

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

Charter Oak Homes,
Petitioner,

MTT Docket No. 354554

v

City of Detroit,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

FINAL OPINION AND JUDGMENT ON REMAND

Introduction

The Court of Appeals, in an unpublished opinion dated October 6, 2011, vacated and remanded this case to the Tribunal “for further proceedings consistent with this opinion.”

The Tribunal must make its own independent finding of fact and arrive at a legally supportable true cash value, supported by competent, material, and substantial evidence on the whole record.

Petitioner appeals the true cash value, state equalized value, and taxable value for this residential real property for the 2008 tax year. The parcel number is 01-000-605-8. The subject property is located at 2555 Brush Street, Detroit, Wayne County, Michigan. Petitioner was represented by Myles B. Hoffert, attorney. Respondent did not file a response to the petition, did not submit evidence, and did not attend the default hearing.

An Order of Default was issued to Respondent for failing to respond to the petition.

Respondent failed to cure the default and a default hearing was held on July 16, 2009, pursuant to TTR 247.

Summary of Judgment

The City of Detroit has assessed the property on the tax roll at:

Parcel Number: 01-000-605-8

TCV	SEV	TV
\$162,536	\$81,268	\$81,268

Petitioner believes that the value of the subject property is:

Parcel No. 01-000-605-8

Year	TCV	AV/SEV	TV
2008	\$100,000	\$50,000	\$50,000

The Tribunal finds the values shall be:

Parcel No. 01-000-605-8

Year	TCV	AV/SEV	TV
2008	\$162,536	\$81,268	\$81,268

Background and Introduction

At issue is the true cash value for a residential property located at 2555 Brush, Detroit, Michigan. This is a townhouse of undetermined square footage. Petitioner states that Respondent has overstated the taxable value of the subject property.

Petitioner’s Arguments

Petitioner believes that the taxable value of the subject property contains public improvements that should be exempt from taxation. Petitioner provided no exhibits or witnesses. Petitioner’s counsel provided testimony at the hearing.

Petitioner’s counsel Hoffert argued the following:

This is a case of Mr. Glieberman, who owns Charter Oak Homes, redid a whole subsection of the City of Detroit. And what he did was he bought the original two blocks, which includes Adeline and Brush and a couple of other streets.

He bought a whole subsection of streets, a two block—going from Woodward to Brush, north. I think it had about four streets in it. And what he did was knock down everything that there was there, and he then gave – redid the sewer system and redid the utilities and built townhouses for sale.

And utilities, repaved the roads. They were all broken up, and the asphalt was cracked where there was asphalt. Basically leveled everything, regraded everything and rebuilt very, very nice townhouses, affordable, and they are in what's called the NEZ zone, neighborhood enterprise zone, for those people who have qualified. This is the only house that's left. It is a taxable value under Toll. Tr. pp. 4, 5.

Hoffert further argues that he would settle for a taxable value of \$50,000. He stated that it was ascertained what Mr. Glieberman paid for the complete project, for the land and building costs, and arrived at a “number.” Hoffert did not provide any documentation or the basis for the \$50,000 assertion. “It’s – it is an estimate,” Tr. p. 6. He further states that “I took my numbers from the other cases that have been adjudicated or agreed to. I can’t get anybody to talk to, because we’ve had two different people from the City of Detroit on the other four-block area, and so we don’t know who’s what.” Tr. p. 8.

Hoffert continues “I got those numbers from the other cases, the six other cases of houses that we have in that subdivision that have been sold and settled.” Tr. p. 8.

The Tribunal asked Hoffert what he had to prove his value and he responded, “I don’t have anything because I can’t get anything from them and I can’t get the numbers. I have nobody to talk to, I have tried at least ten times, and this is a number based on the other cases that we have settled with them in that same subdivision.” Tr. p. 9.

Respondent’s Arguments

Respondent was placed in Default by the February 8, 2009 Order Placing Respondent in Default for failure to answer the petition. Respondent was given 21 days in which to

file a motion to cure the default and file an answer. Respondent failed to do so and did not appear at the Default Hearing.

Tribunal's Findings of Fact

1. Subject property is located at 2555 Brush in Detroit, Michigan.
2. Subject property is located in Wayne County, Detroit School District.
3. Subject property is a single-family residential townhouse.
4. Subject property is located in a Neighborhood Enterprise Zone.
5. Mr. Gliberman was the developer of the project where the subject property is located.
6. Subject property is the last townhouse to be owned by Petitioner.
7. Petitioner's counsel is a practiced attorney familiar with the Tribunals procedures for many years.
8. Petitioner's counsel presented no evidence.
9. Petitioner's counsel presented no witnesses.
10. The true cash value placed on subject property by Respondent is \$162,536; the state equalized and taxable values were \$81,268.
11. Petitioner's counsel made reference to other decisions and stipulations rendered in other Charter Oak hearings. Petitioner's counsel did not refer to the following appeal by docket number; however, this is the only Charter Oak appeal in which an opinion, albeit a non-precedential small claims case, was issued. The small claims case did not support Petitioner's contentions in the above-captioned case. The following small claims docket was heard by the same Tribunal Member, Victoria L. Enyart, with the following information for MTT Docket No. 318715 established:
 - a. Parcel No. 1000617.005 (34 Adeline), Parcel No. 1004160.002 (2442 Woodward) and Parcel No. 1004160.001 (2440 Woodward) were appealed for tax years 2005 through 2009.
 - b. Each of the properties is five years old, new construction, and have never been occupied.
 - c. The buildings contain 8 condo units with 1,440 square feet.
 - d. Each building faces Woodward Avenue, a very busy street in Detroit.
 - e. Respondent determined that the properties should be reduced 20% for external obsolescence due to the influence of Woodward Avenue.
 - f. Petitioner provided the vertical cost for the subject properties.
 - g. Petitioner did not meet the burden of proving that \$7,568 in taxable value should be deducted for infrastructure.
 - h. The Tribunal reduced the market value of the properties 20% for external obsolescence.
 - i. The 2008 true cash value for the properties were established by the Tribunal as:

Parcel Number: 1000617.005 (34 Adeline)

Year	TCV	SEV	TV
2008	198,400	99,200	99,200

Parcel Number: 1004160.002 (2442 Woodward)

Year	TCV	SEV	TV
2008	219,328	109,644	104,502

Parcel Number: 1004160.001 (2440 Woodward)

Year	TCV	SEV	TV
2008	169,568	84,784	78,807

Conclusions of Law

Pursuant to Const 1963, art 9, §3, 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; 221 NW2d 588 (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).

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 9, §3.

As used in the General Property Tax Act, “true 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).

“True cash value” is synonymous with “fair market value.” *CAF Investment Co, supra*. The Michigan Supreme Court, in *Meadowlanes Limited Dividend Housing Ass’n v City of Holland*, 437 Mich 473; 473 NW2d 363 (1991), acknowledged that the goal of the assessment process is to determine “the usual selling price for a given piece of property.” In determining a property’s true cash value or fair market value, Michigan courts and the Tribunal recognize the three traditional valuation approaches as reliable evidence of value. See *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d (1984).

“The petitioner has the burden of establishing the true cash value of the property....” MCL 205.737(3); MCL 211.27(1); *Meadowlanes, supra*. “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 & Laughlin Steel v City of Warren*, 193 Mich App 348, 483 NW2d, 416 (1992), 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 Dept of Treasury*, 131 Mich App 743, 752; 347 NW2d 707(1984). Petitioner, in this instance, failed to establish the true cash value of the subject property. The only “value” contention was Petitioner’s counsel’s representation that \$50,000 state equalized and taxable value would be acceptable.

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 Comm*, 3 Mich App 170; 141 NW2d 699 (1966), aff’d 380 Mich 390 (1968); *Antisdale*, at 276. 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. The Tribunal finds that Petitioner did not present a cost approach to value, a sales comparison analysis, or an income approach to value. Petitioner simply stated “And so I have a number of fifty thousand dollars, which I believe is high, but I’m willing to settle for that number for taxable.” Tr. p. 6.

The Tribunal may not automatically accept a respondent’s assessment but must make its own finding 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); *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982).

Summary of Judgment

On behalf of Petitioner, Mr. Hoffert stated "I got those numbers from the other cases, the six other cases of houses that we have in that subdivision that have been sold and settled." Tr. p. 8. This Tribunal conducted a Small Claims hearing (MTT Docket No. 318715), where evidence was presented for three parcels located on Adeline and Woodward and owned by Petitioner. Petitioner's counsel presented evidence in the **non-precedential** small claims case, including vertical costs, age, and the location facing busy streets. Respondent, in that instance, did file an answer and presented evidence including property records, sketches, and specific details for each property, including the square footage. In that instance, Petitioner did not present evidence that infrastructure costs were included in the taxable value. This Tribunal reduced the value of the three properties based on external obsolescence due to the fact that Woodward Avenue is very busy.

Petitioner's reliance on "other cases that have been adjudicated to or agreed to" is simply insufficient documentation that would be accepted as evidence in proving the

true cash value of the subject property. This Tribunal found eleven additional cases under Charter Oak Homes in the City of Detroit. One (MTT Docket No. 318715) was heard in the Small Claims Division and is not precedential, two (MTT Docket Nos. 354229 and 334767) were stipulations, one (MTT Docket No. 320774) was dismissed, one (MTT Docket No. 413642) is pending in the Small Claims Division, and the remaining six (MTT Docket Nos. 372701, 372702, 372703, 372704, 372705 and 375800) are on a Prehearing General Call. Therefore, Mr. Hoffert's arguments at the Default Hearing do not rise to the level of competent evidence that would substantiate Petitioner's claim of \$50,000 state equalized and taxable value.

If this Tribunal were to consider the evidence in the prior Small Claims case (MTT Docket 318715) and apply it to this specific property, it would take a large leap of faith to assume that the subject property, located on a different street, would be worth less than the \$162,536 true cash value placed on it by Respondent. The 2008 true cash values determined by the Tribunal (after evidence and testimony from both parties) in the previous Small Claims case (MTT Docket No. 318715) for the properties that successfully argued external obsolescence were \$198,400, \$218,328 and \$169,568. The stipulations filed by Petitioner in two cases are not compelling evidence that the subject property is over assessed.

Mr. Hoffert states "And so I have a number of fifty thousand dollars, which I believe is high, but I'm willing to settle for that number for taxable, for the reason that what we did is we tried to ascertain what Mr. Gliberman paid for the complete project, for the land,

and then what he has in building costs. And that's how we arrived at that number. It's – it is an estimate....” Tr. p. 6. The Tribunal notes that Petitioner did not bring this evidence to the hearing. Petitioner, in the Small Claims Division, did present evidence from the same subdivision development.

The Entire Tribunal is the formal division of the Tribunal. The expectations that evidence and witnesses assist the Trier of Fact are more prevalent in the Entire Tribunal. This Tribunal cannot make a determination of value without evidence or Petitioner's meeting its burden of persuasion. Petitioner failed to prove that the taxable value contained any amount for infrastructure (which would constitute a “loss” for purposes of calculating taxable value under *Toll Northville, Ltd v Northville Twp*, 272 Mich App 352; 726 NW2d 57 (2006); Court of Appeals, Docket No. 132466, October 3, 2006, as affirmed *Toll Northville, Ltd v Northville Twp* 480 Mich 6; 743 NW2d 902 (2008)), or that the true cash value of the subject property is less than the \$162,536 value placed on the property by Respondent. Petitioner's counsel's indication of the method used for deriving its proposed assessed and taxable values, and his citation to similar models within the same development that had already been negotiated or adjudicated (in a prior non-precedential Small Claims case) is not relevant. Counsel's statements are not, by themselves, evidence, and are not entitled to any more weight than counsel's assertion in an opening statement of the facts the party intends to prove. See MCR 2.507(A). To be sure, bare assertions by counsel that the above is true does not “make” the evidence relevant.

Statements made by Charter Oak's counsel are not "submission of evidence" as statements and arguments by counsel do not constitute evidence. *Guerrero v Smith*, 380 Mich App 647, 658; 761 NW2d 733 (2008); *Tobin v Providence Hosp*, 244 Mich App 626, 641; 624 NW2d 548 (2001).

The Tribunal, having considered Petitioner's counsel's reliance on other cases, arguments, and lack of evidence, finds that the application and consideration of such would not result in a reduction in the true cash value of the subject property or that Respondent (based on prior cases that are in the Charter Oak Homes development) included an amount in the taxable value for infrastructure.

Although the above-captioned case is a Default Hearing, Petitioner still has the burden of proof. The burden of proof may be lower without opposition, but it remains a hurdle that Petitioner has to overcome. Petitioner has to produce evidence that persuades the Tribunal that the subject property is over assessed.

In this case, the Tribunal concludes that the evidence (in Small Claims Division), testimony, and law indicate that the subject property is not assessed in excess of 50% of market value.

The Tribunal is charged in a valuation appeal to determine the true cash value of the subject property as of each tax year at issue. Petitioner was not able to prove, by a preponderance of its evidence, that the assessment of the subject property should be reduced for the tax year at issue. The evidence in other cases as proposed by

Mr. Hoffert does not support a reduction in the value of subject property. The Tribunal considered the file, evidence presented in MTT Docket No. 318715, a non-precedential case, and Mr. Hoffert's arguments. Petitioner was not able to prove by a preponderance of its evidence that the assessment of the subject property should be modified.

JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the tax year at issue shall be as set forth in the *Summary of Judgment* section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year 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, the 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 this Order within 28 days of the entry of this Order. 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 the Tribunal's order. As provided in 1994 PA 254, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest rate of the 94-day discount treasury bill rate for the first Monday in each month plus 1%. As provided in 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after January 1, 1996 at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 1995 at the rate of 6.55% for calendar year 1996, (ii) after December 31, 1996 at the rate of 6.11% for calendar year 1997, (iii) after December 31, 1997 at the 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, (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (xvi) after December 31, 2010, at the rate of 1.12% for calendar year 2011, and (xvii) after December 31, 2011, at the rate of 1.09% for calendar year 2012.

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

MICHIGAN TAX TRIBUNAL

Entered: January 13, 2012

By: Victoria L. Enyart