



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

Barnes Real Estate Holdings LLC
dba Belle Tire,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 18-002263

City of Wyoming,
Respondent.

Presiding Judge
Victoria L Enyart

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Barnes Real Estate Holdings LLC, dba Belle Tire, appeals ad valorem property tax assessments levied by Respondent, City of Wyoming, against Parcel No(s). 41-17-36-151-017 for the 2018 tax year. Kelly A McKenna, represented Petitioner, and Scott G Smith, Attorney, represented Respondent.

A hearing on this matter was held on September 4, 2019. Petitioner failed to file and exchange a valuation disclosure and brought no witness¹. Respondent's witnesses were Anne M Bouwhuis, MAAO Commercial/Industrial Assessor for Respondent and Scott Engerson, MMAO, Assessor for Respondent.

¹ The Tribunal notes that Petitioner was allowed to give an opening statement, cross Respondent's witnesses, and give a closing statement.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values (“TCV”), state equalized values (“SEV”), and taxable values (“TV”) of the subject property for the 2018 tax year follows:

Parcel No.	Year	TCV	SEV	TV
41-17-36-151-017	2018	\$1,262,400	\$631,200	\$608,889

PETITIONER’S CONTENTIONS

Petitioner contends that a summer intern failed to include the appraisals with the Prehearing Statement.

PETITIONER’S ADMITTED EXHIBIT

Petitioner presented no exhibits. Petitioner appeared at the Prehearing and did not show good cause to offer its valuation disclosure for omission or witnesses to testify. More specifically, Petitioner failed to file and exchange its valuation disclosure by May 20, 2019. Petitioner did not have any witnesses.

RESPONDENT’S CONTENTIONS

Respondent contends that the subject property is fairly assessed at 50% of market value.

RESPONDENT’S ADMITTED EXHIBITS

R-1 Respondent’s Valuation Disclosure.

R-2 State Tax Commission, 2017 County Multipliers for 2003 Base Rates for Commercial and Industrial.

R-3 NAI Wisinski of West Michigan Retail Market Report Q4.

R-4 City of Wyoming, City Assessor’s Office 2018 Commercial ECF Study.

RESPONDENT'S WITNESS(ES)

Anne M Bouwhuis, MMAO, was qualified as an expert in assessing commercial property. She prepared the valuation disclosure as of December 31, 2017. The cost approach and sales comparison approaches were both utilized.

Ms. Bouwhuis began with the cost approach Respondent's exhibit R-1 at page 13 is the grid showing the land sales used to determine the subject's land value. The subject property has 53,143 sq. ft. or 1.22 acres.

Location	Sale Date	Sale Price	Sq Ft	SP/SF	Owner
5530 Clyde Ave	01/11	\$450,521	53,143	\$8.48	Belle Tire
5510 Clyde Ave	02/15	\$450,000	47,480	\$9.48	Panera Bread
700 54th St SW	08/16	\$900,000	63,728	\$14.12	Chick-Fil-A
220 54th St SW	02/18	\$1,028,000	64,991	\$15.82	Credit Union
392 54th St SW	02/17	\$1,050,000	63,205	\$16.61	Discount Tire

The five sales were used, within a two-mile radius of the subject property. The property record indicates that the subject property is assessed at \$4.75 a square foot. The first sale is subject property.

The Valuation Report is the result of entering all of the subject properties building attributes into the assessing offices BS&A software to cost the amenities of the subject. The costs are taken from the Automotive Center cost schedules for an average quality one story with 4,524 feet of mezzanine, 20-foot height, 10,050 sq. ft., 404 lineal feet perimeter with sprinklers. The cost new is \$959,867. The effective age is eight years, which is 82% good based on the applicable depreciation table. The resulting depreciated cost is \$787,091. Concrete was an additional depreciated cost of \$91,171. Total depreciated cost is multiplied by the economic condition factor (ECF) for the

garage auto repair, which is 1.15. The total cost is \$1,010,001. Land value is added for a total true cash value of \$1,262,430.

Ms. Bouwhuis, also prepared a sales comparison approach. Three comparable sales were utilized.

	Subject	Sale 1	Sale 2	Sale 3
Address	5530 Clyde Ave	5965 Kalamazoo	6364 Division	5620 Clay Ave SW
DBA	Belle Tire	Quick Oil Change	Rays Auto Service	Ramsey Tire Service
Sale Price	\$1,262,400	\$325,000	\$400,000	\$798,000
Sale Date	12/17	12/17	07/18	10/14
Sq Feet	10,050	2,048	2,250	7,709
SP/SF	\$125.61	\$159.00	\$177.78	\$103.52
# Bays	10	3	4	7
Sp/Bay	\$126,240	\$108,333	\$100,000	\$114,000
ADJ SP/Bay	\$126,240	\$139,700	\$127,000	\$132,400

Sale 1 is the subject property. All of the comparable sales were within a five mile radius of the subject property. Sale 2 was built in 1991 and was adjusted for number of bays, age and condition, design and quality, for a total 29% adjustment to equal an adjusted unit rate of \$139,700 per bay. Sale 2 adjustments were for bays condition and quality to equal a 29% adjustment for a final unit rate of \$127,000 per bay. Sale 3 was adjusted 15% for market conditions -15% for location 6% for bays 5% for age and condition and 5% for design resulting in \$132,400 per bay. The analysis did not result in a final indication of value pursuant to the sales comparison approach. It was to show that the subject property was properly assessed.

Scott Engerson, City Assessor for Wyoming, was qualified as an expert witness. He was familiar with the subject property at 5530 Clyde Park Avenue Southwest. He has reviewed Respondent's exhibit R-1 and determined and testified that the proper technique was utilized. The economic condition factor ("ECF")² was based upon 63 commercial properties that sold, with land value extracted for a residual sale price divided by the improvement costs to equate to the 1.161 ECF applied to the commercial properties via the cost approach.

Mr. Engerson explained the 2017 State Tax Commission Multiplier utilized for the commercial and industrial property.³ He also testified that The Retail Market Report for West Michigan Fourth Quarter from Wisinski of West Michigan is utilized as a common check on the markets in the area.

FINDINGS OF FACT

1. The subject property is located at 5530 Clyde Park Ave., Wyoming, MI, in Kent County.
2. The subject property is a 10,040 square foot cement block building with brick and glass exterior constructed in 2012.
3. The land area of the subject property is 1.22 acres (53,143 square feet).
4. The building is a Class C property of average quality.
5. The subject property is an automotive service facility with 10 service bays, operating as an automotive tire sale and service retailer.
6. Petitioner did not submit a valuation disclosure.

² R-4

³ R-2

7. Respondent's valuation disclosure includes calculations of value based on the cost approach and the sales comparison approach. The income capitalization approach is not considered.
8. Respondent's cost approach values the land at \$252,429 (\$4.75 per square foot). The value is based on the land rate Respondent has for that type of property.
9. Respondent prepared an analysis of comparable vacant land sales. Respondent's value per square foot of the subject property is substantially lower than any of the comparable vacant land sales.
10. Respondent's cost approach values the building at \$1,010,001 (\$100.50 per square foot). Building cost is based on class, year built, square feet, and other amenities. The base value was reduced by 18% for depreciation. The depreciated cost value was multiplied by an ECF multiplier of 1.15. An additional amount of \$91,171 was added for depreciated cost of concrete.
11. Respondent supported the ECF multiplier with an ECF analysis report, which indicates an ECF of 1.161.
12. The submarket where the subject property is located is an economically vibrant area.
13. Respondent's valuation disclosure included a sales comparable approach indication of value, which included three comparable sales.
14. Respondent's conclusion of value based on this approach is the same as the conclusion for the cost approach, \$1,262,400.
15. The subject property is a service garage utilized for automotive tire sales and service retailer.

16. The subject property is located in an area of retail properties, Panera Bread is next door, Target is across the street as well as Menards, Sonic and Steak and Shake. South of subject is Meijer, Chili's, and Chick-Fil-A.
17. Respondent's exhibits were the only exhibits offered and admitted.

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.⁴

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. 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 percent. . . .⁵

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.⁶

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."⁷

⁴ See MCL 211.27a.

⁵ Const 1963, art 9, sec 3.

⁶ MCL 211.27(1).

⁷ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

“By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment.”⁸ The Tribunal is not bound to accept either of the parties' theories of valuation.⁹ “It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case.”¹⁰ In that regard, 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.”¹¹

A proceeding before the Tax Tribunal is original, independent, and de novo.¹² The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”¹³ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”¹⁴

“The petitioner has the burden of proof in establishing the true cash value of the property.”¹⁵ “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.”¹⁶ However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average

⁸ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

⁹ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

¹⁰ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

¹¹ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

¹² MCL 205.735a(2).

¹³ *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

¹⁴ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

¹⁵ MCL 205.737(3).

¹⁶ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

level of assessments 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.”¹⁷

The three most common approaches to valuation are the capitalization of income approach, the sales comparison, market approach, and the cost-less-depreciation approach.¹⁸ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”¹⁹ 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.²⁰ Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.²¹

As stated above, Petitioner bears the burden of proof to establish the true cash value of the subject property. Here, because Petitioner did not submit a valuation disclosure by the deadline, Petitioner was unable to provide any evidence to support its contention of value.

Respondent provided a valuation disclosure that included cost approach and comparable sales approach value indications. Respondent’s cost approach starts with an analysis of the land value based on comparable vacant land sales. Respondent

¹⁷ MCL 205.737(3).

¹⁸ *Meadowlanes*, *supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff’d* 380 Mich 390 (1968).

¹⁹ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

²⁰ *Antisdale*, *supra* at 277.

²¹ See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

concludes that the land value is \$4.75 per square foot. This is substantially lower than the land value indicated by any of the vacant land sales included in Respondent's valuation disclosure.²² Respondent values the building using standard value per square foot indicators for the class and use of the building. The total cost was adjusted for depreciation by a factor of 18%. An ECF of 1.15 was applied to arrive at the final value of the building. Respondent provided an ECF analysis report indicating a factor of 1.161. The ECF used by Respondent produces a slightly lower value.

The Tribunal has reviewed Respondent's cost approach and finds that the \$4.75 per square foot value used by Respondent appears to be lower than all of Respondent's comparable vacant land sales. Respondent presented five comparable land sales, one of which was the sale of the subject property in 2011. The sale of the subject property and the sale of the Panera Bread lot were too far removed from the tax date to warrant consideration. Of the remaining comparable vacant land sales, the Discount Tire property is the most comparable to the subject property. This sale was for \$16.61 per square foot, which multiplied by 53,143 square feet results in a land value of \$882,705 for the subject property. No errors were indicated on the property record card with respect to the building value. The base costs are from the Michigan Assessor's Manual, and depreciation appears reasonable. The Tribunal is reluctant to increase the cost of the subject property based on the land sales that were provided. Respondent also included a sales comparable approach valuation, which resulted in the same value conclusion as the cost approach. Some weight is given to Respondent's sales comparable approach, but it is reduced because the properties are much smaller than

²² R-1, p. 13.

the subject property, and comparable number 3 is too far removed from the tax date.

Respondent's unit of comparison was individual service bays. The Tribunal finds that the subject property is within the range established by Respondent's comparable sales number 1 and 2.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Respondent's cost approach, is the best indication of the value of the subject property. Also, some weight is given to Respondent's sales comparable approach.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Respondent has proven the true cash value of the subject property based upon the exhibits and testimony. The subject property's TCV, SEV, and TV for the tax year(s) at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax year(s) at issue are AFFIRMED 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 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 within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and 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, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, and (xi) after June 30, 2019 through December 31, 2019, at the rate of 6.39.

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

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.²³ Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.²⁴ A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.²⁵ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.²⁶ A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed

²³ See TTR 261 and 257.

²⁴ See TTR 217 and 267.

²⁵ See TTR 261 and 225.

²⁶ See TTR 261 and 257.

more than 21 days after the entry of the final decision, it is an “appeal by leave.”²⁷ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.²⁸ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.²⁹

By Victoria H. Emjart

Entered: September 30, 2019

²⁷ See MCL 205.753 and MCR 7.204.

²⁸ See TTR 213.

²⁹ See TTR 217 and 267.