

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

Hari Krishanaji Corporation,
Petitioner,

v

MTT Docket No. 392686

Charter Township of Genoa
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Hari Krishanaji Corporation, appeals an ad valorem property tax assessment levied by Respondent, Charter Township of Genoa, against the real property owned by Petitioner (Parcel No. 4711-10-401-007) for the 2010 tax year. Hasmukh Patel, Shareholder, President, and Director of Petitioner, represented Petitioner and Debra Rojewski, Charter Township of Genoa Assessor, represented Respondent.

A hearing on this matter was held on January 14, 2013. Petitioner's witnesses were Hasmukh Patel and Mukeshchandra Patel, Manager of Petitioner. Respondent's sole witness was Debra Rojewski.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash value (“TCV”), state equalized value (“SEV”), and taxable value (“TV”) of the subject property for the tax year under appeal are as follows:

Parcel No. 4711-10-401-007

Year	True Cash Value	Assessed Value	Taxable Value
2010	\$1,006,500	\$503,250	\$503,250

PETITIONER’S CONTENTIONS

Petitioner contends that the evidence presented in this case supports a determination that the true cash value of the subject property on the assessment rolls is substantially overstated. Specifically, Petitioner contends that it purchased the subject property, via an arms-length transaction, for \$800,000¹ in 2007 and that despite the seller’s assurances, Petitioner has incurred a loss on the subject property ever since, which is substantiated by copies of Petitioner’s Federal Tax Returns for the 2009, 2010, and 2011 tax years. Petitioner further states that (i) although it does not know how long the subject property was on the market before it purchased the property, the subject property was listed for sale with a broker; (ii) the appraisal, at the time it purchased the subject property, valued the subject property at \$600,000; (iii) although the financial institution that originally financed the \$600,000 loan, Charter One, sold the loan to PSB Services (“PSB”), Charter

¹ Petitioner put \$200,000 down and financed \$600,000.

One, not PSB, continued to collect payments from Petitioner causing PSB to (a) place Petitioner in default, (b) sheriff deed the subject property for \$400,000, and (c) list the subject property for \$249,000, which generated offers in the range of \$200,00 to \$240,000; (iv) “[t]he property tax is more than [the] mortgage payment; (v) “when you come from . . . Lansing there’s no exit for the motel” and “whatever the exit have, they have two motels right there so nobody come to our motel . . . ;” and (vi) the motel has 28 rooms. (Transcript, pp 7-15, 21-23)

Petitioner’s contentions of TCV, SEV, and TV for the subject property for the tax year at issue:

Parcel No. 4711-10-401-007

Year	True Cash Value	Assessed Value	Taxable Value
2010	\$400,000	\$200,000	\$200,000

PETITIONER’S EXHIBITS

The following documents were presented at the hearing, but were not offered for admission:

1. Petitioner’s U.S. Income Tax Return for the 2009 tax year.
2. Petitioner’s U.S. Income Tax Return for the 2010 tax year.
3. Petitioner’s U.S. Income Tax Return for the 2011 tax year.
4. Listing of the subject property, as of December 11, 2012, for \$249,500.
5. Sheriff’s Deed on Mortgage Sale, dated May 23, 2012, between the Deputy Sheriff for Livingston County and PSB Credit Services, Inc., in the amount of \$400,000.

RESPONDENT'S CONTENTIONS

Respondent contends that the true cash, assessed, and taxable values initially determined by Respondent's Board of Review for the subject property for the tax year at issue were "over assessed" and as such, should be reduced. More specifically, Respondent states that (i) the only sale of the subject property to Petitioner it has on record was for \$665,000; (ii) using the State Tax Commission's assessor's manual, it arrived at a true cash value of \$1.1 million for the subject property for the tax year at issue; (iii) "[p]art of [the subject] property['s] taxes . . . includes a sewer and water assessment" (Transcript, p 16); (iv) the subject property is "kind of tucked away" (Transcript, p 16); (v) the subject land is assessed at \$1,300 per front foot, which is a lower rate than properties located in a more popular section off of Grand River, west of Exit 141, but is the same rate for all commercial properties located in the same area as the subject property; (vi) due to economic conditions, the Economic Condition Factor ("ECF") and the value of the land, which are based on Livingston County's sales and land studies, were decreased from the 2009 tax year to the 2010 tax year; (vii) it relied strictly on the cost approach to develop a true cash value for the improvements to the subject property and utilized the county's land sales study to develop the true cash value of the land; (viii) it did not conduct its own sales studies because it "really didn't have

any sales” (Transcript, p 18); (ix) based on Respondent’s assessor’s “heart”, along with the subject property’s location, Respondent believes a true cash value of \$900,000 would be appropriate for the tax year at issue (Transcript, pp 18-19); (x) there is no direct highway access to the subject property traveling east from Lansing on highway I-96; (xi) the improvements to the subject property were depreciated appropriately using the cost less depreciation approach; (xii) the ECF developed by the county is not applicable to the subject property since Respondent “really [does not] have any . . . motels or many motels in the county” (Transcript, p 23); (xiii) “[t]he only other motel . . . is the one in Fowlerville, a small motel” (Transcript, p 23); (xiv) the land value is too high because “a lot of the land is wetter [near the location of the subject property]” (Transcript, 23-24); and (xv) although it believes that the value of the land is too high, it was unable to indicate how much the land was overvalued. (Transcript, pp 15-24)

As determined by Respondent’s assessor, the TCV, SEV, and TV for the subject property for the tax year at issue were determined to be:

Parcel No. 4711-10-401-007

Year	True Cash Value	Assessed Value	Taxable Value
2010	\$1,126,400	\$563,200	\$563,200

RESPONDENT'S EXHIBITS

The following documents were presented at the hearing, but were not offered for admission:

1. The subject property's Notice of Assessment for the 2010 tax year.
2. The subject property's 2010 Summer Tax bill.
3. The subject property's 2010 Winter Tax bill.
4. The subject property's record card for the 2010 tax year, including the assessor's sketch of the subject property.

FINDINGS OF FACT

1. The subject property consists of an approximately two acre parcel, located at 5474 E. Grand River, Howell, Michigan, with 200 feet of frontage on Grand River.
2. According to Petitioner, Petitioner purchased the subject property, via an arms-length transaction, for \$800,000 in 2007.
3. The subject property is a motel containing a total of 11,578 square feet and 28 motel rooms.
4. The subject property is zoned NSD, Neighborhood Services District.
5. The subject property is classified as Commercial, Improved.
6. There is no direct access to the subject property traveling east on I-96 from Lansing to Detroit.
7. There is direct access to the subject property traveling west on I-96 from Detroit to Lansing via Exit 141.
8. The subject property was assessed for the tax years at issue as follows:

Parcel No. 4711-10-401-007

Year	True Cash Value	Assessed Value	Taxable Value
2010	\$1,126,400	\$563,200	\$563,200

9. The subject land was assessed by front foot, at a rate of \$1,300 per front foot, with a depth factor of 1.4765.
10. Respondent provided a cost less depreciation approach to support its contentions of value.
11. Respondent's ECF of 1.2 for the "2014 Retail/Serv" ECF neighborhood was determined by Livingston County's sales studies.
12. Respondent did not conduct its own sales and land studies in developing the true cash value of the subject property for the tax year at issue because it "really didn't have any sales." (Transcript, p 18)
13. Respondent provided no evidence to support its statement during the hearing that the true cash value of the subject property should be reduced to \$900,000.
14. Petitioner's 2009, 2010, and 2011 Federal Income Tax Returns show an ordinary business loss of \$61,164, \$62,800, and \$58,707, respectively, which includes recognition of depreciation and interest expense.
15. The subject property's Notice of Assessment for the 2010 tax year shows a decrease in the subject property's taxable value by \$64,348 and a decrease in the subject property's state equalized value by \$73,100 from the 2009 tax year.
16. The subject property was transferred via a Sheriff's Deed on Mortgage Sale, dated May 23, 2012, recorded on May 31, 2012, in the amount of \$400,000.
17. Following the foreclosure, the subject property was listed for sale by Friedman Integrated Real Estate Solutions for \$249,500.

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 211.27a.

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).

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 205.737(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.

The Tribunal has carefully reviewed the testimony and evidence presented by the parties in this matter and finds that Petitioner failed to submit an appraisal or other conclusion of value based on evidence submitted. Moreover, Petitioner presented no testimony or evidence utilizing a reliable valuation method. Although Respondent failed to timely submit a valuation disclosure into evidence, Respondent did submit its property record card at the hearing. In this regard, Respondent relied solely on (i) the cost less depreciation approach, to determine the true cash value of the improvements to the subject property, and (ii) Livingston

County's land and sales studies to develop a value for the land and ECF. Based on the testimony and evidence presented in this matter, the Tribunal finds that the appropriate method of determining the true cash value of the subject property for the tax years at issue is the cost less depreciation approach utilized by Respondent, as modified herein.

Although Petitioner failed support its contentions with a reliable valuation method, Petitioner contends that the subject property is over assessed, in violation of MCL 211.27a, based on several factors including (i) the price it paid for the subject property in 2007; (ii) the appraisal that was prepared in connection with said purchase; (iii) its business losses for the 2009, 2010, and 2011 tax years; and (iv) the recent foreclosure and subsequent listing of the subject property for \$249,500, which has only generated offers in the range of \$200,000 to \$240,000. Petitioner's testimony and evidence to substantiate its contentions of value are, however, flawed for several reasons.

First, the price Petitioner paid for the subject property in 2007 is not relevant to an appeal regarding the 2010 tax year, especially absent appropriate market-based time adjustments to reflect any changes in the market from 2007 to 2010. The tax day, for purposes of determining the 2010 assessment roll and 2010 property taxes, was December 31, 2009. See MCL 211.2(2). Although, pursuant to MCL 211.2(2), an assessor is "not restricted to any particular period in the

preparation of the assessment roll” sales that occurred in 2009 and before Respondent confirmed the 2010 assessment roll, see MCL 211.24, would be relevant to determining true cash value for the 2010 tax year. Furthermore, to apply a sales comparison approach and in order for a sale to be accepted as a reliable indicator of value, the property must be proven to have sold “after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, [with] neither . . . under undue duress.” *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 13th ed, 2008), p 23. Although Petitioner testified that it purchased the subject property via an arms-length transaction, which is supported by the subject property’s record card, and also testified that the subject property was listed by a broker, Petitioner did not know how long the subject property was on the market in order for the Tribunal to deem that the subject property was adequately exposed to the market to conclude that the purchase price is a reliable indicator of value. Furthermore, selling price is not conclusive evidence of value and the Tribunal is not bound to accept it as the true cash value. See *First City Corp v City of Lansing*, 153 Mich App 106; 395 NW2d 26 (1986) and *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348; 483 NW2d 416 (1992). By law, even for an arms-length transaction, the purchase price paid in a transfer of real property is not the presumptive true cash value. See MCL

211.27(5). In addition, although Petitioner paid \$800,000 for the subject property in 2007, Petitioner testified that the appraisal that was prepared at the time it purchased the subject property only valued the subject property at \$600,000,² and a single sale may or may not be indicative of the market at large, especially “where there is no other property like it in the vicinity and sales are too infrequent to establish market value.” *Kingsford Chemical Co v City of Kingsford*, 347 Mich 91, 102; 78 NW2d 587 (1956). For these reasons, the Tribunal finds that the price Petitioner paid for the subject property in 2007 is an unreliable indicator of value for the 2010 tax year.

Petitioner also furnished copies of its Federal tax returns for the 2009, 2010, and 2011 tax years to substantiate its contentions of value. Although tax returns are relevant in developing an income approach, which is perhaps the most accurate of the three approaches to value where the property at issue is income producing, such as the subject property, Petitioner failed to provide an actual income approach to support its contentions.

In the income capitalization approach, an appraiser analyzes a property’s capacity to generate future benefits and capitalizes the income into an indication of present value. The principal of anticipation is fundamental to the approach. Techniques and procedures from this approach are used to analyze comparable sales data and to measure obsolescence in the cost approach. *The Appraisal of Real Estate*, p 445.

² This appraisal was not submitted as evidence in this case nor would it have been relevant to the tax year at issue.

Here, Petitioner has failed to provide (i) market income and expense, (ii) any evidence of a reasonable capitalization rate, (iii) and any analysis of its raw income and expense information.

Additionally, although Petitioner provided testimony and evidence regarding the foreclosure of the subject property in 2012, along with details regarding the subsequent listing of the subject property for \$249,500, these events occurred after the tax year at issue and the Tribunal finds them irrelevant in determining the true cash value of the subject property for the 2010 tax year.

That being said, Respondent relied solely on (i) its cost calculations, developed using the cost less depreciation approach, to generate a base cost for the improvements to the subject property, and (ii) Livingston County's land and sales studies to develop a value for the land and ECF because it "really didn't have any sales." (Transcript, p 18) Respondent, however, testified that the subject property was over assessed and, although the improvements to the subject property were properly calculated, a lower land value would be appropriate given the location of the subject property.

In that regard, although Respondent conceded that the subject property's land value is too high given the location of the subject property, Respondent failed to provide any evidence as to what the appropriate land value would be for the tax

year at issue. Petitioner also failed to provide any evidence with respect to land value. Thus, the Tribunal finds that the only sufficient and credible evidence with respect to the value of the land is as identified on the subject property's record card and as such, is the only competent and substantial evidence in this case to ascertain the true cash value of the land for the tax year at issue.

Respondent did, however, testify that it relied on Livingston County's sales and land sales because it "really didn't have any sales" and conceded that the ECF developed by the county is not applicable to the subject property since Respondent "really [does not] have any . . . motels or many motels in the county." (Transcript, pp 18 & 23) That being said, an ECF is used to adjust cost information found in the State Tax Commission Assessor's Manual to local market conditions and is a factor applied to buildings by market area and use. Absent analysis regarding sales in the local jurisdiction where a property is located, an ECF of anything other than 1.0 cannot be supported. As such, the Tribunal finds that Respondent's ECF of 1.2 is unsupported, since Respondent relied on county sales, not sales within its jurisdiction, and as a result, an ECF of 1.0 is appropriate with respect to determining the true cash value of the improvements to the subject property for the 2010 tax year.

The Tribunal further finds that Respondent's cost calculations to determine the true cash value of the improvements to the subject property are appropriate

given (i) Petitioner's failure to demonstrate any error in Respondent's cost less depreciation approach that appears on the property record card; (ii) Respondent's assessor's testimony that she applied the cost approach in conformity with the State Tax Commission Assessor's Manual, as required by MCL 211.10e; and (iii) the Tribunal's independent review of the subject property's record card for the tax year at issue. The Tribunal therefore finds Respondent's cost less depreciation method, which is an established method to derive true cash value, *as calculated* on the assessment record card, is reliable and supports the true cash value of the improvements to the subject property for the 2010 tax year.

In conclusion, the Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that it was proven by a preponderance of the evidence that the subject property was assessed in excess of 50% of market value for the tax year at issue in violation of MCL 211.27a. The subject property's true cash value (TCV), within the meaning of MCL 211.27, state equalized value (SEV), and taxable value (TV) for the tax year at issue 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 MODIFIED 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 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, 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. Pursuant to

1995 PA 232, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010 at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09% for calendar year 2012, and (iv) after June 30, 2012 and prior to July 1, 2013, at the rate of 4.25%.

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

MICHIGAN TAX TRIBUNAL

By: Steven H. Lasher

Entered: January 31, 2013