

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

Daniel Patru,
Petitioner,

v

MTT Docket No. 16-001828

City of Wayne,
Respondent.

Case Type: Valuation

PROPOSED OPINION AND JUDGMENT

Personnel Presiding:	Christine Steinmetz, Hearing Referee
Location of Hearing:	Detroit, MI
Hearing Held on:	October 27, 2016
Appearances on Behalf of Petitioner:	Daniel Patru
Appearances on Behalf of Respondent:	Tony Hobbyak

PROPOSED JUDGMENT

The subject property's true cash value (TCV), state equalized value (SEV) and taxable value (TV) for the tax years at issue shall be as follows:

Parcel Number: 82-55-024-01-1069-000

Year	TCV	SEV	TV
2016	\$50,400	\$25,200	\$25,200

PROCEDURAL HISTORY

Petitioner was required to protest the subject property's assessment to the Board of Review (BOR).

Petitioner protested the subject property's assessment to the 2016 March BOR.

Petitioner filed his Petition with the Tribunal on May 31, 2016, and Respondent filed its Answer on July 11, 2016.

The amount of the state equalized value or taxable value in dispute, as set forth in the pleadings, for all tax years at issue is within the jurisdictional limits of the Small Claims Division.¹

¹ See MCL 205.762(1).

ISSUES AND APPLICABLE LAW

The issues in this matter are:

1. Whether the subject property is assessed in excess of 50% of its TCV.

“The petitioner has the burden of proof in establishing the property’s true cash value.”²

The assessment of real property in Michigan shall not exceed 50% of its true cash value.³ “True cash value” means “the usual selling price”⁴ “True cash value” means “fair market value.”⁵

The Tribunal is required to make an independent determination of true cash value.⁶ “[T]he tribunal is not 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 it may utilize a combination of both in arriving at its determination.”⁷

The Tribunal is required to select the valuation methodology that is accurate and bears a reasonable relationship to the property’s true cash value.⁸

2. Whether the TV exceeds the amount provided by MCL 211.27a.

MCL 211.27a provides that a property’s taxable value is the lesser of the property’s state equalized value or capped taxable value and a property’s capped taxable value is, absent a transfer of ownership, determined mathematically by taking into consideration the prior tax year’s taxable value, physical losses to the property, the rate of inflation and physical additions to the property including omitted property (i.e., property not previously assessed).

SUMMARY OF EVIDENCE

A. Petitioner’s Evidence

Petitioner’s contentions of TCV, SEV and TV:

Parcel Number: 82-55-024-01-1069-000

Year	TCV	SEV	TV
2016	\$32,000	\$16,000	\$16,000

Petitioner offered the following exhibits:

² MCL 205.737(3); *Kern v Pontiac Twp*, 93 Mich App 612; 287 NW2d 603 (1979).

³ Michigan Const 1963, art IX, sec 3.

⁴ MCL 211.27(1).

⁵ *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

⁶ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348; 483 NW2d 416 (1992).

⁷ *Id.* at 356.

⁸ *Safran Printing Co v Detroit*, 88 Mich App 376; 276 NW2d 602 (1979).

1. Evidence, filed on May 31, 2016.
 - a. 2016 Board of Review Decision.
2. Evidence, filed on September 7, 2016.
 - a. Sales history for the subject property.
 - b. Sales listing for the subject property.
3. Evidence, filed on September 14, 2016.
 - a. Sales listing for the subject property.
 - b. Sales history for the subject property.
 - c. Sales listings and sales histories for Respondent's comparables

No exhibits were excluded from evidence

Based on the pleadings, admitted exhibits, and sworn testimony, if any, Petitioner claims:

Petitioner contends that the subject property is assessed over 50% of its true cash value. Petitioner testified that he purchased the subject property in June 2015 for \$32,000. The subject has been listed on the MLS and he was represented by a realtor. Petitioner stated that the subject property had been on the market for some time and that there were other offers but the parties backed out. The subject property sold in a HUD sale and under HUD rules, it is illegal for this sale not to be considered an arm's length transaction. At the hearing, Petitioner presented two pages of repairs that the city required to be completed. The subject's purchase price reflected the fact that the subject needed repairs. Petitioner stated that he put approximately \$10,000 into the subject property and did most of the work himself. The work involved carpentry, electrical, and cement. The repairs were completed and the property had a certificate of occupancy by December 31, 2015.

Petitioner testified regarding Respondent's comparables. Three out of the five comparables had sold previously and resold. Respondent's Comparable 2 sold in 2004 for \$114,000, then again in 2010 for \$20,500, and resold in 2015 for \$49,750. Respondent's Comparable 3 sold for \$113,000 in 2001, resold in a HUD sale in 2012 for \$21,000, and then resold in 2015 for \$57,000. The listing for Respondent's Comparable 3 states awesome privately owned home. Respondent's Comparable 4 sold in 2003 for \$120,500, then again in 2008 for \$30,000, and resold in 2015 for \$65,000. The listing states that the buyer can pick the color of vinyl siding. Petitioner stated that Respondent's Comparables 4 and 5 are updated homes.

Petitioner stated that under MCL 211.27(2) the assessor shall not consider the normal repairs or maintenance until the property is sold. Petitioner presented two pages of repairs that the city required to be repaired on the subject property before allowing occupancy. Petitioner stated that about two weeks after moving in, the subject's basement flooded. Petitioner concluded by stating that the city cannot assess the repairs to the subject property until the property is sold pursuant to the statute.

B. Respondent's Evidence

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

Parcel Number: 82-55-024-01-1069-000

Year	TCV	SEV	TV
2016	\$50,400	\$25,200	\$25,200

Respondent offered the following exhibits:

1. Evidence, filed on July 11, 2016.
 - a. Property record card.
 - b. Valuation report.
 - c. Board of Review decision.
 - d. Petition to Board of Review.
 - e. PS Form 3600-R.
2. Evidence, filed on September 13, 2016.
 - a. Respondent's letter.
 - b. Respondent's comparable market analysis.
 - c. Photographs of the subject and of Respondent's comparables.
 - d. Location map.

No exhibits were excluded from evidence.

Based on the pleadings, admitted exhibits, and sworn testimony, if any, Respondent claims:

Respondent claims that the subject is not assessed in excess of 50% of the property's true cash value. Respondent's representative testified that he submitted sales that support the assessment. He submitted five sales and placed the most weight on his Comparable 1. The sales all sold in arm's length transactions. Several of the comparables only received one adjustment, which was for air conditioning. His comparables were adjusted by \$2,000 for a carport and for a garage, which is market-based.

Respondent's representative indicated that the subject's purchase price does not accurately reflect the subject's true cash value. The subject's listing stated that the subject sold as a HUD home, the property is sold "as-is", and is to be sold by electronic bid only. Respondent's representative did not agree with Petitioner's statement that it is illegal not to find the subject's sale an arm's length transaction. Respondent's representative indicated that the subject's sale was not used in his sales study. Further, Respondent noted that Petitioner put \$10,000 into the subject property in material to make it livable, which did not include labor. This further supports Respondent's contention of \$50,400. Respondent's representative stated that foreclosed sales do not make up the market. Respondent's representative explained that under MCL 211.27, maintenance is to be kept up on a property to reflect the true cash value. Therefore, if a hot water heater breaks, it is assumed it will be repaired to keep up the property. This statute talks about normal maintenance and repairs.

Respondent's representative stated that Petitioner noted several of Respondent's sales sold for a higher amount in prior years and then sold for less during the downturn. The sales, such as his Comparable 3, sold for less in 2011 due to the recession that affected the area. Further, his

comparables 1 and 5 had sold for less due to deferred maintenance, were fixed up, and resold again. Respondent's representative indicated that the cost approach was applied in conformity with the state assessor's manual and that his cost approach is supported by his sales approach.

FINDINGS OF FACT

The following facts were proven by a preponderance of the evidence:

1. The subject property is located at 5073 Winifred, in the county of Wayne, is classified as residential and has a principal residence exemption of 0% for the tax year at issue.
2. The average level of assessment in effect for the property's classification is 50%.
3. The subject property has 1,020 square feet above grade; it has three bedrooms, one full bath, no garage, a basement, and was built in 1943.
4. The subject property sold in August 2015 for \$32,000 in a bank sale.
5. The subject property was repaired and had a certificate of occupancy as of December 31, 2015.
6. Respondent submitted a comparable market analysis valuing the subject property at \$50,400, as of December 31, 2015. The comparables sold in a range between \$49,750 and \$67,000. The comparables had adjusted sales prices in a range between \$48,250 and \$62,500. The total gross adjustments of the comparables are between .91% and 10%.
7. Respondent determined the true cash value of the subject property using the mass appraisal cost-less-depreciation approach.

CONCLUSIONS OF LAW

1. The following authority and reasoned opinion supports the Tribunal's determination:

Petitioner contends that under MCL 211.27(2), the subject's purchase price of \$32,000 reflects the subject's true cash value. In addition, under the statute, the assessor shall not consider normal repairs and maintenance in determining the property's true cash value until the property is sold. First, the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred.⁹ In order for the purchase price to be accepted as the subject's true cash value, it must have sold for market value. Market value is defined as "[t]he most probably price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress."¹⁰ The subject property sold in a bank sale. The seller may have been under financial duress and sold the property for less than market value. In addition, Respondent's representative testified that foreclosed sales were not a common method of acquisition in the subject's area to deem such sales reliable indicators of value. Also, Petitioner testified that the subject property was in need of repair at the time of purchase. He presented two pages of repairs that the city

⁹ See MCL 211.27(6).

¹⁰ See MCL 211.27(6).

required to be completed until the property could be occupied. Petitioner testified that he put approximately \$10,000 in materials into the subject property and that he completed most of the repairs himself. Petitioner further testified that the repairs were completed by December 31, 2015. Under MCL 211.2(2), the relevant date of valuation for the 2016 tax year is December 31, 2015. Therefore, the subject's purchase price reflected the condition of the subject property prior to the repairs and the repairs were completed by tax day. Petitioner claims that under MCL 211.27(2) we should not increase the subject's true cash value for normal repairs and maintenance until the subject property is sold. However, Petitioner even admitted that the subject was in substandard condition at the time of purchase and the city required that the repairs be made. Therefore, the Tribunal does not find that the repairs completed by Petitioner were normal repairs and maintenance as noted by the statute. Instead, the subject was in substandard condition at the time of sale and the purchase price reflected the subject's condition at that time. The repairs were completed and the subject had a certificate of occupancy by December 31, 2015; therefore, the subject's purchase price is not a reliable indicator of value.

In support of the assessment, Respondent submitted a comparable market analysis. Petitioner indicated that Respondent's comparables were not reliable evidence of value because several of the comparables had sold and resold in years prior. As noted above, the relevant date of valuation is December 31, 2015. Therefore, the sales and resales are not close in time and could reflect improvements in the properties or just the market change.

Respondent's comparable market analysis valued the subject property at \$50,400, as of December 31, 2015. The comparables sold in a range between \$49,750 and \$67,000. The comparables had adjusted sales prices in a range between \$48,250 and \$62,500. The total gross adjustments of the comparables are between .91% and 10%. Respondent's representative testified that the comparables sold in arm's length transactions and that he applied market-based adjustments for differences in amenities. The comparables received either one or two adjustments and all sold in 2015. Little weight was given to Respondent's Comparables 4 and 5 because Petitioner indicated that these two comparables were superior to the subject in condition. The Tribunal placed the most weight on Respondent's Comparables 1, 2, and 3. They are similar to the subject in style, size, age, and amenities. These three comparables had adjusted sales prices of \$55,250, \$48,250, and \$52,500, respectively. Respondent's representative stated that the comparables support the current assessment. The Tribunal finds Respondent's sales to be reliable evidence of market value. Based on independent review of the valuation evidence, the Tribunal finds that the comparables fall in a range that support the current assessment of \$50,400, which is within the range of valuations in evidence,¹¹ and accurately reflects the value of the subject property.

Respondent submitted the subject's property record card along with his market analysis. The Tribunal found that Respondent's sales evidence to be reliable and supported the current assessed values as noted on the property record card. Petitioner has not supported his contention of true cash value by a reliable valuation approach. Further, Petitioner has failed to demonstrate any error in Respondent's cost less depreciation approach that appears on the property record

¹¹ See *President Inn Properties, LLC v City of Grand Rapids*, 291 Mich App 625, 642; 806 NW2d 342 (2011)).

card and Respondent testified that the cost approach was applied in conformity with the state assessor's manual. MCL 211.10e. It is concluded, based upon independent review of the valuation evidence that the assessment is supported by Respondent's cost less depreciation approach and sales comparables. Accordingly, the Tribunal adopts the current assessed and taxable values.

2. Based upon the findings of fact and conclusions of law, the property's true cash, state equalized and taxable values for the tax years at issue are as listed in the Proposed Judgment Section of this Proposed Opinion and Judgment (POJ).

JUDGMENT

This is a proposed decision and not a final decision. As such, no action should be taken based on this decision.

After the expiration of the time period for the opposing party to file a response to the exceptions, the Tribunal will review the case file, including the POJ and all exceptions and responses, if any, and:

- a. Issue an FOJ adopting the POJ as a Final Decision.
- b. Issue an FOJ modifying the POJ and adopting the Modified POJ as a Final Decision.
- c. Issue an Order vacating the POJ and ordering a rehearing or such other action as is necessary and appropriate.


EXCEPTIONS

This POJ was prepared by the Michigan Administrative Hearings System. The parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing, by mail or by electronic filing, if available**, if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions). Exceptions are **limited** to the evidence submitted prior to or at the hearing and any matter addressed in the POJ. There is no fee for filing exceptions.

The opposing party has 14 days from the date the exceptions were mailed to that party to file a written response to the exceptions.

Exceptions and responses filed by *e-mail or facsimile* will **not** be considered in the rendering of the Final Opinion and Judgment.

A copy of a party's written exceptions or response **must be sent by mail or electronic service, if agreed upon by the parties**, to the opposing party and proof must be submitted to the Tribunal that the exceptions or response were served on the opposing party.

By 

Date Entered by Tribunal: DEC 01 2016