

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

Hill Road Storage Center, LLC,
Petitioner,

MTT Docket No. 392627

v

Township of Mundy,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

INTRODUCTION

A default hearing was held in the above-captioned case on March 5, 2012, pursuant to TTR 247. In that regard, the Tribunal entered an Order of Default on May 2, 2011, placing Respondent in default for failing to file an answer to the petition as required by TTR 245. The Order required Respondent to cure the default within 21 days of the Order (May 23, 2011). The Tribunal entered its Order scheduling a Default Hearing on November 30, 2011. On December 9, 2011, Respondent filed its answer to the Petition, property record card, and its motion to set aside the default. The Tribunal denied the Motion to set aside default as untimely, and the default hearing was held as scheduled.

Petitioner was represented by Sean McDermott, attorney. Dave Geiger, Township Supervisor, and Cary Bock, Township assessor, attended the default hearing.

Petitioner failed to file Motions to Amend to add subsequent years; therefore, the only tax year at issue is 2010.

Summary of Judgment

Petitioner’s contentions of value:

Parcel No. 15-12-100-023

Year	TCV	AV/SEV	TV
2010	\$430,000	\$215,000	\$215,000

Respondent’s values on the roll:

Parcel No. 15-12-100-023

Year	TCV	AV/SEV	TV
2010	\$711,400	\$355,700	\$355,700

The Tribunal finds the values shall be:

Parcel No. 15-12-100-023

Year	TCV	AV/SEV	TV
2010	\$711,400	\$355,700	\$355,700

Background and Introduction

At issue is the true cash value for a “mini” storage facility located at 1287 West Hill Road, Flint, Michigan. The subject property was purchased by Petitioner in August, 2007, for \$1,050,000.

Petitioner’s Arguments

Petitioner believes that the value should be based on the appraisal that was prepared for the hearing. Petitioner stated he purchased the subject property based on a pro-forma statement, but the property has not met Petitioner’s financial expectations.

Exhibits Admitted:

- P-1 Appraisal
- P-2C Income
- P-2D Monthly Statements

Gerald Todd Clark is the owner of the LLC and was the first witness. He testified that the subject property was purchased with the expectations that he could maintain the income (based on the pro forma) and slowly expand the storage facility. This has not been the case. He testified that income has remained stable since 2008, but plans to expand were permanently placed on hold.

Clark explained that there are three other storage facilities within a 2.5 mile radius of the property and there was a 70,000 square foot storage facility constructed approximately a year after he purchased the subject property. This contributed to the deficient projected income.

Clark testified that Exhibit P-D2 is an Occupancy Report. It has the number of storage units, sizes, and occupancy, as well as how many RV and autos are parked on the property. The gross potential rents and actual rent is also included in the Occupancy Report.

Clark stated that Exhibit P-2C contains the financial statements for the subject property for four years. It has assorted income statements and balance sheets. He testified that for the last four years since the purchase he has lost \$5,000 to \$6,000 a month in cash flow because the subject property never met the pro forma rents. The net income is and has been negative.

Petitioner's valuation witness was Thomas J. Walsh, the author of Petitioner's appraisal. He prepared a report and discussed the three approaches to value. He testified that, due to the age of subject property, the cost approach was considered but not used. Walsh used the income and sales approach.

Walsh explained that he arrived at a value of \$22.00 per square foot for the subject's 20,617 square feet. The five sales were not adjusted for any difference in amenities or locations and did not reflect the number of storage units. Walsh multiplied \$22.00 per square foot of the subject property, and concluded to a value of \$453,600.

When questioned on any adjustments, Walsh responded "Well, there's always adjustment for the building size if they are different. But sometimes the land is more on one sale than another or more than what's contained in the subject. So adjustment for those kinds of features are necessary." TR, p 19. Walsh also found that he did not do an adjustment because there's "no substantiation for being able to do that." TR, p 22.

Walsh stated that the value according to the income approach was \$420,000. When questioned if the income approach had more bearing, he stated:

Yes. This type of property is – is attractive to an investor. They're interested in the income. That's the motivation for their purchase, for acquiring a property like this, is the analysis of what can happen with the income. Other places sell for different rates and for different reasons, but the income is there, and it can be substantiated. They can figure that – compare it to other facilities that are charging – rentals for their properties and establish what's economic and what they can rely upon if they acquire a piece of property. So the income approach is much more controlling than any other approach in income-producing properties such as this. TR, p 20.

Petitioner then rested.

Respondent's Arguments

Respondent was placed in Default by the May 2, 2011, Order Placing Respondent in Default for failure to answer the petition. The Order provided 21 days in which Respondent was to file a motion to cure the default and file an answer. Respondent filed its answer and a motion to set aside default, but failed to do so in a timely manner. Respondent attended the Default Hearing.

Tribunal's Findings of Fact

1. Subject property is located at 1287 West Hill Road, Mundy Township.
2. Subject property is located in Genesee County.
3. Subject property was purchased by Petitioner August 8, 2007 for \$1,050,000.
4. Subject property was originally constructed for mini-storage buildings.
5. Subject property has a 5,040 square foot pole building.
6. Subject property has three other storage buildings; two are 5,040 square feet, and the last one is 8,236 square feet (including 676 square feet office).
7. Subject property has 5.24 acres of land.
8. Subject property is zoned Commercial Improved, allowing the current use.
9. The 134 mini storage units are as follows:
 - a. 20 5' x 10"
 - b. 47 10' x 10'
 - c. 26 10' x 5'
 - d. 12 15' x 15'
 - e. 23 10' x 20'
 - f. 6 10' x 30'
 - g. 1 Pole Barn
 - h. 35 Outdoor spaces

Conclusions of Law

Pursuant to Const 1963, art 9, §3, 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; 221 NW2d 588 (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 9, §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, supra*. 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).

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. Petitioner simply stated “And so I have a number of fifty thousand dollars, which I believe is high, but I’m willing to settle for that number for taxable.” Tr, p 6.

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).

Summary of Judgment

Although the above-captioned case is a Default Hearing, Petitioner still has the burden of proof. The burden of proof may be lower without opposition, but it remains a hurdle

that Petitioner has to overcome. Petitioner has to produce evidence that persuades the Tribunal that the subject property is over assessed.

Petitioner presented an appraisal by Walsh. The Tribunal will go through the evidence presented and make an independent determination of value.

Walsh presented a "Summary Format" appraisal wherein the highest and best use, and information that supports the analyses, opinion, and conclusions is summarized.

This is an issue. The appraisal submitted by Petitioner does not just summarize information; some of the information was simply stated. The sales comparison approach lacks some vital information. The comparable sales do not have the number of storage units. The sale price per storage unit appears to be the manner in which the facilities are bought and sold pursuant to Petitioner's income approach. Petitioner instead used the sale price per square foot. Walsh made zero adjustments to the sale prices for differences in amenities, location, and land or for any purpose. Walsh gave the range of sale prices per square foot unadjusted. This is very misleading to the Tribunal. It borders on futility when trying to determine what the sale price per unit is for the subject's 134 mini-storage units.

Walsh's use of five comparable sales in different locations without adjustments is questionable. He states on page 40 of his appraisal that Sale 1 is larger square footage than subject and is in a less desirable location; however, it is noted that Sale 3 is 38 miles away and Sale 4 is 33 miles from the subject property. There is no discussion in

the report that indicates whether the market for storage facilities is more or less desirable and how they would compete for storage with subject property. Petitioner's Sale 5 is located in Pontiac approximately 33 miles from subject property. There was no indication of the occupancy rate for any of the five sales. Walsh's report contained no adjustment for any difference in amenities or number of storage units. Walsh's sales comparison approach lacks credibility and is misleading.

The validity of Walsh's income approach also is questioned. While the comparable rental properties did include the number of units, no analysis was done to assist the Tribunal in accepting that the income received is actually market rent. The expenses from the owner were also utilized. Petitioner failed to provide independent data from competitive rental properties. It is unclear if expenses are typical for the subject property. The issue with using actual income and expenses and not making a determination of market income and expenses is that it results in a value-in-use to the owner, which may not be market value.

An important distinction is made between market value and investment value. Investment value is the value of a certain property use to a particular investor. Investment value may coincide with market value, which is defined in Chapter 2, if the client's investment criteria are typical of successful buyers in the market. In this case, the two opinions of value may be the same number, but the two types of value and their concepts are not interchangeable.

Market value is objective, impersonal, and detached. Investment value is based on subjective, personal parameters. To develop an opinion of market value with the income capitalization approach, the appraiser must be certain that all the data and forecasts used are market-oriented and reflect the motivations of a typical investor who would be willing to purchase the property as of the effective date of the appraisal. A particular investor may be willing to pay a price different from market value, if necessary, to acquire a property that satisfies other investment

objectives unique to that investor. Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p 450.

The Tribunal requires market value or value in exchange.

Value in exchange is described as:

The estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently, and without compulsion. Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2010), p 23. International Valuation Standards Committee, *International Valuation Standards*, 8th ed. (London, 2007) 76.

Petitioner stated that the property has "lost" money every year. That is true for a balance sheet; however, for purposes of determining market value some items are excluded. The income approach (for valuation appeals) does not include depreciation, costs of the "business," as the value of the property itself is sought. Property taxes are excluded as that is the purpose of the trial. The effective tax rate is added to the overall rate to capitalize net operating income into an indication of value. If, for example, property taxes are overstated the deduction will skew the value.

Walsh did not validate the use of the 10% allowance for vacancy when Petitioner's vacancy as of December 31, 2009 is 21.4%. Exhibit P-D3 does not appear to be an annual report, but is, instead, a monthly report.

Walsh did include property taxes as an expense in the income approach. The Tribunal finds that the income approach is the proper approach. Petitioner provided no indication of the basis for its capitalization rate. Walsh's one sentence "A survey of sales of buildings with a variety of commercial uses throughout Livingston, Genesee,

Oakland, and Washtenaw Counties indicated capitalization rates that ranged from 7.00% to 11.00%. The subject's size, location, and condition support a capitalization rate of 9.75%." Exhibit P-1, p 39. The Tribunal could amend the income approach if there was a basis for the capitalization rate. The selection of a capitalization rate should not be a mystery in an appraisal; it should be clear and unambiguous. The entire report was ambiguous and was of little assistance to this Tribunal in determining that the subject property was over assessed for the sole tax year at issue.

Petitioner did present the balance sheet, which included the depreciated value of the land, improvements, and building. This value totals approximately \$1,200,000. The value placed on the property by Respondent is \$711,400. Petitioner's appraisal by Walsh is misleading, incomplete as to the information that was used to determine that the subject property should be reduced to 35% of the purchase price.

The Tribunal reconstructs the income approach using the available information that was admitted. Walsh was not clear where the information came from that he used for the income approach. The Tribunal finds that the total potential gross income that Walsh uses is what Petitioner reported as effective gross income on both the profit and loss statement, as well as Petitioner's 1040 Schedule E. In addition, Walsh further reduced the effective gross income by 10% for vacancy and credit. Walsh's expenses (after exclusion of property taxes) exceeds actual by a substantial amount. Although Walsh states in the appraisal that the expenses were supplied by the owner, the expenses do not tie back into Petitioner's profit and loss statement or 1040 Schedule E. The

following is extracted from Walsh (Exhibit P-1, pp. 37, 38), Profit and Loss Statement (Exhibit P-C-1, C-2), and Schedule E 1040 Federal Tax return.

12/31/2009	Walsh	Profit/Loss	1040
Effective Gross	\$133,040	\$133,322	\$138,154
Expenses			
Personnel	\$24,158		\$7,687
Repair/ Maintenance	\$7,678	\$4,320	\$8,202
Marketing	\$10,362	\$10,362	\$10,362
Utilities	\$5,109	\$5,109	\$5,622
Office	\$2,057	\$2,057	\$1,808
Cost of Goods	\$85		\$85
Insurance	\$1,934	\$1,934	\$1,934
Acct/Legal		\$3,158	\$4,679
Prof Fees			
Telephone		\$1,772	\$2,365
Computer Rep		\$3,357	
Totals	\$51,383	\$32,069	\$42,744

The Tribunal recalculated the income approach using Walsh's 9.75% capitalization rate and adding 3.43% as an effective tax rate. The income and expenses from Petitioner's Federal Income tax form 1040, Schedule E is used as the basis. The net operating income is \$95,410 divided by the 13.18% overall rate equals a true cash value of \$723,900. This is the value to the property owner using his actual income and expenses. It is not clear from Walsh's appraisal where his market income and expenses came from. It is fairly clear after considering Petitioner's information that Walsh used effective income as potential gross income. Walsh's appraisal is given little weight and credibility due to the errors and the vague, nonexistent explanation of the

basis for income and expenses. Further, the sales comparison approach was given no weight due to the vagueness and misleading assumptions made.

In this case, the Tribunal concludes that the evidence, testimony, and law indicate that the subject property is not assessed in excess of 50% of market value.

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 (xvii) 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: March 29, 2012

By: Victoria L. Enyart