

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

Talmer Bank and Trust,
Petitioner,

v

MTT Docket No. 415632

Township of West Bloomfield,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Introduction

Petitioner, Talmer Bank and Trust, appeals the ad valorem property tax assessment levied by Respondent, Township of West Bloomfield, against the real property owned by Petitioner for the 2011 and 2012 tax years.

Douglas J. Fryer, attorney at Dykema Gossett P.L.L.C. appeared on behalf of Petitioner. Derk W. Beckerleg, attorney Secrest, Wardle, Lynch,

Hampton, Truex and Morley, P.C., appeared on behalf of Respondent.

Petitioner's valuation witness was Andrew B. Chamberlain, ASA, State Certified Appraiser; Respondent's witness was J. Ryan Runnels, Michigan Certified Assessing Officer (3).

The proceedings were brought before this Tribunal on July 1, 2013, to resolve the real property dispute.

Summary of Judgment

Petitioner contends the values should be as follows:

Parcel No. X-18-30-326-012

Petitioner			
Year	TCV	SEV	TV
2011	\$777,000	\$388,500	\$388,500
2012	\$700,000	\$350,000	\$350,000

Parcel No. X-18-30-603-001

Petitioner			
Year	TCV	SEV	TV
2011	\$73,000	\$36,500	\$36,500
2012	\$70,000	\$35,000	\$35,000

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

Parcel No. X-18-30-326-012

Respondent			
Year	TCV	SEV	TV
2011	\$342,980	\$171,490	\$171,490
2012	\$342,240	\$171,120	\$171,120

Parcel No. X-18-30-603-001

Respondent			
Year	TCV	SEV	TV
2011	\$977,460	\$488,730	\$488,730
2012	\$981,340	\$490,670	\$490,670

The Tribunal finds the values shall be:

Parcel No. X-18-30-326-012

Year	TCV	SEV	TV
2011	\$524,400	\$262,200	\$171,490
2012	\$550,000	\$275,000	\$171,120

Parcel No. X-18-30-603-001

Year	TCV	SEV	TV
2011	\$977,460	\$488,730	\$488,730
2012	\$981,340	\$490,670	\$490,670

Background

At issue is the true cash value for the subject property located at 7950 West Maple Road, West Bloomfield, Oakland County. The subject property is a bank branch, with a drive-thru, with 4,387 square feet, on a 1.19 acre of leased land. Petitioner argues that the land is more valuable than the building, based upon the recent acquisition price from Federal Deposit Insurance Corporation ("FDIC").

Petitioner's Arguments

Petitioner believes that the true cash value of the subject property, for the tax years at issue, should be reduced based on Petitioner's appraisal.

Petitioner's Exhibits:

P-1 Appraisal of subject property as of December 31, 2010, and December 31, 2011.

P-2 Curriculum Vitae of Andrew B. Chamberlain.

P-3 Land comparables back up data.

P-4 Improved sales comparables back up data.

P-14 CoStar Retail Report Detroit Retail Market.

Petitioner's first witness was Randolph French, REO¹ Disposition Manager, Special Assets, Talmer Bank and Trust. French is in charge of real estate in the Midwest for properties that have foreclosed. He considers how to reduce the holding costs. He looks at taxes, insurance, and maintenance and reduces the value to 20% of the appraisal price.

French testified that the REO properties are appraised every six months. This includes bank-branch properties, as well as industrial, commercial and residential property.

The subject property was acquired in 2010. FIR² closed approximately 25 branches of Citizens First Bank. The FDIC took receivership and looked at bids. Petitioner looked at all of the appraisals and offered \$950,000. The appraisal was \$970,000 for the land lease; therefore, the building had a residual value of zero.

The total purchase price for all 25 banks was \$15,000,000. This averaged to \$600,000 per branch. The subject property is the only one with a zero

¹ Real Estate Owned ("REO").

² French did not explain FIR, nor was the Tribunal able to discern the root of the acronym.

allocation for the building. Talmer Bank only purchases distressed or foreclosed banks. The process is the same; it is a bid process for FDIC-approved bidders.

Petitioner's valuation expert, Andrew B. Chamberlain, ASA, State Certified Appraiser, testified that he prepared an appraisal of the subject property. He had a copy of the prior FDIC appraisal. He stated that south of the subject property is an intense commercial area.

Chamberlain's scope of the appraisal problem states, in pertinent part:

The subject property is improved and used as a branch bank. Talmer Bank and Trust acquired the subject property from FDIC in July 2010. FDIC received the bank from Citizens First. As of the date of valuation the subject property could be described as distressed. Typically sales of distressed properties are not considered good indications of market value. However, it is my opinion that the sale of the subject property is a good indication of value. While appraisers generally don't use sales of distressed sales, it is our opinion that the poor and uncertain market conditions as of the date of purchase made sales of distressed properties quite common and good indications of market value.

The subject property is owned by Arlene Licht Trust and/or 15 Haggerty. The land is leased to Talmer Bank and Trust. The site is improved with a 4,387 square foot branch bank. The bank building was constructed in 1995 and is in good condition. Talmer acquired the improvements and the leasehold position from FDIC, receiver of Citizens First. Talmer acquired the improvements and the leasehold position for nothing – zero

dollars. The price was determined by an independent appraisal. The FDIC ordered appraisal concluded that the subject's fee simple value was equivalent to land value; therefore the improvements had no value. P-1 p 13.

Chamberlain performed a cost approach. However, he found that it was unreliable due to economic conditions in Michigan, which were frail, and new construction was rare. The cost new was \$1,280,334. Depreciation was estimated at 11% physical, 20% economic and 10% functional. The appraisal explains that the poor economic conditions and national financial crisis were the basis for the economic obsolescence. The functional obsolescence is due to one primary entrance that is not desirable for an alternative use. The value of the depreciated building and site improvements is \$810,812.

Land value was based on three sales of property located in Southfield, Troy, and Canton. Chamberlain concluded to \$15.00 per square foot. The \$777,540 land value was added to the \$810,812 cost for the building. The indicated value via the cost approach is \$1,590,000 as of December 31, 2010.

Chamberlain testified on cross-examination that the market value of the building is zero because the right to use the building is pursuant to the ground lease. The purchase price was the value of the land with no residual value for the building. The purchase of the subject property was a lengthy process and was considered a good indication of value. The building is beautiful but it only has a value of \$70,000 to \$73,000.

Petitioner's cost approach exceeds the value placed on the property by Respondent. Chamberlain was not aware that four new banks were built in West Bloomfield Township. The deletion of the 20% economic obsolescence would increase the cost approach by \$250,000.

Chamberlain did not consider that the zoning for the subject property would prohibit general retail. The vacant land sales he utilized were all retail uses; however, they would not be a legally permissible use for the subject property.

The direct capitalization technique was utilized in considering the income-producing ability of the subject property. Chamberlain determined that the subject property is a special-purpose property with limited use. When

banks are leased it, is typically a built-to-suit lease with above market rates.

The following nine properties were selected as comparables:

Lease	City	Use	Rental Rate
1	Novi	Retail	\$18.00
2	Novi	Retail	\$12.00
3	Novi	Restaurant	\$14.38
4	Novi	Retail	\$14.00
5	Novi	Dentist	\$7.50
6	Waterford	Office	\$15.00
7	Auburn Hills	Bank	\$15.00
8	Allen Park	Bank	\$18.00
9	Saline	Physical Therapy	\$18.00

Chamberlain determined that market rent is \$18.00 per square foot, triple-net, with 8% vacancy. The expenses were 5% for management, and reserves for replacement are \$0.50 per square foot. The basis was the Detroit Retail Market Year-End Report from CoStar. The 8.5% overall capitalization rate was based on Chamberlain's experience and RealtyRates.com. The income approach resulted in an indicated value of \$785,000 as of December 31, 2010.

Chamberlain also conducted a sales comparison approach. He selected the following five sales:

Sale	Subject	1	2	3	4	5
City	W Bloomfield	Northville	Farmington	Novi	Waterford	S Lyon
Date Sold	07/10	12/08	07/10	05/10	12/11	10/12
Sale Price		\$1,525,000	\$650,000	\$550,000	\$416,900	\$425,000
Sq Footage	4,387	6,166	3,607	3,062	4,800	6,000
Condition	Good	Good	Good	Good	Vacant	Vacant
Age	1995	1988	1991	1988	1997	2007
Location	Commercial	Downtown	Downtown	Commercial	Commercial	Rural Comm
Adj SP		\$1,283,550	\$689,000	\$671,250	\$517,151	\$522,850
SP/SF		\$208	\$191	\$219	\$108	\$87
Use	Bank	Offices	Bank	Offices	Credit Union	Dentist

After adjustments for differences in size (\$50 per square foot), condition (20%), and age (10%), Chamberlain concluded to \$210 per square foot, rounded to \$920,000, as of December 31, 2010.

Chamberlain, for all three approaches to value considered the county-wide commercial values, per Oakland County Equalization, was a 9.3% decrease and a 10.34% decrease per West Bloomfield. His 2012 conclusion for all three approaches to value was a decrease in value of 10.00% for the 2012 tax year.

In the final analysis, because there are sufficient sales and income data available to rely upon, the cost approach was not considered appropriate.

Chamberlain concluded to a value of \$850,000 as of December 31, 2010, and a 10% reduction in value to equal \$770,000 as of December 31, 2011.

Respondent's Arguments

Respondent believes that the assessment is proper and reflective of the market value of the subject property.

Respondent's admitted exhibits are:

R-1 Valuation disclosure of subject property (undated).

J. Ryan Runnels, Michigan Certified Assessing Officer (3), has been an appraiser for West Bloomfield Township since 2007. He was the person responsible for the valuation disclosure. Runnels testified that some of the sales and leases utilized by Chamberlain are not legal uses for the subject property, due to the zoning. The subject property is in a restricted zoning area. The O-2 Office Building District accommodates a lower intensity of office use to serve as a transitional zone to abutting single-family districts. Principal uses include professional and medical offices, publically-owned buildings, transformer stations (no storage yards), special uses including; funeral homes, private clubs, places of worship, banks, veterinary clinics,

and senior-assisted living. Runnels states that retail and restaurants are prohibited uses for the subject property.

The subject property is located in a financially-affluent community. All three approaches to value were considered by Respondent; however, the cost and sales approaches carried the most weight. Runnels explained that it is difficult to find credible income information for banks in the sub-market.

Generally, they are not income producing, but owner-occupied.

The cost approach used the State Tax Commission's Cost Manual with the assistance of BS&A computerized software. Land sales were used to estimate the \$6.60 per square foot rate. The building was classified as an average construction, good quality, bank-branch building. The effective age as of December 31, 2010, was seven years. The depreciated value of the building was \$977,461. The land and building were on separate parcel identification numbers because the land is leased. The bank only owns the building.

The general economy was discussed in the sales comparison approach.

Of note is the following:

Runnels testified that Sales 3 and 4 were foreclosures which are reflected in the lower sale price per square foot. Sale 3 was a vacant bank which was being worked on due to some deferred maintenance. Sale 4 was demolished shortly after it was purchased. Respondent's value, per the sales comparison approach, is \$1,381,905 (\$315 per square foot) for both tax years at issue.

Sales 1, 2, and 5 were leased at the time of the sale. Runnels testified that no adjustments were made for the leased fee interest. He did not have access to rental information.

Respondent stated in its report, "Due [to] the inability to identify sufficient and credible information related to leased properties similar to the subject property, we were unable to develop a credible income approach to value."

R-1, p 29.

Respondent requested that the Tribunal adopt its values as assessed. The sales were not reliable, and the income was limited and not performed.

Tribunal's Findings of Fact

1. The subject property involves a commercial branch-bank property.
2. The subject property is owned by two separate entities, one for the building and one for the land.
3. The parcel identification number is X-18-30-326-012 for the 1.19 acres of leased land.
4. The parcel identification number X-18-30-603-001 is the building on leased land.
5. The Tribunal finds that the subject property is a 4,387 square feet bank-branch building on a slab. It contains an ATM and drive thru teller with a canopy.
6. Both parties described the building as beautiful.
7. The parties both agreed that the subject property is in good condition.
8. Chamberlain, Petitioner's expert testified to some functional obsolescence, due to the placement of an exit.
9. The highest and best use of the subject property, as improved, is the current use.
10. Petitioner presented an appraisal with all three approaches to value.
11. Respondent presented a valuation disclosure also utilizing the sales comparison approach as well as the mass-assessment cost approach.
12. Respondent does not have the burden of proof, but the burden of defending the assessment and assuring that it does not exceed 50% of market value.

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 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 *CAF Investment Co v State Tax Comm*, 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. See *Alhi Dev v Orion Twp*, 110 Mich App 764, 767; 314 NW 2d 479 (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; 287 NW2d 603 (1979).

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 50percent; 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.

The Michigan Supreme Court, in *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 484; 473 NW2d 636 (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 proof in establishing the true cash value of the property.” MCL 205.737(3). “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, 354-355; 483 NW2d 416 (1992).

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. See *Meadowlanes*, *supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966);

Antisdale, supra 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, supra* at 277. Petitioner utilized a sales comparison approach. Respondent also used the sales comparison approach to value the 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. See *Pinelake Housing Co-op v Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp, Inc 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. See *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (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. See *Meadowlanes, supra* at 485-486; *Wolverine Tower Assoc v Ann Arbor*, 96 Mich App 780; 293 NW2d 669

(1980); *Tatham v Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982).

CONCLUSIONS OF LAW

The Tribunal, having considered the testimony and evidence and applying sound appraisal theory and techniques finds that the appraisal submitted by Petitioner has theoretical flaws.

Chamberlain had access to the prior FDIC appraisals of the subject property. He did not contact the land owner to determine what the land lease was; he stated that the improvements and leasehold position were acquired for nothing. But the prior appraisal concluded that the fee simple value was equivalent to land value. It appears from reading the report that Chamberlain adopted the same position. However, Chamberlain states that the subject property is in good condition. P-1, p 14.

Chamberlain's income approach included comparable properties that are not permitted in the zoning. The first five rentals are retail or restaurants which are inappropriate for the subject property's zoning, and therefore, cannot be legally supported. Chamberlain's validation is from The CoStar

Retail Report which does not serve to validate the rents, but indicates that he doesn't know that the subject's zoning does not allow retail.

Chamberlain's statement that his "experience" is the basis for an overall rate makes this Tribunal cringe. He then selects overall capitalization rates for retail and shopping centers. The income approach as applied by Chamberlain is given no weight or credibility.

Respondent did not find sufficient comparable leases and did not include an income approach.

Both parties utilized a sales comparison approach. They had one sale in common, 21211 Haggerty, Novi. This sale was of another foreclosed bank branch that the FDIC sold. After adjustments for differences in amenities, the result was \$215 and \$219 per square foot. The remainder of Respondent's sales were leased properties and a foreclosure sale.

Respondent's conclusion was \$315 per square foot or \$1,381,905.

Chamberlain made a mathematical error for his Sale 4. The square footage for Sale 5 was doubled. The result with corrections is a range of sales from \$108 to \$219 per square foot. Petitioner's adjusted sales rank as follows: \$108, \$191, \$208, \$212, and \$219 per square foot. Petitioner

selected \$210 per square foot for a value conclusion of \$920,000 via the sales approach.

Chamberlain did not separately prepare a valuation for the 2012 tax year. In all three approaches, he applied a percentage decrease based on Oakland County Equalization's percentage decrease, combined with Respondent's commercial values decrease. This Tribunal finds that this is unacceptable for a Certified General Appraiser to purposefully not calculate a subsequent year's value. It is absurd and unprofessional. Chamberlain did not prepare a USPAP-compliant appraisal, or invoke USPAP Standards. He clearly does not understand that the factor, as calculated by the equalization department and township, is not simply a percentage decrease in the market value of the commercial properties. It is based upon a sales study for a specific period of time and the assessment of the sale property at the time of the sale. This is to determine the level of assessment for the mass application. It is utilized for a class of property to determine whether assessments are increased or decreased. It is not based upon a paired-sales analysis that indicates the market value increases or decreases for a specific property. It appears to this Tribunal that Chamberlain's shortcut to values for 2012 was pure indolence. The

calculations for the 2012 tax year were missing from Chamberlain's report. He did nothing but misapply a countywide rate to the subject property. Chamberlain's report is given minimal weight and credibility.

The Tribunal finds that the cost new less depreciation is the appropriate value for the subject property. Neither party provided a sales comparison approach that is without flaws. Petitioner's sales made no adjustment for differences in land size.

The parties' sale in common was 21211 Haggerty. This is a foreclosure of a smaller, older property, located in an intensive-commercial area, and in below-average condition. This specific sale was the highest sale price per square foot from Petitioner but was the lowest of Respondent's sales. This Tribunal is reluctant to utilize one sale of a foreclosed property, which was not in pristine condition, to determine the market value of the subject property, which both parties agreed was in good condition. Therefore, the cost approach is applied individually to the two separate parcels.

Chamberlain's cost approach utilizes Marshall Valuation Services, average construction, good quality, as his basis. After calculating the cost, he estimates 20% for economic obsolescence due to poor economic

conditions. Respondent's sales comparison approach states that between 2008 and 2011, four separate financial institutions built new facilities.

Respondent successfully rebutted Chamberlain's economic obsolescence.

He was not aware that new bank branches were constructed in West Bloomfield Township or that several were renovated. This Tribunal finds that the inclusion of economic obsolescence for the subject property is unfounded.

Chamberlain's functional obsolescence for an entrance that he determined is not desirable for an alternative use is also unfounded. The alternative uses were not discussed in the report. However, the limited zoning was a concern. Chamberlain utilized some rental properties that would not be legally permitted at the subject location. Therefore, the functional obsolescence for an alternative use does not appear to have any foundation or support in the report.

Respondent's cost approach is based on a good quality, average construction bank branch. Physical depreciation of 15% was deducted; no functional or economic obsolescence was applied to the fifteen-year-old building.

The land was calculated separately due to a different owner. The land was placed on the assessment roll at \$6.60 per square foot. However, sales of vacant land, from both Petitioner and Respondent indicate that the land is undervalued on the assessment roll. Petitioner's sales indicate \$17.52 and \$15.00 per square foot. Respondent's sales indicate \$9.44 to \$9.99 per square foot. Respondent's vacant land appears to be the reflective of the land value for the subject property. The indicated value of the underlying land (and improvements) is \$524,400 for 2011 and \$550,000 for 2012. The value of the improvement is \$977,460 for 2011 and \$981,340 for 2012. The Tribunal notes this is lower than Petitioner's replacement cost.

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, 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 the Final Opinion and Judgment within 28 days of the entry of the Final Opinion and Judgment. 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 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, and prior to July 1, 2012, at the rate of 1.09% for calendar year 2012, and (iv) after June 30, 2012, through December 31, 2013, at the rate of 4.25%.

This Opinion and Judgment resolves the last pending claim and closes this case.

MICHIGAN TAX TRIBUNAL

By: Victoria L. Enyart

Entered: July 22, 2013