without objection.

In support of values contained in the Valuation Disclosure, James D. Baker was qualified as a level III assessor. Mr. Baker testified that the initial assessments on the subject property were determined using the income capitalization method. Although he did not prepare the initial

assessment, he indicated that the income and expense numbers utilized in arriving at the assessments were based on income and expense numbers derived from a survey conducted by an independent group rather than the actual income and expense numbers of the subject property. Mr. Baker concluded that these calculations were reasonable and also the capitalization rates applied to the net operating from which the true cash value of the subject was determined were reasonable.

Mr. Baker also testified that he utilized both the sales comparison approach and cost approach to test his conclusions of value using the income capitalization approach, which he deemed most approximate for this type of income-producing property. The Tribunal notes that Respondent's Valuation Disclosure contained no supporting data for its capitalization rates, nor the type, age and condition of the mobile home parks that were the subjects of the rent, income and expense surveys.

FINDINGS OF FACT

The Tribunal, having considered all of the documentary evidence and testimony submitted by the parties and based upon that portion of the evidence that the Tribunal finds believable and credible upon the record before it, concludes:

The property is located at 310 48th Street, Kentwood, Kent County, Michigan, is 23.9 acres in size and occupied by Petitioner as a 155-pad mobile home park, and is identified by tax parcel number 41-18-30-326-027.

The mobile home park was constructed in the 1960's and is of a checkerboard design.

Petitioner utilized a direct income capitalization approach in attempting to value the subject property and did not consider the cost approach nor present admissible evidence regarding the sales comparison approach.

Respondent established the assessments for the subject property using an income capitalization approach and in its valuation disclosure (R-2) considered all three approaches to value, but in the end concluded that the true cash value of the subject for all three years under appeal was the identical amount as the original assessments. Respondent acknowledged that the proper method to value was the income capitalization approach.

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 central issue in this dispute is: what is the true cash (market) value of the subject property for tax years 2008, 2009, and 2010. This case requires the Tribunal to determine which valuation methods are useful to determine an accurate market value estimate of the subject property and to make an independent determination of the true cash value based upon its evaluation and analysis of the evidence.

The parties, through their respective representatives, were in agreement that the most appropriate method to value the subject property was through the income capitalization approach.

The Tribunal finds that although neither party's valuation of the subject property using the income capitalization approach offers a fully supportable indicator of value, there is sufficient evidence to allow the Tribunal to make an independent determination of true cash value for tax years 2008, 2009 and 2010 using portions of both parties' income capitalization methodology.

The Tribunal notes that although Petitioner utilized actual income and vacancy rates to arrive at its effective gross income for each year under appeal and Respondent utilized income and vacancy rates extrapolated from market surveys, at the end of the day both parties' EGI amounts were extremely close. For tax year 2008 Petitioner's EGI was \$570,303 as opposed to Respondent's EGI of \$572,508. For 2009 Petitioner's EGI conclusion was \$558,731 as compared to Respondent's \$600,357 and for 2010 Petitioner concluded to an EGI of \$534,480 as opposed to Respondent's concluded EGI of \$575,433. Neither parties' evidence regarding the basis of their respective EGI conclusions were particularly clear or well presented, but taken as a

whole, the Tribunal finds Respondent's market survey evidence as to rental and vacancy rates more convincing and as a result adopts the income, vacancy/collection and other income amounts it utilized in arriving at its EGI amounts for each year (R-2 pp's 19, 21 & 23).

In addition the Tribunal determines, considering the age and layout of the property, Petitioner's actual expense amounts, although only marginally supported, are a better basis to complete the valuation of the subject using the income capitalization method than Respondent's, whose expense numbers were based upon some sort of survey performed by some unidentified entity. There is nothing in this record by way of testimony or in Respondent's Valuation Disclosure (R-2) that indicates that any of the surveyed properties were of similar age and/or condition as the subject.

The Tribunal also is uncertain from the record before it whether Petitioner's capitalization rate was tax loaded, whereas Respondent established to the satisfaction of the Tribunal that its capitalization rates of 11.39% for 2008, 13.04% for 2009 and 13.57% for 2010 were in fact tax loaded and reflected the generally deteriorating economic condition that existed in the State of Michigan on the relevant valuation dates.

Applying Respondent's EGI and capitalization rates as set forth in Respondent's Exhibit #2 for the years under appeal and further utilizing Petitioner's actual expense figures as set forth in P-1, the Tribunal determines the following **true cash values**: **2008** (Respondent's EGI [\$575,433] - \$306,449 [Petitioner's actual expenses] = NOI \$268,884/11.39% Respondent's overall capitalization rate) **\$2,361,580**; **2009** (Respondent's EGI [\$600,357] - \$309,997 [Petitioner's

actual expenses] = \$290,360 [NOI]/13.04% Respondent's overall capitalization rate) **\$2,266,687** and **2010** (Respondent's EGI [\$575,433] - \$301,423 [Petitioner's actual expenses] = \$274,010 [NOI] / 13.57% Respondent's overall capitalization rate) of **\$1,975,558**.

Having determined the true cash value of the parcel at issue for tax years 2008, 2009 and 2010, the Tribunal concludes that the assessed and taxable values for the subject 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, 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, (xiii) after December 31, 2007, at the rate of 5.81% (xiv) for calendar year 2008, at the rate of 3.315 for calendar year 2009, and (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010.

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

MICHIGAN TAX TRIBUNAL

Entered: January 11, 2011

By: Kimbal R. Smith III, Tribunal Judge