

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

Michigan Retail Partners I, LLC, and
MAF CASA Michigan I LLC,
Petitioners,

v

MTT Docket No. 361531

City of Big Rapids,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Introduction

Petitioners, Michigan Retail Partners I, LLC, and MAF CASA Michigan I, LLC, appeal the ad valorem property tax assessment levied by Respondent, City of Big Rapids, against the real property owned by Petitioner for the 2009, 2010, and 2011 tax years. Eva T. Cantarella, attorney at Hertz Schram PC , appeared on behalf of Petitioners. Eric D. Williams, attorney for the City of Big Rapids, appeared on behalf of Respondent. Petitioners' witness was Marshall A. Brulez, MAI, Managing Director, CBRE. Respondent's witness was Daniel Kirwin, Michigan Advanced Assessing Officer, contract assessor for Respondent.

The proceedings were brought before this Tribunal on November 21, 2011, to resolve the real property dispute.

Summary of Judgment

The City of Big Rapids has assessed the property on the tax roll as follows:

Parcel No. 54-17-15-400-001

Year	TCV	SEV	TV
2009	\$5,282,200	\$2,641,100	\$2,641,100
2010	\$4,640,200	\$2,320,100	\$2,320,100
2011	\$4,356,200	\$2,178,100	\$2,178,100

Petitioner contends the values should be as follows:

Parcel No. 54-17-15-400-001

		Petitioner	
Year	TCV	SEV	TV
2009	\$4,050,000	\$2,025,000	\$2,025,000
2010	\$3,890,000	\$1,945,000	\$1,945,000
2011	\$3,900,000	\$1,950,000	\$1,950,000

The Tribunal finds the values shall be:

Parcel No. 54-17-15-400-001

		Petitioner	
Year	TCV	SEV	TV
2009	\$4,050,000	\$2,025,000	\$2,025,000
2010	\$3,890,000	\$1,945,000	\$1,945,000
2011	\$3,900,000	\$1,950,000	\$1,950,000

Background

At issue is the true cash value for the Sattler Square Shopping Center located at 710 Perry Avenue, Big Rapids, Michigan. The property includes a 94,500 square foot retail center. The parcel has a total of 12.62 acres. Tractor Supply Company and Big Lots co-anchor the shopping center.

Petitioners' Arguments

Petitioners believe that the true cash value of the subject property for the tax years at issue should be reduced based on Petitioners' appraisal.

Petitioners' Exhibit admitted:

P-1 Appraisal of subject property.

Petitioners' only witness was Marshall A. Brulez, MAI, who did not personally perform the appraisal, but reviewed and signed the report.

Brulez testified that the leased fee estate was the interest appraised. This is the ownership interest that would be acquired by any party, which is basically ownership interest subject to leases in place. Subject property is an average quality class C neighborhood community retail center. The co-anchors, Tractor Supply and Big Lots, occupy 56,850 square feet of the 94,450 total square feet. The remainder of the center is divided between tenants that occupy more than 5,000 square feet (15,450 square feet total) and 22,150 square feet occupied by smaller in-line tenants. The property was constructed in 1989 and renovated in 1993. Brulez estimated depreciation was 40%.

Brulez explained the information that was considered in the appraisal to determine the market value of the leased fee interest of subject property. Retail investment trends for the tertiary sales in the Midwest region were given some weight. The market trends for the Greater Grand Rapids retail summary for vacancy rates within shopping centers for 2011 was presented.

Brulez stated that four retail rentals were comparable to the subject property. They are:

Comp #	Name	Sq Feet	Year Blt	Occupancy	Expense Basis	Base Rent	Terms
1	Ferris Common	173,557	1990	100%	NNN	\$9.50 - \$11.50	3-10 Yrs
2	Big Rapids Marketplace	26,890	2007	100%	NNN	\$12.00	5 Yrs

Comp #	Name	Sq Feet	Year Blt	Occupancy	Expense Basis	Base Rent	Terms
3	Southland Shopping Center	28,906	1957	81%	NNN	\$8.00 - \$14.00	3-5 Yrs
4	Big Value Center	71,248	1975	82%	NNN	\$6.00 - \$12.00	3-10 Yrs
Subject	Sattler Square Shopping Center	94,950	1989	97%	NNN	43.75 - \$17.50	1-15.8 Yrs

The occupancy ranged from 81% to 100%. Brulez concluded to a 95% stabilized occupancy based on the actual, Big Rapids market, Mecosta County, and the rent comparables. Brulez explained that the 95% occupancy used was based on multiple factors that do include the subject property. He testified:

Subject property is in a fairly stable place, that it's got, you know, in excess of 95% occupancy and has a history of that even though it is – even though it is occupied by many second and third generation tenants and that the major influence in Big Rapids is Ferris State University and its proximity to the campuses definitely influence its healthy occupancy. TR p 29.

Brulez went through the information utilized for the income approach. The same comparable rental properties that were used to determine occupancy were also utilized for market rent. Potential gross income (based on appropriate rates for the mid-anchor and square footages above and below 5,000 square feet) is \$6.80 per square foot or \$642,109. Vacancy and credit was estimated at 6% of potential gross income.

Operating expenses included insurance, common area maintenance, management fee, non-reimbursable landlord expense, and reserves for replacement was based on actual expenses as well as market equaled 22.85% or \$149,037. Operating expenses were deducted from effective gross income for a net operating income of \$503,249.

Brulez then considered capitalization rates based on the following sources: comparable sales, national investor survey, market participants, and CBRE. The range was 8.00% to 11.00%. Brulez considered the market and return that investors would require and found the following results: 9.50% for the 2009 tax year, 10.00% for the 2010 tax year, and 9.50% for the 2011 tax year. The effective tax rate was added for an overall capitalization rate. The 2009 overall capitalization rate ("OAR") was 12.42%. The net operating income (\$503,249) is divided by the OAR (12.42%) to equal an indicated true cash value of \$4,050,000 for the 2009 tax year. Brulez used the same technique for all three years.

On cross-examination he calculated pursuant to Respondent's request what the value difference would be, if the capitalization rate were 8.00% plus the effective tax rate is an overall rate of 10.92. This would result in a value of \$4,608,500 for 2009; \$4,613,700 for 2010, and \$4,441,000. Brulez was questioned on whether the change in value of the vacancy rate used was the actual vacancy rate. He replied that it would be minimal, approximately a one percent increase.

Brulez selected four comparable retail properties that sold, for the sales comparison approach. The four sales that were selected for the 2009 tax year are:

Comp #	Location	Sale Date	Sale Price	SQ Ft	SP/SF	Occupancy	NOI/SF	OAR
1	Fremont MI	Apr-07	\$2,200,000	42,538	\$51.72	100%	\$4.45	8.61%
2	St. Johns	Jan-07	\$3,116,000	71,282	\$43.71	0%	\$4.81	11.01%
3	Three Rivers Listing	Nov-08	\$3,710,500	80,582	\$46.05	92%	\$2.74	5.94%
4	Kalamazoo	Feb-07	\$3,350,000	77,816	\$43.05	100%	\$4.18	9.71%
Subject	Big Rapids			94,450		95%	\$5.33	

Three properties sold and one was a listing. The sale price per square foot ranged from \$43.05 to \$51.72. Sale 2 in St. Johns was vacant at the time of the sale resulting in an overall capitalization rate of 11.01%. The sales were adjusted for differences in market conditions (time), listing, location, size and tenancy. After adjustments the values ranged from \$40.04 per square foot to \$48.10 per square foot. The 2009 value via the sales comparison approach was \$4,090,000 or \$43.30 per square foot. The same technique was used to determine the 2010 and 2011 tax years.

Respondent's Arguments

Respondent argues that Petitioners' appraisal indicates an 8.00% capitalization rate, which would result in an increased value for the subject property. The 8.00% capitalization rate results in a correct market value for the subject property that is a decrease in value but more in line with Respondent's value.

Respondent's Exhibits admitted:

- R-1 ECF calculations.
- R-2 Map of ECF area.
- R-3 Digital area.
- R-4 Larger aerial.
- R-5 2010 Aerial.
- R-7 2009 property record.
- R-8 2010 property record.
- R-9 2011 property record.

Daniel Kirwin, Michigan Advanced Assessing Officer, contract assessor for the City of Big Rapids, was Respondent's only witness. He explained that the subject property is located across from Ferris State University's main campus. He believes that there could be room for an out lot to be split from the subject property next to Applebee's.

Kirwin testified that there is a large apartment complex, a Lowes, and Menards that were constructed since 2000, in deference to Petitioners' appraisal that states that new retail projects have not been developed due to economic conditions. K-mart plaza added Buffalo Wild Wings, which moved into the shopping center in 2008.

Kirwin did a spread sheet indicating the 2011 dollar per square foot that is reflected on the assessment roll to indicate that the subject property is fairly and equitably assessed. Petitioners objected, indicating this was beyond this witness's scope. Kirwin did not author or timely exchange a valuation disclosure and was precluded from testifying about value conclusions. Respondent had a valuation disclosure prepared but did not bring its author or offer it as an exhibit. Kirwin's testimony was therefore limited.

Kirwin believes that Petitioners should have considered a lower capitalization rate because the subject property is in a prime location with very little vacancy, located across the street from Ferris State University.

Tribunal's Findings of Fact

1. Subject property is located at 710 Perry Street, City of Big Rapids, Mecosta County.
2. Subject property contains 94,450 square feet.
3. Subject property has a total of 12.16 acres.
4. Subject property is a multi-tenant retail building with co-anchors.
5. Subject property contains a variety of in-line retail spaces.
6. Subject property has actual vacancy of 3% as of December 31, 2008, 3% as of December 31, 2009, and 3% as of December 31, 2010.
7. Subject property has close proximity to Ferris State University.
8. Respondent chose not to admit its valuation disclosure.
9. Petitioner admitted its valuation disclosure.

Applicable 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).

The Michigan Supreme Court, in *Meadowlanes Ltd 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 632 (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 NW2nd, 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).

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 Petitioners used typical appraisal methods to determine the true cash value of subject property.

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).

Conclusions of Law

Petitioners presented both an income approach and a sales comparison approach that indicates a decrease in the true cash value of subject property.

Brulez considered the subject property's actual rent and vacancy, as well as market income and vacancy when determining the gross income, vacancy and credit loss, and operating expenses for subject property. The Tribunal finds that subject property has a decrease in gross income and an increase in nonreimbursable landlord expenses. The economy and renegotiation of existing leases reflect the economic recession that took place. Subject property's 2009 and 2010 income decreased, vacancy increased, the net operating income decreased indicating a general decrease in market value.

Respondent argued that the overall capitalization rate utilized by Petitioners did not take into consideration the location of subject property. The Tribunal finds that Petitioners considered capitalization rates based on comparable sales, national investor survey, market participants, and CBRE, four sources more than Respondent submitted.

Respondent did not have a factual basis for the assertion that Petitioners should have selected a lower capitalization rate.

Respondent failed to present evidence to convince this Tribunal that the overall capitalization rate should be 8.00% plus the effective tax rate. Petitioners' appraisal included the source date, both national data and extracted rates from Michigan sales. Petitioners selected overall rates that were at the high end of the rates presented.

Petitioners state “Interviews with market participants acknowledged the dominance of the subject, relative to its market and cited the subject’s ability to maintain a stable occupancy. Some concern was noted regarding the relatively short terms remaining for the mid-anchor tenancies.” P-1, p 59.

Although Respondent believed that the overall capitalization rate utilized by Petitioners did not take into consideration the actual occupancy and location of subject property. Respondent also questioned the vacancy and occupancy used by Petitioners in their valuation disclosure.

Vacancy and credit loss is an allowance for reductions in potential gross income attributable to vacancies, tenant turnover, and nonpayment of rent or other income. This line item considers two components: physical vacancy as a loss in income and collection loss caused by concessions or default by tenants. Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p 483-484.

The conclusion used by Petitioners is different than subject property’s actual vacancy because it reflects typical investor expectations.

The Tribunal finds that Respondent is misguided on both the overall rate and vacancy and credit rate. Petitioners used several authorities and weighed the overall rate against rates extracted from sales and listings. Respondent provided no evidence to the contrary. In fact, Respondent provided no valuation evidence, choosing to verbally rebut its two issues with Petitioners’ appraisal. The Tribunal finds credible Petitioners’ testimony that the summary appraisal report was prepared to meet Uniform Standards of Professional Appraisal Practice (USPAP). Petitioners’ appraisal report was not

misleading, and explained the process and techniques used to develop a sales comparison approach and an income approach. Petitioners' witness was able to testify to the standards used by the appraisers and was found to be credible. The Tribunal finds that Petitioners presented a valuation disclosure that used typical techniques for the sales comparison approach and the income approach. The methods were explained, and the techniques were appropriate.

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. In an income-producing property the cost-less-depreciation approach on a mass basis may not be the most appropriate when determining true cash value. An income approach is found to be the appropriate technique when valuing income-producing property.

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. Petitioners were able to prove by a preponderance of their evidence that the assessment of the subject property should be modified.

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, (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (xvi) after December 31, 2010, at the rate of 1.12% for calendar year 2011, and (xvi) after December 31, 2011, at the rate of 1.09 for calendar year 2012.

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

MICHIGAN TAX TRIBUNAL

Entered: January 10, 2012

By: Victoria L. Enyart