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EXPERT COUNSEL



REAL SOLUTIONS

Property Tax Appeals & Recent Cases

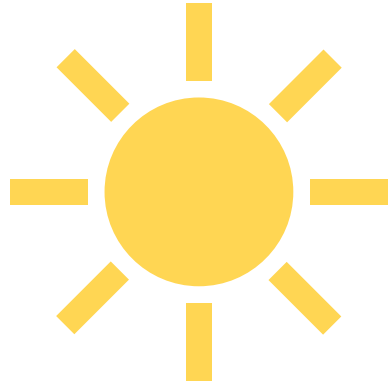
ATTORNEYS ROSS BOWER AND BRITTANY NICHOL

NOVEMBER 9, 2021



Property Taxes

Assessments



Summer Taxes

Bills sent in early July
Payment due in September



Winter Taxes

Bills sent in early December
Payment due in February



Real Property Classifications

- MCL 211.34(c)
 - Commercial
 - Agricultural
 - Residential
 - Developmental
 - Timber/Cutover
 - Industrial

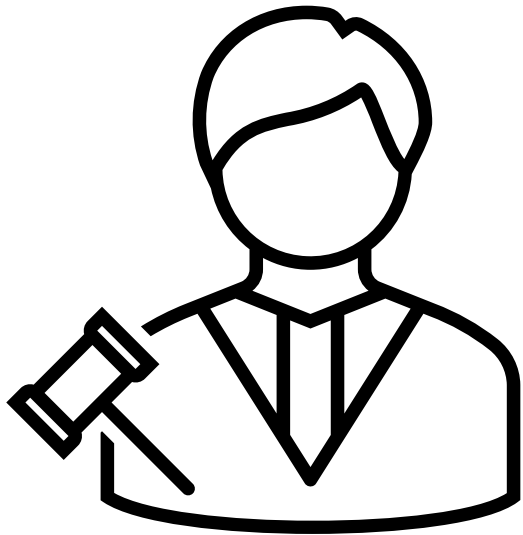




Image: https://www.mlive.com/lansing-news/2012/03/ottawa_state_office_building_e.html

The Michigan Tax Tribunal

Overview of the MTT



- Administrative court with sole jurisdiction over property tax appeals
- Split into 2 divisions – small claims & entire tribunal



Small Claims vs. Entire Tribunal

Small Claims

- Residential, principal residence exemption, poverty & agricultural exemption appeals
- Other disputes < \$100,000 & special assessments < \$20,000
- Informal proceedings – usually by referee

Entire Tribunal

- All other appeals
- Formal proceedings – by ALJ or Tribunal member
- Parties are generally represented by attorneys





Image: <https://www.thearcfamilyinstitute.org/resources/appeals-process-landing-page.html>

Property Tax Appeals

Deadlines for Appeals



COMMERCIAL PROPERTY

MAY 31 – NO BOARD OF REVIEW
REQUIRED



RESIDENTIAL PROPERTY

JULY 31 – MUST GO TO BOARD OF
REVIEW FIRST



SPECIAL ASSESSMENTS

35 DAYS AFTER SPECIAL ASSESSMENT
ROLE IS CONFIRMED





Board of Review - March

- Responsible for reviewing and correcting the current year's assessment role
- Hear taxpayer appeals regarding taxable value
- NO authority to make corrections to a prior year's assessment role

Responsible for correcting “qualified errors”



Boards of
Review – July
& December

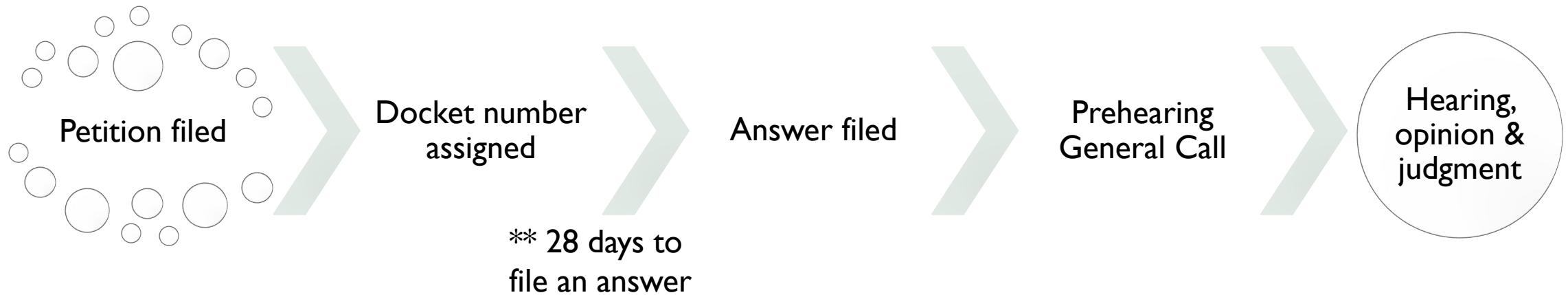
Responsible for considering appeals regarding:

Principal Residence
Exemptions

Qualified
Agricultural
Exemptions

Other specific
exemptions

Appeal Process





COVID-19 Impacts

- Sectors of Market hit differently
 - Residential, Grocery, Small Retail
 - Office space – remote work
- PPP Loans
- Changes in Highest and Best Use
- Future Implications?
- Full impact will be seen within a few years





Case Law Updates

Upper Peninsula Land Conservancy v. Michigamme Twp.

- Date of Decision: June 11, 2020
- Petitioner acquired remote property that the public could access by walking, but if someone wished to drive onto the property, Petitioner needed to open gates to allow access
- Petitioner stated the property's primary purpose was to be a nature conservation area
- Tribunal held Petitioner was not a charitable institution because the property did not benefit the general public
 - No activities offered to the general public
 - Public's access was restricted – must walk or have prior authorization
- Court of Appeals affirmed the Tribunal's decision
 - Acknowledged some restrictions were due to the remoteness of the property, but Petitioner did not remedy this by hosting educational programs or interact with local organizations
 - Court did not agree that Petitioner's primary purpose was charitable just because the property's purpose was conservation



Moorings of Leelanau, LLC v. City of Traverse City

- Date of Decision: July 29, 2021
- MIM LLC owned 42% interest in TML LLC. Two individuals each owned equal portions (29%) of the remaining 58% interest of TML
- TML's purpose was purchasing, developing and selling the subject property
- After a dispute, the two individuals relinquished their ownership in TML
 - MIM then owned 100% of TML
- Tribunal held that conveyance of ownership interest in an LLC of more than 50% is considered a transfer of ownership – therefore permissible for uncapping
- Court of Appeals affirmed



Vukich v. City of St. Clair Shores

- Date of Decision: July 29, 2021
- A veteran lived on the subject property from 2005 until his death in 2019 and qualified for the disabled veteran property tax exemption under MCL 211.7b
- Petitioner Vukich became a co-owner of the property with the veteran in 2017
- In 2019, after the veteran's death, the City requested the property be added to the rolls for the remainder of 2019
- The State Tax Commission approved the request but noted the property should have been added in 2017 when Petitioner became co-owner
- Tribunal held the statute only requires the veteran own the subject property, not be the *sole* owner. Tribunal also held that the proration of 2019 was not correct as the property qualified for the exemption for the entirety of the year because the veteran was qualified and living on the 2019 tax day (December 31, 2018)
- Court of Appeals affirmed



Charter Township of Pittsfield v. Washtenaw County Treasurer

- Date of Decision: August 19, 2021
- Pittsfield Charter Township turned delinquent taxes over to the Washtenaw County Treasurer, who foreclosed on the properties, pursuant to the General Property Tax Act
 - The foreclosure sale did not bring in the full amount of delinquent taxes due
 - When this happens, the County may recover the amount of delinquent taxes still owed in a “chargeback” from the Township MCL 211.87b(1)
- The County sent the Township a bill for the remaining amount due, which included administrative fees incurred by the County relating to the specific properties
 - The Township refused to pay the administrative fee amount
 - As a result, when the County issued a settlement check to the Township for its share of the delinquent taxes, it withheld the amount of the unpaid administrative fees
- The Court of Appeals held that any taxes, interest, penalties, and fees for foreclosed properties, ***including administrative fees***, must be reimbursed from foreclosure proceeds and can be charged back to the Township



Petersen Financial, LLC v. City of Kentwood and Kent County Treasurer

- Date of Decision: April 22, 2021
- The City entered into a voluntary special assessment agreement with the property owner. The property owner failed to pay the special assessments and tax foreclosure procedures commenced. Petersen Financial, LLC purchased the subject property through a tax foreclosure sale.
- Petersen argued that the special assessments had been extinguished by the foreclosure judgment.
- The Court of Appeals held that the voluntary special assessment agreement was a contract that did not survive the foreclosure.
 - It was not a special assessment levied in accordance with the statutes, municipal charter, or ordinances that govern special assessments in the City.
- The Court held that the City did create a valid special assessment through Resolution; however, all installments of the special assessment were due and payable prior to the foreclosure. The special assessment was extinguished at foreclosure, and the City lacked the legal authority to pass a later resolution to modify the special assessment's terms.
- Further, the City was not able to “revive” an extinguished special assessment.



City of Lansing v. Angavine Holding, LLC

- Date of Decision: October 14, 2021
- In 2013, Angavine renovated the subject property by replacing first floor office space with 8 apartments. The City did not reassess the property's first floor for the general property tax assessment roll until 2019. The City attempted to increase Angavine's tax liability for tax years 2016-2018.
- The City initiated proceedings before the State Tax Commission to correct the assessment roll.
- The State Tax Commission dismissed 2016 for lack of jurisdiction; and for 2017-2018, held that the remodeled first floor did not qualify as omitted property.
- The Court of Appeals held:
 - 1) The State Tax Commission's decision to maintain the "status quo" was a final agency decision acting in a quasi-judicial capacity. The Circuit Court did have jurisdiction to hear the City's appeal.
 - 2) Affirmed the Trial Court decision that the first-floor apartments qualified as omitted property.



West St. Joseph Property LLC v. Delta Township

- Date of Decision: August 26, 2021
- The subject property was the subject of an “Agreement” between Petitioner and the State of Michigan
 - The State of Michigan was leasing the subject property from Petitioner for nearly \$11 million dollars over 20 years
 - The State then had the option to purchase the property at the end of the lease for \$1
- The issue was whether the subject property was exempt under the General Property Tax Act
 - Petitioner argued the lease constituted a transfer of ownership and that the State alone occupied and owned the subject property and was therefore subject to a tax exemption under MCL 211.7I
- The decision of the Tribunal turned on the term “belonging to” & concluded that the property did not belong to the State
- The Court of Appeals Affirmed holding that the lease did not constitute a transfer of ownership. The Court also agreed with the Tribunal’s interpretation of “belonging to” and affirmed that “belonging to” was intended to indicate that property was owned by the State



Menard, Inc. v. City of Escanaba

- Appeal filed in 2014
- Trial took place in Tax Tribunal, and the Michigan Tax Tribunal found Menards' valuation persuasive and valued the property near the \$3.3 million TCV figure
 - Escanaba valued the property at around \$8 million TCV
- The Court of Appeals reversed and remanded. The MTT should have considered the “cost less depreciation” approach and additional evidence regarding the effect of deed restrictions
- MTT found the correct TCV was \$5 million
 - Escanaba appealed
- And it's not done yet...
 - June 15, 2021 – *Amicus Curiae* Brief was filed by the Michigan Municipal League
 - June 30, 2021 – Petitioner Menard filed Motion to strike *Amicus Curiae* Brief, or in alternative leave to file a response brief and filed a response brief
 - July 21, 2021 – Court of Appeals denied motion to strike. Granted motion for leave to file a response brief to the extent the response brief submitted is accepted for filing



Questions



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