

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

Joseph and Jaqueline Jurkiewicz,
Petitioners,

v

MTT Docket No. 409452

Hill Township,
Respondent.

Tribunal Judge Presiding
Preeti Gadola

OPINION AND JUDGMENT

Introduction

Petitioners, Joseph and Jaqueline Jurkiewicz, appeal the ad valorem property tax assessment levied by Respondent, Hill Township, against the real property owned by Petitioner for the 2010 tax year (parcel number: 006-440-016-00). The property consists of a vacation home (not a principal residence) with frontage on S. Dease Lake. Petitioners appeared before the Tribunal pro se and testified on their own behalf.

Respondent was placed in default on August 2, 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 21, 2012, before the Tribunal Judge.

Respondent, Hill Township, assessed the property as follows:

Parcel No. 006-440-016-00

Year	TCV	AV/SEV	TV
2010	\$262,800	\$131,400	\$125,743

Petitioners’ 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. 006-440-016-00

Year	TCV	AV/SEV	TV
2010	\$150,000	\$75,000	\$75,000

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. 006-440-016-00

Year	TCV	AV/SEV	TV
2010	\$150,000	\$75,000	\$75,000

PETITIONERS’ CONTENTIONS

Petitioners contend 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. Petitioners presented two appraisals of the property prepared by Todd Herzog, State Licensed Appraiser, as evidence that Respondent overvalued the property.

PETITIONERS’ ADMITTED EXHIBITS

P-1: Appraisal with comparables created 2/25/2009

P-2: Appraisal with comparables created 2/11/2012

PETITIONERS' TESTIMONY AND ARGUMENT

Petitioners testified at the hearing that the subject property vacation home was unfinished as of present. (Transcript, p. 16.) They presented the Tribunal with an appraisal of the property, demonstrating value as of February 25, 2009, of \$175,000. Such appraisal contained photographs of the property in its unfinished state. Petitioners further testified that the 2009 appraisal of the property was based on the assumption that the property was finished as such appraisal was utilized for financing purposes. (Transcript, p. 3, 6.)

Petitioners testified that at the time the appraisal was completed, the home had no flooring, carpeting, interior doors, sinks in the kitchen, or cabinet doors. (Transcript, p. 6.) Furthermore, the garage was incomplete. (Transcript, p. 13.) Petitioners estimated that they paid an additional \$25,000 to bring the home up to its current state of finish. (Transcript, pp. 19-20.) Petitioner testified that the unfinished items mentioned above were installed in June, 2010. (Transcript, p. 17). Further the home's garage construction commenced in fall, 2011. (Transcript, p. 17). At the hearing on this matter, Petitioners further testified that no appraiser or assessor from Hill Township had been out to inspect the property and that there were many errors on the assessment record card. (Transcript, p. 14).

Petitioners contend that they completed their own analysis to determine the true cash value of the property by pulling MLS listings (active listings and completed sales) and dividing the sale price of the comparables by their square footage. Petitioners computed an average sale price per square foot of the comparables of \$101. Petitioners then multiplied the average dollar

per square foot of the sales comparables by the square footage of the subject property and came up with a value estimate of \$140,000. (Transcript, p. 7.)

Petitioners testified that Consumers Power had an easement on the subject property and that, as a result, there were towering power lines with guide wires located on the property. Petitioners testified that the presence of the guide wires also decreased the desirability of the property. (Transcript, p. 8.) Finally, Petitioners testified that the home and lot next door to the subject sold for \$140,000; however, such neighboring home had less square footage than the subject and smaller lake frontage. It was, however, completely finished and the subject was not. (Transcript, p. 19.)

Upon questioning by the Tribunal, Petitioners testified that sales comparable four on the 2009 appraisal was essentially the same house as the subject property, but the comparable property was located on a much more desirable lake (Long Lake) that was almost double the size of the subject property lake. (Transcript, p.11.)

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 vacation home with lake frontage on S. Dease Lake.
2. The property is located in Hill Township, Ogemaw County, Michigan. The tax identification number of the property is 006-440-016-00.

3. The property is classified as residential, real.
4. The property has a principal residence exemption of 0%.
5. Respondent, Hill Township, assessed the property for the 2010 tax year as follows:

Parcel No. 006-440-016-00

Year	TCV	AV/SEV	TV
2010	\$262,800	\$131,400	\$125,743

6. Petitioners presented a 2009 appraisal of the subject property with four comparable sales adjusted to be consistent with the characteristics of the subject property.
7. The subject property was unfinished at the time of the appraisal. In June, 2010, Petitioners continued work on the property, but it was unfinished on December 31, 2009.
8. Petitioners' 2009 appraisal presented a true cash value of the property of \$175,000, as a finished home.
9. Petitioners presented a 2012 appraisal of the subject property with four comparable sales adjusted to be consistent with the characteristics of the subject property.
10. The 2012 appraisal presented a true cash value of the subject of \$174,000.
11. Comparable four of the 2009 appraisal is substantially similar to the subject property, with appropriate adjustments.

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

Petitioners present the Tribunal with two appraisals of the subject property prepared by Todd Herzog, State Licensed Appraiser, in support of their valuation of the property. The appraisals each present four sales comparable to the subject with adjustments consistent with the characteristics of the property.

In viewing the photographs of the subject property presented in the 2009 appraisal, with Petitioners' testimony under oath, the Tribunal finds that the subject property was incomplete on December 31, 2009.¹

Petitioners' appraiser, Todd Herzog ("Mr. Herzog"), determined a true cash value of the property, **as complete**, of \$175,000 in 2009. In 2010, Mr. Herzog determined a TCV of the property of \$174,000. From a comparison of the two appraisals, it appears that the fair market value of the property has remained stable. Furthermore, in Mr. Herzog's 2009 appraisal, comparable four is essentially the same vacation home as the subject property. Petitioners testified that the comparable home was located on a more desirable lake than the subject property and such difference was taken into account by the appraiser in his adjustments. When comparable four was adjusted to be consistent with the subject property, as complete, its market value was determined to be \$177,570. The Tribunal finds, upon careful consideration of the two

¹ MCL 211.2(2) states: (2) The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, any provisions in the charter of any city or village to the contrary notwithstanding. An assessing officer is not restricted to any particular period in the preparation of the assessment roll but may survey, examine, or review property at any time before or after the tax day.

appraisals and from comparable four on the 2009 appraisal, that Mr. Herzog properly and consistently computed the true cash value of the property on 2/25/2009 and 2/11/2012 (the dates of the appraisals), as finished properties.

The issue before the Tribunal in determining the true cash value of the subject property on December 31, 2009, is that it was not complete on that date. The Tribunal viewed photographs of the property in the 2009 appraisal that demonstrated incomplete exterior walls. (P-1). Petitioners further testified that at the time of 2009 appraisal, the home had no flooring, carpeting, interior doors, sinks in the kitchen, or cabinet doors. (Transcript, p. 6.) In addition, the garage of the home was incomplete. (Transcript, p. 13.) Petitioners estimated that they paid an additional \$25,000 to bring the home up to its current state of finish. (Transcript, pp. 19-20.) Petitioners testified that the unfinished items mentioned above were installed in June, 2010, (Transcript, p. 17) and that the home's garage construction commenced in fall, 2011. (Transcript, p. 17.) The completion dates of the unfinished items mentioned above demonstrate that they were definitely not complete on December 31, 2009. Therefore, The Tribunal finds Mr. Herzog's appraisals and Petitioners' testimony to be credible and persuasive in determining the true cash value of the property to be \$150,000 for the 2010 tax year. The Tribunal notes that the investment of \$25,000 into the present state of completion of the property does not necessarily equate to the market value of the property increasing by \$25,000; however, the Tribunal finds that the expenditure of \$25,000 by Petitioners is the best evidence presented in determining the true cash value of the property as unfinished, on December 31, 2009.

With regard to Petitioners' evidence presenting an average dollar per square foot of sale price of properties in the subject property area, the Tribunal does not find such evidence to be probative in determining the true cash value of the property. Petitioners did not present the Tribunal with the characteristics of the sales comparables in order to adjust them to be consistent with the characteristics of the subject property. In other words, the Tribunal is unable to determine if one property might have an attached garage, deck, or swimming pool that would affect the comparable property's market value as compared to the subject property. The Tribunal finds that the appraisals presented by Petitioners, with their expense testimony, is the best evidence presented to the Tribunal in order to make an independent determination of 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 Petitioners' 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 Petitioners 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