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

101 S. Washington Development, LLC,
Petitioner,

v

MTT Docket No. 351521

City of Lansing,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Introduction

Petitioner, 101 S. Washington Development, LLC, appeals ad valorem property tax assessments levied by Respondent, City of Lansing, against the real property owned by Petitioner for the 2008 tax year. Timothy H. McCarthy, Jr., attorney, appeared on behalf of Petitioner. Michael D. Homier, attorney, appeared on behalf of Respondent. Petitioner's witness was Paul Vlahakis, member of 101 S. Washington Development, LLC, that owns the subject property. Jack Johns, appraiser, was questioned by Petitioner. Respondent, at the conclusion of Petitioner's case, moved for a directed verdict. Respondent did not put on its case.

The proceedings were brought before this Tribunal on April 13, 2011, to resolve the real property dispute.

The City of Lansing has assessed the property on the tax roll at:

Parcel No. 33-01-04-16-401-002

Year	TCV	AV/SEV	TV
2008	$5,800,000	$2,900,000	$2,786,083

Petitioner believes that the values of the subject property are:

Parcel No. 33-01-04-16-401-002

Year	TCV	AV/SEV	TV
2008	$4,930,000	$2,465,000	$2,465,000

The Tribunal finds the values shall be:

Parcel No. 33-01-04-16-401-002

Year	TCV	AV/SEV	TV
2008	$5,800,000	$2,900,000	$2,786,083

Background and Introduction

At issue is the true cash value for a commercial retail property located at 101 S. Washington, Lansing, Michigan. This is a multi-tenant nine-story office building with 59,449 square feet. Petitioner contends that it is 66% occupied. Petitioner states that the assessor has the property overstated, partially because the subject property was estimated to be at a stable occupancy.

Petitioner's Arguments

Petitioner believes that the true cash value of the subject property for the tax years at issue should be reduced based on Petitioner's testimony.

Petitioner's first witness is Paul Vlahakis[1], member of the LLC that owns the subject property and the president of the company that manages the facility. He handles the day-to-day operations of the building, maintenance requests, new tenant construction, and is the broker for the property.

Vlahakis has had an ownership interest in the the subject property since 1998. He testified that he believes that the assessment is overstated because the building did not have a stabilized occupancy in 2008 or anytime. Vlahakis believes that the average market vacancy in downtown Lansing was around 10%; that means that the property would be 90% occupied. The subject property has never been above 65% occupied.

Vlahakis explained that when the tax bill is received it is checked for accuracy, and if the values appear too high they make an appointment with the Board of Review. The rent roll and market comparables are routinely given to the board and some type of income and expense statement. A rent roll that shows the occupants of the building, the lease term, current rent, and calculations of occupancy and vacancy is prepared for the Board of Review.

The occupancy level of the subject property was testified to by Vlahakis as he believed it was 60% as of December 31, 2007 with some leases due to expire in early 2008. He

[1] The Tribunal notes that Mr. Vlahakis was not qualified as an expert witness. Petitioner clearly stated "My purpose here is not to qualify Mr. Vlahakis as an expert. I think he probably could be if he was offered as such, but that's not what I'm doing. He has personal knowledge of the property, he has personal knowledge as a fact witness of everything that are the subject – is the subject of the questions." TR p 20.

opined that the value of the subject property, based on the income and a capitalization rate of approximately nine to ten percent, was around $4.4 to $4.5 million.

Vlahakis testified on cross that he used an income approach to determine the true cash value of the subject property. He determined the capitalization rate was ten percent for investment purposes. Vlahakis then stated the tenants and square foot as of December 31, 2007 were:

1st Floor; Troppo 5,000 square feet at $10.79 gross rent plus utilities.
2nd Floor; Detroit Free Press 1,200 square feet at $19.50, Troppo 900 square feet at $900 a month, Capital Consultants, 1,200 at $2,000 a month. Approximately 4,500 square feet was vacant.
3rd Floor is vacant and has never had a tenant.
4th Floor: Malcolm Pirnie 6,000 to 6,500 square feet, at $19.50 per square foot.
5th Floor: Lasky Fifarek Law firm, 3,800 square feet at $19.50 per square foot, Kramer, Gill and Associates occupied 1,200 square feet at approximately $19.50 per square foot.
6th Floor; the President's Council 3,800 square feet, Midwest Strategies occupies 2,000 square feet,
7th Floor: Detroit DTE 3,800 square feet, University of Michigan 1,200 square feet,
8th Floor: Bailey and Associated 2,400,
9th Floor: Kelly Cawthorne 6,500 square feet.
Pita Pit occupies 2,000 square feet adjacent to Troppo's at $3,000 a month.

Vlahakis explained that when he does an income analysis he takes the total income of the building, minus the expenses and comes up with a value based on a percentage of return that the building would expect and the capitalization rate. The lobby on the first floor is not charged rent. He testified that generally the rents were $18.00 per square foot.

Vlahakis stated that the "floor plates" for the building is small and broken up with vertical shafts, elevators and stairwells. This limits the tenants that need larger square footage; they do not want to traverse between floors. The majority of tenants are looking for a

minimum of 10,000 square feet. Vlahakis believes the small floor plate contributes to the difficulty in finding tenants, not the location. The 6,500 square feet per floor limits the tenants. He would argue that the subject property is the best location in downtown Lansing, so the location is not an issue. The footprint or floor plate is beyond the control of the owner, the building cannot be expanded. Vlahakis believes that an appraiser would consider it functional obsolescence.

Tenant build-out allowance was estimated at $20 to $30 per square foot and an average of $150,000 to $200,000 was spent per floor to make it leasable. Vlahakis testified that the subject property does have some raw space, meaning unfinished space. The vacant areas, except for the area that Choice One Communications occupied, are raw, unfinished space.

Petitioner's next witness was Jack Johns, a commercial real estate appraiser and a broker. He was offered as an expert on valuation of commercial property, commercial broker and anything related to those domains. Petitioner stated that the purpose of this witness was to testify about the qualifications of the individual who submitted a valuation on behalf of Respondent. The second issue was to discuss ethical and professional standards that may or may not have been applied to Respondent's valuation. The last issue was for Johns to testify about the value of the subject property, of which he has personal knowledge. The Tribunal ruled that Johns would be allowed to rebut Respondent's valuation AFTER it was admitted. Pursuant to TTR 283, Johns would not be allowed to testify to the value of the subject property. Johns did not prepare a

valuation disclosure, much less one that was timely exchanged and upon which Petitioner relied for its value conclusions.

Petitioner rested. Petitioner then requested that Johns be qualified as an expert witness. The Tribunal ruled that it had insufficient information to determine whether Johns would be an expert in USPAP or the qualification of Respondent's witness because there was nothing to rebut.

Respondent's Arguments

Respondent requested that the Tribunal dismiss the case. In addition to Petitioner's burden of proof there was also a burden of going forward with the evidence. Respondent believed that neither burden was met. Petitioner cannot and has not sustained the burden of going forward. No material evidence is on the record other than the lay opinion of the building owner. No valuation disclosure or any evidence has been submitted into evidence.

Petitioner objected and stated that significant evidence regarding the value of the subject property was presented.

Post Hearing Briefs

The Tribunal did not request post hearing briefs. Petitioner filed a post hearing brief stating that the hearing proceeded in an unconventional manner. The property owner, Vlahakis testified. Johns was called to "expose limitations and defects inherent within

Respondent's valuation," however, he was not allowed to testify prior to the admission of Respondent's valuation. He would not be able to testify as to the value of the subject property.

Petitioner "recaps" Vlahakis' extensive testimony. Petitioner then includes a chart that is in greater detail than Vlahakis' actual testimony.

Petitioner urges the Tribunal to consider a sale across the street that took place three months after tax day.

Petitioner then, in its post hearing brief, calculates an income approach using figures that were not testified to nor admitted into evidence. This Tribunal rejects Petitioner's last minute attempt to have evidence that was not produced at the hearing admitted in a post hearing brief. The Tribunal, therefore, does not consider pages 4, 5, 6, and 7 that contain calculations that were not testified to at the hearing.

Petitioner also submitted a Reply Brief in Response to Respondent's Post Hearing Brief. The Tribunal did not order the post hearing briefs and will not allow replies to the briefs. Therefore, the reply brief was returned to Petitioner.

Respondent states in its Post Hearing Brief that Petitioner filed its Post-Hearing Brief "in a last-ditch effort to salvage a meritless case that Petitioner concedes was fraught with 'irregularities' and 'procedural failing[s] and oversights.'" Petitioner presented no

expert testimony, valuation disclosures or exhibits at the hearing. Petitioner filed a brief based on evidence that was never admitted at the hearing.

Respondent requests the Tribunal strike Petitioner's post-hearing brief to the extent that it refers to evidence that was not admitted at the hearing. Respondent states that arguments made by Petitioner are without merit.

Respondent contends that the Tribunal did not order a post-hearing brief. Petitioner did not request leave to file a brief, either at the hearing or by written motion. Respondent cites TTR 230, "All requests to the tribunal for an order in a pending appeal must be made by written motion filed with the clerk and accompanied by the appropriate fee unless otherwise ordered by the tribunal."

Respondent states that Petitioner's post-hearing brief relies on Respondent's valuation disclosure that was not offered as evidence, is not part of the record, and Petitioner should be barred from relying on the evidence and the brief should be rejected.

The Tribunal finds that portions of Petitioner's post hearing brief (that was not ordered) was of no assistance to this Tribunal in determining the true cash value of the subject property. Petitioner tried, after the hearing at which zero exhibits were offered or discussed, to increase its reliability. However, Petitioner stated that the Tribunal Rules were familiar, but clearly chose not to bring the valuation witness who prepared the valuation disclosure that was allowed to be submitted at the last moment of a Show

Cause Prehearing. It makes no sense to this Tribunal how Petitioner believes that the lower value should prevail or why the Tribunal would rely upon evidence not presented or admitted at the hearing for proof of the valuation.

Tribunal's Findings of Fact

The Tribunal finds that Petitioner was not able to successfully carry its burden of proving that the assessments exceed 50% of market value.

Petitioner's witness Vlahakis was an owner of the subject property, a broker and manager. He was knowledgeable about his property. He testified to the general square footage and what he remembered as rents. He did not testify as to the actual gross income of the subject property, the net operating income of the subject property, as found only in Petitioner's post-hearing brief. Petitioner did testify that he believed the value of the subject property was around $4,400,000. Vlahakis did not provide the gross income that he used as a basis for the value determination. Vlahakis did explain the cap rate that he used when analyzing properties for investors.

Petitioner failed to produce any evidence that substantiates Vlahakis' testimony. Not one exhibit was offered and, therefore, none was admitted. This is not a small claims hearing where property owners testify to what their belief of the true cash value of a property should be, but rather a formal hearing with a court reporter, witnesses, and testimony. Petitioner, at the Show Cause Prehearing, submitted at the last moment a valuation disclosure prepared by Robert Vertalka, MAI, SRA. This valuation disclosure

was not part of the hearing nor was Vertalka a witness. Vertalka would have been an appropriate witness to testify as to value, as he prepared the valuation disclosure that Petitioner submitted for the Show Cause Prehearing.

Petitioner argues that the testimony alone should persuade this Tribunal that Petitioner is over assessed. Petitioner's post hearing brief states

> Petitioner respectfully urges Your Honor to exercise her duty and discretion and, in this case, to do the right thing; to consider the only evidence presented and to make a fair, just and constitutionally sound decision. What the constitution requires, as do our notions of justice and fairness in property taxation, is quite simple. The Tribunal, in its wisdom, and having heard the evidence presented, must determine what the true cash value of the subject property was on December 31, 2007. Petitioner's Post-Hearing Brief, page 6.

The Tribunal does not have Respondent's evidence before it, and finds that Petitioner's insistence that the valuation disclosure is incorrect is beyond the scope of this Tribunal's jurisdiction. Evidence that is not presented and is not before this Tribunal is simply not considered. Therefore, Petitioner's modification of Respondent's income approach again is not considered.

The Tribunal is required to determine the true cash value of the subject property in the above-captioned case. The Tribunal, however, contrary to Petitioner's statement, does not have equitable power to consider that Petitioner is over assessed. Based on no exhibit, no rent roll, no income approach, no cost approach or market analysis, the only decision the Tribunal can make is that Petitioner failed in carrying the burden of proof.

Furthermore, Vlahakis' testimony did not rise to the burden of persuasion or burden of going forward that, would require Respondent to present its case in chief.

Petitioner could have called Respondent as an adverse witness but did not do so and was, therefore, precluded from offering rebuttal testimony to Respondent's valuation disclosure that was not before the Tribunal.

Petitioner's post hearing brief is not relied upon nor of any assistance to this Tribunal in this matter.

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.

As used in the General Property Tax Act, "true cash value" means 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. MCL 211.27(1).

"True cash value" is synonymous with "fair market value." *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974). The Michigan Supreme Court, in *Meadowlanes, supra*, acknowledged that the goal of the assessment process is to determine "the usual selling price for a given piece of property." In determining a property's true cash value or fair market value, Michigan courts and the Tribunal

recognize the three traditional valuation approaches as reliable evidence of value. See *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2nd (1984).

"The petitioner has the burden of establishing the true cash value of the property...." MCL 205.737(3); MCL 211.27(1); *Meadowlands Limited Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 483-484; 473 NW2d 363 (1991). "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." *Jones & Laughlin Steel v City of Warren,* 193 Mich App 348, 483 NW2nd, 416 (1992), at 354-355, citing: *Kar v Hogan*, 399 Mich 529, 539-540; 251 NW2d 77(1976); *Holy Spirit Ass'n for the Unification of World Christianity v Dept of Treasury*, 131 Mich App 743, 752; 347 NW2d 707(1984). Petitioner, in this instance, failed to establish the true cash value of the subject property. The value presented by Petitioner was an opinion of value, without any evidence.

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*, at 484-485; *Pantilind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968); *Antisdale*, at 276. 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. The Tribunal finds that Petitioner did not present a cost approach to value, a

sales comparison analysis, or an income approach to value. The most applicable approach in the above-captioned case would be an income approach.

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 NW2d 479 (1981). The Tribunal may not automatically accept a respondent's assessment but must make its own finding of fact and arrive at a legally supportable true cash value. *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979). The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 377 NW2d 908 (1985). 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); *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982).

In this case, the Tribunal concludes that the evidence, testimony, and law indicate that the subject property is properly assessed at 50% of market value. An appraisal of fair market value requires a determination of the property's "highest and best use," which is "the reasonably probable and legal use of vacant land or an improved property that is legally permissible, physically possible, financially feasible, and that results in the highest value." Appraisal Institute, *Appraising Residential Properties*, (Chicago, 3rd ed.,

1999), p 211. Petitioner presented no evidence of the true cash value of the subject property. The only decision that the Tribunal can make is to affirm the assessments.

The Tribunal is charged in a valuation appeal to determine the true cash value of the subject property as of each tax year at issue. Petitioner was not able to prove, by a preponderance of its evidence, that the assessment of the subject property should be reduced for the tax year at issue.

JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the tax years 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 90 days of the entry of the Final Opinion and Judgment, the 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 this Order within 28 days of the entry of this Order. 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 the Tribunal's order. As provided in 1994 PA 254, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest rate of the 94-day discount treasury bill rate for the first Monday in each month plus 1%. As provided in 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after January 1, 1996 at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 1995 at the rate of 6.55% for calendar year 1996, (ii) after December 31, 1996 at the rate of 6.11% for calendar year 1997, (iii) after December 31, 1997 at the 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, (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, and (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010 at the rate of 1.12% for calendar year 2011.

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

MICHIGAN TAX TRIBUNAL

Entered: May 16, 2011 By: Victoria L. Enyart