

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL
PROPERTY TAX APPEAL

MJC Chesterfield,
Petitioner,

v

MTT Docket No. 327410

Township of Chesterfield,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Introduction

Petitioner, MJC Chesterfield, appeals ad valorem property tax assessments levied by Respondent, Township of Chesterfield (also “Township”), against the real property owned by Petitioner for the 2006, 2007 and 2008 tax years. David B. Marmon, attorney, appeared on behalf of Petitioner. Lawrence W. Dloski, attorney, appeared on behalf of Respondent. Witnesses appeared on behalf of both parties. They include: Beth Brennan, Controller for MJC Chesterfield, and Respondent’s County Equalization Director, Steve Mellen.

The proceedings were brought to this Tribunal on August 24, 2009 to resolve the real property dispute.

At issue before the Tribunal is the determination of true cash value of Petitioner’s real property for the 2006, 2007 and 2008 tax years. The State Equalized Value and Taxable Value (“TV”) on the assessment roll, Petitioner’s Taxable Values, and the Tribunal’s final **Taxable Values** (in bold) are as follows:

2006	Assessor	Petitioner's	TV	MTT	
Parcel No.	SEV	TV	TV	TV	
			in Dispute		
15-009-017-402-004	\$66,964	\$63,854	\$39,449	\$24,405	\$63,854
15-009-017-402-005	\$70,258	\$69,163	\$39,449	\$29,714	\$69,163
15-009-017-402-072	\$57,000	\$53,452	\$37,506	\$15,946	\$49,352
15-009-017-402-079	\$57,000	\$53,452	\$30,059	\$23,393	\$49,352
15-009-017-402-080	\$62,132	\$58,584	\$30,059	\$28,525	\$54,484
15-009-017-402-081	\$59,275	\$55,727	\$30,059	\$25,668	\$51,627
15-009-017-402-082	\$59,275	\$55,727	\$30,059	\$25,668	\$51,627
15-009-017-402-083	\$62,132	\$58,584	\$30,059	\$28,525	\$54,484
15-009-017-402-084	\$57,000	\$53,452	\$30,059	\$23,393	\$49,352
15-009-017-402-085	\$57,000	\$53,452	\$30,059	\$23,393	\$49,352
15-009-017-402-086	\$62,132	\$58,584	\$30,059	\$28,525	\$54,484
15-009-017-402-087	\$59,275	\$55,727	\$30,059	\$25,668	\$51,627
15-009-017-402-088	\$59,393	\$55,845	\$30,059	\$25,786	\$51,745
15-009-017-402-089	\$62,251	\$58,703	\$30,059	\$28,644	\$54,603
15-009-017-402-090	\$59,824	\$56,276	\$30,059	\$26,217	\$52,176
15-009-017-402-113	\$71,648	\$69,090	\$39,553	\$29,537	\$64,000
15-009-017-402-170	\$71,058	\$67,960	\$38,368	\$29,592	\$63,860
15-009-017-402-175	\$54,177	\$50,629	\$31,355	\$19,274	\$46,529
15-009-017-402-176	\$59,006	\$55,458	\$31,355	\$24,103	\$51,358
15-009-017-402-179	\$59,006	\$55,458	\$31,355	\$24,103	\$51,358
15-009-017-402-180	\$54,177	\$50,629	\$31,355	\$19,274	\$46,529
15-009-017-402-181	\$54,177	\$50,629	\$31,355	\$19,274	\$46,529
15-009-017-402-182	\$59,006	\$55,458	\$31,355	\$24,103	\$51,358
15-009-017-402-185	\$59,119	\$55,571	\$31,355	\$24,216	\$51,471
15-009-017-402-187	\$20,294	\$16,746	\$10,200	\$6,546	\$12,646
15-009-017-402-188	\$21,502	\$17,954	\$10,200	\$7,754	\$13,854
15-009-017-402-189	\$20,830	\$17,282	\$10,200	\$7,082	\$13,182
15-009-017-402-190	\$20,830	\$17,282	\$10,200	\$7,082	\$13,182
15-009-017-402-191	\$21,502	\$17,954	\$10,200	\$7,754	\$13,854
15-009-017-402-192	\$20,294	\$16,746	\$10,200	\$6,546	\$12,646
15-009-017-402-193	\$20,294	\$16,746	\$10,200	\$6,546	\$12,646
15-009-017-402-194	\$21,502	\$17,954	\$10,200	\$7,754	\$13,854
15-009-017-402-195	\$20,830	\$17,282	\$10,200	\$7,082	\$13,182
15-009-017-402-196	\$20,857	\$17,309	\$10,200	\$7,109	\$13,209
15-009-017-402-197	\$21,530	\$17,982	\$10,200	\$7,782	\$13,882
15-009-017-402-198	\$20,294	\$16,746	\$10,200	\$6,546	\$12,646
15-009-017-402-199	\$20,294	\$16,746	\$9,837	\$6,909	\$12,646
15-009-017-402-200	\$21,502	\$17,954	\$9,837	\$8,117	\$13,854
15-009-017-402-201	\$20,830	\$17,282	\$9,837	\$7,445	\$13,182
15-009-017-402-202	\$20,830	\$17,282	\$9,837	\$7,445	\$13,182
15-009-017-402-203	\$21,502	\$17,954	\$9,837	\$8,117	\$13,854
15-009-017-402-204	\$20,294	\$16,746	\$9,837	\$6,909	\$12,646
15-009-017-402-205	\$20,294	\$16,746	\$9,837	\$6,909	\$12,646
15-009-017-402-206	\$21,502	\$17,954	\$9,837	\$8,117	\$13,854

15-009-017-402-207	\$20,830	\$17,282	\$9,837	\$7,445	\$13,182
15-009-017-402-208	\$20,857	\$17,309	\$9,837	\$7,472	\$13,209
15-009-017-402-209	\$21,530	\$17,982	\$9,837	\$8,145	\$13,882
15-009-017-402-210	\$20,294	\$16,746	\$9,837	\$6,909	\$12,646
15-009-017-402-211	\$37,235	\$33,687	\$15,360	\$18,327	\$29,587
15-009-017-402-212	\$40,254	\$36,706	\$15,360	\$21,346	\$32,606
15-009-017-402-213	\$38,574	\$35,026	\$15,360	\$19,666	\$30,926
15-009-017-402-214	\$38,574	\$35,026	\$15,360	\$19,666	\$30,926
15-009-017-402-215	\$40,254	\$35,706	\$15,360	\$20,346	\$32,606
15-009-017-402-216	\$37,235	\$33,687	\$15,360	\$18,327	\$29,587
15-009-017-402-217	\$37,235	\$33,687	\$15,360	\$18,327	\$29,587
15-009-017-402-218	\$40,254	\$36,706	\$15,360	\$21,346	\$32,606
15-009-017-402-219	\$38,574	\$35,026	\$15,360	\$19,666	\$30,926
15-009-017-402-220	\$38,643	\$35,095	\$15,360	\$19,735	\$30,995
15-009-017-402-221	\$40,324	\$36,776	\$15,360	\$21,416	\$32,676
15-009-017-402-222	\$37,235	\$33,687	\$15,360	\$18,327	\$29,587
15-009-017-403-029	\$72,525	\$65,912	\$43,957	\$21,955	\$65,912
15-009-017-403-056	\$71,899	\$60,973	\$45,977	\$14,996	\$60,973
15-009-017-403-075	\$39,137	\$37,078	\$33,283	\$3,795	\$31,489
15-009-017-403-079	\$54,206	\$52,147	\$37,282	\$14,865	\$46,558

2007	Assessor	Petitioner's	TV	MTT	
Parcel No.	SEV	TV	TV	TV	
			in Dispute		
15-009-017-402-004	\$68,129	\$68,216	\$39,449	\$28,767	\$66,217
15-009-017-402-005	\$70,715	\$70,715	\$39,449	\$31,266	\$71,722
15-009-017-402-080	\$62,540	\$60,751	\$38,509	\$22,242	\$56,500
15-009-017-402-086	\$62,540	\$60,751	\$38,542	\$22,209	\$56,500
15-009-017-402-176	\$71,988	\$70,770	\$39,460	\$31,310	\$53,258
15-009-017-402-185	\$72,130	\$70,917	\$39,725	\$31,192	\$53,375
15-009-017-402-187	\$31,992	\$29,587	\$23,616	\$5,971	\$13,114
15-009-017-402-188	\$34,450	\$32,146	\$23,616	\$8,530	\$14,367
15-009-017-402-189	\$33,383	\$30,722	\$23,616	\$7,106	\$13,670
15-009-017-402-190	\$33,383	\$30,772	\$23,616	\$7,156	\$13,670
15-009-017-402-192	\$31,992	\$29,587	\$23,616	\$5,971	\$13,114
15-009-017-402-193	\$31,992	\$29,587	\$23,616	\$5,971	\$13,114
15-009-017-402-195	\$33,383	\$30,722	\$23,782	\$6,940	\$13,670
15-009-017-402-197	\$34,507	\$32,205	\$23,616	\$8,589	\$14,396
15-009-017-402-198	\$31,992	\$29,587	\$23,616	\$5,971	\$13,114
15-009-017-402-200	\$47,175	\$45,541	\$28,192	\$17,349	\$14,367
15-009-017-402-201	\$45,575	\$43,396	\$28,192	\$15,204	\$13,670
15-009-017-402-202	\$45,575	\$43,393	\$28,192	\$15,201	\$13,670
15-009-017-402-203	\$47,175	\$45,541	\$28,192	\$17,349	\$14,367
15-009-017-402-204	\$43,488	\$41,688	\$28,192	\$13,496	\$13,114
15-009-017-402-205	\$43,488	\$41,688	\$28,192	\$13,496	\$13,114
15-009-017-402-206	\$47,175	\$45,541	\$28,192	\$17,349	\$14,367
15-009-017-402-207	\$45,575	\$43,396	\$28,192	\$15,204	\$13,670
15-009-017-402-208	\$45,660	\$43,484	\$28,192	\$15,292	\$13,698

15-009-017-402-209	\$47,260	\$45,630	\$28,192	\$17,438	\$14,396
15-009-017-402-210	\$43,488	\$41,688	\$28,192	\$13,496	\$13,114
15-009-017-402-216	\$65,904	\$64,882	\$38,295	\$26,587	\$30,682

2008	Assessor	Petitioner's	TV	MTT	
Parcel No.	SEV	TV	TV	TV	
			in Dispute		
15-009-017-402-004	\$60,119	\$60,119	\$39,452	\$20,667	\$67,740
15-009-017-402-005	\$63,700	\$63,700	\$39,452	\$24,248	\$73,372
15-009-017-402-080	\$56,464	\$56,464	\$39,757	\$16,707	\$57,799
15-009-017-402-185	\$64,970	\$64,970	\$39,757	\$25,213	\$54,603
15-009-017-402-187	\$39,980	\$39,980	\$31,546	\$8,434	\$13,416
15-009-017-402-188	\$42,846	\$42,846	\$31,546	\$11,300	\$14,697
15-009-017-402-190	\$40,630	\$40,630	\$31,546	\$9,084	\$13,984
15-009-017-402-193	\$39,980	\$39,980	\$31,546	\$8,434	\$13,416
15-009-017-402-197	\$42,925	\$42,925	\$31,546	\$11,379	\$14,727
15-009-017-402-200	\$42,846	\$42,846	\$35,565	\$7,281	\$14,697
15-009-017-402-202	\$40,630	\$40,630	\$35,835	\$4,795	\$13,984
15-009-017-402-203	\$42,846	\$42,846	\$35,565	\$7,281	\$14,697
15-009-017-402-204	\$39,980	\$39,980	\$35,548	\$4,432	\$13,416
15-009-017-402-205	\$39,980	\$39,980	\$36,431	\$3,549	\$13,416
15-009-017-402-206	\$65,409	\$65,409	\$37,688	\$27,721	\$14,697
15-009-017-402-207	\$40,630	\$40,630	\$36,596	\$4,034	\$13,984
15-009-017-402-210	\$39,980	\$39,980	\$36,346	\$3,634	\$13,416

Background and Introduction

At issue for the tax years 2006, 2007 and 2008 is Petitioner’s taxable value (“TV”) for a multiple parcel residential condominium project. Petitioner believes that additional taxable value increases above the Consumer Price Index (“CPI”) for infrastructure improvements were included in the 2005 or 2006 taxable value. Petitioner requests that the taxable value exclude the infrastructure that the Supreme Court found unconstitutional because, once the subdivision has been dedicated, those public service improvements are dedicated as part of the municipality especially roads, water, sewer, etc.

Petitioner believes that the property record cards show that for 61 of the 65 parcels the taxable value of land only increased to \$5,452 for each lot. Petitioner contends that if the total taxable

value has a deduction for taxable value of building only, the difference is the \$5,452 as the new taxable value for land for 61 parcels. The 2006 CPI was 3.3%, the land value should only have increased to \$1,352. Therefore, Petitioner believes that the difference between the two land figures indicates that the taxable value has been illegally increased above the CPI.

Petitioner's contentions for the taxable value for 2007 at a 3.7% CPI for each lot should be \$1,402. The 2008 taxable value contention for each of the 61 lots is \$1,434 per parcel.

In addition, Petitioner has requested that the 2005 tax year be included; however, in a separate order this was denied. Petitioner failed to timely file an appeal with the Tribunal for 2005, and cannot amend to include it in 2009. The Tribunal found no jurisdiction for tax year 2005.

Petitioner's Arguments

Petitioner argues that for 61 parcels of subject properties, a residential condominium, that the taxable value increased above the CPI for the land value. Petitioner also argues that in some instances the taxable value of the vertical improvements exceeds the cost of the new construction.

Petitioner believes that Respondent improperly calculated the taxable value for 61 lots.

Respondent should have to prove how the increases were justified under 211.27a.

Steven Mellen, Equalization Director for Macomb County, was an adverse witness for Petitioner.

Macomb County took over the assessing duties for Chesterfield Township on June 1, 2008.

Mellen testified that he does not directly know how the 2006 or 2007 assessments were done as the previous assessor was in charge. He testified that the assessed and taxable values were correct except for two parcels for 2007 only.

Mellen, using P-9, page three, parcel number 402-027, explained that the 2005 taxable value was \$1,309; the land value was \$3,411. The 2006 taxable value increased to \$53,452, the assessment for building value only was \$48,000, and the difference between the two is \$5,452. Mellen testified that residual is the 2006 taxable value attributable to the land was \$5,452.

Petitioner's next witness was Beth Ann Brennan, controller for MJC Homes, Inc., the management company overseeing MCJ Chesterfield, LLC, and the builder/developer of the subject condominiums. She testified that the land was originally purchased by Petitioner in August, 1999. She testified to the corresponding three historical warranty deeds for parcels 09-17-401-002 for \$1,236,426.50; 150-917-400-047 for \$650,000; and 150-917-400-137 for \$1,280,456.50. (P-1).

Brennan had attached to the original deeds the summary that she prepared that lists the 2006 assessment and taxable value based on change of assessment notices. She explained her spread sheet: first column is close dates, second column is the building number, third column is the parcel number for each unit, and then a summary of the vertical costs. She prepared a similar sheet for 2006, 2007, 2008 and 2009.

Respondent objected to P-1 for the purpose of relevancy of the vertical costs and allocation of land to a *Toll Brothers* case. Petitioner stated that there are additions on each parcel for subsequent years. Petitioner did not know how the additions were put on the parcel and submitted its rendition of what was spent for each building on each parcel for each relevant tax year. Petitioner argues that the addition is half of the value of any building addition for the taxable value calculations.

Respondent argued that this was getting away from *Toll Brothers* and are now at trial appealing the true cash value of building additions and trying to submit evidence. “My objection is to what is the relevancy of vertical costs and allocation of land to a Toll Brothers case?” TR p 45.

Petitioner stated that P-1 was Petitioner’s valuation disclosure for what they believe the true cash is for the vertical improvements. P-1 was not admitted because it was a valuation disclosure not timely exchanged. Valuation disclosures were due June 2008, this is a valuation disclosure clearly not exchanged timely.

Respondent’s Argument

Respondent chose not to present a case. Respondent left the Tribunal with the testimony of the one adverse witness, the Equalization Director. Respondent stated that Petitioner has the burden of proof as to whether there was an increase in taxable value that violated the *Toll Brothers* decision. Respondent states “There is no proof and, therefore, our position is they have not carried their burden of proof and we’re going to rest.” TR p 54.

Tribunal's Findings of Fact

The Tribunal finds that the taxable value of the land only exceeds the CPI. Although there was no testimony from Respondent that would assist the Tribunal in determining why the taxable value exceeds the CPI, it is quite apparent that regardless of the reason the taxable value of the land only portion of the taxable exceeds the CPI. Petitioner's secondary argument, that the true cash value of the vertical costs of the buildings exceeds market value, was lost because adequate proof was not timely filed or exchanged.

Respondent is correct that Petitioner has the burden of proof, which Petitioner met; however, there is a burden of persuasion. Petitioner also met the burden of persuading the Tribunal that, while it may not be crystal clear as to why the taxable value for the majority of the lots increased above the CPI, Respondent had a duty to provide an explanation of why and blatantly refused to do so.

Although Respondent's Equalization Director was not the assessor of record at the time of the filing of this appeal, the State Assessor's Board¹ has rules that require assessors to respond to a petition before the Tribunal. Rule 47 states:

R 211.447 Revocation or suspension of certification; grounds; hearing; Rule 47.
(1) A certification may be revoked for any of the following reasons: (f) Willful failure to respond to appellant's petition before the tax tribunal as required by the provisions of Act No. 186 of the Public Acts of 1973, as amended, being §205.701 et seq. of the Michigan Compiled Laws.

Assessors as part of their certification have a responsibility to defend the assessments at issue. Respondent clearly failed to defend the value. The fact that he did not perform the assessments himself is not an excuse for his failure to defend the values. Respondent had sufficient time to

¹ The State Assessor's Board was abolished on October 28, 2009 by Executive Order 2009-51.

prepare a defense and submit it to the Tribunal. The taxable value calculations are apparently in excess of the Consumer Price Index, which is clearly a violation of statute. Respondent failed to provide the Tribunal with any evidence to justify the taxable value increase above the Consumer Price Index. An Equalization Director who agrees to be the assessor and testify before the Tribunal has an obligation to the taxing unit to provide sufficient testimony to assist the Tribunal in determining why the taxable value increased above the CPI. Respondent has a unique knowledge and could have used BS&A software's "Calculation Detail Screen" for each individual parcel for the tax years at issue to determine why the taxable value was allowed to increase above the CPI. Respondent's testimony that he "did not know why" may have been true; however, it is implausible that Respondent in his duty as assessor did not follow through. Regardless of his position as Equalization Director or Assessor, the Headlee Addition shows up in this "Calculation Detail Screen" and he would have access to the information. Whether or not the information would have assisted the Tribunal is a question that will not be answered.

Conclusions of 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 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 the assessment, being the price which could be obtained for the property at private sale, and not 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 (1974), has also held that true cash value is synonymous with fair market value.

In that regard, the Tribunal is charged in such cases 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 (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 petitioner does, however, have the burden of establishing the property's true cash value. See MCL 205.737(3) and *Kern v Pontiac Twp*, 93 Mich App 612 (1974).

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%....; and for a system of equalization of assessments. For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value. Const 1963 Art IX , Sec 3.

It is clear to this Tribunal that Respondent increased the taxable value above the inflation rate for the 2006 tax year. Without a corresponding "addition" to the taxable value, the increase for the land portion of the properties at issue is corrected to reflect the prior year's taxable value increased by the Consumer Price Index for each parcel for each year under appeal.

Judgment

IT IS ORDERED that the property's assessed and taxable values for the tax years at issue shall be as set forth in the *Introduction* section of this Final 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 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, 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 90 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, and (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009.

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: November 25, 2009

By: Victoria L. Enyart