

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

Jersey Marshall, Inc.  
Petitioner,

v

MTT Docket Nos. 401982, 401985  
heard concurrently

City of Marshall,  
Respondent.

Tribunal Judge Presiding  
Preeti Gadola

**OPINION AND JUDGMENT**

Introduction

Petitioner, Jersey Marshall, Inc., appeals the ad valorem property tax assessment levied by Respondent, City of Marshall, against the real property owned by Petitioner for the 2010 tax year (parcel numbers: 13-53-001-961-00, 13-53-001-963-00, 13-53-001-965-00, 13-53-001-966-00, and 13-53-002-270-00). The property consists of a vacant State Farm Insurance Office building, warehouse, surrounding property and parking lots. Petitioner was represented by Morgan Thomas, Managing Consultant, Marvin F. Poer and Company, and James R. Tully, Vice President Real Estate, Icon International, Inc.

Respondent was placed in default on July 22, 2011, for failure to file an answer to the Petition pursuant to TTR 247. Respondent failed to set aside the default and thus a default hearing was scheduled and occurred on February 22, 2012, before the Tribunal Judge.

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

Docket Number 401985\*:

Parcel No. 13-53-001-961-00

Year	TCV	AV/SEV	TV
2010	\$1,125,800	\$562,900	\$562,900

Parcel No. 13-53-001-963-00

Year	TCV	AV/SEV	TV
2010	\$64,200	\$32,100	\$32,100

Parcel No. 13-53-001-965-00

Year	TCV	AV/SEV	TV
2010	\$50,000	\$25,000	\$25,000

Parcel No. 13-53-001-966-00

Year	TCV	AV/SEV	TV
2010	\$66,400	\$33,200	\$33,200

Docket No. 401982\*\*:

Parcel No. 13-53-002-270-00

Year	TCV	AV/SEV	TV
2010	\$2,294,600	\$1,147,300	\$1,147,300

\*Docket No. 401985 consists of the subject property warehouse and surrounding property including parking lots.

\*\*Docket No. 410982 consists of the subject property office building. The subject property warehouse is located across the street from the office building.

Petitioner’s contentions of true cash value (“TCV”), state equalized value (“SEV”), and taxable value (“TV”) for the tax year in question are as follows:

Parcel No. 13-53-001-961-00

Year	TCV	AV/SEV	TV
2010	\$315,680	\$157,840	\$157,840

Parcel No. 13-53-001-963-00

Year	TCV	AV/SEV	TV
2010	\$18,000	\$9,000	\$9,000

Parcel No. 13-53-001-965-00

Year	TCV	AV/SEV	TV
2010	\$14,000	\$7,000	\$7,000

Parcel No. 13-53-001-966-00

Year	TCV	AV/SEV	TV
2010	\$18,620	\$9,310	\$9,310

Parcel No. 13-53-002-270-00

Year	TCV	AV/SEV	TV
2010	\$623,700	\$311,850	\$311,850

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

Parcel No. 13-53-001-961-00

Year	TCV	AV/SEV	TV
2010	\$315,680	\$157,840	\$157,840

Parcel No. 13-53-001-963-00

Year	TCV	AV/SEV	TV
2010	\$18,000	\$9,000	\$9,000

Parcel No. 13-53-001-965-00

Year	TCV	AV/SEV	TV
2010	\$14,000	\$7,000	\$7,000

Parcel No. 13-53-001-966-00

Year	TCV	AV/SEV	TV
2010	\$18,620	\$9,310	\$9,310

Parcel No. 13-53-002-270-00

Year	TCV	AV/SEV	TV
2010	\$623,700	\$311,850	\$311,850

### **PETITIONER'S CONTENTIONS**

Petitioner contends that the evidence presented in this case strongly supports a determination that the true cash value of the subject property as presented by Respondent is substantially overstated. Petitioner presented purchase agreements, property transfer affidavit, escrow trust disbursement statements, real estate transfer tax valuation affidavit, covenant deed, and a broker's offering memorandum to support its contention of value.

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

- P-1: Sale and Purchase Agreement, Sept. 2009
- P-2: Escrow Trust Disbursement Statement, Dec. 2009
- P-3: Property Transfer Affidavit, December 2009
- P-4: Purchase and Sale Agreement, June 2010
- P-5: Express Escrow Trust Instructions, Aug. 2010
- P-6: Real Estate Tax Valuation Affidavit, Aug. 2010
- P-7: Broker's Offering Memorandum

### **PETITIONER'S TESTIMONY AND ARGUMENT**

At the hearing on this matter Petitioner was represented by Morgan Thomas, Managing Consultant, Marvin F. Poer and Company ("Mr. Thomas"), and James R. Tully, Vice President Real Estate, ICON International, Inc. ("Mr. Tully"). Both representatives gave testimony at the

hearing, under oath. The subject property consists of a vacant State Farm Insurance Office building, warehouse, surrounding land and parking lots. State Farm Insurance Company moved its headquarters from Marshall, Michigan, and was unable to sell the property on the open market for about two years. (Transcript, p. 11.)

In December, 2009, the subject property was sold to Jersey Marshall, Inc., which is a single entity corporation formed by Icon International, Inc. (“ICON”) to purchase the property. (Transcript, p. 6.) Mr. Tully, Vice President of Real Estate for ICON, testified that ICON is a corporate barter company and is the parent company of Jersey Marshall, Inc., (“Jersey Marshall”). (Transcript, p. 8.) The business model of ICON, in this matter, was to form the single entity corporation to purchase the real estate vacated by State Farm Insurance Co. at the asking price. ICON, through Jersey Marshall, paid the asking price of the property with the understanding that State Farm would run its media through ICON. (Transcript, pp 7-8.) Essentially, ICON, through Jersey Marshall, paid above-market value for the real estate and in return for doing so, State Farm agreed to spend part of its preexisting advertising budget with ICON. (Transcript, pp. 8-9.)

Mr. Tully testified that Petitioner purchased the subject property for \$1,700,000. ICON determined that it needed to earn back \$2,000,000, including purchase price, plus \$300,000 in carrying costs (including real estate tax, boilers, electricity, among other items.) (Transcript, p. 21.) State Farm agreed to run its media through ICON as if ICON had given them \$2,000,000. ICON then earns back its \$1,700,000 plus \$300,000 to cover holding costs. It then sells the property for \$990,000, less transactional costs and brokerage fees, and the remaining amount of money is the profit earned by ICON. (Transcript, pp. 21-22.)

Mr. Tully further testified that ICON does not reposition or redevelop a property for sale. As soon as it closes on a property, it engages a broker to resell it at market value. (Transcript, pp. 13-14.) ICON has never sold a property for more than its purchase price. As stated above, ICON purchased the State Farm property in December, 2009, for \$1,700,000. It then resold the property in June, 2010, and closed on the sale in August, 2010. The August sale price of the property was \$990,000, for all five parcels. (Transcript, pp. 12, 14.)

Mr. Tully testified that Jersey Marshall received two offers to purchase the property before accepting the \$990,000 bid. It received an offer of \$350,000 and another of \$650,000. (Transcript, p. 14.) The original offers were rejected by either Jersey Marshall or the purchaser, and Jersey Marshall accepted and closed on the final offer. Mr. Thomas testified that the subject property is a unique one. It consists of a large sprawling one-story office building and then across the street, in a different building, is a warehouse. The building is only a few blocks east of downtown Marshall in the middle of a residential area. It is difficult to get trucks into and out of the property. Mr. Thomas further testified that the insurance business has changed quite a bit over the years in that upon the occurrence of a car accident, for example, an adjuster is sent out to the accident victim with a laptop to approve car repairs. Thus there is no longer a need for a warehouse of files when everything is computerized. (Transcript, pp. 29-30.) Mr. Thomas testified that, given the unique nature of the subject property, the real estate broker was unable to find any suitable sales comparables.

While the 2010 tax year is the only one under contention in this matter, Mr. Thomas noted that the TCV of the property for 2011 was set by the City of Marshall at \$1,700,000, which is the purchase price of the property in December, 2009. (Transcript, p. 31.)

**RESPONDENT’S CONTENTIONS, ADMITTED EXHIBITS, AND ARGUMENT**

Respondent did not appear at the hearing on this matter to provide any contentions, exhibits, or argument.

**FINDINGS OF FACT**

1. The subject property consists of a vacant State Farm Office Building, warehouse, and parking lots.
2. The property is located in the City of Marshall, Calhoun County, Michigan.
3. The property is classified as commercial, real.
4. The property has a principal residence exemption of 0%.
5. Respondent, City of Marshall, assessed the property for the 2010 tax year as follows:

Parcel No. 13-53-001-961-00

Year	TCV	AV/SEV	TV
2010	\$1,125,800	\$562,900	\$562,900

Parcel No. 13-53-001-963-00

Year	TCV	AV/SEV	TV
2010	\$64,200	\$32,100	\$32,100

Parcel No. 13-53-001-965-00

Year	TCV	AV/SEV	TV
2010	\$50,000	\$25,000	\$25,000

Parcel No. 13-53-001-966-00

Year	TCV	AV/SEV	TV
2010	\$66,400	\$33,200	\$33,200

Parcel No. 13-53-002-270-00

Year	TCV	AV/SEV	TV
2010	\$2,294,600	\$1,147,300	\$1,147,300

6. Petitioner presented sale and purchase agreements of the property for December, 2009, and August, 2010. The subject property sold for \$1,700,000 in December, 2009, and \$990,000 in August, 2010.
7. Petitioner presented the Broker's Offering Memorandum regarding the second sale of the property in August, 2010.

### **ISSUES PRESENTED 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. 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); 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 market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. *Antisdale*, p278. 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*, p277.

#### VALUATION OF THE SUBJECT PROPERTY

Mr. Tully testified at the hearing on this matter that ICON purchased the subject property through its single entity corporation, Jersey Marshall, Inc. It purchased the property in December, 2009, for \$1,700,000 for all 5 parcels of land. The purchase of the property was subject to an agreement by Petitioner to purchase \$2,000,000 worth of media from ICON so that it earned its investment back (\$1,700,000 plus \$300,000 in holding costs). The Tribunal finds that the sale of the subject property in December, 2009, was not subject to normal market pressures and therefore did not represent the true cash value of the property in the tax year in question (2010). As stated above, 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,... MCL 211.27(1); MSA 7.27(1). (Emphasis added).

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).

The Tribunal finds Mr. Thomas's testimony regarding the marketing of the subject property after its first sale to be credible. The property was on the market for six months before an offer to purchase was accepted. Petitioner received two offers on the property for \$350,000 and \$650,000, which failed to close. Petitioner did accept an offer for the purchase of the property of \$990,000, which closed in August, 2010. The Tribunal finds Mr. Thomas' testimony regarding the lack of sales comparables to the subject property to be credible and reliable. The subject property consists of a vacant State Farm office building, unique in its architectural presentation as a one-story building across the street from its warehouse. Furthermore, given the business model of ICON, the profit it desired to make from the resale of the property was its income from the transaction. There was no reason for ICON to sell the property under market value even with the media contract it received from State Farm.

The sale of the subject property occurred in August, 2010. The offer to purchase was accepted in June, 2010, and the transaction closed in August. June, 2010, is six months after the December 31, 2009, tax day at issue in this matter; however, the Tribunal finds that the sale price of the property in August is the best representation of the true cash value of the property in 2010. Respondent did not file an Answer to Petitioner's Petition nor provide any evidence supporting its assessment of the subject property. Therefore, given that the Tribunal is required to make an independent determination of value with the best evidence provided, the Tribunal determines that the sale price of the property in June, 2010, was the best indication of the true cash value of the subject property.

Respondent did not appear at the hearing on this matter. Respondent was defaulted for failure to file an Answer to Petitioner's Petition, and failed to cure the default. As indicated by its default, Respondent presented no assessment record card for the property and provided no information regarding its computation of the true cash value of the property.

### **JUDGMENT**

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner did prove by a preponderance of the evidence that the subject property is assessed in excess of 50% of market value for the 2010 tax year. The subject property's true cash value (TCV), state equalized value (SEV), and taxable value (TV) is 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, 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, 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, and (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010 (xvi) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (xvii) after December 31, 2010 at the rate of 1.12% for calendar year 2011.

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

MICHIGAN TAX TRIBUNAL

Entered: March 28, 2012

By: Preeti Gadola