

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

Autozone Stores, Inc/Autozone #2276,
Petitioner,

v

MTT Docket Nos. 451303

City of Big Rapids,
Respondent.

Tribunal Judge Presiding
Marcus L. Abood

FINAL OPINION AND JUDGMENT

Petitioner, Autozone Stores, Incorporated, appeals the ad valorem property tax assessment levied by Respondent, City of Big Rapids, against the real property owned by Petitioner for the 2013 and 2014 tax years.

A hearing was held on March 2, 2015, to resolve the real property tax dispute. Peter Ellenson, attorney at Fred Gordon, PC, appeared on behalf of Petitioner. Eric D. Williams, attorney, appeared on behalf of Respondent. Joseph L. Torzewski, MAI, was Petitioner's valuation witness. John Meyer was Respondent's valuation witness.

SUMMARY OF JUDGMENT

The subject property's 2013 and 2014 True Cash Values (TCVs), Assessed Values (AVs), and Taxable Values (TVs) as determined by Respondent are:

Parcel Number: 54-17-15-300-026

Year	TCV	SEV	TV
2013	\$435,000	\$217,500	\$217,500
2014	\$435,000	\$217,500	\$217,500

Petitioner's contentions of true cash value (TCV), state equalized value (SEV), and taxable value (TV) for each parcel and tax year at issue:

Parcel Number: 54-17-15-300-026

Year	TCV	SEV	TV
2013	\$280,000	\$140,000	\$140,000
2014	\$280,000	\$140,000	\$140,000

The Tribunal's conclusions are:

Parcel Number: 54-17-15-300-026

Year	TCV	SEV	TV
2013	\$275,000	\$137,500	\$137,500
2014	\$275,000	\$137,500	\$137,500

GENERAL PROPERTY DESCRIPTION

The subject property is known as an Autozone Store (#2276), and is located at 820 Perry Avenue, in the City of Big Rapids, Mecosta County, Michigan. The subject site is comprised of 1.96 acres and is improved with a commercial retail building constructed in 2000.

SUMMARY OF PETITIONER'S CASE

Petitioner presented testimony from its appraiser, Joseph L. Torzewski, MAI. Mr. Torzewski has appraised many Autozone stores throughout the State of Michigan on behalf of property owners, for tax appeals. Based on his education and experience, the Tribunal accepted Mr. Torzewski as an expert real estate appraiser.

In support of its value contentions, Petitioner offered the following exhibits, which were admitted into evidence:

- P-1: Appraisal Report prepared by Joseph L. Torzewski.
- P-2: Vanguard Report regarding O'Reilly Automotive, 2006-2007
- P-3: US SEC Form 10-K, O'Reilly Automotive 12/31/13
- P-5: Net Lease Advisor reviews of Autozone, O'Reilly and Advance Auto Parts
- P-6: Apex sketch of subject building, provided to Petitioner by Respondent on 2/13/15
- P-9: Chart of Fee Simple Sales
- P-10: MLS reports re: 1298 M-89, Plainwell, MI

Mr. Torzewski described the subject site and improvements which are located across the street from Ferris State University. (TR, pp 23-29) He further described his market analysis and neighborhood analysis for the subject property. References were made to general sales and built-to-suit construction within the city. From this information, further analysis was conducted regarding the decline in property values subsequent to the great recession. (TR, p 34)

Mr. Torzewski testified to the difference between a fee simple interest and a leased fee interest. The real property is being appraised, not the occupancy of the property. The subject property was appraised in fee simple interest; the property was appraised as if unleased, vacant, and available for sale. The focus is on value-in-exchange and not value-in-use. (TR, p 38)

Mr. Torzewski described the highest and best of the subject property relative to the fee simple, owner-occupied elements. He identified the three approaches to value as the income approach, sales comparison approach and income capitalization approach. Further, he identified and described the data sources for this appraisal assignment.

Petitioner's appraiser considered all three approaches to value but only developed and communicated indications of value from the income and sales comparison approaches. The cost approach was not developed because of the age of the building and economic obsolescence associated with the subject property. Regarding the sales comparison approach, Petitioner explained that the lack of sales data in the city precipitated the need to expand the search area for comparable sales data. Mr. Torzewski contends that his comparable sales were properly analyzed and adjusted to the subject property. Five sales were researched and analyzed for direct comparison to the subject property. (TR, pp 39-55) Further, Petitioner's appraiser acknowledged his due diligence in identifying sales of retail properties within his appraisal

report for the Big Rapids area. (Petitioner's Exhibit P-1, p 31) He also contends that the commercial development westward in Big Rapids represents a good location. (TR, p 134)

Through further testimony, Mr. Torzewski explained that the revised gross building area of 5,352 square feet does not change his conclusions of value for the subject property. His original determination of 5,619 square feet was revised based on Petitioner's acceptance and stipulation of Respondent's Apex drawing showing 5,352 square feet. (TR, p 60)

Petitioner's appraiser testified that the O'Reilly sales utilized by Respondent's appraiser were not relevant or appropriate for analysis. Mr. Torzewski testified that O'Reilly's marketing plan is very aggressive and their purchase prices are often above market value. (TR, pp 61-79 and 108-110)

Mr. Torzewski developed and communicated an income approach to value. His initial analysis started with 5 rental properties and then encompassed vacancy/credit loss, expenses, net operating income, capitalization rates and a resulting indication of value. He submits that this approach was used as ". . . a secondary approach to kind of support the overall value conclusions, a check for reasonableness for the sale." (TR, p 98)

Petitioner contends the reconciled true cash value of the subject property for 2013 and 2014 is \$280,000.

SUMMARY OF RESPONDENT'S CASE

Respondent presented testimony from its appraiser, John Meyer who has been a licensed real estate appraiser in the state of Michigan since 1992. He started his own valuation company in 1983 and handles commercial, industrial and residential assignments. Based on his education and experience, the Tribunal accepted Mr. Meyer as an expert in real estate appraisal.

In support of its value contentions, Respondent offered the following exhibits, which were admitted into evidence:

- R-1: Respondent's Valuation Disclosure.
- R-2: 2012 Record Card 54-17-15-300-026.
- R-3: 2013 Record Card 54-17-15-300-026.
- R-4: 2014 Record Card 54-17-15-300-026.
- R-7: Map with front view depicting subject and sales location.
- R-8: Map with aerial depicting subject and sales location.

John Meyer referenced typographical errors within his appraisal report. Including minor corrections, he asserts a revision should be made to comparable sales 2 and 5 for the land-to-building ratio adjustment. (TR, pp 158-159)

Respondent's appraiser identified and described the Big Rapids market area as well as the subject site and improvements. (TR, pp 161-166) Reference was made to the initial purchase of the subject site and the construction cost of the subject improvements.

Respondent's appraiser considered all three approaches to value but only developed the income and sales comparison approaches. The cost approach was not developed because of the age of the building and the difficulty in estimating accrued depreciation.

Regarding his sales comparison approach, Mr. Meyer first considered 14 sales (Respondent's Exhibit R-1, p 19) and then picked five sales for direct comparison to the subject property. (TR, pp 167-177) His indication of value from this approach was \$450,000 (rounded).

Respondent's appraiser developed and communicated an income approach to value. Mr. Meyer testified to the initial research for rental comparables that he then chose five rental properties for the income analysis. He contended that \$9 per square feet is an appropriate rental rate for the subject. His application and analysis of a vacancy rate, expenses, net operating income, and capitalization rate culminated in a value indication of \$420,000. (TR, pp 177-182)

Respondent contends the reconciled true cash value of the subject property for 2013 and 2014 is \$435,000.

FINDINGS OF FACT

1. The subject property is located at 820 Perry Avenue, City of Big Rapids, and within Mecosta County.
2. The subject parcel code number is 54-17-15-300-026 and is zoned C-1, Commercial.
3. The subject site has a total land area of 1.96 acres.
4. The subject building was constructed in 2000.
5. The subject property record cards for 2012, 2013 and 2014 denote the gross building area (GBA) as 5,619 square feet.
6. The parties have valued the fee simple interest in the subject land and improvements.
7. The subject property is owner-occupied. In other words, the subject is not a leased fee interest.
8. The City of Big Rapids had one example of new construction in 8 quarters between 2011 and 2012. (TR, p 147)
9. Petitioner's valuation disclosure was submitted in the form of a narrative appraisal report prepared by Joseph L. Torzewski, Certified General Real Estate Appraiser in the State of Michigan.
10. Petitioner's appraiser inspected the subject property on April 22, 2014.
11. Petitioner's appraisal report denoted the subject's gross building area as 5,619 square feet.
12. Petitioner stipulated and applied a revised gross building area of 5,352 square feet for the subject property. (TR, p 58) This revised GBA was based on the City of Big Rapids Assessor's Apex sketch. (Petitioner's Exhibit P-6)
13. Petitioner's appraiser appraised other Autozone stores within Michigan. (TR, p 17)
14. Petitioner presented business and marketing strategies for O'Reilly's auto parts. (Petitioner's Exhibits P-2 and P-3)
15. Petitioner's appraiser considered but did not utilize sales involving O'Reilly's. (TR, pp 102, 112, 148)
16. Petitioner's appraiser did work for O'Reilly's Auto Parts in 2008 and 2009. (TR, p 148)
17. Petitioner's appraiser reviewed and researched O'Reilly sales/leases including their marketing plan and strategy. (TR, pp 61-79)
18. Petitioner's appraisal report includes the income and sales comparison approaches to value for the years under appeal.
19. Petitioner's appraiser did not develop the cost approach because of the difficulty in determining the functional and external obsolescence attributable to the subject property.
20. Petitioner's appraiser analyzed the Mecosta County retail market. (Petitioner's Exhibit P-1, p 16)
21. Petitioner's appraiser analyzed the Big Rapids retail market. (Petitioner's Exhibit P-1, p 17)
22. Petitioner's appraisal report cites seven retail sales in Big Rapids. (Petitioner's Exhibit P-1, p 33)

23. Petitioner's sales comparison approach includes five sales for a direct comparative analysis. The sales are located in Saginaw, Wyoming, Alma, and Muskegon.
24. Petitioner's appraiser applied the revised gross building area of 5,352 square feet to his sales comparison analysis. The gross building area revision did not change his conclusion of value for the two years under appeal. (TR, p 60)
25. Petitioner's contention of true cash value is the same for 2013 and 2014.
26. Respondent submitted a valuation disclosure in the form of a narrative appraisal report prepared by John Meyer, Certified Residential Real Estate Appraiser in the State of Michigan.
27. Respondent's appraiser inspected the subject property on May 6, 2014.
28. Respondent's appraisal report includes the income and sales comparison approaches to value for the years under appeal.
29. Respondent's appraiser included a summary of 14 sales for general consideration in his comparative analysis. (Respondent's Exhibit, R-1, p 19)
30. In testimony, Respondent's appraiser admitted that his summary of 14 sales includes leased fee sales (959 South Wisconsin, 6689 M-68 Highway, 6252 M-68 Highway, and 11349 South Saginaw).
31. Respondent's sales comparison approach includes 5 sales located in Belding, Plainwell, Kentwood, and Muskegon.
32. Respondent's comparative sales analysis includes three sales involving O'Reilly's Auto Parts.
33. Respondent's appraiser previously appraised his comparable sale 4. (TR, p 172). This fact was not disclosed in Respondent's appraisal report.
34. Respondent's appraiser did not research O'Reilly's marketing strategies, acquisition plans or motives. (TR, p 188)
35. Respondent's appraiser acknowledged that O'Reilly's is a national retail chain. (TR, p 189)
36. Respondent's appraiser acknowledged that national retail corporations may purchase commercial property above market value. (TR, p 191)
37. Respondent's appraiser relies on a broad range of market sales in his comparative analysis. (TR, p 201)
38. Respondent's contention of true cash value is the same for 2013 and 2014.
39. Neither party was able to find any appropriate sales for comparative analysis within the City of Big Rapids.
40. The parties' appraisers were unable to obtain sufficient information regarding the O'Reilly's sale at 1298 M-89 Highway, Otsego, Michigan. (TR, pp 169, 170, 233)
41. The parties' appraisers have utilized a common comparable sale located at 1819 Holton Road, Muskegon, Michigan. (TR, pp 55, 131, 239)

APPLICABLE LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value. See MCL 211.27a.

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. 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 percent. . . . Const 1963, art 9, 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 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).

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.” *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

“By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment.” *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). 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; 378 NW2d 590 (1985). “It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case.” *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991). In that regard, 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.” *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735a(2). The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.” *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990). “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.” *Jones & Laughlin Steel Corp, supra* at 352-353.

“The petitioner has the burden of proof in establishing the true cash value of the property.” MCL 205.737(3). “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 Corp, supra* at 354-355. However, “[t]he assessing agency has the burden of proof in establishing the ratio of the 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(3).

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, supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff’d* 380 Mich 390 (1968). “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.” *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale, supra* 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 v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984).

CONCLUSIONS OF LAW

Petitioner developed and analyzed the income and sales comparison approaches to value. Respondent also developed and analyzed income and sales comparison approaches to value. As reflected in the findings of fact, neither party developed a cost approach to value. Petitioner’s appraiser was charged with determining the market value of the subject property for the 2013 and 2014 years under appeal. Respondent was charged with defending the assessments for the subject property for those years under appeal.

As noted in the findings of fact, neither party’s appraiser developed or communicated a cost approach to value. The reasons of older improvements and the difficulty of determining accrued depreciation were cited for the omission of this approach. Issues of vacant land sales

were not raised but the parties' inability to differentiate between surplus¹ and excess land² would not have bolstered arguments in favor of this approach. Therefore, the cost approach was considered but is not relevant to the present appeal.

Regarding the income approach to value, both parties' have developed and applied an income analysis to the subject property. Testimony indicated the appraisers' similarities and dissimilarities pertaining to the various income components. The overriding fact in this appeal is that the subject property is owner-occupied and does not have an income history. The Tribunal is cognizant that this commercial property has income producing capabilities but the parties' appraisers' analysis in fee simple is compelling. Therefore, the income approach to value was considered but given no application or weight in the independent determination of market value for the subject property.

The parties' initial reliance on a gross building area of 5,619 square feet as denoted in the subject property record card is noteworthy. Petitioner accepted a revised the size based on an Apex sketch and dimensions from the Big Rapids Assessor. Respondent's refusal to stipulate to the revised gross building area of 5,352 square feet does not make sense in light of the source for this information. Both gross building area square footages were determined by the assessor but Respondent did not give any rationale or support for relying on the larger square footage. The subject building is not a complete rectangular configuration as depicted by photographic evidence. Therefore, Respondent's reliance on an unsupported larger gross building area is given no weight or credibility.

Both parties' appraisal reports contain sales comparison approaches to value. The lack of comparable sales data in the subject market area did not deter the appraisers' due diligence in

¹ Appraisal Institute, *The Dictionary of Real Estate Appraisal*, (Chicago: 5th ed, 2010), p 191.

² *Id.*, p 71.

their respective comparative analyses. Fee simple sales with supportable and defensible comparisons to arrive at an adjusted range of value are the expectation in the present case. Outlier and leased fee sales, while worthy of consideration, are still distinguishable from sales which fall within a tighter grouping. Moreover, sufficient testimonial and documentary evidence demonstrated that sales transactions involving O'Reilly's were not relevant for comparative analysis. The market exposure of the O'Reilly sales is not the exclusive determination of arm's length transactions as Respondent's appraiser contends. (TR, pp 169-171) The definition of market value³ entails numerous elements for proper justification in a comparative analysis. The O'Reilly sales are part of the market but research and analysis focused and differentiated the most relevant sales that then become comparable sales. The appraisers' independent paths intersect at the point of one particular sale. Specifically, the parties' utilization of the common comparable sale located at 1819 Holton Road in Muskegon, Michigan is persuasive. From this comparable sale a reasoned and reconciled determination of value for the subject property is attainable. This sale is relatively similar to the subject in quality of construction, site size, and market conditions. Petitioner's adjusted sale price is \$51.59 and Respondent's revised adjusted sale price is \$51.18. Based on 5,352 square feet, the sale prices equate to \$276,006 and \$273,915 respectively and indicate a close and consistent range of value.

Again, the subject property is an owner-occupied building. The property has no history of an income stream. In other words, the subject is not an income-producing property. This is validated by both parties' analysis of the subject property in a fee simple interest. The primary focus is given to the sales comparison approach to value.

The Tribunal finds that Petitioner was able to show that the property was over-assessed for the tax years under appeal. To be certain, minimal differences in a value contention should

³ Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 14th ed, 2013), pp 58-60.

not be obscured by overzealous inclinations of advocacy. As such, and in light of the above, the Tribunal finds that Petitioner has succeeded in meeting its burden of going forward with competent evidence on the issue of true cash value, assessed value, and taxable value. The parties have provided credible documentary evidence and testimony on the basis of the utilization of the common comparable sale located at 1819 Holton Road. Lastly, the independent determination of market value reflects that no market condition changes occurred from 2013 to 2014 based on the parties' respective true cash value contentions.

JUDGMENT

IT IS ORDERED that the subject property's true cash, assessed, and taxable values for the 2013 and 2014 tax years are those shown in the "Summary of Judgment" section of this 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 assessed and taxable values in the amounts as finally shown in the "Final Values" section of this Opinion and Judgment, subject to the processes of equalization, within 20 days of the entry of this Opinion and Judgment. 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 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 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, 2010, at the rate of 1.12% for calendar year 2011; (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09%; and (iv) after June 30, 2012, through June 30, 2015, at the rate of 4.25%.

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

By: Marcus L. Abood

Entered: April 20, 2015