

STATE OF MINNESOTA  
COUNTY OF DAKOTA

TAX COURT  
FIRST JUDICIAL DISTRICT  
REGULAR DIVISION

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Signal Hills Company and  
Signal Hills Foods, Inc.

Petitioners,

vs.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER FOR JUDGMENT**

File No. C3-91-7321

County of Dakota,

Respondent.

Dated: July 13, 1992

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The above entitled matter was heard by the Honorable Earl B. Gustafson, Judge of the Minnesota Tax Court, on June 19, 1992, at the Dakota County Government Center, Hastings, Minnesota.

Phillip R. Krass, Attorney at Law, appeared on behalf of Petitioners.

Michael R. Ring, Assistant Dakota County Attorney, appeared on behalf of the Respondent.

The issue in this case is the market value of land improved with a Hardee's fast food restaurant located in the Signal Hills Shopping Center in West St. Paul.

The Court, having heard and considered the evidence adduced at the hearing, and upon all of the files, records and proceedings herein, now makes the following:

**FINDINGS OF FACT**

1. Petitioners have sufficient interest in the property to maintain this petition; all statutory and jurisdictional requirements have been complied with, and the Court has

jurisdiction over the subject matter of the action and the parties hereto.

2. The subject property consists of an 11,000 square foot parcel of land located in the Signal Hills Shopping Center in West St. Paul, Dakota County, State of Minnesota; P.I.D. No. 42 01700 020 55. It is improved with a 4,213 square foot Hardee's fast food restaurant.

3. Petitioners contest the assessor's estimated market value (EMV) of \$418,600 as of January 2, 1990 for taxes payable in 1991.

4. The Court finds the fair market value of the subject property to be approximately \$418,600 as of January 2, 1990.

#### CONCLUSIONS OF LAW

1. The assessor's estimated market value for the subject property of \$418,600 as of January 2, 1990 is hereby affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS  
HEREBY ORDERED.

BY THE COURT,

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Earl B. Gustafson, Judge  
MINNESOTA TAX COURT

DATED: July 13, 1992

#### MEMORANDUM

Petitioners are fee owners of an 11,000 square foot parcel of land (100 x 110) located at 1193 South Robert Street in Signal Hills Shopping Center. The parcel is improved with a Hardee's fast food restaurant built in 1985.

The issue is the fair market value of the subject property on the January 2, 1990

assessment date. The Dakota County Assessor valued the property at \$418,600. Petitioners object to this value as excessive.

We are confronted with the problem of determining the market value of real property, namely land and building. Sales of fast food restaurants usually include not only land and building, but additional value attributable to business enterprise or "good will". This complicates the valuation task because non real estate elements must be excluded when comparisons are made with sales of similar franchised fast food restaurants. Fortunately in this case we have a sale of similar property, a Wendy's restaurant on Robert Street, that stood vacant for several years and when it sold it was a non-franchise sale that included no "good will". This sale will be discussed later when we consider the market approach to value.

Petitioners make one basic point: they see the building as being overvalued because it would not cost more than \$238,000 to \$293,000 to replace it with a new Hardee's building and the assessor has valued the building at \$364,100. (There is no significant dispute between the parties about the value of the land which they agree is approximately \$5.00 per square foot). The total assessor's estimated market value (EMV) as we have said is \$418,000.

Two witnesses were called by Petitioners. First, Mr. Joseph Barley, a building contractor specializing in constructing and remodeling Hardee's restaurants, testified as to the cost of replacing the present building with a newly designed building now required by the Hardee's franchise. He made no estimate of the cost of replacing the present building. A new building with the new "image" would have 3,800 square feet. The

present building is larger and contains 4,213 square feet. Mr. Barley testified that if the property were sold for continued use as a Hardee's restaurant, the building would have to be remodeled or replaced to fit the new design or "image" before Hardee's would approve the transfer of the franchise.

The second witness for Petitioners was Mr. John M. Diamond, a real estate broker who deals almost exclusively with the sale and purchase of Hardee's franchised restaurants. He confirmed what Mr. Barley said about Hardee's design requirements and also testified that 40,000 square feet of land or more was needed for parking and drive-through space for each Hardee's restaurant. The parcel under review has 11,000 square feet, but additional adjoining space is leased to the franchisee. This additional land is not part of this proceeding, having been dismissed at the commencement of trial because the parties had no dispute over its market value. We therefore must take into account the fact that we are valuing a parcel that has an inadequate land to building ratio, but that additional leased land would be available to any hypothetical buyer/franchisee.

The assessor's estimated market value (EMV) of \$418,600 is prima facie valid. Minn. Stat. § 271.06, subd. 6. The burden is on the Petitioners to prove the contrary by a fair preponderance of evidence as in any civil case. Schleiff v. County of Freeborn, 231 Minn. 389, 43 N.W.2d 265 (1950).

Petitioners did not call any appraisal witness, nor did anyone with an ownership interest testify and offer an opinion as to the market value of the real estate as a whole. No evidence of the sale of a Hardee's restaurant as a going business was offered.

One witness was called by Respondent. He was Mr. Thomas Krier, Senior Appraiser for Dakota County, who has primary responsibility for appraising commercial property. Mr. Krier prepared a full appraisal of the subject property using the three traditional approaches to value: cost, income and market. He put greatest reliance on the market approach and concluded that, in his opinion, the fair market value of the property on the 1990 assessment date was \$484,500, some \$66,000 more than the assessor's EMV.

We think all three approaches to value should be considered in this case. The property presents a unique valuation problem and each approach contributes a different but complimentary answer. The cost approach estimates the replacement cost new and, depending upon the amount of depreciation allowed, probably sets the upper limit of value.

Mr. Krier used the Marshall-Swift Cost Calculator system to estimate building and site improvement costs. He valued the land at \$5.00 per square foot or \$55,000 for the 11,000 square feet. He calculated the replacement cost new for the building and other improvements to the land to be \$427,445 and then he depreciated this figure by 6% for physical depreciation. Recognizing that there may be some obsolescence due to the current design of the building, we would add an additional 5% to this depreciation figure. This calculation would result in an indicated value of \$435,426 using the cost approach, rather than the \$456,800 figure used by Mr. Krier.

Using the income approach, Mr. Krier estimated market rents because he was not furnished operating statements by Petitioners. He capitalized net operating income

at 10.5% and arrived at an indicated value of \$428,400. We would raise this capitalization rate to 12% which would lower the indicated value to \$414,622. We give this approach less weight than we ordinarily would because all income and expense figures had to be estimated without any reference to actual experience.

When we turn to the market approach we are fortunate to have for comparison two recent sales of the same fast food type of restaurant in the immediate Robert Street neighborhood.

A Wendy's restaurant property located at 1685 South Robert Street sold for \$362,500 in June 1989 and again in November 1990 for \$370,000. The assessment date in question is January 1990, somewhere between the two sale dates. We will arbitrarily use \$365,000 as the sale price for our analysis. One salient factor to be considered is the land size. The subject has an inadequate 11,000 square feet of land and Wendy's has 31,965 square feet, or three times as much land, and presumably an adequate amount for a fast food restaurant operation.

In attempting to make a comparison between these two properties to determine a market value for the subject property we will use the price paid per square foot of building area as the unit of comparison. A straight comparison of price per square foot of building which includes the land in the sale would be distorted because of the difference in land sizes. First, to find the price paid for the Wendy's building alone, we will subtract the value of the land from the total sale price. The remainder will be the price paid for the building and improvements. Because the land has a consensus value of \$5.00 per square foot, the land value is \$159,825 ( $31,965 \times \$5.00$ ), rounded to

\$160,000. When this land value is subtracted from a sale price of \$365,000 the price attributable to the building and improvements is \$205,000, or a price of \$83.84 per square foot of building area.

If we now multiply \$83.84 by the gross building area of the subject Hardee's building (4,213 square feet), the building value is \$353,218. When this is added to the land value of \$55,000, the indicated value of the subject property is \$408,218.

Giving consideration to all three approaches to value and to all of the evidence adduced, we conclude that the Petitioners have failed to prove that the assessor's EMV of \$418,000 is excessive.

E.B.G.