



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

MARLON I. BROWN, DPA
DIRECTOR

Derby Favorites LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MTT Docket No. 23-001356

City of Tecumseh,
Respondent.

Presiding Judge
Mark Perry

SUMMARY OF PREHEARING CONFERENCE

SCHEDULING ORDER

NOTICE OF HEARING

A Prehearing Conference on this matter was held on July 24, 2024. Seth O'Loughlin and Jon Aylsworth appeared on behalf of Petitioner. Philip Goldsmith and Amanda Lacelle appeared on behalf of Respondent. A scheduling order has been established and a hearing has been set for:

HEARING DATE:	January 22, 2025
*The hearing shall continue on January 23, 2025, and January 24, 2025, as necessary.	
HEARING TIME:	9:00 a.m.
HEARING LOCATION:	611 W. Ottawa, 2 nd Floor, Lansing, Michigan 48933.

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.

PREHEARING CONFERENCE SUMMARY

I. 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: XT0-129-4750-15

Year	TCV	AV	TV
2023	\$2,729,000	\$1,364,500	\$1,364,500

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

Parcel Number: XT0-129-4750-15

	Petitioner			Respondent		
Year	TCV	SEV	TV	TCV	SEV	TV
2023	\$1,325,000	\$662,500	\$662,500	\$2,729,000	\$1,364,500	\$1,364,500

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

Parcel Number: XT0-129-4750-15

Year	TCV	SEV	TV
2023	\$1,404,000	\$702,000	\$702,000

III. TAX INFORMATION

The property's taxes have been paid for the tax year(s) at issue.

IV. FACTUAL STATEMENT OF CLAIMS:

A. Classification of property:

Parcel Number	Classification
XT0-129-4750-15	Commercial (201)

B. Highest and best use (H&BU) for the tax years at issue:

Tax Year	H&BU
2023	Current Use – Commercial Retail

C. The property's TCV and TV are at issue for each tax year under appeal.

D. Petitioner's claims or counterclaims:

The 2023 SEV and TV levied against the subject property exceeds 50% of the property's fair market value. The income and market approaches to value do not support the AV.

E. Respondent's claims or counterclaims:

Respondent's valuations will be supported through expert rebuttal witnesses to Petitioner's valuation disclosure appraisal by discounting many of appraiser's final valuations. Evidence to support the failure of the Respondent's valuation disclosure will be provided.

V. PENDING MOTIONS OR DISCOVERY:

A. Motions: None pending at this time.

B. Discovery: Discovery is closed except as stated below.

VI. WITNESSES

A. As provided by TTR 237, a person, other than a rebuttal witness, who is NOT identified as a witness in the prehearing statement, shall NOT be permitted to give testimony, unless, for good cause shown, the Tribunal permits the testimony to be taken.

Mr. O'Loughlin stated there is some confusion as to exactly who Respondent will be calling as its witnesses. Specifically, Respondent's original prehearing statement prepared by Ms. Lacelle was untimely received by Petitioner. It was filed on March 28, 2024, about nine days after the March 19, 2024 file and exchange date, and disclosed Ms. Lacelle and Mr. Russell Raftary as witnesses. Mr. O'Loughlin further stated Respondent filed an amended prehearing statement on May 9, 2024, which was not served on Mr. O'Loughlin, and removed Ms. Lacelle as a witness and confirmed Mr. Raftary will testify in review of Petitioner's appraisal. Respondent's amended prehearing statement also added Mr. John Widmer, Jr., MAI, as a rebuttal witness testifying in review of Petitioner's appraisal and making Respondent's chief in case of rebuttal of Petitioner's allegations. Mr. O'Loughlin stated that this adds to the confusion of who Respondent will be calling as a witness and whether Respondent will have the ability to call the witness in this case.

Despite as noted in the amended prehearing statement, Mr. Goldsmith responded that Mr. Raftary, in fact, will not be testifying as a rebuttal witness on behalf of Respondent. Ms. Lacelle also added that pursuant to TTR 237 as noted in the amended prehearing statement, a rebuttal witness does not have to be listed in the amended prehearing statement, but she did add Mr. Widmer

anyway. She further stated that so long as an amendment was filed within 28 days of the original filing it was her understanding that the named rebuttal witness should be allowed as a rebuttal witness. Addressing untimely submissions, Ms. Lacelle stated that due to issues with scheduling and personal issues at the time, she was late. She further stated that she was always upfront, and the parties knew she was upfront from the beginning. Ms. Lacelle further explained she did not send Mr. O'Loughlin the prehearing statements because she had always dealt directly with Mr. Aylsworth from the very beginning, and she thought he would forward the prehearing statements to Mr. O'Loughlin. Ms. Lacelle also stated Mr. O'Loughlin filed his appearance slightly before submitting Respondent's prehearing statement.

In response to Respondent's explanation of the amended prehearing statement and adding a new rebuttal witness, Mr. O'Loughlin stated that he felt it is important to note that the amended prehearing statement was not sent until May 9, 2024, and there is an extensive history of untimeliness in this case. Petitioner's representative filed his appearance well before May 9, 2024, when the amended prehearing statement was submitted. The idea that Petitioner's counsel never received the copy was troublesome. He felt the bigger issue was why this hearing was not set as a show cause conference. He went on to say considering Respondent has no valuation evidence on the record and no other evidence on file, Respondent is going to rely on rebuttal evidence while nothing has been submitted. The first prehearing statement was late, and the amended prehearing statement changes its witnesses, and it seems highly prejudicial against Petitioner who timely submitted all its evidence needed to defend against these untimely submissions. Mr. O'Loughlin stated if the rolls had been reserved, and Petitioner had been untimely, Respondent would have also been demanding a show cause hearing. He felt enforcing the Tribunal's rules would be appropriate and to hold a show cause hearing.

Addressing discovery, Mr. O'Loughlin stated because he did not timely receive the amended prehearing statement, he was not aware of the change in witnesses and the new witness added, so he was not able to conduct the discovery on those witnesses. He further stated as soon as he became aware of it, he served post-valuation discovery on those witnesses. Discovery was served July 3, 2024, and he originally used July 31, 2024 as close of discovery. Given the untimely receipt of the original prehearing statement and amended prehearing statement, Mr. O'Loughlin requested an extension of post-valuation discovery to August 7, 2024. Mr. Goldsmith stated no objection to the requested extension. He stated that Respondent would provide Petitioner's requested post-valuation discovery information and again reaffirmed Mr. Raftary was withdrawn as a rebuttal witness.

- B. Witnesses will testify under oath or affirmation at the hearing, are subject to cross-examination by the opposing party, and to questions by the administrative law judge.

SCHEDULING ORDER

- I. August 7, 2024 is the date extended post-valuation disclosure discovery shall be completed.
- II. January 8, 2025 is the final date to file and serve upon the opposing party and the Tribunal a final exhibit list and to furnish the opposing party with a copy of each exhibit. **The parties must use the form prescribed by the Tribunal.** 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.
- III. January 8, 2025 is the date for Petitioner to notify the Tribunal in writing of the name and telephone number of the court reporter retained by the parties to transcribe the hearing.

Failure to comply with this Order will result in holding the non-complying party in default and may result in the dismissal of the case or the conducting of a show cause or default hearing, as provided by TTR 231.¹

Date Entered: July 26, 2024

By



¹ See also MCL 205.732.

HEARING INFORMATION – PLEASE READ IMMEDIATELY

GENERAL INFORMATION: An impartial hearing will be conducted in accordance with the Michigan Tax Tribunal Rules (R 792.10201-R 792.10297) 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 Tribunal 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.²

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 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.

² See TTR 231.

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 Tribunal by telephone at (517) 335-9760, or complete and submit an accommodation request form at <https://www.michigan.gov/taxtrib/-/media/Project/Websites/taxtrib/ET-Sample-Petitions-and-Forms/Disability-Accommodation-Form.pdf?rev=0b4e75a81f1e4cd186b0fcf956fe9f4c&hash=679AB1FBC0EFE783181CD8637BFEF027> within five (5) days of receipt of the Notice of Hearing to ensure availability of accommodation.

Hearing participants and observing members of the public who need assistance with speech or hearing may also participate in a telephonic or virtual hearing by dialing 7-1-1 and using the Michigan Relay service. More information about this service may be found at https://www.michigan.gov/mpsc/0,9535,7-395-93308_93325_93425_94040_94041---,00.html.

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 Tribunal 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
611 W. Ottawa St., Lansing, MI 48933
U.S. Postal Mailing Address: PO BOX 30232, Lansing, MI 48909
Other Carriers (UPS, FedEx, DHL):
2nd Floor MTT, 2407 N. Grand River Avenue, Lansing, MI 48906
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.

PROOF OF SERVICE

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provide by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk