



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. 18-000446

City of Wyoming,
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 TO CORRECT TAXABLE VALUE

CORRECTED FINAL OPINION AND JUDGMENT

On January 23, 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.

On January 27, 2020, Respondent filed a motion requesting the Tribunal to correct the subject property's taxable value. In the motion, 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.

Petitioners have not filed a response to Respondent's motion.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 10% in the final value conclusion, but inasmuch as it relied on leased fee

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

² See MCR 2.119.

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 \$187,200 for the subject property, which was derived by multiplying its estimated gross sales of \$2,240,000 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, Comparable 2 had a build-out allowance that was not considered or accounted for and Comparable 3 does not appear to have been adjusted correctly for lease date. Comparables 4, 5, and 7 were sale-leaseback transactions and Comparable 6 was a build-to-suit. The Tribunal has consistently held that such transactions are not reflective of market value.⁵ 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 value indication 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 only 10%. Given the available evidence, the Tribunal cannot conclude that this constituted a palpable error within the meaning of MCR 2.119. The Tribunal similarly cannot find any error in Respondent's use of sales outside of the Grand Rapids MSA on the basis that he was looking for shorter lease terms, as this speaks largely to the basis of its appraiser's adjustments for property rights conveyed. As such, and inasmuch as Petitioners failed to demonstrate any error in Respondent's cost approach, which was given primary weight and consideration (80%) in the final value determination, Petitioners' contention that the Tribunal's value determination must be vacated is without merit. Giving appropriate weight and consideration to the value indicated by this approach (\$2,080,000) and Respondent's sales approach (\$2,120,000), the Tribunal

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.

⁵ See *Meritax, LLC v Richmond*, 23 MTTR 214 (Docket No. 425425), issued October 18, 2012, *Home Depot USA, Inc v Breitung Twp* 23 MTTR 468 (Docket No. 366428), issued December 26, 2012 and *Lowes v Marquette Twp*, 23 MTTR 248 (Docket No. 385768), issued December 13, 2012.

finds that only a slight reduction in true cash value is indicated, as a value of \$2,100,000 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.⁶ 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:

Parcel Number: 41-17-33-427-043

Year	TCV	SEV	TV
2018	\$1,377,400	\$688,700	\$621,512

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

Parcel Number: 41-17-33-427-043

Year	TCV	SEV	TV
2018	\$2,100,000	\$1,050,000	\$621,512

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 to Correct Taxable Value is GRANTED.

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.⁷ 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

⁶ See MCL 211.27a(2).

⁷ See MCL 205.755.

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, 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.⁸ 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.⁹ 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.¹⁰ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.¹¹

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

⁸ See TTR 261 and 257.

⁹ See TTR 217 and 267.

¹⁰ See TTR 261 and 225.

¹¹ See TTR 261 and 257.

“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.”¹² 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.¹³ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.¹⁴

By  _____

Entered: February 7, 2020
ejg

¹² See MCL 205.753 and MCR 7.204.

¹³ See TTR 213.

¹⁴ See TTR 217 and 267.