

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

GMO Threshold Timber Michigan, LLC,  
Petitioner,

v

MTT Docket No. 409401

Eagle Harbor Township,  
Respondent.

Tribunal Judge Presiding  
Preeti Gadola

**OPINION AND JUDGMENT**

Introduction

Petitioner, GMO Threshold Timber Michigan, LLC, appeals the ad valorem property tax assessment levied by Respondent, Eagle Harbor Township, against the real property owned by Petitioner for the 2010 tax year (parcel number: 42-206-34-250-450). The property consists of 28 acres of vacant land. Stuart Deming, attorney, represented Petitioner; Respondent did not appear at the hearing. Petitioner's witness was Michael C. Jukuri, appraiser.

Respondent was placed in default on August 2, 2011, for failure to file an answer to the Petition pursuant to TTR 247. Respondent did not file a motion to set aside the default and thus a default hearing was scheduled and occurred on February 21, 2012, before the Tribunal Judge.

Respondent, Eagle Harbor Township, assessed the property as follows:

Parcel No. 42-206-34-250-450

Year	TCV	AV/SEV	TV
2010	\$169,228	\$84,614	\$66,018

The revised True Cash Value (“TCV”), State Equalized Value (“SEV”), and Taxable Value (“TV”) as determined by the Board of Review are as follows:

Parcel No. 42-206-34-250-450

Year	TCV	AV/SEV	TV
2010	\$57,640	\$28,820	\$28,820

Petitioner’s contentions of TCV, SEV, and TV for the tax year in question are as follows:

Parcel No. 42-206-34-250-450

Year	TCV	AV/SEV	TV
2010	\$25,000	\$12,500	\$9,752

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 is as follows:

Parcel No. 42-206-34-250-450

Year	TCV	AV/SEV	TV
2010	\$25,000	\$12,500	\$12,500

**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 an appraisal of the property prepared by Michael C. Jukari, State Licensed Appraiser, as evidence that Respondent and its local board of review overvalued the property.

Petitioner further contends that the property’s taxable value was unlawfully uncapped under MCL 211.27a(2), (3), and (4). Petitioner contends that the 2009 and 2010 assessed values of the property were the same dollar amount: \$84,614. Petitioner further contends that the

taxable value of the property for tax years 2009 and 2010 were the same dollar amount: \$66,217. Petitioner alleges that there was no uncapping of the taxable value of the property in 2010 and that the “taxable value represented 78.02% of the assessed value” in both years. (Petitioner’s Prehearing Statement, p. 6 (“Statement”). Petitioner further alleges that the board of review found the assessed value and taxable value of the property to be equal dollar amounts: \$28,820. Petitioner alleges that there was an unlawful uncapping by the board of review and that the taxable value should also be 78.02% of its assessed value or \$9,752. (Statement p. 7).

#### **PETITIONER’S ADMITTED EXHIBITS**

P-1 Qualifications of Michael C. Jukuri

P-2 Appraisal Report of Michael C. Jukuri

P-3 2010 Notice of Assessment – Eagle Harbor Township

P-4 2010 Board of Review Decision

#### **PETITIONER’S WITNESS’S PRESENTATION OF PETITIONER’S ARGUMENT**

Michael C. Jukuri

Mr. Jukuri testified that he is a licensed appraiser with 17 years of appraisal experience for North Country Agency. He further testified that he is an associate real estate broker and designated business appraisal expert through the Michigan Association of Real Estate Appraisers/Northern Michigan University. (Petitioner’s Exhibit 1, Transcript p. 6). Mr. Jukuri testified that he grew up in Northern Michigan, went to college there, and currently resides in the area. (Transcript, p. 6).

Mr. Jukuri prepared an appraisal giving the value of the property as of January 14, 2010, as \$25,000. (Petitioner's Exhibit 2, Transcript, p. 11). Mr. Jukuri testified that he was confident that the appraisal presented the value of the property as of December 31, 2009, though prepared to demonstrate value two weeks later. (Transcript, p. 11). In determining the market value of the subject property, Mr. Jukuri relied upon the sales comparison approach. (Statement, p. 5, Transcript, p. 8). He identified three comparable sales that took place in the same market area as the subject property. With respect to each comparable sale, Mr. Jukuri made adjustments for acreage, uplands, and river frontage. (Transcript, pp. 9-10). Mr. Jukuri testified that the highest and best use of the property is as recreational land. Upon questioning by the Tribunal, Mr. Jukuri clarified the meaning of "recreational" to be land utilized for hunting and at most a hunting camp or cottage. (Transcript, p. 13). Mr. Jukuri testified that there was no water frontage on the property, but that Goodell Road is a private road that goes through the property and leads down to waterfront lots. (Transcript, pp. 7-8).

Mr. Jukuri testified that there were only about six to seven sales of property remotely similar to the subject within the last few years. (Transcript, p. 14). He explained that most of the land in Eagle Harbor Township area is state owned or privately held timberland property. (Transcript, p. 15). Mr. Jukuri chose three sales that he considered most comparable to the subject and utilized them, with adjustments, to determine the true cash value of the subject property. (Transcript, pp. 10-11).

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

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

**FINDINGS OF FACT**

1. The subject property consists of 28 acres of vacant land.
2. The property is located in Eagle Harbor Township, Keweenaw County, Michigan. The tax identification number of the property is 42-206-34-250-450
3. The property is classified as residential, real
4. Respondent, Eagle Harbor Township, assessed the property for a the 2010 tax year as follows:

Parcel No. 42-206-34-250-450

Year	TCV	AV/SEV	TV
2010	\$169,228	\$84,614	\$66,018

5. The subject property was assessed, by the board of review, for the tax year at issue as follows:

Parcel No. 42-206-34-250-450

Year	TCV	AV/SEV	TV
2010	\$57,640	\$28,820	\$28,820

6. Petitioner presented an appraisal of the subject property with three comparable sales of vacant land, adjusted to be consistent with the subject property.
7. There was no transfer of ownership of the subject property. The taxable value of the property was not uncapped.

### 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. 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 sales comparison approach.

#### VALUATION OF THE SUBJECT PROPERTY

Petitioner presents the Tribunal with an appraisal of the subject property prepared by Michael J. Jukuri, State Licensed Appraiser, in support of its valuation of the property. The appraisal presents three sales of properties comparable to the subject with adjustments consistent with the characteristics of the property. There were very few adjustments to the comparable properties, such only consisting of acreage and terrain of the comparable land. Two of the comparable sales were 4 to 7 miles from the subject.

Mr. Jukuri testified that he grew up in Houghton County, Michigan, and currently lives there. Houghton County is directly adjacent to Keweenaw County where the subject property is located. Mr. Jukuri has been a state licensed real estate appraiser for 17 years and the Tribunal finds his testimony to be credible with regard to the true cash value of the 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.

The Tribunal determines that Petitioner proved by a preponderance of the evidence that the subject property is assessed in excess of 50% of market value.

#### WAS THE TAXABLE VALUE OF THE PROPERTY UNCAPPED?

Petitioner alleges that the taxable value of the subject property was improperly uncapped by the Eagle Harbor Township Board of Review. (Statement, p. 6). Petitioner notes that the

assessed and taxable values of the property were the same dollar amount in 2009 and 2010. Petitioner alleges “that the taxable value of the property was 78.02% of the assessed value” in both years. (Statement, p. 6). Petitioner notes that the assessed value and taxable value of the subject property were set at the same dollar amount (\$28,820) by the Eagle Harbor Township Board of Review. Petitioner alleges that the taxable value of the property was unlawfully uncapped in 2010, presumably by the Board of Review, and that the taxable value of the property in 2010 should also be 78.02% of its assessed value or \$9,752. (Statement, pp. 6-7).

The Tribunal finds that Petitioner has an unclear understanding of MCL 211.27a(2) which states:

(2) Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, **the taxable value of each parcel of property is the lesser of the following:**

(a) The property's taxable value in the immediately preceding year minus any losses, **multiplied by the lesser of 1.05 or the inflation rate**, plus all additions. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994.

(b) The **property's current state equalized valuation**. (Emphasis added).

The taxable value of the subject property for the 2009 tax year was \$66,217. The taxable value of the subject property for 2010 was originally \$66,018 and then lowered by the Board of Review to \$28,820. First of all, the original taxable value of the property for 2010 was properly computed by utilizing the taxable value of the property in 2009 multiplied by the rate of inflation (.997). See MCL 211.27a(2)(a) above. The taxable value of the property was not the same dollar amount for 2009 and 2010 (Petitioner’s Exhibit 3 – 2010 Notice of Assessment, Taxable Value....), as alleged by Petitioner in its Statement. Secondly, when the Board of

Review lowered the assessed/state equalized and taxable values of the subject property for 2010, MCL 211.27a(2)(b) directs that the taxable value shall be the property's current state equalized value. Such determination follows because MCL 211.27a(2) states that the taxable value of the property shall be the **lesser** of the previous year taxable value multiplied by 1.05 or the rate of inflation, **or** the property's current state equalized value. Finally, the taxable value of a property only uncaps if there is a transfer of ownership under MCL 211.27a(3) and no transfer occurred in this matter. (Transcript, p. 12, Petitioner's Exhibits 3 and 4).

### **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 Tribunal further finds that the property taxable value was not improperly uncapped. 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 8, 2012

By: Preeti Gadola