



STATE OF MICHIGAN  
 DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
 LANSING

GRETCHEN WHITMER  
 GOVERNOR

ORLENE HAWKS  
 DIRECTOR

South Center LLC,  
 Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 17-001626

City of Royal Oak,  
 Respondent.

Presiding Judge  
 Victoria L Enyart

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, South Center LLC, appeals the percentage complete of new construction based on the ad valorem property tax assessments levied by Respondent, City of Royal Oak, against Parcel No. 72-25-21-239-017 for the 2017 tax year. Peter J. Sarkesian and Dennis M. Rauss, Attorneys, represented Petitioner, and Seth A. O’Loughlin, Attorney, represented Respondent.

A hearing on this matter was held on March 21, 2019. Petitioner’s witnesses were Howard Atesian and Darren Atesian, both members of South Center, LLC. Respondent’s witnesses were James Geiermann, City Assessor, and Jeffrey Schmidt, Assessing Staff.

Based on the evidence, testimony, and case file, the Tribunal finds that the taxable value (“TV”) of the subject property for the 2017 tax year (at 95% complete) is as follows:

Parcel No.	Year	TV
72-25-21-239-017	2017	\$1,023,620

### PETITIONER'S CONTENTIONS

Petitioner contends that the subject property was 74.7% complete, not 100% complete, as of December 31, 2016. As a result, Petitioner contends the correct state equalized and taxable values are \$736,940.

### PETITIONER'S ADMITTED EXHIBITS

P-14 Chronological Timeline of Values, Percentages, and Events

P-15 Five pages from Bosman Appraisal Services

P-16 Affidavit of James M Geiermann, Assessor, City of Royal Oak

### PETITIONER'S WITNESS(ES)

Petitioner's first witness was Howard Atesian, Manager and Member of South Center LLC. Petitioner utilized a portion of the appraisal prepared for Comerica by Bosman Appraisal Services dated January 5, 2017<sup>1</sup>. Five pages were admitted assisting Petitioner's recollection of percentage complete.

Petitioner purchased the subject property on June 10, 2015. The subject property is part of the first floor (the other portion of the first floor and all of the second floor is not owned by Petitioner). Petitioner testified that 100% of Crowdrise was completed as of December 31, 2016.<sup>2</sup> Two of the four proposed units were not turn-key interior complete. Suite 405 SLS Studio was 66% completed. Suites 415 and 403 were 0% completed.<sup>3</sup>

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<sup>1</sup> P-15.

<sup>2</sup> P-15 at 1.

<sup>3</sup> P-15 at 1. The document does not state the date the subject was inspected.

Petitioner utilizes P-15 which states Crowdrise is 50.7% of the square footage of Unit 2. The value of the completed portion is \$256,027.59, which Petitioner adds to the 2016 assessed value of \$508,903.44 to equal a December 31, 2016 taxable value of \$764,930. The \$764,930 is divided by the City's \$1,046,240<sup>4</sup> to result in Petitioner's 74.7% complete as of December 31, 2016. Mr. Howard Atesian testified that he prepared P-14 without assistance.

Darren Atesian is also a member of the LLC and has responsibilities for commercial management, negotiating with tenants, contractors for build-outs, and leasing. He testified that he was in and out of the subject property. It was not 100% complete as of December 31, 2016. No demising walls were up, and some minor build-outs were in place for SLS. Mr. Atesian's only contact with the city is with the building department. He agrees with the 74.7% complete.

#### RESPONDENT'S CONTENTIONS

Respondent contends that based on walk-through's and a checklist the subject property was for their purpose assessed at 100% complete. As a result, Respondent contends that the state equalized value should be revised to \$1,085,000, and the taxable value should be affirmed as being \$1,063,580.

#### RESPONDENT'S ADMITTED EXHIBITS

R-2 2017 Property Record Card

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<sup>4</sup> P-14 item 8, the December 31, 2018 value.

### RESPONDENT'S WITNESS(ES)

James Geiermann, Assessor for the City of Royal Oak, testified that it is his responsibility to determine the value of the subject property and percentage complete. He conferred with Jeffrey Schmidt and closed the building permit and placed the building as complete.

Mr. Geiermann testified that he frequently walked by the subject property as it is only a couple of blocks from City Hall. He did go in a couple of times, that there were construction workers present, but that he did not go through the entire building.

Upon cross-examination, Mr. Geiermann was questioned about Petitioner's Exhibit 15<sup>5</sup>.

Q. So when you're determining the true cash value of this property and there's still \$303,470 to complete you still think it's 100% done for tax purposes.

A. Well sir, I don't have that information, and that information that you just detailed for me and for the Court would be what I would consider as tenant buildouts.

Mr. Geiermann was also questioned on the photographs from P-15. His response was the date of the photographs was unknown and some were grainy, so he did not opine that they depicted that the subject property was not finished as of tax day. Jeffrey Schmidt, staff appraiser, is responsible for maintaining property record cards for the commercial and industrial properties, including sales information. He was at the subject property a few times and poked his head in a couple of times. He was responsible for the visual inspection and placing the 100% closure for the building permit indicating on the property information that the building was complete. This was an indication that the

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<sup>5</sup> Tr. at 106.

assessor's office did not have to do another inspection. The final value determination is the assessor's responsibility.

#### FINDINGS OF FACT

1. The only issue before the Tribunal is the percent complete as it affects the taxable value of the subject property as of December 31, 2016 for the 2017 value.
2. Respondent's total floor area is 13,211 square foot per the 2017 property record.
3. Petitioner's Exhibit 15 indicates that the total square footage is 15,684.
4. The property record for 2017 indicates the true cash value of the building placed on the roll is \$1,880,728.
5. Petitioner's estimated total cost is \$806,245, with \$303,470 cost to complete as of an unknown date.
6. Respondent's effective age is 10, resulting in 82% good for physical depreciation.
7. Petitioner's Exhibit 15, despite its assertion, is not a business record. It is a portion of a valuation report prepared for Comerica Bank and dated January 5, 2017 as an appraisal.
8. Petitioner's Exhibit 15 did not have the author present to testify to the questions on the Bosman Re-Certification of Value, such as the definition of "turn-key" as used in the report, the source of the estimated total cost, the source of the estimated cost to complete, or the parties' discrepancy with respect to square footage.
9. Petitioner's Exhibit 15 was properly used at the hearing for the limited purpose of refreshing Mr. Atesian's recollection of the level of finish.

10. This Tribunal cannot reconcile the 2,474 square feet difference between the Petitioner's P-15, and Respondent without the testimony from the author of P-15.
11. Respondent's square footage of 13,211 is found to be correct, based upon the property record.
12. Respondent's 2016 building permits and 2017 building permits up to June 2017, indicate that the subject property is less than 100% complete.

### CONCLUSIONS OF 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.<sup>6</sup>

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 . . .<sup>7</sup>

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.<sup>8</sup>

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."<sup>9</sup>

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<sup>6</sup> See MCL 211.27a.

<sup>7</sup> Const 1963, art 9, sec 3.

<sup>8</sup> MCL 211.27(1).

<sup>9</sup> *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.”<sup>10</sup> The Tribunal is not bound to accept either of the parties' theories of valuation.<sup>11</sup> “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.”<sup>12</sup> 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.”<sup>13</sup>

A proceeding before the Tax Tribunal is original, independent, and de novo.<sup>14</sup> The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”<sup>15</sup> “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”<sup>16</sup>

“The petitioner has the burden of proof in establishing the true cash value of the property.”<sup>17</sup> “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.”<sup>18</sup> However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average

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<sup>10</sup> *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

<sup>11</sup> *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

<sup>12</sup> *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

<sup>13</sup> *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

<sup>14</sup> MCL 205.735a(2).

<sup>15</sup> *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

<sup>16</sup> *Jones & Laughlin Steel Corp*, *supra* at 352-353.

<sup>17</sup> MCL 205.737(3).

<sup>18</sup> *Jones & Laughlin Steel Corp*, *supra* at 354-355.

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.”<sup>19</sup>

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.<sup>20</sup> “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”<sup>21</sup> 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.<sup>22</sup> Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.<sup>23</sup>

The testimony of Petitioner’s witnesses was sufficient for it to meet its burden going forward under the *Jones & Laughlin* standard. Specifically, Petitioner presented two witnesses. While neither was recognized as a valuation expert, the witnesses established that they were very familiar with the purchase and renovation of the subject property. Petitioner’s witnesses generally testified to their personal knowledge that interior construction was not complete as of tax day. As the burden going forward was

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<sup>19</sup> MCL 205.737(3).

<sup>20</sup> *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).

<sup>21</sup> *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

<sup>22</sup> *Antisdale*, *supra* at 277.

<sup>23</sup> See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

met, the burden shifted to Respondent to prove how it established the percent complete of the subject interior.

Respondent provided sufficient evidence to demonstrate the subject property was 100% complete as of tax day. Respondent submitted a copy of its property record card indicating that the subject was 100% complete as of tax day. Respondent's assessor, who certified Respondent's tax roll, testified that such a percent complete means that the structure is enclosed, and the walls, windows, roof, and siding are in place. It does not require the presence of tenant improvements, which are typically assessed as personal property.

The record card indicates that the subject property was inspected and found to be 100% complete on December 29, 2016, or two days before tax day. The assessor acknowledged that he made the decision to value the property as 100% complete. He relied upon his personal knowledge of the building as well as his inspection of the direct report in making the determination of completion percentage. The direct report in question, Mr. Schmidt, a certified assessor and commercial property appraiser for Respondent, testified that he inspected the subject property on multiple occasions, at last three, during the period before and after the subject tax day. He testified that he accessed the building with the assistance of contractors. He testified that he used the standard property completion checklist in making his determination that the property was complete as of tax day. He testified that, based upon his estimation, the property was 100% complete as of tax day. This testimony was based upon his personal collection of several site visits before and after tax day, as well as a file note, entered two days prior to tax day, that there was no effective need for an assessment official to

re-visit the property for determining percent complete because it was determined to be 100% complete as of that date. Petitioner did not impeach any of this testimony. As such, Respondent has provided sufficient evidence to establish the basis for its assessment, and Petitioner bears the burden to prove that the assessment is incorrect.

As discussed in the Findings of Facts, the Tribunal cannot rely upon the valuation disclosure that Petitioner attempted to introduce into evidence. Specifically, and despite Petitioner's attempts to categorize this document as a business record, the document is a re-certification of an appraisal, which is a valuation disclosure for purposes of Tribunal rules.<sup>24</sup> The report's author did not appear at the hearing to provide the source of data, methodology, underlying assumptions, and other information necessary for the Tribunal to determine whether it could rely upon the report's contention of value, and as such, the report and its written findings are properly excluded from the record.

Petitioner's primary witness, Mr. Atesian, provided computations as to how he determined the subject's percent complete as of tax day. The Tribunal first notes that the computation is a valuation disclosure for Tribunal purposes because it is documentary evidence that a party intends to submit to establish the subject property's true cash value.<sup>25</sup> However, in terms of following Tribunal rules for valuation disclosures, the document is also significantly lacking, both because Mr. Atesian failed to sign the document and because it fails to fully provide the basis for the conclusions established therein.<sup>26</sup> However, based upon the examination and cross-examination of the witness, the Tribunal finds that it is appropriate to use its discretion to allow the

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<sup>24</sup> See TTR 237.

<sup>25</sup> See Michigan Tax Tribunal Glossary of Terms, at <<https://www.michigan.gov/taxtrib/0.4677,7-187-25923-126336--00.html>>, last accessed on May 1, 2019.

<sup>26</sup> See TTR 255(2).

document to be entered into the record as a valuation disclosure and for the witness's testimony to be considered because there is no dispute that the document was prepared by Mr. Atesian and because Respondent had a full and fair opportunity to cross-examine the witness as to the bases upon which his conclusions were based.

The Tribunal finds that little weight shall be given to Petitioner's valuation disclosure. First, it is undisputed that Mr. Atesian is not a recognized expert in property valuation, such as an appraiser or assessor. Next, the document does not comport to one of the three recognized methods of property valuation.<sup>27</sup> It is primarily based upon the information and assumptions present in Respondent's property record cards but failed to differentiate whether its own percent complete as indicated by the document is in conformity with the mode and method used to establish the percent complete based upon the property record cards. Under cross-examination, the witness specifically admitted that he could not testify to the method used to develop those percentages from the document upon which his valuation disclosure relied. Further, Mr. Atesian's testimony failed to establish he possessed a sufficient basis of knowledge with respect to the underlying assumptions supporting the recertification report and property record cards to reliably extract information from those documents and incorporate that information into his determination of value.

Petitioner's witnesses also testified that they have been inside the subject property innumerable times, including around tax day, and that interior walls and floors remained incomplete as of tax day. The witnesses' testimony was credible to the extent that the elder Mr. Atesian did not attempt to arrive at a calculated percent complete

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<sup>27</sup> See *The Appraisal of Real Estate*, 14th ed: Appraisal Institute (2014).

through an arbitrary and unsupported formula. However, the testimony was credible to the extent that Petitioner's witnesses were familiar with the interior of the property and that some improvements remained incomplete. Although that testimony failed to provide any rational basis upon which the Tribunal could find that Petitioner met its burden of proof to demonstrate that the property was 74.7% complete, the Tribunal is nevertheless convinced that the subject interior was not 100% complete as of tax day. As such, a finding that the subject was 95% complete as of tax day is supported by the evidence on the record.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner has failed to prove the percentage complete of the subject property as of December 31, 2016 is 74.7%. Respondent's building permits for 2016 up to 2017 are public information and indicate that the subject property was not 100% complete as of December 31, 2016. However, based on the evidence the subject property was not more than 95% complete as of tax day. The subject property's TV for the tax year at issue are is stated in the Introduction section above.

## JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax year(s) 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 20 days of the entry of the Final Opinion and Judgment, 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 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, 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%, and (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%.

This Final Opinion and Judgment resolves all pending claims in this matter 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 required filing fee within 21 days from the date of entry of the final decision.<sup>28</sup> 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.<sup>29</sup> A copy of the motion must be served 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.<sup>30</sup> Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.<sup>31</sup>

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<sup>28</sup> See TTR 261 and 257.

<sup>29</sup> See TTR 217 and 267.

<sup>30</sup> See TTR 261 and 225.

<sup>31</sup> See TTR 261 and 257.

A claim of appeal must be filed 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.”<sup>32</sup> A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.<sup>33</sup> The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.<sup>34</sup>

By *Victoria H. Emjart*

Entered: May 21, 2019  
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<sup>32</sup> See MCL 205.753 and MCR 7.204.

<sup>33</sup> See TTR 213.

<sup>34</sup> See TTR 217 and 267.