

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

Vlahakis Development LLC,  
Petitioner,

v

MTT Docket No. 351510

City of Lansing,  
Respondent.

Tribunal Judge Presiding  
Victoria L. Enyart

**OPINION AND JUDGMENT**

**ORDER DENYING RESPONDENT'S MOTION IN LIMINE**

Introduction

Petitioner, Vlahakis Development LLC, appeals ad valorem property tax assessment levied by Respondent, City of Lansing, against the real property owned by Petitioner for the 2008 tax year. Timothy H. McCarthy, Jr., attorney, appeared on behalf of Petitioner. Michael D. Homier, attorney, appeared on behalf of Respondent. Petitioner's witness was Paul Vlahakis, owner of Vlahakis Development LLC. Jack Johns, appraiser, was questioned by Petitioner. Respondent, at the conclusion of Petitioner's case, moved for a directed verdict. Respondent's assessor, Marie Irish, testified.

The proceedings were brought before this Tribunal on July 28, 2011, to resolve the real property dispute.

Summary of Judgment

The City of Lansing has assessed the property on the tax roll at:

Parcel Number: 33-01-01-28-126-062

TCV	SEV	TV
\$954,200	\$477,100	\$477,100

Petitioner believes that the value of the subject property is:

Parcel No. 33-01-01-28-126-062

Year	TCV	AV/SEV	TV
2008	\$500,000	\$250,000	\$250,000

The Tribunal finds the values shall be:

Parcel No. 33-01-01-28-126-062

Year	TCV	AV/SEV	TV
2008	\$876,100	\$438,050	\$438,050

Background and Introduction

At issue is the true cash value for a commercial office property located at 2025 South Washington, Lansing, Michigan. This is a multi-tenant, three-story office building with 15,000 square feet. Petitioner contends that it is 33% occupied. Petitioner states that the assessor has the property overstated, partially because the subject property was estimated to be at a stable occupancy.

Petitioner’s Arguments

Petitioner believes that the true cash value of the subject property for the tax year at issue should be reduced based on Petitioner’s testimony.

Petitioner's Exhibits admitted:

P-2 Warranty Deed and P-3 Rent roll.

Petitioner's first witness is Paul Vlahakis, the sole member of Vlahakis Development. Vlahakis is a real estate broker, specializing in commercial/industrial real estate. He also has a development company that renovates and does construction. He owns or has an interest in approximately fifteen properties in the Lansing area.

Vlahakis testified that he was approached by the bank to market the subject property. It was listed by CB Richard Ellis for a few years and during that time was foreclosed and the lender wanted it off their inventory. Vlahakis thought it may be a good investment and reached an agreement to purchase the property in December 2005 for \$582,000.

After purchasing the subject property, Vlahakis explained that they cleaned up the interior, repaired doors, carpeted and painted, repaired leaky windows, sealed the parking lot, striped it, and installed a tenant sign. It was only 10% occupied at the time of purchase. Vlahakis thought that the size and price of the property were right for speculation and that with some cleaning up and making it more appealing, it would be rented.

Using the rent roll, Vlahakis testified regarding the tenants and the square footage leased, indicating that there is a difference between gross square footage of the building and rentable square footage. The building has an open atrium that is not rentable, much like the hallways. The gross square footage is approximately 15,000 square feet;

the net rentable area is 12,000 square feet. The city has the square footage closer to 19,000, which Vlahakis stated was incorrect.

The tenants are Veterans Administration Clinic, which pays \$4,400 a month rent, and the Red Cedar Clinic, which pays \$780 a month. Vlahakis estimated that he loses approximately \$80,000 a year after expenses are paid. This does not include any return on the purchase price. He paid cash for the building, so there is no mortgage.

Vlahakis testified that this property is less competitive because of the crime rate and low concentration of offices in the vicinity. The subject property is adjacent to a party store and across the street from a warehouse surrounded by residential properties. His hope was to lease it to physicians at Ingham Medical, but that did not materialize.

Vlahakis believes the value of the subject property is no more than the 2005 purchase price of \$582,000.

Petitioner's next witness was Jack Johns, a commercial real estate appraiser. He was offered initially as a fact witness. Johns attended the March, 2008 Board of Review. He testified that the Board of Review was provided a rent roll, income and operating expenses, as well as some comparable rentals and sales data.

Johns also testified regarding a four-page report that he prepared, which is a review of Respondent's valuation disclosure. Johns testified that he prepared this appraisal

review at Mr. Vlahakis' request. When questioned why the appraisal review was done, Johns stated, "To see if the appraisal complies with USPAP, if we agree or disagree with the value conclusions, and any recommendation to those value conclusions, recommended alternative value." TR p 120.<sup>1</sup> John's appraisal review was not admitted into evidence, because Respondent's valuation disclosure was not in evidence.

The Tribunal ruled that Johns would be allowed to rebut Respondent's valuation *after* it was admitted. Pursuant to TTR 283, Johns would not be allowed to testify to the value of the subject property, as Johns did not prepare a valuation disclosure, much less one that was timely exchanged and upon which Petitioner relied for its value conclusions.

#### Respondent's Arguments

Respondent requested that the Tribunal dismiss the case. In addition to Petitioner's burden of proof, Respondent stated there was also a burden of going forward with the evidence. Respondent believed that neither burden was met. Respondent stated that Petitioner cannot and has not sustained the burden of going forward. Petitioner has not produced any evidence akin to a cost approach, an income approach or a sales comparison approach. No valuation disclosure has been submitted into evidence.

Petitioner objected and stated that significant evidence regarding the value of the subject property was presented.

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<sup>1</sup> The Tribunal notes that Respondent filed a Motion in Limine to strike the appraisal review document.

The Tribunal requested that Respondent admit the property record card for the subject property and the basis for the assessment.

Respondent's admitted exhibit: R-2, the 2008 property record card.

Maria L. Irish, assessor, explained her job duties include the oversight of all of the assessment functions within the City of Lansing for real and personal property. She is certified as a Michigan Master Assessing Officer (prior Level IV). She testified that the property record details ownership, legal descriptions, building permits, sales, and land and building data for subject property. The property was constructed in 1987, and has a total floor area of 19,353 square feet. Irish testified that she is responsible for presenting the values to the board of review. She oversees the function of making sure that the assessment rolls are compiled according to Michigan Compiled Laws and the State Tax Commission Rules and Guidelines.

Irish explained that the assessment of the subject property was done in the ordinary course of business. It was a replacement cost new less depreciation with any other factors, sales studies were conducted, and the equalization factors were established with the Ingham County Equalization Department. The office properties south of I-496 are the subject's neighborhood. The neighborhood received a reduction of 6.36% for the office class of properties for tax year 2008. This resulted in the assessment of the subject property of \$477,100.

Tribunal's Findings of Fact

1. Subject property is located at 2028 Washington Avenue, Lansing, Michigan.
2. Subject property contains 19,353 square feet on three floors.
3. Subject property has a 560 square foot atrium included in the 19,353 square feet.
4. Subject property has 1.15 acres.
5. Subject property is a multi-tenant office building.
6. As of December 31, 2007 occupancy was 4,440 square feet and 10,633 square feet vacant.
7. Net rentable area is 15,033 square feet. Excluded is atrium, elevator shafts, hallways and entrances.
8. Petitioner paid \$582,000 for subject property in December 2005.
9. Subject property is not located in a prime office neighborhood.

Petitioner's witness Vlahakis was an owner of the subject property, a broker and manager. He was knowledgeable about this property. He testified to the net rentable area and the rent roll. He testified as to the actual gross income of the subject property. Petitioner testified that he believed the value of the subject property was no more than the December 2005 purchase price. Vlahakis went to the local Board of Review with Johns, with rent comparables and comparable sales, and with the rent rolls. If Petitioner had submitted market information it would have assisted the Tribunal in determining the market rent, market vacancies, as well as expenses, for the subject property. Using actual rents and vacancies, but not providing sufficient information or an income approach, is not of any assistance to this Tribunal in determining the market value of the subject property.

The Tribunal is charged with determining the true cash value of the subject property. When a property's actual income is relied upon the resulting value is value-in-use, not market value. Fee simple requires income and expense information from the market for similar properties. This is also true of a sales comparison approach, which neither party

offered. The information must be presented with appropriate adjustments for differences in amenities. There was insufficient information offered by Petitioner to utilize an income approach. The only value presented by Petitioner was the actual sale price.

Vlahakis explained the neighborhood, and external influences that would indicate a negative value for the subject property. The subject property was listed for some time at \$1,200,000 by CB Richard Ellis. It did not sell and the owners gave it back to the bank, which needed \$600,000. The subject property was exposed to the open market, but did not sell until the bank received it back. Vlahakis at that time negotiated with the bank. While the sale may not be a typical arms-length transaction, it was exposed to the market for a sufficient amount of time. However, one sale does not indicate that the sale price is market value. Petitioner presented no other sales that would indicate that the sale price should be accepted as market value.

Petitioner presented the rent roll. It was undated, but Vlahakis testified as to the December 31, 2007 date. This indicated the actual vacancy and rent paid. It did not indicate market rent or market vacancy for the subject property.

The Tribunal is required to determine the true cash value of the subject property in the above-captioned case. Petitioner did not carry its burden of proving that the sale price is market value. However, the Tribunal was left with some questions and requested that Respondent present, at minimum, the property record cards so the Tribunal had some data for the subject property.

Based on the property record cards, which indicate a cost new less depreciation value, the square footage of the atrium was costed out twice, first as part of the entire square footage of the building and then separately. The depreciation factor for the atrium reflected a factor that was not the same as the entire building. Based on the correction, the true cash value of the subject property is reduced slightly. Without a market or an income approach the only approach that was available to the Tribunal in its entirety was Respondent's cost approach.

Petitioner could have called Respondent as an adverse witness, but did not do so and was, therefore, precluded from offering rebuttal testimony to Respondent's valuation disclosure, which was not before the Tribunal.

The Tribunal notes that throughout the hearing the parties interrupted each other and the Tribunal. The Tribunal found this to be disrespectful, as well as disruptive.

#### Conclusions of Law

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value. 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 the assessment, being the price which could be obtained for the property at private sale, and not forced or auction sale. See MCL 211.27(1). The Michigan Supreme Court in *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450 (1974), has also held that true cash value is synonymous with fair market value.

In that regard, the Tribunal is charged in such cases with finding a property's true cash value to determine the property's lawful assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767 (1981). The determination of the lawful assessment will, in turn, facilitate the calculation of the property's taxable value as provided by MCL 211.27a. A petitioner does, however, have the burden of establishing the property's true cash value. See MCL 205.737(3) and *Kern v Pontiac Twp*, 93 Mich App 612 (1974).

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law...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%....; and for a system of equalization of assessments. For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value. Const 1963 Art IX , Sec 3.

As used in the General Property Tax Act, "true cash value" means 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).

"True cash value" is synonymous with "fair market value." *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974). The Michigan Supreme Court,

in *Meadowlanes Limited Dividend Housing Ass'n v City of Holland*, 437 Mich 473; 473 NW2d 363 (1991), acknowledged that the goal of the assessment process is to determine “the usual selling price for a given piece of property.” In determining a property’s true cash value or fair market value, Michigan courts and the Tribunal recognize the three traditional valuation approaches as reliable evidence of value. See *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d (1984).

“The petitioner has the burden of establishing the true cash value of the property....” MCL 205.737(3); MCL 211.27(1); *Meadowlanes, supra*. “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 v City of Warren*, 193 Mich App 348, 483 NW2d, 416 (1992), at 354-355, citing: *Kar v Hogan*, 399 Mich 529, 539-540; 251 NW2d 77(1976); *Holy Spirit Ass’n for the Unification of World Christianity v Dept of Treasury*, 131 Mich App 743, 752; 347 NW2d 707(1984). Petitioner, in this instance, failed to establish the true cash value of the subject property. The only value presented by Petitioner was sale price and actual rents.

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*, at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966), aff’d 380 Mich 390 (1968); *Antisdale*, at 276. 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*, at 277. The Tribunal finds that Petitioner did not present a cost approach to value, a sales comparison analysis, or an income approach to value. The most applicable approach in the above-captioned case would be an income approach.

The Tribunal may not automatically accept a respondent's assessment but must make its own finding of fact and arrive at a legally supportable true cash value. *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979). 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; 377 NW2d 908 (1985). 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. *Meadowlanes*, at 485-486; *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980); *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982).

In this case, the Tribunal concludes that the evidence, testimony, and law indicate that the subject property is assessed in excess of 50% of market value. An appraisal of fair market value requires a determination of the property's "highest and best use," which is "the reasonably probable and legal use of vacant land or an improved property that is legally permissible, physically possible, financially feasible, and that results in the

highest value.” Appraisal Institute, *Appraising Residential Properties*, (Chicago, 3<sup>rd</sup> ed., 1999), p 211. Petitioner presented the subject property’s sale price, actual rent and actual vacancy. Petitioner did not present market rent, or comparable sales that would have the same market influences and would substantiate Petitioner’s sale price as market.

The Tribunal is charged in a valuation appeal to determine the true cash value of the subject property as of each tax year at issue. Petitioner was not able to prove, by a preponderance of its evidence, that the assessment of the subject property should be reduced for the tax year at issue. However, the Tribunal finds that Respondent’s cost less depreciation approach was considered. The cost approach included in its square footage the cost for the atrium, but also costed the atrium separately. This double costed the square footage for the atrium. The Tribunal adjusts the costs, and depreciates the atrium the same percentage as the building. Respondent considered the physical age of the subject property as 55% good, functional 90% good, and 80% good for external obsolescence; the aggregate result is 39.6% good for depreciation from all causes. Respondent considered the condition, functional obsolescence, and the external obsolescence in determining the true cash value of the subject property. The Tribunal reduced the true cash value to reflect the double costing of the atrium and adjusts the atrium depreciation to 39.6%.

The Tribunal finds that Respondent’s Motion in Limine to preclude admission of John’s appraisal review should be denied. Respondent did not present the valuation disclosure

that the appraisal review purported to rebut; therefore, Respondent's Motion in Limine is Denied as Moot.

### JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the tax year at issue shall be as set forth in the *Summary of Judgment* section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year 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 90 days of the entry of the Final Opinion and Judgment, the 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 as required by this Order within 28 days of the entry of this Order. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of 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 the Tribunal's order. As provided in 1994 PA 254, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest rate of the 94-day discount treasury bill rate for the first Monday in each month plus 1%. As provided in 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after January 1, 1996 at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 1995 at the rate of 6.55% for calendar year 1996, (ii) after December 31, 1996 at the rate of 6.11% for calendar year 1997, (iii) after December 31, 1997 at the rate of 6.04% for calendar year 1998, (iv) after December 31, 1998 at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999 at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000 at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001 at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003 at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004 at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005 at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006 at the rate of 5.42% for calendar year 2007, and (xiii) after December 31, 2007 at the rate of 5.81% for calendar year 2008, (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, and (xv) after December 31,

2009, at the rate of 1.23% for calendar year 2010 at the rate of 1.12% for calendar year 2011.

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

MICHIGAN TAX TRIBUNAL

Entered: August 31, 2011

By: Victoria L. Enyart