

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

Smith Investment, Inc.,
Petitioner,

v

MTT Docket Nos. 362760 and 362762

City of Romulus,
Respondent.

Tribunal Judge Presiding
Preeti Gadola

OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Smith Investment, Inc. ("Smith"), appeals ad valorem property tax assessments levied by Respondent, City of Romulus, against the real property owned by Petitioner for the 2009 tax year (Parcel Nos. 82-80-048-99-0003-000 and 82-80-048-99-0001-000). Jeffrey C. Stearns, attorney, represented Petitioner, and Jason C. Long, attorney, represented Respondent.

The subject properties consist of parcels of land with residential structures. The properties are classified as residential, but are zoned M- T, Industrial Transportation District. The properties are located in proximity to I-94 and Detroit Metropolitan Airport, in the City of Romulus.

A hearing on these matters was held on October 25, 2011. Petitioner did not offer any witnesses. Respondent offered Respondent's Assessor, Julie Albert, as its only witness.

Based on the evidence, testimony and case file, the Tribunal finds that the true cash values ("TCV"), the state equalized values ("SEV"), and the taxable values ("TV") of the subject properties for tax year 2009 are as follows:

Docket No. 362760

Parcel Number: 82-80-048-99-0003-000 ("Parcel 003")

Year	TCV	SEV	TV
2009	\$77,200	\$38,600	\$37,064

Docket No. 362762

Parcel Number: 82-80-048-99-0001-000 ("Parcel 0001")

Year	TCV	SEV	TV
2009	\$114,000	\$57,000	\$51,424

PETITIONER'S CONTENTIONS

Petitioner contends, in its Petition in this matter, that the subject properties were over assessed for the tax year in question. Petitioner further contends that the increase in assessment requested by Respondent was not supported by the sales comparison approach to value presented in Respondent's Valuation Disclosure.

As determined by Petitioner, the TCV, SEV and TV for the subject properties for the tax year at issue should be:

Parcel Number: 82-80-048-99-0003-000

Year	TCV	SEV	TV
2009	\$25,000	\$12,500	\$12,500

Parcel Number: 82-80-048-99-0001-000

Year	TCV	SEV	TV
2009	\$45,000	\$22,500	\$22,500

PETITIONER'S ADMITTED EXHIBITS

Petitioner did not enter any exhibits into the record at the hearing on this matter.

PETITIONER'S WITNESSES

Petitioner did not call any witnesses at the hearing on this matter.

RESPONDENT'S CONTENTIONS

Respondent contends that the true cash and assessed values determined by Respondent for the subject properties for the tax year at issue should be increased after the completion of the appraiser's sales comparison approach to value. At the hearing on this matter, Julie Albert, Assessor for the City of Romulus, testified that the subject properties, though classed residential, are in an M-T industrial zone and that their highest and best use was as industrial property. The properties were located in close proximity to I-94 and Detroit Metropolitan Airport. As such, another use for the properties would be as the site of advertising billboards. Such location of the properties presented an increased contention of TCV due to their potential as industrial sites.

In her Valuation Disclosure, Ms. Albert presented a sales comparison approach to value of the subject properties. Such Valuation Disclosure presented two sales comparables that demonstrated an increased price per acre of properties in the subject property area. Ms. Albert testified that the sales presented affirmed her contention that the TCV of the subject properties should be increased.

As determined by Respondent, the revised TCV, SEV and TV for the subject properties for the tax year at issue should be:

Parcel Number: 82-80-048-99-0003-000

Year	TCV	SEV	TV
2009	\$127,500	\$63,750	\$37,064

Parcel Number: 82-80-048-99-0001-000

Year	TCV	SEV	TV
2009	\$204,750	\$102,375	\$51,424

RESPONDENT'S ADMITTED EXHIBITS

- R-1 Valuation Disclosure, pp. 1-11
- R-2 Curriculum Vitae for City of Romulus Assessing Director, Julie Albert
- R-3 City of Romulus Zoning Map
- R-5 Tax parcel map showing the subject property
- R-9 Warranty Deed for the property commonly known as 28900 Hildebrandt, Romulus, Michigan
- R-10 Memorandum of Land Contract for property commonly known as 10043 S. Middlebelt Road, Romulus, Michigan

RESPONDENT'S WITNESSES

Julie Albert

Julie Albert, Certified Michigan Assessment Evaluator, Level IV, has been the Director of Assessment for the City of Romulus since January 2002. Prior to such employment, she was the Deputy Director of Assessment for the City of Westland and a City of Westland Appraiser, Level II. Ms. Albert has been an appraiser or assessor since February 1992. (R-2)

In direct examination by Respondent's attorney, Ms. Albert testified regarding the two sales comparables that she utilized in determining the true cash value of the subject properties for the tax year in question. She testified that the original assessment was based on a mass appraisal technique that included land and building. Ms. Albert testified, however, that upon completing an individualized valuation, she determined that the highest and best use of the properties was for industrial use. (Transcript, p. 15)

Ms. Albert testified that the subject property parcel number 0003 consisted of .73 acre with a home and garage on it. (Transcript p. 15) [According to R-1 it consisted of .62 acre of land.] The subject property parcel number 0001 consisted of 1.17 acres with a house on it. (Transcript, p. 22) [According to R-1 it consisted of 1.04 acres.] Ms. Albert testified that comparable 1 consisted of 1.19 acres and sold in June 2008. (Transcript, p. 19) Upon questioning by the Tribunal, she testified that it was also zoned M-T, was a bank sale (the seller was "First National Bank of America," (transcript, p. 28, R-10) and the sale was by land contract (R-10). Respondent's comparable 2 was zoned M-2 and consisted of 10.21 acres that sold in November 2008. (Transcript, p. 20, R-9) Ms. Albert testified that she blended the two comparable sales to determine the true cash value of the subject properties. She testified that all the properties (subjects and comparables) were off Middlebelt Road, zoned M-T, and had the same proximity to I-94 (Transcript, p. 21). Respondent contends that the true cash value of parcel 0003 was \$127,500 in tax year 2009 and the true cash value of parcel 0001 was \$204,750 in tax year 2009. Respondent testified that though bank sales have steadily increased in

Romulus, in 2008 not many bank sales were seen in the marketplace. (Transcript, p. 29)

FINDINGS OF FACT

1. The subject property consists of two parcels of property in the City of Romulus located at 28301 Smith and 28615 Smith.
2. The parcel numbers of the properties are 82-80-048-99-0003-000 (28301 Smith) and 82-80-048-99-0001-000 (28615 Smith).
3. The subject properties were assessed for tax year 2009 as follows:

Docket No. 362760
Parcel Number: 82-80-048-99-0003-000

	TCV	SEV	TV
2009	\$77,200	\$38,600	\$37,064

Docket No. 362762
Parcel Number: 82-80-048-99-0001-000

	TCV	SEV	TV
2009	\$114,000	\$57,000	\$51,424

4. The subject properties consist of residential homes on a .62-acre (28301 Smith) and 1.04-acre (28615 Smith) sites.
5. The subject properties are classed residential, but are zoned as M-T, Industrial Transportation District, allowing for the construction of heavy manufacturing and truck distribution facilities.
6. Respondent's sales comparison approach to value presented two (2) vacant land sales in the subject properties' area.

Vacant Land Sale 1 was located at 10043 Middlebelt St., Romulus, Michigan. It was a 1.19-acre parcel, zoned M-T, classed commercial, and sold for \$185,000 on June 19, 2008. It was sold by First National Bank of America to Hassan Ouza by land contract. (R-1)

Vacant land Sale 2 was located at 28900 Hildebrant, Romulus, Michigan. It was a 10.21-acre parcel, zoned M-T, and sold for \$2,000,000 on November 3, 2008. It was sold by MAT Properties to Park and Travel, Inc. by warranty deed. (R-1)

7. Although Respondent prepared a cost analysis for each tax year at issue presented on its property record card, Respondent did not rely on the cost approach in making its value determinations.

ISSUES AND 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, except for taxes levied for school operating purposes. 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 percent 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).

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).

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 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 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). 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. However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessment 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.” MCL 205.735(3).

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*, at 277. The Tribunal finds that the appropriate method of determining the true cash value of the subject property for the tax year at issue is the cost-less-depreciation approach.

Although Petitioner did not meet its burden of persuasion by essentially not putting on a case, the burden of presenting evidence shifted to Respondent, who argued for an increase in assessment. The Court of Appeals in *City of Troy v Cleveland Pneumatic Tool Co*, 109 Mich App 361, 368-369; 311 NW2d 782, 786 (1981), stated:

We conclude that the Tax Tribunal erred in its construction of the statute. The precursor to MCL 205.737(3); MSA 7.650(37)(3), being MCL 205.737(1); MSA 7.650(37)(1), provided that the taxpayer bears the burden of establishing the value of his property. In construing an amendment to a statute, a change in phraseology raises a presumption that a change in meaning was also intended. *Lawrence Baking Co v Unemployment Compensation Comm*, 308 Mich 198, 205; 13 NW2d 260

(1944), *cert den* 323 US 738; 65 SCt 43; 89 LEd 591 (1944); *Michigan Transportation Co v Secretary of State*, 41 Mich App 654, 665; 201 NW2d 83 (1972), *lv den* 389 Mich 767 (1973). We find nothing to suggest that the Legislature intended anything other than to change the allocation of the burden of proof *vis-a-vis* true cash value when amending MCL 205.737; MSA 7.650(37). *The Legislature was apparently dissatisfied with allocating the burden of proof in all cases to the taxpayer and determined that the party who loses in the early stages of the tax dispute on the issue of true cash value should shoulder the obligation of proving that the value should be computed differently in the Tax Tribunal. (Emphasis added.)*

The tax collecting unit is obligated to present evidence supporting its determination of value. An assessment, once challenged, even if it does not satisfy the taxpayer's burden of proof, requires a response because, regardless of the assessor's proofs in litigation, the tribunal must independently determine the value. *Jones and Laughlin, supra*. Further, "[e]ven if the tribunal had correctly concluded that petitioner's proofs had failed; the tribunal is still required to make an independent determination of the true cash value of the property." *Charter Oak Homes v City of Detroit*, unpublished opinion per curiam of the Court of Appeals, issued October 6, 2011 (Docket No. 297509). The Court in *Charter Oak Homes* indicated that the Tribunal is precluded from "simply rubber stamping" the assessments at issue.

In its burden of going forward with the evidence, Respondent presented a Valuation Disclosure (R-1) that presented two sales of vacant land in the City of Romulus in the 2008 tax year. The first sale was of a vacant 1.19-acre parcel, zoned M-T, classed commercial that sold for \$185,000 on June 19, 2008. It was sold by First National Bank of America to Hassan Ouza by land contract. Given that the sale was from a bank to an individual the Tribunal finds that it cannot determine if the sale was

subject to normal market pressures. Furthermore, Ms. Albert (Respondent's assessor) testified that in 2008 she "really didn't see a lot of bank sales" in the marketplace.

(Transcript, p. 29) The Tribunal, therefore, finds the choice of a bank sale comparable to be somewhat suspect. Further, the comparable sale is classed commercial while the subject properties are classed residential. The Tribunal, therefore, opines that a bank sale, classed commercial, is not the most applicable sale to present as comparable to the subjects. Vacant land Sale 2 was located at 28900 Hildebrant, Romulus, Michigan. It was a 10.21-acre parcel, zoned M-T, and sold for \$2,000,000 on November 3, 2008. It was sold by MAT Properties to Park and Travel, Inc. by warranty deed. Although the sale of the Hildebrant property did not appear to be a bank sale, and the classification was not listed (R-1), the large size of the parcel indicates to the Tribunal that the comparable is not truly comparable to the subject properties. The subject properties are 1.04 acres and .62 acres in size. The Hildebrant property was 10.21 acres in size, which was 10+ times the size of the subject properties. The Tribunal finds that the comparable sales presented by Respondent were not probative in determining the TCV of the properties for the tax year at issue, thus the Tribunal finds that the properties should not receive an increase in assessment for the 2009 tax year.

The Tribunal finds that the cost-less-depreciation approach to value was the best indicator of the TCV of the subject properties for the tax year in question. From examination of the property record cards for the subject properties, The Tribunal independently determined that the residential building true cash values were accurately computed by the utilization of the State Tax Commission cost manual to determine rates

to be applied to the subject houses and related improvements, based on characteristics of the houses such as class, quality of construction, building square footage, etc. Once a total square foot rate was determined for the buildings, the county multiplier developed by the State Tax Commission was properly applied to the rate to adjust the manual rates to the individual community. A rate of depreciation was applied to the rates developed for the houses and each improvement. Again, based on State Tax Commission guidelines for physical depreciation, a “percent good” rate of 69% (28301 Smith) and 45% (28615 Smith) was determined for the subject property for the 2009 tax year. An economic condition factor or “ECF” was applied to the depreciated square foot rate to represent the cost associated with the particular neighborhood of the subject properties. Land value was properly added based on comparison of comparable land sales.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner did not prove by a preponderance of the evidence that the subject properties were assessed in excess of 50% of market value. Respondent also failed to prove that the assessments for the subject properties should be increased for the 2009 tax year. The subject properties’ true cash values (TCV), state equalized values (SEV), and taxable values (TV) are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the tax year at issue are AFFIRMED as set forth in the Introduction 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 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, 2004, at the rate of 2.07% for calendar year 2005, (ii) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (iii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (iv) after December 31, 2007, at the rate of 5.81% for calendar year 2008, (v) after December 31, 2008, at the rate of 3.315% for calendar year 2009, (vi) after December 31, 2009, at the rate of 1.23% for calendar year 2010, and (vii) after December 31, 2010 at the rate of 1.12% for calendar year 2011.

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

MICHIGAN TAX TRIBUNAL

Entered: November 22, 2011 By: Preeti Gadola