STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Armored Self Storage,
Petitioner,

v

MTT Docket No. 309351

Tribunal Judge Presiding
Stuart Trager

Mayfield Twp,
Respondent.

FINAL OPINION AND JUDGMENT

INTRODUCTION

A default hearing, pursuant to TTR 247, was held in the above-captioned matter on April 24, 2008. Petitioner, Armored Self Storage, contends that the state equalized value, assessed value and taxable value of the subject property, as determined by Respondent, Mayfield Township, exceeded 50% of true cash value for the 2004 tax year. Petitioner had purchased the property, a combination of a commercial and self storage facility, in April of 2003 for $1,600,000. Petitioner asserts that the 2004 assessment should be reduced because Petitioner was misled by the seller as to the income stream, so the property was not worth what Petitioner paid for it.

Because Respondent failed to cure a Tribunal Order of Default, by not timely filing its valuation disclosure, its participation in this matter was limited.

The Tribunal finds that the state equalized value, assessed value and taxable value of the subject property, Parcel Number: 014-032-029-00, as determined by Respondent, was not successfully challenged by Petitioner. Having considered the evidence submitted, the case file,

and the relevant case law, the Tribunal finds that the property's 2004 true cash value (TCV), state equalized value (SEV), and taxable value (TV) are:

Parcel Number: 014-032-029-00

Year	TCV	SEV	TV
2004	$1,403,400	$701,700	$701,700

CASE HISTORY

Petitioner filed its petition in this matter on June 29, 2004 contesting the assessed value, state equalized value, and taxable value of its property, as determined by Respondent, Mayfield Township, claiming it exceeded 50% of the true cash value of the property for the 2004 tax year. The subsequent tax years were not appealed. On July 15, 2004 Respondent filed an answer to the Petition.

On January 4, 2005 the Tribunal issued a Notice of September 2005 Prehearing General Call and Order of Procedure. The notice indicated, in part, as follows:

> Pursuant to TTR 252 and this Order, the parties are required to submit a valuation disclosure (i.e., an appraisal, appraisal record card, etc.) prior to the holding of the prehearing conference. Failure to submit a valuation disclosure as provided by this order will result in the party/parties being placed in default. A valuation disclosure is defined as all documentary evidence or other tangible evidence which a party relied upon in support of their contention as to the property's true cash value or any portion thereof which contains the party's value conclusion and data, valuation methodology, analysis, or reasoning in support of their contentions. See TTR 101.
>
> Parties have the right to supplement or "augment" the valuation disclosures submitted as required by this order through testimony as provided by TTR 283,

> but DO NOT have the right to submit any supplemental valuation disclosures unless otherwise ordered by the Tribunal.
>
> It is ordered that the parties exchange and file valuation disclosures on or before 07/29/2005. Failure to exchange and file valuation disclosures by the date indicated will result in default.

On March 9, 2006 the Tribunal issued separate orders placing Respondent and Petitioner in default, with 21 days to cure the defaults.

On March 30, 2006 Petitioner filed a motion to set aside its default, along with a valuation disclosure, and a Prehearing Statement. The Prehearing Statement indicated Dan Boboltz, Mark Johnson, and the Township assessor as witnesses.

On April 11, 2006 Respondent filed a Prehearing Statement without a valuation disclosure.

On May 5, 2006 the Tribunal entered an order setting aside Petitioner's default.

On January 29, 2007 Respondent filed a motion to set aside default, along with a valuation disclosure, a deed for the property, and the property record card.

On February 2, 2007, due to the untimely filing of Respondent's motion, the Tribunal issued an Order Denying Respondent's Motion to Set Aside Default and setting February 16, 2007 for a Default Hearing.

On February 1, 2007 Petitioner sent in another copy of its Valuation Disclosure dated March 29, 2006, with the same supporting documentation as submitted in 2006. Petitioner's second Witness List dated February 1, 2007, contained four names: Dan Boboltz; Mark Johnson; Melissa Boboltz; and the Township Assessor. Petitioner also provided an exhibit list dated February 1, 2007 which apparently contained the same supporting documentation as previously

submitted on March 29, 2006, i.e., a schedule of purported actual cost; an invoice; Township property cards (printed March 9, 2004); and a one-page summary of Petitioner's property values for the subject property broken down into land, buildings, and improvements.

Subsequently, the Tribunal issued an order entered February 27, 2007 scheduling a prehearing conference for April 12, 2007.

Respondent filed a Motion for Reconsideration on February 14, 2007. The Tribunal by order issued March 19, 2007 denied Respondent's motion for reconsideration.

Subsequently, on May 29, 2007 Petitioner filed a Statement in Support of Entry of Default Judgment, to which Petitioner had attached an appraisal report dated April 20, 2007, with an effective date of December 31, 2006.

A default hearing was scheduled for April 24, 2008 by Order entered March 31, 2008.

Petitioner filed an Amended Witness List on April 10, 2008 listing two witnesses: Samuel D. Sweet and Kevin Groves.

A default hearing was held by the Tax Tribunal on April 24, 2008. Testimony was presented by Samuel D. Sweet, pro se, and Kevin Groves, Petitioner's appraiser. Direct testimony of Samuel D. Sweet was taken by co-counsel, Thomas L. Beadle. Respondent, through attorney David Churchill, was allowed to cross examine the witnesses. In the course of the hearing, the May 29, 2007 appraisal was offered as evidence, but it was not admitted.

At the hearing held April 24, 2008, Samuel D. Sweet in his opening statement advised that he was the sole member of "Armored Self Storage LLC," as he had bought out the other member in

July 2007. He indicated that tax year 2004 was the sole year at issue, as the petition had not been amended to add 2005, 2006, 2007, or 2008. He agreed that the offered appraisal dated April 20, 2007 indicated a value of $975,000 as of December 31, 2006 (the petition dated June 28, 2004 contended a TCV of $929,784 and SEV and TV of $464,892). He acknowledged that the effective date of the appraisal was December 31, 2006, although this was an assessment appeal of tax year 2004, that December 31, 2003 was the effective tax day. He also agreed that the final discovery cutoff was February 2, 2007.

He stated that the property was purchased by Armored Self Storage in April 2003 for $1.6 million.

Sweet contended that the seller had way overstated the earnings, which led to an over valuation of the property.

He described the property as a multiuse facility containing self storage and mini-storage on the back of the property. The front of the property was light industrial and commercial.

Sweet was then sworn in as a witness and examined by Petitioner's co-counsel, Thomas L. Beadle. Sweet testified that he is a professional bankruptcy trustee and, as such, considered himself an astute businessman. Dan Boboltz, his former partner in Armored Self Storage, negotiated and purchased the property. Sweet indicated that there was a massive move out of tenants within the first 45 days of the purchase. He also indicated that subsequently, when he performed a forensic accounting, he determined that the tenant list was not updated by the seller prior to the sale.

Sweet believes the Township had over assessed the seven usable acres of the subject property, at $400,000. He said he would be happy to have $200,000 cash for the land.

There are two frontage buildings, with multiple tenants in each building. Buildings vary in size from one being approximately 1,800 square feet to the other being about 800 square feet. The occupants include a sign maker, a silk screener, a photographer, and a home healthcare deliverer of oxygen tanks.

He described the rest of the property as containing seven storage buildings, 30' x 120' each. None of the storage buildings were heated; none of them had electricity; also none have air conditioning and they all have roll-up doors.

Each storage building was assessed at $80,000. Sweet stated he believes he could have bought and built them for $40,000 each. Sweet further stated that he believes the total assessment should be between $950,000 and $1 million for tax year 2004.

Sweet testified that he reviewed the business documents of the seller. He indicated there were over 200 storage leases. He reviewed roughly 15% to 20% of the storage leases. Each of the storage units had locks on them and Sweet had no external way to determine if the storage units were rented or not rented. He believed Petitioner's drop in income was solely due to misinformation regarding the number of storage units rented.

Sweet subsequently bought out his partner for $40,000. He stated that the appraisal dated April 20, 2007 showed, by a sales comparison approach, a value of $1.2 million on December 31, 2006.

Sweet was then cross-examined by Respondent's counsel and testified as follows:

The rental rates given by the seller were accurate; however, the number of storage units that were occupied was not accurate.

Sweet obtained a mortgage of the property for $1,320,000. He was not aware if the lending institution had a mortgage appraisal performed. He believed that the mortgage money was loaned, as an accommodation to him, by the bank. He testified that he had given a personal guarantee for the mortgage.

Kevin Groves, Petitioner's appraiser, was then sworn in and testified on direct examination as follows:

There are three approaches to determining property value: cost; sales comparison; and income produced. He indicated that the cost approach was not appropriate in this case because of depreciation and age of the property. He indicated that the sales approach was difficult because there were few properties that were comparable; however, he did come up with a value based on comparison sales.

He believed that the income approach was the most applicable for the subject property. He was given income data for 2004, 2005, and 2006. He calculated capitalization rate of 11.97%. This yielded a true cash value in 2006 of $975,000 and a true cash value in 2004 of $1 million. Groves testified that the income approach was the best way of evaluating the true cash value for the property.

The Tribunal denied admission of the appraisal because its effective date was December 31, 2006 when the subject tax day was December 31, 2003. Also the appraisal, prepared and dated April 20, 2007, was submitted well after the valuation disclosure exchange date, July 29, 2005. This irregularity was compounded by Petitioner not seeking leave of the Tribunal to submit an appraisal.

Kevin Groves was then cross-examined by Respondent's counsel, David Churchill. Groves testified that his opinion was based on the income approach, and that the buildings were six years old at the time of the appraisal.

The sales comparison approach yielded a value of $1.2 million apparently as of December 31, 2006. He made adjustments for larger and smaller buildings. Groves noted that some of the buildings were built in 2001, but he was not clear on the other building dates.

Groves indicated that between 2004 and 2005 there was volatility in the real estate market, with interest rates fluctuating and Delphi filing bankruptcy, which negatively affected the local economy and real estate market.

He had three comparables for the sales comparable approach. It was noted in cross-examination that the comparisons were not equivalent because the zoning of the comparables was different from the subject property.

Groves believed that expenses were rising over three years from the time of purchase to the April 20, 2007 appraisal. All of these factors were applied in deriving value using the income approach.

Groves agreed, in cross-examination, that standard practice requires the last three years of income be used in deriving an appraisal value based on income.

In addition to the issues of valuation of the subject property, there are the issues of the validity of the appraisal that was submitted dated May 29, 2007 and the weight of the testimony of Kevin Groves.

At the conclusion of the hearing, the Tribunal requested briefs on whether or not the April 20, 2007 appraisal should be admitted, and the admissibility and weight of the testimony of Kevin Groves, Petitioner's appraiser.

Petitioner's Position

In a written brief filed after the hearing, as to the admissibility of the April 20, 2007 appraisal, Petitioner argues that the second Default Hearing Scheduling Order did not include the standard submission notice deadlines for filing exhibits and witnesses, as is generally done. Since the Tribunal adjourned and then canceled the first scheduled default hearing and thereafter scheduled this matter for a Prehearing conference, any purported deadline submission date imposed by the first Default Hearing Scheduling order is irrelevant, and cannot be the basis to exclude the appraisal report from being admitted into evidence. Furthermore, the only discovery deadline that was imposed by an Order of the Tribunal in this case was set forth in the initial Order, which indicated that there would be no discovery after the completion of the Prehearing conference. Since a Prehearing Conference was never held, Petitioner argues there was no discovery deadline. Furthermore, Respondent was not prejudiced in the filing of the appraisal report since Respondent had over ten months to review the appraisal before the default hearing was held.

Also, discovery was technically not closed for Petitioner. Further, Respondent utilized the appraisal report in its cross examination.

Finally, Petitioner argues that TTR 283 allows a party to augment the valuation disclosure through testimony, and through any necessary documentation, which means the appraisal report and Groves' testimony should be allowed into evidence.

Respondent's Position

Respondent, in its post-default hearing response brief, argues that Petitioner's appraisal was filed 22 months after its due date and 14 months after Petitioner had filed its valuation disclosure. Also, the appraisal had an effective date of December 31, 2006 for an appeal involving tax year 2004. The tax year date for tax year 2004 was December 31, 2003.

The Prehearing General Call established a due date of July 29, 2005 for the parties' Valuation Disclosures and Prehearing Statements. The term "Valuation Disclosure" is defined by TTR 101(m) as documentary or other tangible evidence in a property tax appeal which a party relies upon in support of the party's contention as to the true cash value and which contains the party's value conclusion and data, valuation methodology, analysis, or reasoning. TTR 252 provides that a valuation disclosure shall be filed as provided by order of the tribunal. That date was determined during the Prehearing General Call in this matter. An appraisal is clearly documentary tangible evidence and therefore must be filed with the valuation disclosure.

The Appraisal in question was filed on May 29, 2007 as an attachment to Petitioner's Statement in Support of Entry of Default Judgment. Also it was filed after Respondent's Motion to Set Aside Default and after Respondent's Motion for Reconsideration. Furthermore, the deadline for

filing the appraisal report is not governed by MTT discovery rules counting backwards from the actual hearing date. It is governed by the deadline for filing the valuation disclosure, and the filing of the valuation disclosure was untimely. Consequently, the appraisal should not be admitted into evidence.

Not only was the Appraisal not filed in a timely fashion, but Petitioner's Prehearing Statement, which was required to include a list of witnesses, did not list Kevin Groves as a witness. There was no notice that an appraiser would testify or that an appraisal would be filed, which is in violation of TTR 252. Therefore, the expert witness testimony should not be admitted based on the appraisal report, since that information was not contained in the valuation disclosure under TTR 283.

FINDINGS OF FACT

Petitioner, Armored Self Storage, LLC, purchased the subject property on April 30, 2003 for $1,600,000, in an arms-length negotiation. The property consists of 9.4 acres.

There are two frontage buildings, with multiple tenants in each building. Buildings vary in size from approximately 1,800 square feet, to the other being about 800 square feet. The occupants include a sign maker, a silk screener, a photographer, and a home healthcare deliverer of oxygen tanks.

The back part of the property contains seven storage buildings, 30' x 120' each. None of the storage buildings are heated; none of them have electricity; also none have air conditioning and they all have roll-up doors.

CONCLUSIONS OF LAW

A. ADMISSIBILITY OF APRIL 20, 2007 APPRAISAL REPORT

In regard to the admissibility of Petitioner's Appraisal Report, under TTR 252(1), a party's valuation disclosure in a property tax appeal shall be filed with the Tribunal and exchanged with the opposing party as provided by order of the Tribunal. The Appraisal Report should have been filed with Petitioner's Valuation Disclosure. Petitioner's Appraisal Report should have been filed July 29, 2005 or perhaps even March 30, 2006, when Petitioner cured its default along with the Valuation Disclosure in order for the Appraisal Report to be admitted into evidence. The Petitioner had ample time to file the Appraisal Report with its Valuation Disclosure.

Petitioner argues that the April 20, 2007 appraisal report is merely an augmentation as allowed by the Tax Tribunal rules. However, looking at the record for this subject file, it is noted that Petitioner's valuation disclosure was filed March 30, 2006 and subsequently re-filed February 1, 2007 containing the same documentation as submitted in 2006. The exhibit list submitted and resubmitted contained the same supporting documentation, i.e., a schedule of purported actual costs (without supporting documentation), an invoice for miscellaneous materials, the township property record cards (printed March 9, 2004) and a one-page summary of the subject property's component values (without attribution of authorship or documentation). The proffered April 20, 2007 appraisal report is substantially more than a mere augmentation. The data and analysis is not at all analogous to the supporting documentation as originally submitted.

Petitioner's argument that the discovery cutoff was never given is without merit. The Tribunal's January 4, 2005 Prehearing General Call Notice set a date for exchange of valuation disclosures,

July 29, 2005, and it was never changed. Further, the appraisal was submitted after the date due without properly submitting it to the Tribunal for approval.

The Tribunal's determination made during the April 24, 2008 hearing regarding the non-admissibility of Petitioner's April 20, 2007 appraisal stands.

B. PROBATIVE VALUE OF APPRAISAL AND APPRAISER'S TESTIMONY

On March 30, 2006 Petitioner filed a motion to set aside its default, along with a valuation disclosure, and a Prehearing Statement. The Prehearing Statement indicated Dan Boboltz, Mark Johnson, and the Township assessor as witnesses.

Petitioner's second Witness List dated February 1, 2007, contained four names: Dan Boboltz; Mark Johnson; Melissa Boboltz; and the Township Assessor.

Petitioner then filed an Amended Witness List on April 10, 2008 listing two witnesses: Samuel D. Sweet and Kevin Groves.

The revisions of the witness lists were done without providing a general summary of the subject area of the proposed witnesses' testimony and without leave from the Tribunal, which is contrary to TTR 252.

Also, TTR 283(3) provides that a witness may not testify as to the value of property without submission of the valuation disclosure containing that person's value conclusion and the basis for the conclusions. As the appraisal was not submitted with the valuation disclosure, when it was due, there was no basis to support appraiser Kevin Groves' testimony.

In addition to the procedural flaws in Petitioner's case, there are issues as to whether Petitioner, even with the admission of the appraisal and the appraiser's testimony, has met the burden of proof and overcome presumption in favor of the 2004 Township assessment. The substance of the appraisal is open to question.

Petitioner's expert, Kevin Groves, relied on the income approach; however, there are problems with the methodology used. As noted, the effective date of the appraisal, December 31, 2006, is three years after the tax day for the tax year at issue. Upon cross-examination, Petitioner's expert admitted that the standard practice for a property valuation utilizing the income approach requires analysis of the prior three years of income stream, i.e., 2001, 2002, and 2003. Instead, the income from the three years *after* purchase of the subject property by Petitioner was analyzed: 2004, 2005 and 2006. Further, there was no data in the appraisal to indicate the expenses that would occur in the general market were used to establish a benchmark of market expenses. Instead, Petitioner's expert focused on Petitioner's income and expenses for the three years after the subject tax day. Based on the income approach, the value reached for December 31, 2006 was $975,000.

Petitioner's expert, Kevin Groves, did indicate the study of comparable sales that the value of the subject property in December 31, 2006 was $1,200,000. However, upon cross-examination it was noted that the zoning for the proffered comparables was not the same as the subject property.

Petitioner’s expert did indicate there were economic factors in the vicinity of the subject property prior to the date of the April 20, 2007 appraisal that indicated a decline in market values.

Therefore, even though the December 31, 2006 value based on Petitioner's income approach was $975,000, this does not necessarily undermine the validity of the township's December 31, 2003 assessed values.

Petitioner's expert dismissed, out of hand, the utilization of the cost approach for valuing the subject property. However, given that the structures on the property were just two to three years old as of December 31, 2003, the Tribunal finds questionable Groves' failure to use the cost approach.

C. CONCLUSION

The assessment of real property in Michigan shall not exceed 50% of its true cash value. Michigan Const 1963, art IX, sec 3. 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 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 (1974), held that "true cash value" means "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 (1981).The determination of the lawful assessment facilitates the calculation of the property's taxable value as provided by MCL 211.27a.

In a case before the Tax Tribunal, "[t]he petitioner has the burden of proof in establishing the property's true cash value…[t]he assessing agency has the burden of proof in establishing the

ratio of average 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." MCL 205.737; *Kern v Pontiac Twp*, 93 Mich App 612 (1974), and *Shaughnesy v Tax Tribunal*, 420 Mich 246 (1984); *Hoerner-Waldorf Corp v Village of Ontonagon*, 26 Mich App 542 (1970); and *Brittany Park Apartments v Harrison Township*, 104 Mich App 81 (1981).

The Tribunal is required to select the methodology that is accurate and bears a reasonable relationship to the property's true cash value. See *Safran Printing Co v Detroit*, 88 Mich App 376 (1979), lv den 411 Mich 880 (1981). Regardless of the valuation approach employed, the final value 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 (1991).

The Court of Appeals in *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348 (1992), ruled that the Tribunal is required to make an independent determination of true cash value. The Court stated:

> We note that the 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 in arriving at its determination. *Meadowlanes Ltd Dividend Housing Ass'n, supra* at 485-486; *Wolverine Tower Association v Ann Arbor*, 96 Mich App 780 (1980).

Whether for procedural or substantive reasons, the Tribunal finds that Petitioner has not met its burden of proof.

Consequently, Petitioner's Appraisal report is not admitted into evidence since it was not timely submitted, as it was submitted well after the valuation disclosure cutoff date, and the appraisal was not effective for the tax date at issue. Also, Petitioner's Valuation Disclosure, provided to

cure the default, did not provide enough evidence to carry Petitioner's burden of proof to reasonably establish evidence as required under MCL 205.737.

Additionally, the testimony based on Petitioner's Appraisal Report should not be admitted into evidence. TTR 283 provides that, without leave of the Tribunal, a witness may not testify as to the value of property without submission of a valuation disclosure containing that person's value conclusions and the basis for the conclusions. Since Petitioner's Valuation Disclosure did not contain the Appraisal Report, which was the basis for the appraiser's testimony, the testimony should not be admitted.

Petitioner purchased the property April 30, 2003 for $1,600,000. Petitioner was able to obtain a mortgage for $1,320,000. For tax year 2004 the Township assessor gave the property a true cash value of $1,403,400. Utilizing the value derived by Petitioner's expert based on sale comparables some three years after the subject tax day of $1,200,000, and giving credibility to the assertion of Petitioner's expert that economic conditions in the area had caused a decline in property values, the township's assessed true cash value of $1,403,400 appears to be the best indication of true cash value.

Therefore, the Tribunal finds that the values for the subject property are as listed below:

Parcel Number: 014-032-029-00

Year	TCV	SEV	TV
2004	$1,403,400	$701,700	$701,700

JUDGMENT

IT IS ORDERED that Petitioner's Appraisal Report and the testimony regarding that Appraisal Report shall not be admitted into evidence.

IT IS FURTHER ORDERED that the subject property's taxable value for the tax years at issue shall be those specified above.

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 assessed and taxable values as finally shown in the Final Values section of the modified Proposed Opinion and Judgment within 90 days of the entry of this Final Opinion and Judgment, subject to the processes of equalization. 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 Final Opinion and Judgment within 90 days of the 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 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 Opinion and Judgment. As provided by 1994 PA 254 and 1995 PA 232, being MCL 205.737, as amended, interest shall accrue at the rate of 2.78% for calendar year 2003, at the rate of 2.16% for calendar year 2004, at the rate of 2.07% for calendar year 2005, at the rate of 3.66% for calendar year 2006, at the rate of 5.42% for calendar year 2007 and at the rate of 5.81% for calendar year 2008.

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

MICHIGAN TAX TRIBUNAL

Entered: October 9, 2008 By: Stuart Trager, Tribunal Member