



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

Carl E & Carol V Wiseman,
Petitioners,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 18-000443

City of Kentwood,
Respondent.

Presiding Judge
Steven M Bieda

ORDER PARTIALLY GRANTING PETITIONERS' MOTION FOR RECONSIDERATION

ORDER GRANTING RESPONDENT'S MOTION TO CORRECT TAXABLE VALUE
IMMEDIATE CONSIDERATION

ORDER GRANTING RESPONDENT'S MOTION FOR COSTS IMMEDIATE
CONSIDERATION

ORDER GRANTING RESPONDENT'S MOTION TO CORRECT TAXABLE VALUE

ORDER DENYING RESPONDENT'S MOTION FOR COSTS

CORRECTED FINAL OPINION AND JUDGMENT

On January 17, 2020, Petitioners filed a motion requesting that the Tribunal reconsider the Final Opinion and Judgment entered in the above-captioned case on December 27, 2019. In the Motion, Petitioners state that the Tribunal erroneously relied on a sales and income approach that consist entirely of leased fee sales and leased fee interests and uncapped the subject property's taxable value. Further, Respondent's cost approach does not establish that the values for land improvements and building are relevant for the subject property's specific market and local economic factors; therefore the cost determination made by Respondent's assessor is the best evidence of value.

On January 23, 2020, Respondent filed motions requesting the Tribunal to correct the subject property's taxable value and award it costs and attorneys fees. In the motions, Respondent states that it is not aware of any transactions that would result in an uncapping for the 2018 tax year and therefore the Tribunal's true cash value determination should not have resulted in an increase in the subject property's taxable value. Costs and attorney fees are warranted given the Tribunal's conclusion that the property was significantly under-assessed and the nature of Petitioners' presentation, i.e., the calling of a single witness who presented fundamentally flawed analysis containing multiple inconsistencies and contradictions.

Petitioners have not filed a response to Respondent's motions.¹

The Tribunal has considered the motions and the case file and finds that Petitioners have demonstrated a palpable error relative to the Final Opinion and Judgment that misled the Tribunal and the parties and that would have resulted in a different disposition if the error was corrected.² Specifically, Respondent's income approach was weighted at 80% in the final value conclusion, but inasmuch as it relied on leased fee interests, it should not have been given any weight. Michigan courts have long held that the fee simple interest is the relevant interest in determining a property's true cash value or "usual selling price" within the meaning of MCL 211.27.³ Respondent utilized a market rent of \$216,000 for the subject property, which was derived by multiplying its estimated gross sales of \$2,700,000 by an estimated market-based percentage rent of 8%.⁴ This approach clearly contemplates a leased fee interest, and while Respondent's appraiser found that the indicated rent was supported by its lease comparables, said comparables are equally problematic. In that regard, the Tribunal acknowledged and accepted Petitioner's arguments with respect to lease comparables 2, 3, 4, and 7, but found that comparables 1, 5, and 6 supported Respondent's conclusion of market rent. As noted by Petitioner, however, Comparable 1 had a \$20/SF buildout allowance so the lease functioned as a financing mechanism and no adjustment was made; Comparable 5 is specifically stated as having rents being based upon 8% of gross sales showing no connection to the market; and Comparable 6 was a development predicated on obtaining a lease that could then be sold by the landlord based on the lease value. Absent appropriate consideration and adjustments for these factors, the Tribunal cannot find that this analysis provides a reliable indication of the free simple value.

Nevertheless, Petitioners' contentions regarding Respondent's sales approach are without merit, as while it similarly relied on leased fee interests, Respondent's appraiser adjusted the comparable sales for property rights conveyed. Petitioners failed to support their argument or otherwise establish that these adjustments are insufficient to result in a fee simple valuation and the Tribunal acknowledged that the use of leased fee sales, even as adjusted, minimized the strength of this approach to value. This finding was reflected in its final determination, which weighted the sales approach at

¹ Because a response would not impact the Tribunal's ruling on either motion, the Tribunal finds that none is necessary and immediate consideration of Respondent's motions is warranted.

² See MCR 2.119.

³ See *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620; 432 NW2d 325 (1990), wherein the Michigan Supreme Court stated: "The uniformity requirement of the Michigan Constitution compels the assignment of values to property upon the basis of the true cash value of the property and not upon the basis of the manner in which it is held. Noticeably absent from the statutory definition of 'cash value' and those enumerated factors which an assessor must consider is any reference to the identity of the person owning an interest in the property or whether there are other parcels which are owned by the same taxpayer. In other words, the fact of ownership is not a germane consideration in determining value: 'The Constitution requires assessments to be made on property at its cash value. This means not only what may be put to valuable uses, but what has a *recognizable pecuniary value inherent in itself, and not enhanced or diminished according to the person who owns or uses it.*'" *Id.* at 640-641. (citations omitted).

⁴ The gross sales estimate based on 2016 and 2017 actual gross sales, with primary consideration given to the 2017 figures. The market-based rent of 8% was estimated based on a review of industry standards from various sources.

only 10%. Given the available evidence, the Tribunal cannot conclude that this constituted a palpable error within the meaning of MCR 2.119.

Petitioners' contentions regarding the cost approach are similarly without merit. There is no evidence on record supporting the land value or any of the other factors utilized in the mass appraisal approach reflected on the property record card. Indeed, the record card itself was not even provided or offered for admission. Moreover, despite Petitioners' assertion to the contrary, local considerations are inherent in Respondent's land value analysis, as all of the comparables are located in the same general vicinity. As such, and in light of all of the issues noted in the Final Opinion and Judgment regarding Petitioners' valuation of the subject property, and the aforementioned issues with Respondent's sales and income approaches to value, the Tribunal finds that the cost approach (as prepared by Respondent's appraiser) provides the best evidence of true cash value or "usual selling price" within the meaning of MCL 211.27. Giving appropriate weight and consideration to the value indicated by this approach (\$2,480,000) and Respondent's sales approach (\$2,880,000), the Tribunal finds that a value of \$2,500,000 is supported for the 2018 tax year.

Both parties requested correction of the subject property's taxable value and the Tribunal finds that it did err in setting the property's taxable value equal to an amount in excess of the capped value.⁵ Respondent also requested costs and attorney fees but the Tribunal is not persuaded that either is warranted. The Michigan Court Rules and the Administrative Procedures Act provide the Tribunal with some criteria in determining whether an award of costs is appropriate, but ultimately, the decision is solely within the discretion of the Tribunal judge. TTR 209(1) states that "the tribunal may, upon motion or its own initiative, award costs in a proceeding, as provided by section 52 of the act, MCL 205.752."⁶ MCL 205.752(1) states that "costs may be awarded in the discretion of the tribunal," and as noted in *Aberdeen of Brighton, LLC v Brighton*,⁷ "the term 'may' is permissive and is indicative of discretion."⁸ Although the Tribunal's discretion is not limited, statutorily or otherwise, it generally does reserve an award of costs to circumstances where an action or defense was frivolous, or other good cause to justify the granting of such an award has been shown. Given the facts and circumstances presented in this matter, Petitioners' appeal is concluded to have been grounded in fact and warranted by existing law, however flawed its methodology may have been. And as discussed herein, Respondent's valuation is not without its own issues. Therefore,

The property's true cash value (TCV), state equalized value (SEV), and taxable value (TV), as established by the Board of Review for the tax year at issue, are as follows:

⁵ See MCL 211.27a(2).

⁶ Unlike its predecessor, TTR 209 no longer limits the award of costs to a prevailing party. Rather, the Tribunal may award costs to any party.

⁷ *Aberdeen of Brighton, LLC v Brighton*, unpublished per curiam opinion of the Court of Appeals, issued October 16, 2012 (Docket No. 301826).

⁸ *Id.*, citing *In re Forfeiture of Bail Bond*, 276 Mich App 482, 492; 740 NW2d 734 (2007).

Parcel Number: 41-18-15-202-027

Year	TCV	SEV	TV
2018	\$2,262,000	\$1,131,000	\$947,979

The property's final TCV, SEV, and TV, for the tax year at issue, are as follows:

Parcel Number: 41-18-15-202-027

Year	TCV	SEV	TV
2018	\$2,500,000	\$1,250,000	\$947,979

IT IS ORDERED that Petitioners' Motion for Reconsideration is PARTIALLY GRANTED.

IT IS FURTHER ORDERED that Respondent's Motion to Correct Taxable Value is granted IMMEDIATE CONSIDERATION.

IT IS FURTHER ORDERED that Respondent's Motion for Costs is granted IMMEDIATE CONSIDERATION.

IT IS FURTHER ORDERED that Respondent's Motion to Correct Taxable Value is GRANTED.

IT IS FURTHER ORDERED that Respondent's Motion for Costs is DENIED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as provided in this Corrected Final Opinion and Judgment within 20 days of entry of this Corrected Final Opinion and Judgment, subject to the processes of equalization.⁹ To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Corrected Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Corrected Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31,

⁹ See MCL 205.755.

2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (xi) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, and (xii) after December 31, 2019, through June 30, 2020, at the rate of 6.40%.

This Corrected Final Opinion and Judgment resolves the last pending claim and closes this case.

APPEAL RIGHTS

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

A motion for reconsideration must be filed with the Tribunal with the required filing fee within 21 days from the date of entry of the final decision.¹⁰ Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.¹¹ You are required to serve a copy of the motion on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.¹² Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.¹³

A claim of appeal must be filed with the Michigan Court of Appeals with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."¹⁴ You are required to file a copy of the claim of appeal with filing fee with the Tribunal in order to certify the record on appeal.¹⁵ The fee

¹⁰ See TTR 261 and 257.

¹¹ See TTR 217 and 267.

¹² See TTR 261 and 225.

¹³ See TTR 261 and 257.

¹⁴ See MCL 205.753 and MCR 7.204.

¹⁵ See TTR 213.

for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.¹⁶



By _____

Entered: February 7, 2020
ejg

¹⁶ See TTR 217 and 267.