

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

Nagmuddin A. Pady,
Petitioner,

v

MTT Docket No. 415618

City of Detroit,
Respondent.

Tribunal Judge Presiding
Marcus L. Abood

ORDER GRANTING PETITIONER'S MOTION TO AMEND

OPINION AND JUDGMENT

I. INTRODUCTION

Petitioner, Nagmuddin A. Pady, through its amended Petition in the above-captioned case, is appealing the ad valorem property tax assessment levied by Respondent, City of Detroit, for the 2011 and 2012¹ tax years. Respondent was placed in default on January 30, 2012, for failure to file an answer to the Petition as required by TTR 247. Pursuant to the Order of Default, Respondent was required to file both an answer to the petition and a motion to set aside the default, along with the appropriate filing fees. Respondent failed to timely respond to the default or file the required motion, and a default hearing was scheduled and heard on August 17, 2012. Roger S. Canzano appeared on behalf of Petitioner.

¹ On May 31, 2012, Petitioner filed a Motion requesting that the Tribunal allow it amend the Petition to include the 2012 tax year. No response to the Motion was filed. The Tribunal, having given due consideration to Petitioner's Motion to Amend and the case file, finds that good cause has been shown to justify the granting of the Motion.

II. SUMMARY OF JUDGMENT

The property's TCV, SEV, and TV as established by the Board of Review for the tax years at issue are as follows:

Parcel No. 22050930-4			
Year	TCV	SEV	TV
2011	449,352	224,676	224,676
2012	400,000	200,000	200,000

Parcel No. 22050935-42			
Year	TCV	SEV	TV
2011	337,328	168,664	168,664
2012	273,220	136,610	136,610

Parcel No. 22050943-4			
Year	TCV	SEV	TV
2011	27,414	13,707	13,707
2012	26,794	13,397	13,397

Petitioner's contentions of TCV, SEV, and TV as determined by Petitioner's appraiser for the tax years at issue are as follows:

Parcel No. 22050930-4			
Year	TCV	SEV	TV
2011	224,676	112,338	112,338
2012	160,000	80,000	80,000

Parcel No. 22050935-42			
Year	TCV	SEV	TV
2011	168,664	84,332	84,332
2012	160,000	80,000	80,000

Parcel No. 22050943-4			
Year	TCV	SEV	TV
2011	13,706	6,853	6,853
2012	10,000	5,000	5,000

The property's TCV, SEV, and TV as determined by the Tribunal for the tax years at issue are as follows:

Parcel No. 22050930-4			
Year	TCV	SEV	TV
2011	449,352	224,676	224,676
2012	400,000	200,000	200,000

Parcel No. 22050935-42			
Year	TCV	SEV	TV
2011	337,328	168,664	168,664
2012	273,220	136,610	136,610

Parcel No. 22050943-4			
Year	TCV	SEV	TV
2011	27,414	13,707	13,707
2012	26,794	13,397	13,397

III. GENERAL PROPERTY DESCRIPTION

The subject property consists of three individual but contiguous parcels located in the City of Detroit, Wayne County, Michigan. They are classified as 201-Commercial, zoned B-4, General Business, and improved with a single story, multi-tenant retail center originally constructed in 1963, with renovations in 1999 and 2000. The site has a total land area of 23,820 square feet and the building has a total gross area of 15,008 square feet.

IV. SUMMARY OF PETITIONER'S CASE

Petitioner contends that the subject property is assessed in excess of 50% of its true cash value. In support of its value contentions, Petitioner offered the following exhibit, which was not admitted into evidence:

P-1: Appraisal Report Prepared by Kenneth H. Johnson, C.G.A., dated July 18, 2012.

The above document was not admitted into evidence because Petitioner failed to authenticate it as required by MRE 901. In that regard, the Michigan Court of Appeals, in *People v Manni*, an unpublished opinion per curiam, decided November 1, 2011 (Docket No. 298050), noted as follows:

When it comes to the admission of evidence, a proper foundation must be laid in which the item can be identified as that which it is purported to be....*People v Furman*, 158 Mich App 302, 331; 404 NW2d 246 (1987). “The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” MRE 901(a). Testimony of a witness with knowledge “that a matter is what it is claimed to be” is one method of authentication or identification that conforms with MRE 901(a). MRE 901(b)(1).

The purported author of the report, Kenneth H. Johnson, was not present at the hearing to provide testimony its contents, and no other means of authentication were offered by Petitioner. Further, the report is not a public, self-authenticating document under MRE 902. Notably, an appraisal report is specifically defined as “[a]ny communication, written or oral, of an appraisal, appraisal review, or appraisal consulting service that is transmitted *to the client* upon completion of an assignment.” *The Dictionary of Real Estate Appraisal*, p. 168 (Chicago, Appraisal Institute, 5th ed, 2010). In the absence of a suitable foundation, the Tribunal finds

that the report is properly excluded from consideration.²

V. FINDINGS OF FACT

1. The subject property consists of three individual but contiguous parcels located in the City of Detroit, Wayne County, Michigan. The parcels are identified as Parcel Nos. 22050930-4, 22050935-42 and 22050943-4 and commonly known as 13565, 13581 and 13601 Greenfield Road. They are classified 201, Commercial Real, and zoned B-4, General Business.
2. Together, the subject parcels have a total land area of 23,820 square feet. The subject building is a single story, average quality structure that was originally constructed in 1963, with renovations in 1999 and 2000. It has a total gross area of 15,008 square feet.
3. Petitioner *submitted* two documents in support of its specified contentions of value for the subject property: An excerpt from a Preliminary Data Analysis prepared by an unknown author and a fee simple appraisal report prepared by Kenneth H. Johnson. The Preliminary Data Analysis was not offered or admitted into evidence, but the submitted excerpt indicates a “weighted” value of \$425,000 for the subject property as of December 31, 2010. The indicated value does not conform to the aggregate true cash value alleged in Petitioner’s pleadings for the 2011 tax year.
4. Although Kenneth H. Johnson was listed on Petitioner’s Witness List, he did not appear at the hearing and did not provide testimony. The Johnson appraisal report, which values the subject property at \$300,000 as of December 31, 2011, was offered, but not admitted due to Petitioner’s failure to authenticate it as required by MRE 901. The indicated value of the report does not conform to the aggregate true cash value alleged in Petitioner’s pleadings for the 2012 tax year.

VI. APPLICABLE LAW

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50 % of its true cash value. The Michigan Legislature defined “true cash value” as “the usual selling price at the

² See also *Community Shores Bank v Babbitt's Sport Center, LLC*, an unpublished opinion per curiam, decided August 2, 2012 (Docket No. 305235) and *Knollwood Country Club v Township of West Bloomfield*, an unpublished opinion per curiam, decided March 23, 2004 (Docket No. 241297).

place where the property to which the term is applied is at the time of assessment, being the price which could be obtained for the property at private sale, and not at forced or auction sale.” See MCL 211.27(1). The Michigan Supreme Court, in *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450; 221 NW2d 588 (1974), held that “true cash value” is synonymous with “fair market value.”

The Tribunal is charged with finding a property’s true cash value to determine the property’s lawful assessment. *Alhi Development Co v Orion Twp*, 110, Mich App 764, 767; 314 NW2d 479 (1981). The determination of the lawful assessment will, in turn, facilitate the calculation of the property’s taxable value as provided by MCL 211.27a. 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 must 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 & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

MCL 205.737 provides that “[t]he petitioner has the burden of proof in establishing the property’s true cash value.” The Michigan Court of Appeals has

held that “[t]his 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 Steel Corp v City of Warren*, 193 Mich App 348, 355-356; 483 NW2d 416 (1992). Nonetheless, the tribunal *must* make an independent determination of true cash value. *Id* at 355. The Tribunal is also obligated to select the valuation methodology that is accurate and bears a reasonable relation to the property’s true cash value. *Safran Printing Co v Detroit*, 88 Mich App 376; 276 NW2d 602 (1979), *lv den* 411 Mich 880 (1981). The Tribunal is not, however, “bound to accept either of the parties’ theories of valuation. It may accept one theory and reject the other, it may reject both theories, or...utilize a combination of both in arriving at its determination.” *Jones, supra* at 356. Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject property would sell. *Meadowlanes Ltd Dividend Housing Ass’n v City of Holland*, 437 Mich 473; 473 NW2d 636 (1991).

VII. CONCLUSIONS OF LAW

The Tax Tribunal Act has consistently been construed by Michigan courts as imposing upon petitioner the burden of establishing a property’s true cash value while, at the same time, imposing upon the Tribunal a duty to make an independent

determination of true cash value.³ Petitioner's burden is not eliminated or reduced simply because a hearing in any given case is conducted as a default hearing under TTR 247(2).⁴ Further, the Michigan Court of Appeals has held that the Tribunal is not required to make an independent determination of true cash value when the petitioner has not met its burden of going forward because "[a] contrary holding would be tantamount to requiring the tribunal to hire its own appraiser." *Country Meadows et al v Township of Macomb*, an unpublished⁵ opinion per curiam of the Court of Appeals, issued April 1, 1997 (Docket No. 182305).⁶ Recently, however, the Court found that the Tribunal committed an error of law in failing to make an independent determination of value, despite the noted absence of any documentary evidence on the record. In *Charter Oak Homes v City of Detroit*, an unpublished opinion per curiam of the Court of Appeals, issued October 06, 2011 (Docket No. 297509), the Court reasoned and stated as follows:

We find, as legal error, the failure of the Tribunal to perform its duty in simply 'rubber stamping' the valuation of the City and failing to engage in an independent determination of the value of the subject property. The ruling of the Tribunal is particularly suspect given the default status of the City in this matter. 'Even if the tribunal had correctly concluded that petitioner's proofs had failed, the tribunal still

³ MCL 205.735a and MCL 205.737. See *Great Lakes Div of Nat Steel Corp v City of Ecorse*, 227 Mich App 379, 576 NW2d 667 (1998), *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348; 483 NW2d 416 (1992), and *Alhi Development Co v Orion Twp*, 110 Mich App 764, 314 NW2d 479 (1981).

⁴ See *Aldridge v Greenbush Twp*, MTT Docket No. 310158 (2007), aff'd in an unpublished opinion per curiam of the Court of Appeals, issued July 22, 2008 (Docket No. 278913).

⁵ The Tribunal recognizes that unpublished opinions are neither precedential nor binding. MCR 7.215(c)(1). See also, *Cedroni Associates, Inc v Tomblinson, Harburn Associates, Architects & Planners*, __Mich__; __NW2d__ (2012) and *Neal v Department of Corrections*, __Mich App__; __NW2d__ (2012).

⁶ See also *Linn v Township of Alaiedon*, unpublished opinion per curiam of the Court of Appeals, issued September 29, 2000 (Docket No. 218359).

would be required to make an independent determination of the true cash value of the property. The tribunal may not automatically accept a respondent's assessment, but must make its own findings of fact and arrive at a legally supportable true cash value.' In sum, we find that the Tribunal's determination was not 'supported by competent, material, and substantial evidence on the whole record.'

Nevertheless, the Tribunal finds that the Court's decision in *Charter Oak* does not overrule or undermine the principles underlying its previous decisions in *Country Meadows, supra* and like cases. Rather it was heavily premised on the specific facts and circumstances presented in that case, particularly the respondent city's notable and continuing lack of cooperation. The Court stated that "despite ongoing efforts, [Charter Oak] was unable to obtain any information from the City regarding the property or how it calculated or derived the challenged taxable value." In addition, the record in that case clearly suggested the existence of numerous potentially substantial errors in Respondent's cost less depreciation approach to value for the subject property. Consequently, the Court found "counsel's indication of the method⁷ used for deriving its proposed assessed and taxable values," sufficient to meet Petitioner's burden of going forward with the evidence. Because Petitioner had met its initial burden of proof, the Tribunal's duty to make an independent determination of value was invoked.

⁷ Petitioner's counsel cited similar properties from within the same development that had already been appealed and negotiated or adjudicated before the Tribunal.

Petitioner in this case was required pursuant to MCL 205.737 and TTR 252 to submit a valuation disclosure in support of its specified contentions of value. Petitioner did offer such a disclosure in the form of a fee simple appraisal report, but failed to authenticate the proffered report as required by MRE 901. As a result of this failure to comply with the Michigan Rules of Evidence and Tribunal Rules of Practice and Procedure, Petitioner also failed to meet its burden of going forward on the issue of true cash value. Further, it is noted that here, unlike in *Charter Oak, supra* there is no indication that Petitioner was unable to obtain a property record card or other information from Respondent pertaining to the subject property and how its assessed and taxable values were calculated for the tax years at issue. In fact, Petitioner's counsel indicated that he had personally met with one of Respondent's assessors on April 13, 2012 to discuss the instant appeal.⁸ Similarly, there is nothing that establishes or even suggests any errors in Respondent's cost approach for either year. More importantly, however, even if the Tribunal had found that Petitioner had somehow met its burden of going forward, it nonetheless would have no alternative but to conclude that Petitioner did not meet its burden of persuasion. In that regard, Petitioner's testimony and arguments would not be sufficient to support a finding that the subject property is assessed in excess of 50% of its true cash value, and the proffered evidence, even

⁸ TR. p 4.

on its face, does not support the specific contentions of value set forth in Petitioner's pleadings.

Notwithstanding Petitioner's failure to properly prosecute its case⁹ and the egregious statements¹⁰ made by Petitioner's counsel during the duly scheduled and noticed hearing, the Tribunal has given due consideration to the entire record in the above-captioned case and finds that it does not warrant a reduction in the subject property's assessment for either of the tax years at issue.

VIII. JUDGMENT

IT IS SO ORDERED.

IT IS FURTHER ORDERED that Petitioner's Motion to Amend is GRANTED.

IT IS FURTHER ORDERED that the subject property's true cash, assessed, and taxable values for the 2011 and 2012 tax years are those shown in the "Summary of Judgment" section of this 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

⁹ The Tribunal notes Justice Murphy, C.J. dissent from the majority opinion in *Charter Oak*, in which he stated: "I recognize that proceedings in the MTT are original, independent, and are considered de novo, that an assessment carries no presumption of validity, that the MTT cannot simply affirm an assessment absent supporting evidence, that the MTT has a duty to make its own independent determination of true cash value, and that on the failure of a petitioner's evidence to show that an assessment should be lower, the burden of going forward with evidence may shift to the respondent....Here, we do not have a situation where the evidence submitted by Charter Oak was inadequate to support its position; rather, no evidence whatsoever was even presented by Charter Oak. Under the circumstances of this case, it was impossible for the MTT to make its own independent determination of true cash value and, on my review of the two opinions issued by the MTT, the MTT never made a finding regarding the property's true cash value or the soundness of the city's assessment; it merely found that Charter Oak failed to go forward with any evidence challenging the assessment. Although the effect of the MTT's ruling was to leave intact the city's assessment, the MTT had no other option under the TTRs and statutes. In essence, the MTT's ruling was not a finding in favor of the city's assessment, but was instead simply a dismissal of Charter Oak's petition."

¹⁰ See TR. p 10.

to be corrected to reflect the assessed and taxable values in the amounts as finally shown in the “Final Values” section of this Opinion and Judgment, subject to the processes of equalization, within 20 days of the entry of this Opinion and Judgment. 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 Opinion and Judgment within 20 days of the entry of this 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 Order. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 2008, at the rate of 3.31% for calendar year 2009, and (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, and (iv) after December 31, 2011, at the rate of 1.09% for calendar year 2012.

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

MICHIGAN TAX TRIBUNAL

Entered: Sept. 9, 2012
ejg

By: Marcus L. Abood