



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

O-N Minerals,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 20-002532

City of Rogers City,
Respondent.

Presiding Judge
Peter M. Kopke

SUMMARY OF PREHEARING CONFERENCE

NOTICE OF VIDEO CONFERENCE HEARING

ORDER GRANTING RESPONDENT'S MOTION TO WITHHOLD

**ORDER CORRECTING JUNE 14, 2021 ORDER GRANTING
JOINT MOTION FOR PROTECTIVE ORDER**

SCHEDULING ORDER

A Prehearing Conference on this matter was held on November 22, 2021. Joseph M. Rogowski, Esq. appeared by telephone on behalf of Petitioner. Jennifer Wu, Esq. appeared by telephone on behalf of Respondent. A scheduling order has been established and a video conference hearing, via **Microsoft Teams**, has been set for:

HEARING DATE:	January 25, 2022. The hearing shall continue on January 26 and 27, 2022 , as necessary.
HEARING TIME:	9:00 a.m.
TEAMS HEARING LINK:	Click here to join the meeting +1 248-509-0316 , 251196074# United States, Pontiac Phone Conference ID: 251 196 074#
PARTICIPANTS' GUIDE:	https://bit.ly/34fBXnN

This is an important legal document. Please have someone translate the document.

Este es un documento legal importante. Por favor, haga traducir este documento.

এটি একটি গুরুত্বপূর্ণ আইনি দলিল, অনুগ্রহ করে কেউ দলিলটিকে অনুবাদ করুন।

هذا هو وثيقة قانونية هامة يرجى لديك شخص تترجم الوثيقة.

Ito ay isang mahalagang legal na dokumento. Mangyari lamang na magkaroon ng isang tao isalin ang dokumento.

This hearing is open to the public and this notice is provided under the Open Meetings Act. Any participant or member of the public wishing to attend this hearing **must** click on the “Teams Hearing Link” provided above to gain access to the hearing.

PREHEARING CONFERENCE SUMMARY

- I. SHOW CAUSE HEARING: N/A
 II. VALUATION INFORMATION:

A. The true cash value (TCV), assessed value (AV), and taxable value (TV) for each parcel and tax year at issue as established by the Board of Review:

Parcel Number	Year	TCV	AV	TV
150-123-000-006-05	2020	\$20,608,000	\$10,304,000	\$10,304,000

B. The parties' contentions of TCV, state equalized value (SEV), and TV for each parcel and tax year at issue:

Parcel Number: 150-123-000-006-05

Petitioner's Contentions			
Year	TCV	SEV	TV
2020	\$8,530,000	\$4,265,000	\$4,265,000

Parcel Number: 150-123-000-006-05

Respondent's Contentions			
Year	TCV	SEV	TV
2020	\$25,735,740	\$12,867,870	\$12,867,870

C. Amounts in dispute for the tax years at issue:

Parcel Number	Year	SEV	TV
150-123-000-006-05	2020	\$8,602,870	\$8,602,870

D. TAX INFORMATION: Both parties claim that the ad valorem taxes at issue have been paid.

- III. FACTUAL STATEMENT OF CLAIMS:

A. Classification of property for the tax years at issue:

Parcel Number	Classification
150-123-000-006-05	Industrial Real

B. Proposed highest and best use (“H&BU”) for the tax years at issue:

Parcel Number	H&BU
150-123-000-006-05	Industrial

- C. The property’s TCV and TV are at issue for each tax year under appeal.
D. Petitioner’s claims or counterclaims: “As set forth in Petitioner’s Appraisal, Respondent’s assessment is in excess of that allowed under Michigan law.”
E. Respondent’s claims or counterclaims: “Respondent’s valuation was made in accordance with proper assessing practices and accurately reflect[s] the values.”

IV. PENDING MOTIONS OR DISCOVERY:

A. Motions:

On August 18, 2021, Respondent filed a Motion requesting that the Tribunal “withhold, in whole or in part, Respondent’s Valuation Disclosure in accordance with the terms and directives in the Tribunal’s June 14, 2021 Protective Order, against public disclosure.” In the Motion, Respondent claims that:

1. “During the parties’ Pre-Valuation Discovery, the parties moved for a Protective Order from the Tribunal regarding certain financial and operational information sought by Respondent that Petitioner considered to be confidential and proprietary. These financial and operational disclosures were later identified by the Tribunal in its June 14, 2021 Order Granting Joint Motion for Entry of Stipulated Protective Order (‘Protective Order’), at ¶ 4 (hereinafter referred to as ‘Confidential Information’). A true and correct copy of the Order is annexed hereto as Exhibit A.
2. In connection with Respondent’s Valuation Disclosure, Respondent’s retained expert, Bradley D. Ross, has considered and relied upon, in whole or in part, Petitioner’s Confidential Information in his appraisal of the subject property for purposes of the instant action, as permitted under the Protective Order. A true and correct copy of Respondent’s Valuation Disclosure is annexed hereto as Exhibit B (‘Respondent’s Valuation’).
3. As provided for in Respondent’s Valuation, references to Petitioner’s Confidential Information has been identified with the words ‘Confidential and Proprietary’ in red font in the following sections:
 - Section 4.2.2 Construction Work in Progress Value (Figure 10), see Exhibit B at 32; and
 - Section 6.8 Ore Body Value (Figure 15), see Exhibit B at 51.”

Petitioner has not filed a Response to the Motion.

The Tribunal has reviewed the Motion and the case file and finds that a motion to withhold generally refers to the exchange of valuation disclosures between the

parties and not the “withholding” of a valuation disclosure because a portion of the valuation disclosure may contain information that the Tribunal has determined may be subject to protection as confidential commercial information. In that regard, the Tribunal did issue an Order on June 14, 2021, granting the parties’ Joint Motion for Protective Order. The Tribunal did, however, err in the entry of that Order, as the Tribunal’s authority to enter that Order under MCR 2.302(C) was limited to the protection of confidential commercial information *for discovery purposes* and not hearing purposes.¹ In that regard, the Motion did not identify the exception under the Open Meetings Act that would permit the Tribunal to conduct a portion of the scheduled hearing as a closed session to consider the protectable confidential commercial information.² As such, the Order needs to be corrected.³ With respect to the Motion, no motion to withhold was necessary. Rather, Respondent was to have simply marked their valuation disclosure to indicate the inclusion of protectable confidential information. Nevertheless, good cause exists to justify the granting of the Motion and the removal of Respondent’s valuation disclosure from the docket for public viewing pending the offering of that valuation disclosure for admission **unless** the required motion for closed session is granted. Therefore,

IT IS ORDERED that Respondent’s Motion to Withhold is GRANTED.

IT IS FURTHER ORDERED that Respondent’s valuation disclosure shall be REMOVED from the docket for public viewing, as indicated above.

IT IS FURTHER ORDERED that the June 14, 2021 Order granting the parties’ Motion for Protective Order is CORRECTED, as indicated herein.

B. Discovery: Discovery is closed unless otherwise stated below.

SCHEDULING ORDER

The parties and the Tribunal have determined the hearing in the above-captioned case shall be conducted as a video conference proceeding. Although video conference proceedings via *Microsoft Teams* are generally set up using email addresses, the Tribunal has provided a “Teams Hearing Link” that can be utilized by participants (i.e., attorneys or agents, witnesses, the court reporter, etc.) to “join” the hearing **and the parties or their attorneys or agents are required** to provide that link **to their participants** so that they can **timely** “join the hearing.”

¹ See also TTR 215 and *Herald Co v Michigan Tax Tribunal*, 258 Mich App 78; 699 NW2d 862 (2003).

² See MCL 15.268.

³ If either party intends on offering the “protected” commercial information exchanged during discovery as evidence to be considered during the hearing conducted in this case, that party or parties are required to file a motion for closed session prior to the conducting of the hearing that must demonstrate the specific Opening Meeting Act exception permitting the conducting of a closed session during that hearing.


The Tribunal has also provided a link to *MOAHR MTT Guide for Participants for the Conducting of Entire Tribunal Video Conference Hearings*. Participants **should review** the Guide **prior to the hearing**, as participants **are required to comply** with the requirements of the *Guide*, as said requirements will facilitate the conducting and transcription of the scheduled hearing. The **parties or their attorneys or agents** are also **required** to provide the link to the *MOAHR MTT Guide for Participants to their participants* so that they are **aware of and can comply with** those requirements.

- I. **January 11, 2022**, is the final date for the parties to submit their exhibit lists and exhibits, with the exception of rebuttal exhibits, to the Tribunal by **e-filing or email** and the opposing party or parties by **email**. For the exhibit list, the parties **must use** the form prescribed by the Tribunal. The exhibit list and exhibits **shall be submitted** as provided in the **MOAHR MTT Guide for Participants**. An exhibit will **not** be admitted into evidence unless the exhibit is disclosed and furnished in accordance with this Order (even though admissible) **except** upon a finding of good cause by the Tribunal. The exhibits may be submitted separately or in a single document **provided** that the single document or PDF is **bookmarked** so that each exhibit can be easily accessed.
- II. **January 11, 2022**, is the final date for Petitioner to notify the Tribunal by **e-filing or email** of the name and telephone number of the court reporter retained by the parties to transcribe the hearing, as provided in the **MOAHR MTT Guide for Participants**.

IT IS SO ORDERED.

Failure to comply with this Order may result in the dismissal of the case or the conducting of a show cause or default hearing.⁴

Entered: November 23, 2021
pmk

By  _____

⁴ See TTR 231(1) and (4). See also *Grimm v Dep't of Treasury*, 291 Mich App 140, 149-50; 810 NW2d 65 (2010) and MCL 205.732(c).

HEARING INFORMATION – PLEASE READ IMMEDIATELY

GENERAL INFORMATION: An impartial hearing will be conducted in accordance with the Michigan Administrative Hearing Rules (R 792.10101-R 792.11289) and the Michigan Administrative Procedures Act, MCL 24.201 *et seq.* The Michigan Rules of Evidence and the Michigan Court Rules may be applicable. A party is expected to exercise proper respect and courtesy toward other parties, witnesses, and administrative law judges, which includes attending the hearing on time, silencing cell phones, and dressing in appropriate clothing for in-person hearings.

REPRESENTATION: A party may be represented by an attorney or other authorized representative of the party's own choosing and at the party's own expense. The Michigan Office of Administrative Hearings and Rules does not recommend or appoint attorneys.

WITNESSES: Parties may present witnesses, if any, identified in the Prehearing Statements, to testify under oath or affirmation at the hearing, subject to cross-examination by the opposing party, and questions by the administrative law judge.

EXHIBITS: The parties shall bring two (2) copies of all proposed exhibits (i.e., file copy and Judge's copy) to the hearing. Each exhibit must display the docket number and exhibit number (i.e., P1, P2, R1, R2, etc.) in the upper right-hand corner of the first page of each copy of each proposed exhibit. If an exhibit contains multiple pages, each page shall be numbered. The proposed exhibits must be separated into numerical order sets and indexed for easy reference.

COURT REPORTER: The parties shall not only provide a court reporter to transcribe the hearing but shall also provide an electronic copy of the hearing transcript to the Tribunal by e-mailing it to taxtrib@michigan.gov. The costs attributable to the court reporter shall be shared equally by the parties. If the parties fail to pay the costs of the transcript to the court report prior to the submission of the transcript to the Tribunal, the court reporter may report this to the Tribunal with the submission of the transcript. As a result, the party or parties who failed to pay the costs associated with the transcript may be held in default.⁵

WITHDRAWAL: If Petitioner no longer wants to continue with the appeal, Petitioner may submit a written request to withdraw the case. Respondent must concur with the withdrawal. The request must be submitted to the Tribunal and served on Respondent at least 14 days before the hearing. Respondent may file a concurrence or objection to the request within 7 days of the service of the request on that party. If Respondent does not timely submit a concurrence or objection to the request will be deemed to be a concurrence to the request. If the request is granted, the case will be dismissed. If a request is not granted or the Tribunal has not notified you that it has been granted, you are required to attend the hearing.

SETTLEMENT: Parties may submit a written agreement settling a case (i.e., stipulation). The stipulation must be on a form made available by the tribunal or shall be in a written form that is in substantial compliance with the tribunal's form and be signed by the parties' attorneys or authorized representatives, if they have attorneys or

⁵ See TTR 321.

authorized representatives, or by the parties, if they do not have attorneys or authorized representatives. There is a \$50 fee for the filing of the stipulation. If the stipulation with appropriate filing fee is received by the Tribunal or the parties email a copy of the signed stipulation to the Tribunal by 4:30 p.m. on the business day immediately preceding the day of the scheduled hearing, the hearing may be adjourned. Parties that email a copy of a signed stipulation to the Tribunal for purposes of adjourning a hearing are also required to submit the original signed stipulation with appropriate filing fee. The stipulation, once submitted, will be reviewed and, if accepted, the Tribunal will issue a consent judgment.

FAILURE TO APPEAR: The failure of a party to timely appear or otherwise participate in a hearing will result in adjournment of the hearing and the holding of that party in default. The defaulted party will be given an opportunity to show good cause for the failure to appear. Failure to respond or show good cause may result in dismissal of the case or the conducting of a default hearing.

REASONABLE ACCOMMODATION: All hearings are conducted in a barrier-free location in compliance with the Americans with Disabilities Act. An individual requiring reasonable accommodation for effective participation in a hearing, including accessible documentation such as braille, large print, electronic or audio reader, should contact the MOAHR by telephone at (517) 335-9760, or complete and submit an accommodation request form at

https://www.michigan.gov/documents/lara/Disability_Accommodation_FORM_v1_2_464017_7.doc within five (5) days of receipt of the Notice of Hearing to ensure availability of accommodation.

PRIVACY OF INFORMATION: In order to conduct a comprehensive and fair hearing, a party's private or confidential information, such as health or financial information, may be disclosed to the Tribunal and other parties and their attorneys or representatives. The MOAHR will use the private information solely for purposes related to the hearings process. A party may file a motion to request that a public hearing be closed in part or file a motion for protective order to deem certain information private and confidential in order to afford that information special protection.

CONTACT INFORMATION:

Michigan Tax Tribunal

Mailing Address: P.O. Box 30232, Lansing, MI 48909

Phone: (517) 335-9760

E-Mail: taxtrib@michigan.gov

Website: www.michigan.gov/taxtrib

E-Filing: <https://eFiling.apps.lara.state.mi.us>

Office Hours: 8:00 a.m. – 5:00 p.m., our office is closed from 12:00 p.m. – 1:00 p.m.