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

BBF Holdings LLC.
Petitioner,

v

MTT Docket No. 319612

Township of Lawrence,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Petitioner, BBF Holdings, LLC, (also "BBF") appeals ad valorem property tax assessments levied by Respondent Township of Lawrence (also "Township") against the real property owned by Petitioner for the 2005, 2006 and 2007 tax years. Joanne B. Faycurry, attorney, appeared on behalf of Petitioner. Andrew J. Mulder, attorney, appeared on behalf of Respondent. Witnesses appeared on behalf of both parties. They include: Petitioner's valuation expert, George Bratcher, MAI, and Respondent's valuation expert, Douglas K. Hodge, MAI.

The proceedings were brought to this Tribunal on January 5, 2009, to resolve the real property assessment dispute.

At issue before the Tribunal is the determination of true cash value of Petitioner's real property for the 2005, 2006, and 2007 tax years. The value on the assessment roll is as follows:

Parcel Number: 80-13-019-005-00

Year	TCV	SEV	TV
2005	$96,400	$48,200	$28,184
2006	$96,600	$48,300	$29,114
2007	$106,000	$53,000	$30,191

Parcel Number: 80-13-019-002-04

Year	TCV	SEV	TV
2005	$2,752,400	$1,376,200	$874,853
2006	$3,113,800	$1,556,900	$903,723
2007	$3,470,400	$1,735,200	$937,160

Petitioner’s appraisal indicates the following values:

Parcel Number: 80-13-019-005-00

Year	TCV	SEV	TV
2005	$24,000	$12,000	$12,000
2006	$24,000	$12,000	$12,000
2007	$24,000	$12,000	$12,000

Parcel Number: 80-13-019-002-04

Year	TCV	SEV	TV
2005	$726,000	$358,000	$358,000
2006	$726,000	$358,000	$358,000
2007	$726,000	$358,000	$358,000

Respondent’s appraisal indicates that subject property should be valued at $1,900,000 for each of the three years.

Background and Introduction

The subject properties are located within the Township of Lawrence, Van Buren County, Michigan, on 60395 County Road 681. There is one building located on parcel identification number 80-13-019-002-04. Parcel 80-13-019-005-00 contains two mobile homes that are owned by employees. This parcel is considered by both parties as vacant. Site improvements include gravel parking.

The Tribunal finds subject property is a cold storage and processing facility that is presently used for processing, storage and packaging of nursery stock. The capacity of the facility is approximately 2,000,000 trees in the cold storage area. The subject property has 26 acres with frontage on County Road 681, with I-94 forming the southern border. The 132,830 square foot building has two cold storage areas, shipping and receiving, employee area, offices, compressor room and processing areas. Both parcels are zoned agricultural.

Petitioner's Arguments

Petitioner states that the issue is the lawful assessment of the properties. Petitioner contends that the market value of subject properties has decreased due to the economy, location, and age of the improvements. Subject properties are located in a rural community. The majority of cold storage/controlled atmosphere buildings are located with good access to the highway along the I-94 corridor. Subject is located on a dead-end street and is zoned agricultural. This limits the use of the property.

Petitioner's appraiser Bratcher has the MAI designation from the Appraisal Institute. He performed an appraisal of the subject property as of December 31, 2006, and opined that the values have not changed for any of the tax years at issue. His qualifications include an appraisal practice consisting of 70% commercial appraisals, 20% industrial appraisals, and 5% agricultural appraisals. He does not do residential reports. He has appraised two cold storage facilities in 2004 and 2006.

Bratcher valued subject properties as of December 31, 2006 and applied the information retrospectively. No change in value was determined for the December 31, 2004 and December 31, 2005 tax years at issue.

Bratcher testified that a local appraiser familiar with the area assisted him by providing him with five sales. Bratcher used three of the sales for his appraisal. He made no independent determination confirming the information. He did not talk to the buyer, seller or the realtor involved with the transactions. The same is true of the vacant land sales used by Bratcher to determine the value of the land as if vacant. The cost and market comparison approaches were both used by Bratcher. However, he relied entirely upon the market comparison approach.

Bratcher testified that the subject property is zoned agricultural and the highest and best use of the subject property is the current development and utilization of the property.

The cost approach was developed; however, Bratcher did not place any weight on the value conclusion because of the large amount of obsolescence present. Bratcher estimated the obsolescence was in excess of 90%.

The first step in developing the cost approach was to determine the market value of land. Bratcher selected four sales of property in close proximity to subject. He testified that vacant sale 1 had the wrong front footage information; it had an irregular shape, but was a similar location. Land sale 2 was a similar size, but it was an irregular shape that would not lend itself to the same utility as subject property. Land sale 3 was heavily wooded with wetlands. Land sale 4 is 2/3 woods with the remaining 1/3 in crops.

Bratcher, using Marshall Swift Valuation Services, then determined the replacement cost new from Section 14, page 14, February, 2006 calculator method. He used the Cold Storage Facilities, class C, average cost at $50.64 per square foot. He made an adjustment for the "controlled atmosphere" of $20.30 for a total base rate of $71.14. The base cost is adjusted upward 3,882 for area perimeter; 1.231 for story height; and multipliers for current costs of 1.05 and 1.05 for local multiplier. The final dollar per square foot was $85.16. The $85.16 was multiplied by the total square feet of 132,830 for a replacement cost new of $11,311,083.

Depreciation is a loss in value from all sources. Bratcher determined that subject property was 28 years old and had an expected life of 40 years. Physical deterioration was determined by dividing 28/40 for a total of 70% depreciation or 30% remaining life.
Bratcher determined that the property additionally suffered from some deferred maintenance for roof repair, exterior work and insulation. This loss was estimated to be $80,000.

Bratcher, in looking at depreciation, determined that subject also suffered from functional obsolescence in terms of an outdated office and size. He also decided that external obsolescence exists because of the declining fruit and vegetable market in southwestern Michigan.

Bratcher's determination of functional and external obsolescence was based on his costing of building sale 1[1] and 2. The following indicates pertinent parts of visual aid 1:

Sale 1	$770,000	sale price
	$130,000	equipment deduction
	$640,000	sale price without equipment
	$133,750	land value deduction
	$506,250	
	$ 65,000	deduction for scales
	$441,250	sale price for improvements only
	58,080	square feet
	$85.93	Marshall Swift rate multiplied by the square footage
	$4,990,814	replacement cost new
	$441,250 /	$4,990,814 = 91% total depreciation
25 years	effective age divided by	
40 years	total life	
63%	Physical obsolescence	
91% -	63% = 28% for functional and external obsolescence	
Sale 2	$310,256	sale price
	$ 12,500	land value deduction
	$298,026	sale price for improvements only
	63,340	square feet
	$87.61	Marshall Swift rate multiplied by the square footage
	$5,987,267	replacement cost new
	$298,026 /	$5,987,267 = 95% total depreciation
	28 years	effective age divided by
40 years	actual age	
70%	Physical Obsolescence	
95% -	70% = 25% for functional and external obsolescence	

The final cost new less depreciation is as follows:

132,830 square feet times $85.16	$11,311,803
Curable physical depreciation deduction	$ 80,000
Incurable physical depreciation (70%) deduction	$ 7,862,262
Functional obsolescence (5%) deduction	$ 561,590
Economic obsolescence (20%) deduction	$ 2,246,361

[1] Sale 1 contains three separate buildings, but was "costed" out using the aggregate square footage.

Depreciated cost of improvements	$	561,590
Plus:		
Land Value	$	67,600
Site Improvements[2]	$	20,000
Total value Cost Approach (rounded)	$	650,000

Bratcher testified that the cost approach was given no weight in his final analysis.

The sales comparison approach was determined by Bratcher to be the best representation of market value for subject property. He used three sales located within Van Buren County to indicate the value of subject. A modified version of the sales adjustment grid is:

	Subject	Sale 1	Sale 2	Sale 3
Sale Date		May-06	Jun-03	Nov-04
Sale Price		$640,000	$310,526	$725,000
Sq Ft	132,830	58,080	68,340	36,400
% Cold Storage	70%	65%	54%	95%
Acres	26	53.5	5	8
SP/SF		$13.26	$4.54	$19.92
Adjustments				
Condition				-50%
Quality		-10%		
Size		47%	83%	53%
Land		-16%	7%	

Bratcher's final indication of value based on the sales comparison approach was $750,000 or $5.64 per square foot.

Steven Flamm testified that he was originally a consultant with Hilltop Nurseries, LLC around 2002. He was acquainted with the property since the mid-nineties because his father would deliver corrugated boxes to the nursery. He was hired to consult and do the day to day

[2] Well, septic, gravel parking lot are included in the site improvements.

management. His stated that Hilltop Nurseries, LLC is defunct, having been foreclosed. Hilltop Fruit Farms was then formed. The events as understood by the Tribunal are as follows:

February, 2002, Hilltop Nurseries, LLC is managed by Flamm.
August 2002, Arcadia Capital Corporation forms “Hilltop Fruit Farms, LLC.”
June, 2004, Hilltop Nurseries, LLC to Metropolitan Life, $1,544,784 Sheriffs Deed.
March, 2005, Metropolitan Life to Hilltop Fruit Farms, LLC $800,000, Covenant Deed.
April, 2005, Hilltop Fruit Farms, LLC changes its name to BBF Holdings, LLC.

Flamm testified that he has 1/3 interest in both BBF Holdings, which owns the real estate, and Hilltop Fruit Trees, LLC, which manages the property.

Respondent’s Arguments

Respondent agrees that the subject property is over-assessed in excess of 50% of market value, but not to the extent that Petitioner has requested with its appraisal. Respondent presented an appraisal by Douglas Hodge, MAI.

Hodge testified that his appraisal practice consists of 75% agribusiness rural property, and 25% commercial and industrial. He appraises 2-3 cold storage facilities a year. He explained the difference between cold storage and controlled atmosphere facilities.

Cold storage may be with refrigeration or freezer storage and costs more to construct than a typical storage warehouse because of the refrigeration requirements. Controlled atmosphere is removing oxygen and replacing it with a preservation (or sometimes ripening) gas. The controlled atmosphere facilities are the most expensive to construct, then freezer storage, and then cold storage being the least expensive of the three to construct and maintain. Hodge opined that the highest and best use of subject property is its continued use as a cold storage facility.

Hodge also started with vacant land sales as the initial step in the cost approach. He began with eleven sales of vacant acreage. He used a regression analysis deeming that the sales were not increasing in price per acre from June, 2001 to January, 2006. His next analysis determined that the sale price per acre was a slight increase as the property was larger. The land sales were narrowed down to four comparable properties that Hodge stated required no adjustments. The land value was determined to be $3,500 per acre multiplied by subject's 26 acres is $91,000.

Replacement cost is defined in Appraisal Institute, *The Dictionary of Real Estate Appraisal*, Chicago: 4th ed, 2002. as: "The estimated cost to construct, at current prices as of the effective appraisal date, a building with utility equivalent to the building being appraised, using modern materials and current standards, design, and layout."

Hodge also used Marshall Swift, Section 14, page 24 from February 2004, calculator method, at the Cold Storage Facilities, class C, average cost at $44.42 per square foot. He made an adjustment for the approximately 100,000 square feet of HVAC for an additional $13.85 (an allocated cost) for a final per square foot cost of $55.25. The base cost was adjusted 1.08 for current cost multiplier; 1.04 local multiplier; 0.87 floor area multiplier. The final cost per square foot was $53.99. The $53.99 is multiplied by the total square feet of 132,830 for a replacement cost new of $7,171,414.

Hodge discussed the three types of depreciation. Physical deterioration is based on the effective age of the building and the total economic life. Functional obsolescence is a change in building or equipment usage. It could also be attributed to the layout or deficiencies in construction. Replacement cost new usually takes care of the bulk of functional obsolescence. External obsolescence is based on factors outside of the property that include: change in cost structure, weakened demand, competition, loss of market, or a change in neighborhood land uses.

Functional and external obsolescence was combined by Hodge because the subject property is more of a specialty property type. Cold storage facilities are dominated by Hanson Cold Storage and Total Logistics Control. According to Hodge, the cold storage space is in equilibrium with absorption of additional space unlikely. An estimated 30% is used to combine the functional and external obsolescence due to the limited demand for controlled atmosphere and cold storage facilities and subject's location in a primarily rural area. Subject was determined to have a physical depreciation of 63%. The additional 30% combined function and external obsolescence is also deducted from replacement cost new.

The final cost new less depreciation is as follows:

132,830 square feet times $53.99	$7,171,491
Incurable physical depreciation (63%) deduction	$ 4,482,133
Functional/Economic obsolescence (30%) deduct	$ 806,784
Depreciated cost of improvements	$ 1,882,496
Plus:	
Land Value	$ 91,000
Site Improvements[3]	$ 25,000
Total value Cost Approach (rounded)	$ 1,980,000

Hodge then applies the sales comparison approach selecting four sales of comparable property. Only one of the sales is located in Van Buren County, the other three are located in more

[3] Well, septic, gravel parking lot are included in the site improvements.

metropolitan areas; this required a location adjustment of 20% for location. No adjustments were made to the sale prices due to market conditions because there was insufficient evidence in the market to support a time adjustment. The square feet of the comparables ranged from 77,140 to 177,342. Hodge states that the buildings are considered to be approximately the same size and no adjustment was indicated in the market. Building utility took into consideration the fact that each of the comparables was used for cold/freezer storage processing similar to subject property. However, the portion of the building utilized for freezer, which is more expensive to construct and maintain, is adjusted from 10% to 20%.

Hodge's final estimate of value for the sales comparison approach is $1,800,000.

TRIBUNAL'S FINDINGS OF FACT

Petitioner's appraiser utilized three sales of "controlled atmosphere" properties that were approximately one-half the size of subject property, but were located within the general area. The Tribunal is concerned that the adjustments made for size of 37.7%, 80% and 52% appear to be excessive. In addition to size adjustments, sale 3 included a 50% negative adjustment for condition, due to remodeling. The three sales appear to not be a comparable as Petitioner warrants. Petitioner found that "the cost approach was not considered applicable due to the large amount of obsolescence present with the subject, which makes the cost approach as it applies to the subject less reliable."[4]

Petitioner's cost approach was $650,000, the sales comparison approach was $750,000. The 15% difference in the two approaches leads the Tribunal to find that neither approach as utilized

[4] Petitioners Exhibit 2, p 73.

by Petitioner is considered reliable. The adjustments in the sales comparison approach are excessive and in Petitioner's report states that the cost approach is not reliable, the sales comparison approach with an excessive amount of adjustments leads the Tribunal to find that Petitioner's sales comparison approach is also not reliable.

Respondent's appraisal also included both a cost and sales comparison approach. Respondent determined that subject property is a special purpose facility. The Tribunal agrees, subject property is a cold storage and processing facility that is presently used for processing, storage and packaging of nursery stock and is not adaptable for use other than storage.

Petitioner's land sales included two sales that were waterfront and heavily wooded. The remaining sales indicate a land value of $2,600 per acre. The $2,600 is multiplied by the 26 acres to equal $67,600 land value.

Petitioner's replacement cost new is accepted with the minor adjustment for land value resulting in a replacement cost new of $1,975,100.

Petitioner's sales were closer to subject's size with the exception of sale 4 that is located in Van Buren County. The remainder of Petitioner's sales were located in Grand Rapids, Holland and Traverse City. Petitioner's adjustments ranged from -10% to -50%. Sale 3 required the least amount of adjustments and was the newest sale. The indicated sale price per square foot for sale 3 at $10.10 is the lowest of the four sales. Petitioner included the bank liquidation sale of subject property in calculating the mean indicated value.

Petitioner's sales have an indicated mean of $13.55 per square foot. The result is a $1,800,000 value for subject property based upon sales.

Subject property was marketed for $2,250,000 by Kevin Morin for Met Life. The property was shown 5 or 6 times with no offers. It was not clear from the record if that included all of the approximately 260 to 300 acres that Met Life foreclosed on or the 160 acres that Petitioner purchased from Met Life for $800,000, or just the 26 acres that are currently under appeal. Regardless, the asking price and the negotiated sale price were millions of dollars apart.

The Tribunal finds that subject property is not as valuable as Respondent believes nor as inexpensive as the negotiated sale price, but somewhat less than Respondent's value.

Respondent's Sale 3 is the best comparable with a similar location in a rural area, close to the same square footage, with additional land. The property sold for $10.10 per square foot. The Tribunal finds the value for subject property would be $10 per square foot or $1,328,300. Subject is split between two parcel identification numbers 80-13-019-005-00 contains one acre that the parties discussed as vacant. The property record card indicates .69 acre is vacant.

Based upon its examination of the evidence received at the hearing conducted in this matter, the Tribunal concludes the true cash value, state equalized value, assessed value and taxable value of the subject properties for the 2005, 2006, and 2007 tax year are as follows:

Parcel Number: 80-13-019-005-00

Year	TCV	SEV	TV
2005	$2,600	$2,600	$2,600
2006	$2,600	$2,600	$2,600
2007	$2,600	$2,600	$2,600

Parcel Number: 80-13-019-002-04

Year	TCV	SEV	TV
2005	$1,325,700	$662,850	$662,850
2006	$1,325,700	$662,850	$662,850
2007	$1,325,700	$662,850	$662,850

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).

Under MCL 205.737(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2nd 479 (1981). The Tribunal may not automatically adopt a respondent's assessment but must make its own findings of fact and arrive at a legally supportable true cash value. *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208,220; 406 NW2nd 832 (1987); *Consolidated Aluminum Corp v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979). 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. *Meadowlanes*, at 485-486; *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980). A similar position is stated in *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982): The Tax Tribunal is not required to accept the valuation figure advanced by the taxpayer, the valuation figure advanced by the assessing unit, or some figure in between these two. It may reject both the taxpayer's and assessing unit's approaches.

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. *Meadowlanes Limited Dividend Housing Assn v City of Holland*, 437, 484-485; 473 NW2d 636 (1991); *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (1966); 380 Mich 390; 157 NW2d 293 (1968); *Antisdale v City of Galesburg*, 420 Mich 265, 276; 362 NW2d 632 (1984). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in the marketplace trading. *Antisdale* at 276, n 1. 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. *Antisdale*, at 277.

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 *Findings of Fact* 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: February 18, 2009 Victoria L. Enyart