

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

Crescent House, LLC,  
Petitioner,

v

MTT Docket No. 373903

City of Detroit,  
Respondent.

Tribunal Judge Presiding  
Preeti Gadola

**FINAL OPINION AND JUDGMENT**

Introduction

Petitioner, Crescent House, LLC, appeals the ad valorem property tax assessment levied by Respondent, City of Detroit, against the real property owned by Petitioner for the 2009-2010 tax years (parcel number: 22122536.001). The property under appeal is a multi-family residential dwelling (apartment building) located at 19280 Telegraph in the city of Detroit, Michigan. Petitioner was represented Herbert Strather, registered manager and part owner of the subject property, and Respondent was represented by Kevin Richard, attorney. Mr. Strather testified on Petitioner's behalf and Respondent presented no witnesses. The hearing of this matter occurred on November 27, 2012.

Respondent, City of Detroit, assessed the property as follows:

Parcel Number	Year	TCV	SEV	TV
22122536.001	2009	\$3,190,746	\$1,595,373*	\$1,595,373*
	2010	\$300,000	\$150,000	\$150,000

\*The excerpt of the tax roll presented at the hearing listed a SEV and TV of \$0 for the subject property for tax year 2009. A few hours after the conclusion of the hearing, Respondent faxed a corrected excerpt of the tax roll listing the 2009 SEV and TV of the subject property as presented above.

Petitioner's contentions of true cash value ("TCV"), state equalized value ("SEV"), and taxable value ("TV") for the tax years in question are as follows:

Parcel Number	Year	TCV	SEV	TV
22122536.001	2009	\$500,000	\$250,000	\$250,000
	2010	\$500,000	\$250,000	\$250,000

Based on the evidence, testimony, and case file, the Tribunal finds that the TCV, SEV, and TV of the subject properties for the years under appeal are as follows:

Parcel Number	Year	TCV	SEV	TV
22122536.001	2009	\$300,000	\$150,000	\$150,000
	2010	\$300,000	\$150,000	\$149,550

### **PETITIONER'S ADMITTED EXHIBITS**

Petitioner did not submit any exhibits.

**PETITIONER'S WITNESS**

Herbert Strather

Mr. Strather testified that he is the registered manager and part owner of the subject property. He testified that Respondent has valued the property at \$0.00 for 2009 and \$300,000 for 2010; however he contends that the property's market value should be \$300,000 for both years. He also testified that Petitioner paid tax on the property despite it being zeroed out on the tax roll.

Mr. Strather testified that the property went into receivership in 2008 and was sold by the receiver for \$300,000 in 2010. He testified that as of December 31, 2008, there were no rentable units in the property due to the leaking roof and asphalt with potholes, among other issues. He further testified that the economy in Detroit severely deteriorated due to depopulation causing the value of the subject property to plummet.

**RESPONDENT'S ADMITTED EXHIBITS**

R-1 Excerpt of the subject property on the tax roll

R-2 Property Record Cards of the subject property listing its value as of 2010-2013.

R-3 Valuation Report of the subject property for 2013

### **RESPONDENT'S WITNESS**

Respondent did not present any witnesses.

### **FINDINGS OF FACT**

1. The subject property, parcel number 22122536.001, is a multi-family residential dwelling (apartment building) located at 19280 Telegraph in the city of Detroit, Michigan.
2. The subject property is classified as commercial, real.
3. Respondent's excerpt of the tax roll (R-1) indicated a state equalized and taxable value for 2009 of the subject property of \$0.00 and for 2010 of \$150,000.
4. Respondent's corrected excerpt of the tax roll listed its state equalized and taxable values for 2009 to be \$1,595,373 and for 2010 to be \$150,000.
5. The property record card of the subject property listed its 2010 assessed and taxable values to be \$150,000. The 2009 values of the subject property were not listed on the property record card.
6. The subject property was sold on December 1, 2010, for \$300,000. It is listed on the property record card to be a "bank sale."

### 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. See MCL 211.27(a).

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%.... 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), the Tribunal must find a property's true cash value in determining a lawful property assessment. See *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. See *Teledyne Continental Motors*

*v Muskegon Twp*, 145 Mich App 749, 754; 378; NW2d 590 (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. See *Meadowlanes Ltd. Dividend Housing Ass'n 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 205.735a(2). The Tribunal's factual findings are to be supported by competent, material, and substantial evidence. See *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; 462 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 & 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 & 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. See *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 market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. See *Antisdale*. 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. See *Antisdale*, at 277.

Respondent presented the state equalized and taxable values of the subject property to be \$0.00 for 2009 and \$150,000 for 2010, as demonstrated in the excerpt of the tax roll of the property admitted into evidence at the hearing of this matter. (R-1) On the same day as the hearing, Respondent faxed a corrected excerpt of the tax roll (a public record) with regard to the property presenting a 2009 state equalized and taxable value of \$1,595,373 and a 2010 state equalized

and taxable value of \$150,000. The Tribunal does not find Respondent's contentions of the true cash value of the property for 2009 in the original or corrected excerpts of the tax roll to be probative. Respondent presented no witnesses or testimony regarding the original or corrected 2009 value of the subject property. Respondent further presented no witnesses or testimony regarding the 2010 value of the property. The excerpts of the tax roll presented by Respondent provided no explanation (only a listing of "MBOR Assessed," state equalized and taxable values) as to the determination of the fair market value of the property for the tax years in question. Further, R-2, the property record card listing 2010-2013 assessed and taxable values for the property lists only a land value and zero dollars in building value for 2012 and 2013 and in 2010, R-2 provided only a \$1,595,373 building value and zero dollars in land value. R-2 does not list the 2009 value of the subject property. R-3, the valuation report for the subject property, also presents the 2013 land value only for the subject property and a building value of zero dollars.

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), p. 4. The Court in *Charter Oak Homes* indicated that the Tribunal is precluded from “simply rubber stamping” the assessments at issue.

The subject property sold for \$300,000 on December 1, 2010, and is listed on the property record card as a bank sale. Petitioner also testified that the property went into receivership in 2008 and was sold by the receiver for \$300,000 in 2010. While the Tribunal acknowledges that the sale price of a property, and especially a bank sale, is not the preferred evidence of the fair market value of a property, in this case, it is the best evidence presented to the Tribunal in making its independent determination of the value of the subject property for the 2009 and 2010 tax years. This determination of true cash value is also supported by Respondent’s calculated true cash value of the property for 2010 of \$300,000 , as demonstrated on the excerpt of the tax roll, revised excerpt on the tax roll, and property record card of the subject property. The Tribunal reiterates that Respondent presented no witnesses, and therefore no testimony, to explain the

method of determination of the inconsistent land/building values and the assessed, state equalized and taxable values of the property for the tax years in question.

In this case, the Tribunal concludes that the evidence, testimony, and case file indicate that the subject property is assessed in excess of 50% of market value. The Tribunal is charged in this valuation appeal to independently determine the true cash value of the subject property for each tax year at issue. The Tribunal determines that the preponderance of the evidence suggests that the assessment of the subject property should be modified.

### **JUDGMENT**

The subject property's true cash value (TCV), state equalized value (SEV), and taxable value (TV) for the 2009-2010 tax years are as stated in the Introduction section above.

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 value 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 28 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, 2008, at the rate of 3.31% for calendar year 2009, ii) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (iii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iv) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09% for calendar year 2012; (v) after

June 30, 2012 and prior to January 1, 2013, at the rate of 4.25%; and (vi) after December 31, 2012, and prior to July 1, 2013, at the rate of 4.25%.

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

MICHIGAN TAX TRIBUNAL

By: Preeti Gadola

Entered: January 14, 2013