

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

JLD Associates Ltd Partnership,

Petitioner,

v

MTT Docket No. 440570

Township of Resort,

Tribunal Judge Presiding
Paul V. McCord

Respondent.

FINAL OPINION AND JUDGMENT

J. Robert Langan (P53606), for Petitioner.

No appearance for Respondent.

I. INTRODUCTION

This property tax assessment dispute comes before the Tribunal for decision after a default hearing in the Entire Tribunal Division on December 12, 2013, in Dimondale, Michigan. At issue is the market value (true cash value or “TCV”) of Petitioner’s 8.37 acres of vacant land located on US 31 Highway, Resort Township (Petoskey), Michigan (the “Subject”). Respondent’s assessment, produced by means of mass-appraisal, indicated that the TCV of the Subject was \$504,400 for the tax year at issue. Petitioner alleged in its petition that the market value of its property likely did not exceed \$150,000. At hearing, Petitioner presented evidence that the TCV of the Subject likely did not exceed \$154,000. Respondent did not appear at the default hearing and has submitted no evidence of value. The issues for decision are: (1) the true cash, state equalized and taxable values of Petitioner’s property for the tax year at issue, and (2) whether Petitioner is entitled to its costs. It is.

II. JUDGMENT

This Tribunal holds that the Subject’s TCV, state equalized value (SEV), and taxable value (TV) for the tax year at issue are as follows:

Tax Year	Parcel Number	TCV	SEV	TV
2012	24-13-18-02-300-025	\$154,000	\$77,000	\$77,000

We further hold that Petitioner is entitled to its costs incurred in prosecuting this case.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After hearing and observing the witnesses who testified at the evidentiary hearing, allowing for the Tribunal to assess credibility, and having further considered the exhibits submitted by the parties, the arguments presented by counsel, and applying the governing legal principles, the Tribunal makes the following independent findings of fact and conclusions of law¹ set forth below in memorandum form. See MCL 205.751(1) (“A decision and opinion of the tribunal . . . shall be in writing or stated in the record, and shall include a concise statement of facts and conclusions of law, stated separately . . .”); see also MCL 24.285.

IV. FINDINGS OF FACT

This section presents a “concise, separate, statement of facts” within the meaning of MCL 205.751(1), and, unless stated otherwise, the matters stated or summarized are “findings of fact” within the meaning of MCL 24.285. The findings of fact are set forth in narrative form based on the Tribunal’s conclusion that it is the most expeditious manner of proceeding where there are few disputes about facts and the main focus of the controversy is the valuation of the Subject as of the tax year at issue.

1. *Assessment*

The Subject is identified on Respondent’s assessment roll by Parcel No. 24-13-18-02-300-025. For the 2012 tax year, Respondent determined that the true cash value of the Subject, by method of mass appraisal, was \$504,400. Specifically, true cash value (TCV), state equalized value (SEV), assessed value (AV), and taxable value (TV) of the Subject, as appearing on Respondent’s assessment roll for the tax years at issue, are as follows:

Year	TCV	SEV	AV	TV
2012	\$504,400	\$252,200	\$252,200	\$252,200

The Subject is classified as “residential” property. During the tax year at issue, the level of assessment for residential real property within Respondent’s jurisdiction equaled 50 percent of true cash value as determined by method of mass appraisal.

2. *The Subject Property*

The Subject is an approximate 8.37 acre parcel of vacant residential land on Charlevoix Avenue (US 31 Highway), about 2 miles east of Petoskey, Michigan. The Subject lies at the corner of US 31 Hwy and Blackbird Road. US 31 Hwy forms the north line of the Subject (*i.e.*, the Subject lies to the south of this roadway) with approximately 795 feet of frontage. The east line of the

¹ To the extent that a finding of fact is more properly a conclusion of law, and to the extent that a conclusion of law is more properly a finding of fact, it should be so construed.

Subject is formed by about 505 feet of frontage along Blackbird Road. Lake Michigan lies to the north of the Subject, across US 31 Hwy and over lands of others. While the Subject affords some view amenity of the lake, the Subject is about 95 percent wooded and numerous trees would need to be removed and others trimmed to allow a view of the water and distant hills across Little Traverse Bay (Lake Michigan). Further, as the view is over lands not owned or controlled by the Subject, future tree growth and/or construction could limit or block this view amenity.

The Subject is an irregularly shaped parcel of land. The topography undulates with 90 percent to 95 percent of the land area characterized by moderated to severe steep slopes, small ridges and deep valleys. Nearly the Subject's entire road frontage is higher than the road grade level. Only one small area on the north line (US 31) of the Subject, near its center, provides access from the roadway to the Subject by way of an old driveway. A steep incline leads this entrance to a roughly shaped horseshoe bowl area of land of about two acres formed by severe hills/ridge line in all directions.

From the intersection of US 31 Hwy and Blackbird Road (the Subject's northeast corner), a curving ridge line characterized by severe slopes meanders from the northeast corner to the southeast corner along the Subject's east line. A deep u-shaped valley, formed by the curving ridge line and characterized by severe slopes, is one of the major topographical features lying along the Subject's east line. Consequently, the Subject's frontage along Blackbird Road does not allow for reasonable access or driveway installation, as the Subject's east line has a much higher elevation than the road bed and, given the gradient of the sloping ridge, cannot be negotiated by a motor vehicle. The Subject's elevation at its southeast corner is approximately fifteen feet higher than road grade level of Blackbird Road, and that corner is not the top of the hill.

Once on the Subject near the southeast corner, a level to gently sloping area about 20 feet wide and 100 feet long extends west to a level to a gently sloping area of approximately one acre. From this elevation, multiple severe slopes, ridges and valleys are encountered in all directions onto the remaining portion of the Subject. The Subject's topography restricts most of its useful land area and limits its possibility to be divided into smaller usable lots.

3. Petitioner's Valuation Disclosure

Petitioner offered a summary residential appraisal report of the Subject prepared by William J. Couture. Mr. Couture is a state license real estate appraiser and had been appraising properties in the market area of the Subject for over 48 years. Mr. Couture stated that he was very familiar with the Subject, as his office is only a mile and a half from the Subject. Mr. Couture even added that he lives only a mile from the Subject. Mr. Couture conducted a physical inspection of the Subject and the Subject's neighborhood.

Mr. Couture opined that the market value of the Subject as of December 31, 2011, was \$154,000. In rendering his opinion of value, Petitioner's expert relied entirely on the sales comparison approach to value. Petitioner's expert located 3 comparable vacant land sales within the general market area of the Subject ranging in sale price from \$80,000 to \$350,000. Each of the three

sales occurred during the period from August 2010 to September 2011. All of the comparables were within the general area of the Subject ranging from as little as 0.19 miles away (Sale 2) to as far as 3.72 miles (Sale 3).

Petitioner's expert explained that all of the comparable sales were sales that were selected because they were the most recent and applicable sales available. The local market is between 25 percent to 75 percent developed. The relevant market during the period was considered to be in an over-supply condition, with prices declining and marketing times in excess of six months. Absorption/growth rate was slow. Mr. Couture found that a variety of different physical characteristics among each of the comparable sales required adjustment. Petitioner's appraiser reasoned that vacant properties that afford excellent views of Lake Michigan and Little Traverse Bay differ in many respects. Location, physical size, topography and configuration are some of the major factors that determine superior and/or inferior characteristics when comparing one vacant parcel to another. Mr. Couture also offered that other very important considerations involve specifics such as how much of the Subject affords a view, topography relating to side grade at contact point with roadways and also interior areas where sever slopes can have a positive or negative effect on value. Sales 2 and 3 were selected from a limited number of sales that occurred during the period from 2010 to 2011. Due to the declining values of real estate, Mr. Couture believed that these two sales could not indicate a higher value of the Subject as of the relevant valuation date.

The net adjustments applied ranged from -55.7 percent to 103.8 percent. Gross adjustments ranged from 55.7 percent to 121.3 percent. The largest adjustments were applied for size and topography. Given the Subject's proximity to Petoskey, location adjustments were also applied. After making various adjustments, Petitioner comparable sales indicated sale prices ranging from \$143,000 to \$163,000.

V. CONCLUSIONS OF LAW

1. Default

TTR 231(1) provides that if a party has failed to plead, appear, or otherwise proceed as provided by the Tribunal's rules or orders, the Tribunal may, upon motion or its own initiative, hold that party in default. On December 7, 2012, the Tribunal entered an Order of Default in the above-captioned case, finding that Respondent had failed to file an Answer in this case as required by former TTR 245 (now TTR 229).² Respondent did not cure its default.³ As Respondent was the defaulting party to which it does not bear the burden of proof, as to the TCV of the Subject (see MCL 205.737(3)), this Tribunal issued a Default Hearing Scheduling Order on October 28, 2013. Under the Tax Tribunal's rules a "default hearing" is a hearing at which the respondent is

² See TTR 229(1) providing that the failure to file either an answer or a responsive motion within 28 day may result in the holding of respondent in default and the conduction of a default hearing as provided in TTR 231.

³ On November 20, 2013, after this case was scheduled for a default hearing, Respondent filed its answer explaining that in December 2012, it left and voice mail with the Tribunal explaining that there was no new evidence to add at that time. Waiting for further correspondence from the MTT and not receiving any until out Notice of Default Hearing issued on October 28, 2013, Respondent's assessor explained that he was unaware that he needed to take any further action.

precluded from presenting any testimony, submitting any evidence, and examining the other party's witnesses unless, in the Tribunal's discretion, it allows otherwise. TTR 231(2). A default hearing, pursuant to TTR 231, was held on December 12, 2013. Petitioner appeared through its counsel and offered the testimony of its expert witness, together with documentary evidence in support of its value claim. Respondent, Township of Resort, was not present at the hearing, offered no motion to set aside the default, proofs that it had a meritorious defense to Petitioner's appeal, evidence as to the market value of the Subject, or that its default in this matter was other than willful.

2. *Burden of proof*

Although Respondent is in default and this case is being heard as a default hearing, Petitioner nevertheless bears the burden of proof as to the true cash value of its property. MCL 205.737(3); *Samonek v Norvell Twp*, 208 Mich App 80, 84; 527 NW2d 24 (1994). In other words, merely because Respondent is precluded from presenting any testimony, submitting any evidence, and examining Petitioner's witnesses, Petitioner is not automatically entitled to judgment in its favor. Instead, Petitioner's obligation to establish through the evidence it presents its right to relief remains unaltered. In this regard, a default hearing is analogous to the situation where a respondent moves pursuant to MCR 2.504(B)(2) for involuntary dismissal at the close of petitioner's proofs (knowing, of course, that neither party actually so moved). Therefore, this Tribunal weighs and analyzes the evidence presented in this case employing the evidentiary standard applicable to such a motion, meaning that this Tribunal must "weigh the evidence, pass upon the credibility of witnesses and select between conflicting inferences." *Marderosian v Stroh Brewery Co*, 123 Mich App 719, 724; 333 NW2d 341(1983). Under this formulation, Petitioner is not given the advantage of the most favorable interpretation of the evidence. *Id.*

The burden of proof in a tax case encompasses two concepts: (1) the burden of going forward with the evidence, and (2) the burden of persuasion, which remains with Petitioner throughout the course of the hearing. *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 409-410; 576 NW2d 667 (1998). In order to meet its burden of going forward with the evidence (sometimes referred to as the burden of production), the evidence offered by Petitioner must be sufficient and reliable to demonstrate that the assessment at issue is in error. *Id.* at 410. If the evidence introduced by Petitioner is sufficient, albeit not necessarily conclusive, that the challenged assessment may be wrong, then the Tribunal must appraise the testimony, make a determination of true value of the property and fix the assessment. *Id.*; see also *Jones & Laughlin Steel Corp v Warren*, 193 Mich App 348, 355; 483 NW2d 416 (1992). In the end, however, whether Petitioner is entitled to any relief depends on Petitioner meeting its burden of persuasion. The "burden of persuasion" refers to Petitioner's obligation to introduce evidence sufficient to convince this Tribunal, to a requisite degree of belief⁴ that its claim as to the TCV of its property is in fact true. *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich 167, 178-179; 405 NW2d 88 (1987).

⁴ In valuation cases, the petitioner's burden is "by a preponderance of the evidence." That is, in the opinion of the Tribunal, it is "more likely than not" that the true cash value of the petitioner's property is as the petitioner claims it to be. See MCL 205.737(3); see also *President Inn Properties, LLC v Grand Rapids*, 291 Mich App 625, 631; 806 NW2d 342 (2011).

In this case, this Tribunal finds that Petitioner has produced sufficient evidence to meet its burden of going forward with the evidence.⁵ See *President Inn Props LLC v Grand Rapids*, 291 Mich App 625, 631; 806 NW2d 342 (2011); *Great Lakes Div of Nat'l Steel Corp*, *supra* at 408-409. Petitioner presented independent evidence of the value of the Subject by a competent appraiser with a rational basis for his appraisal. If taken as true, the opinion of Petitioner's expert and the facts upon which he relied create a sufficient question regarding the correctness of the assessment at issue to allow this Tribunal to make an independent determination of the value of Petitioner's property.

3. Valuation

The true cash value of property must "reflect the probable price that a willing buyer and a willing seller would arrive at through arm's length negotiation." *Huron Ridge LP v Ypsilanti Twp*, 275 Mich App 23, 28; 737 NW2d 187 (2007), see also MCL 211.27(1). Ultimately the true cash value of property is a question of fact. See *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 638; 462 NW2d 325 (1990). In deciding valuation cases, we often look to the opinions of witnesses. See TTR 255(2). To this end, our rules generally make the submission of an appraisal or documents supporting the contended value, together with supporting expert valuation testimony, a practical requirement. See TTR 237(1) and 255(2). The Tribunal has broad discretion in forming its own conclusions about the record. See *President Inn*, *supra* at 351, citing *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985). We can find facts and accept or reject expert testimony and theories as we see fit. *Jones & Laughlin*, 193 Mich App at 356. But regardless of the method employed, this Tribunal must determine the most accurate valuation under the individual circumstances of the case. *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437, 485-486, 502; 473 NW2d 473 NW2d 636 (1991).

While there are three common approaches employed to value property, the income approach, the sales comparison approach, and the cost approach, see *Great Lakes Div. of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 390; 576 NW2d 667 (1998); *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984), only the sales comparison approach was developed by Petitioner's expert and presented at hearing. The sales comparison approach is applicable to all types of real property interests when there are sufficient recent, reliable transactions to indicate value patterns and trends in the market. For property types bought and sold regularly, the market approach often provides a supportable indication of market value. When data is available, this is the most straight forward and simple way to explain and support an opinion of market value. Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p 380. This is especially true were the property at issue is vacant land. This Tribunal finds that the sales comparison approach offers the most accurate method for

⁵ This Tribunal cautions that a finding where Petitioner has met its burden of going forward with the evidence does not equate to a finding that the value of the property is less than that on the assessment roll. To the contrary, by meeting its burden of going forward with the evidence, Petitioner trips the Tax Tribunal's obligation under the Tax Tribunal Act to address the question of what value should be accorded the property. See MCL 205.735a(2). Once the burden of going forward with the evidence is met, "[t]he Tax Tribunal has a duty to make its own, independent determination of true cash value." *President Inn Properties, LLC v City of Grand Rapids*, 291 Mich App 625; 806 NW2d 342, 352 (2011).

determining the true cash value of Petitioner's property. Petitioner argues that, given the opinion of its expert, and his analysis of the three comparable properties that he selected, any potential buyer for the Subject as of the relevant tax day would pay no more than \$154,000. This Tribunal agrees.

Petitioner's expert was qualified by the Tribunal as an expert in real property valuation, and his appraisal was admitted into evidence thereby permitting him to offer opinion testimony. See TTR 255(2). However, being qualified as an expert is but the first part of accepting an expert's opinion. With regard to Petitioner's analysis, all of the comparables have large gross adjustments from 55.7 percent to 121.3 percent. However, given the limited market data during the period and the unique features of the Subject, these adjustments appear on balance and supportable. Specifically, these large adjustments are due to the fact that comparable 1 received a large adjustment for its superior topography and comparable 3 received large adjustments for, view and road type. Comparables 1 and 3 also received large adjustments for location, Comparable 1 being superior, whereas Comparable 3 was inferior. Comparables 1 and 3 also received differing size adjustments. Comparable 1 is 10 acres and received a -\$70,000 adjustment, whereas Comparable 3 is 10.7 acres and received a -\$7,000 adjustment for size. Comparable 2 which is only 5 acres, received a \$35,000 adjustment for size. The Tribunal finds that Petitioner size adjustment is inconsistently applied. In the end, Comparable 1 should be given must less consideration, as it location and superior topography limits its comparability, although it does assist in bracketing these units of comparison. Reviewing the evidence and testimony presented in this case, this Tribunal finds that the severe topography of the Subject significantly impacts useful land area of the Subject for residential development and limits its possibility to be divided into smaller usable lots. Consequently, the Subject's topography is the most significant value influencing feature of the Subject. Taking into consideration the size and topography of each of Comparables 2 and 3, and that of the Subject, this Tribunal finds that a market value conclusion for the Subject of \$154,000 for the tax years at issue is supported.

As the probative value of an expert's opinion must stand or fall upon the facts and reasoning offered in support of that opinion, this Tribunal is convinced by the appropriate standard of proof that Petitioner's adjustments were appropriately devised and adequately supported in this matter. Based on the foregoing, this Tribunal finds that the sales comparison approach methodology and market evidence as presented by Petitioner sufficiently supports Petitioner's contentions of value.

4. *Costs and Fees*

Generally speaking, litigation costs and legal expenses are not recoverable unless otherwise authorized by statute, case law, or contract. MCL 205.752(1) authorizes the Tribunal to award costs incurred by a party in pursuing an appeal in this forum. Although the Tribunal is hesitant to award costs, Rule 209(1) nevertheless provides that a party may be entitled to an award of costs, either on motion or on the Tribunal's own initiative, when provided for by the Tribunal in a decision or order. TTR 209(1). The decision to award costs is solely within the discretion of the Tribunal judge. Here, Respondent has failed to timely submit an answer and failed to appropriately respond to the Tribunal's Orders. Not until Respondent received the Notice of Default Hearing dated October 28, 2013, did Respondent finally file an answer in this case.

Respondent dilatory filing comes too little too late. The Tribunal finds that Respondent has failed to participate in this appeal in any manner and has failed to provide any meritorious defense to Petitioner's case. As a result, Respondent has burdened both Petitioner and this Tribunal with a case. Therefore, awarding Petitioner costs is appropriate in this case.

VI. CONCLUSION

Respondent has failed to provide any evidence in support of the values assessed on the roll. Accordingly, it cannot be determined that Respondent's assessments accurately reflect the value of the subject properties. After a careful review and weighing of the testimony and exhibits presented by Petitioner, Petitioner's sales approach is found to be the only reliable evidence as to the value of the Subject for the 2012 tax year. The Tribunal finds that Petitioner has met its burden of proof and that a reduction in the assessments is warranted. For the reasons discussed above, the conclusion of this Tribunal is that the true cash, state equalized, and taxable values of the Subject are as follows:

Parcel Number: 24-13-18-02-300-025

Year	TCV	SEV	TV
2012	\$154,000	\$77,000	\$77,000

Further this Tribunal has found that an award of cost to Petitioner is warranted. In reaching the holdings in this opinion, this Tribunal has considered all arguments for contrary holdings, and has rejected all arguments not discussed as without merit or irrelevant. Therefore,

IT IS ORDERED that Petitioner shall submit to the Tribunal and Respondent within 14 days of the entry of this Order, a bill of costs, prepared in compliance with TTR 209(3), reflecting the costs incurred by Petitioner in this matter.

IT IS FURTHER ORDERED that Respondent may respond to the bill of costs within seven (7) days of the service of the bill of costs.

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 values as finally shown in this Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment, the 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, at the rate of 1.12% for calendar year 2011, and (xvi) after December 31, 2011, at the rate of 1.09 for calendar year 2012, (iv) after June 30, 2012, through December 31, 2013, at the rate of 4.25%, and (v) after December 31, 2013, and through June 30, 2014, at the rate of 4.25%.

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

By: Paul V. McCord

Entered: