

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Elmcrest Partners, LLC,
Petitioner,

v

MTT Docket No. 327926

Charter Township of Ypsilanti,
Respondent.

Tribunal Judge Presiding
Stuart Trager

OPINION AND JUDGMENT

INTRODUCTION

This real property tax valuation case came before the Michigan Tax Tribunal for hearing on April 16 and 17, 2009 in Lansing, Michigan. Petitioner was represented by David E. Nykanen, Attorney at Law. Angela B. King, Attorney at Law, represented Respondent, Ypsilanti Township.

At issue is the true cash value of the subject property, known as Elmcrest Mobile Home Community (Elmcrest), a mobile home park in Ypsilanti Township. The tax years at issue are 2006, 2007, and 2008. The property is classified for taxation purposes as MHP- Mobile Home Park. The average level of assessment for each tax year in question is 50%.

Each party offered testimony and documentary evidence. Petitioner's exhibits P-1 through P-6, P-9 through P-11, P-14 and P-15 were admitted into evidence. Respondent's valuation disclosures, Exhibit R-1, and Exhibit R-2 and Exhibits R-3 through R-9, and Exhibits R-11 through R-18 were admitted into evidence.

PROCEDURAL HISTORY

The 2006 property tax assessments were based on Respondent's estimate of the true cash value (TCV) of the subject property as of December 31, 2005. Petitioner appeared before the March 2006 Board of Review for the Ypsilanti Township to protest the true cash value (TCV), state equalized value (SEV), and taxable value (TV) of the subject property. The Board of Review denied the relief requested and affirmed the tax assessments. On June 28, 2006, Petitioner filed a petition with the Tribunal alleging that Respondent erred in its assessment of TCV, SEV, and TV for the 2006 tax year. Respondent filed a timely answer. The Tribunal granted Petitioner's motions to amend to add the subsequent tax years 2007 and 2008.

PARTIES' CONTENTIONS OF ASSESSED AND TRUE CASH VALUES

Petitioner contends that the property is assessed in excess of 50% of its true cash value.

Respondent contends that the property is assessed at 50% of its true cash value.

Petitioner's Contentions of TCV, SEV and TV for the tax years at issue are as follows:

Parcel Number: K-11-01-100-015

Year	TCV	SEV	TV
2006	\$1,023,000	\$511,500	\$511,500
2007	\$1,023,000	\$511,500	\$511,500
2008	\$ 835,000	\$417,500	\$417,500

Respondent's Contentions of TCV, SEV and TV for the tax years at issue are as follows:

Parcel Number: K-11-01-100-015

Year	TCV	SEV	TV
2006	\$1,583,600	\$791,800	\$791,800
2007	\$1,583,600	\$791,800	\$791,800
2008	\$1,498,200	\$749,100	\$749,100

TRIBUNAL'S CONCLUSIONS OF ASSESSED AND TRUE CASH VALUE

The Tribunal concludes that the true cash value and revised assessments of the subject property are as follows:

Parcel Number: K-11-01-100-015

Year	TCV	SEV	TV
2006	\$1,200,000	\$600,000	\$600,000
2007	\$1,200,000	\$600,000	\$600,000
2008	\$1,250,000	\$625,000	\$613,800

PETITIONER'S EVIDENCE, APPRAISAL AND EXPERT TESTIMONY

Darrel Swain

Petitioner's first witness was Darrel Swain, general manager of Denmark Management.

Denmark Management owns and manages Elmcrest, as well as 46 other mobile home park properties.

Mr. Swain testified:

* That modern mobile home parks have a density of five to seven sites per acre, along with pools, playgrounds, and clubhouses. There is a range in the quality of mobile home parks from high end to low end. A high-end park will have amenities such as pools, playgrounds, and clubhouses.

*Elmcrest has 15 sites per acre, and no amenities. Many Elmcrest tenants will leave without taking the mobile home with them because they are outdated. Rehabilitation of the abandoned homes is often not cost beneficial. Modern mobile homes are no longer being manufactured with the same size as 30 to 40 years ago. The more recently manufactured homes will not fit on the single wide sites at Elmcrest. Today, one can purchase manufactured homes that are 80 feet in length, down to 60 feet in length. Elmcrest sites have 40 foot depth. Elmcrest

would need to combine three sites to make one currently marketable site, and would lose 22 sites in the process.

*Because Elmcrest is a low-end park, the combination of sites will not necessarily generate substantially more income. The standard rent at Elmcrest, as of December 31, 2007, was \$290 per month, and this was about the same for 2006 and 2007.

On December 31, 2005, 89 sites at Elmcrest were revenue producing. As of December 31, 2006, 82 sites were revenue producing. On December 31, 2007, 65 sites were revenue producing, and on March 31, 2009, 58 sites were revenue producing.

Mr. Swain also testified that two of Respondent's comparables, Timberland on Michigan Avenue and Rawsonville Woods on Rawsonville Road, both owned by Denmark, are not comparable to the subject property. These parks have pools, playgrounds, and larger sites.

Mr. Swain attributes the decline in Elmcrest rentals to the functional obsolescence of the park, particularly because of the smaller sites. Elmcrest will receive \$400 to \$500 per month for a site that has a home on it. Denmark will sell houses to residents. Mr. Swain indicated there is a municipal recreation center, public park, and golf course near Elmcrest.

The process for licensing a mobile home park begins with the owner/developer creating a site plan. The plan is reviewed by the state of Michigan. Also the state will review the actual construction. The plan that was submitted for Elmcrest contained 112 sites.

Margaret McMichael

Petitioner's expert appraiser Margaret McMichael, a state certified General Real Estate Appraiser, testified regarding her appraisal report, which concluded the subject property's TCV as of December 31, 2005 and December 31, 2006 at \$1,020,000. For December 31, 2007, she concluded a TCV of \$835,000. She testified that her calculation of TCV was based on the requirements of the general property tax act. She believed that the highest and best use was as improved, as a mobile home park, even though Elmcrest was undergoing a state of decline. Ms. McMichael considered the cost less depreciation approach as not being meaningful, because the largest component of value was the land itself. She gave the greatest weight to the market approach.

She testified that there were a limited number of sales for properties similar to the subject property. She did determine that there were three comparables, in addition to the subject.

The subject property, comprising 7 ½ acres, with 15 sites per acre, was purchased July 15, 2005 for \$1,300,000, yielding a value of \$11,607 per home site.

Comparable #1 is Village Estates, also in Ypsilanti Township, comprising 6.44 acres, with 12 units per acre, is of similar age and has the same lack of amenities as the subject property, was purchased December 9, 2005 for \$732,644, yielding a value of \$9,769 per home site.

Comparable #2, Riverview Mobile Home Park, is in the city of Inkster, comprising 5.11 acres, which was purchased February 15, 2005 for \$625,000, yielding a per site value of \$8,929, with the same lack of amenities as the subject property.

Comparable #3 is Ypsilanti Mobile Village, in Ypsilanti Township, purchased September 13, 2004 for \$795,000, comprising 6.93 acres, with a density of 10 units per acre, yielding a per home site value of \$12,230, with the same lack of amenities as the subject property.

She testified that she made qualitative and quantitative adjustments in the comparables. She made many negative adjustments with all three comparables, because of a declining market. She believes that the three comparables had superior density allocations than the subject property.

Ms. McMichael concluded for tax years 2006 and 2007 a value of \$11,500 per pad site.

Assuming 89 productive sites she concluded a market value of \$1,023,500 for tax years 2006 and 2007.

Ms. McMichael's 2008 market sales study used the same comparables as the 2006/2007 studies and adjusted the per pad value downwards by \$1000 from \$11,500 per site to \$10,500 per site.

Ms. McMichael testified the adjustment was based on market trends and the subject property being vulnerable to the market trends. Further, she reduced the number of productive sites to 80. Thus multiplying 80 times \$10,500 she concluded a market sales value of \$840,000 for tax year 2008.

Ms. McMichael testified that her 2006/2007 income approach was based on a blend of actual and market derived expenses. She assumed 89 sites times \$290 monthly rent; less 10% vacancy and credit loss, yielding a gross income of \$278,748. This was close but more optimistic than the actual income, as of December 31, 2006, of \$247,145. She noted that the vacancy rates were higher in subsequent years. She excluded taxes and operating expenses from the capitalization

rate. She used a 12% capitalization rate for all three years, believing that this rate reflected the higher risk involved in this type of investment.

Ms. McMichael testified that her income approach analysis for tax years 2006/2007 concluded a value of \$1,003,633 and for tax year 2008, her income analysis concluded a value of \$822,333.

In cross examination, Respondent's counsel suggested that the city of Inkster was not a valid comparable to Ypsilanti Township, because it was losing population while Ypsilanti Township has been gaining population. Ms. McMichael did not make any value adjustments for school districts. Further, she did not make any adjustments for the proximity of municipal facilities, including parks and a nearby golf course, because all of her comparables have similar amenities nearby.

Ms. McMichael noted that the number of productive sites was based on the capacity reached as of December 31, 2005, which was 89 sites. She noted that the number of actually occupied sites for December 31, 2007, was 65 but she used 80 sites in her calculations in order to be conservative. Ms. McMichael concluded for tax years 2006 and 2007, pursuant to the market value approach \$1,023,500, and for tax year 2008 a value of \$840,000. Reconciling the market and income approaches, she determined a value for tax years 2006 and 2007 of \$1,020,000 and for 2008 a reconciled value of \$835,000. She acknowledged that, given a \$1.3 million purchase price and utilizing 89 sites, the per pad value for the subject property would be \$14,607.

RESPONDENT'S EVIDENCE, APPRAISAL, AND EXPERT TESTIMONY

Sharon L.Frischman

Respondent's sole witness was Sharon L.Frischman, assessing director, Ypsilanti Township.

She is a Certified Level IV Appraiser and a Certified General Appraiser.

Ms. Frischman testified that Elmcrest was licensed for 112 sites from 2006 through 2009.

Township records indicate there were 111 single wide spaces, and one double wide space.

SEMCOG data and documents were introduced to show that Petitioner's Inkster comparable is not applicable because Inkster is not a growing community and Ypsilanti Township is a growing community.

The subject property was purchased for \$1.3 million in July 2005, as indicated in the property transfer affidavit, as part of a bulk transfer. Ms. Frischman requested a copy of the purchase documents and appraisal, but they were not provided; however, the closing statement for the purchase of Elmcrest showed that a \$4,000 fee was paid for the appraisal.

Ms. Frischman did not include a 60-year-old wood frame structure on the property because she did not believe that it added to the value of the property.

The site is 240 feet wide, which Ms. Frischman admits would make this site difficult to develop for other developments. It is zoned single-family residential. A road runs down the center of the property, which would make it difficult for a residential development.

Ms. Frischman believes the cost approach is not applicable because the improvements, water and sewer lines, and pavement are durable and have a long life span. She believes the income approach is the most applicable, because an investor would look at the income stream in determining market value and would not utilize the cost approach. She stated that income approach is used in assessing all mobile home parks in Ypsilanti Township.

Ms. Frischman's testimony then focused on the market sales approach for 2006/2007.

Respondent Comparable #1 was Ypsilanti Mobile Village, located on E. Michigan Ave in Ypsilanti Township (this comparable was also used by Petitioner). This property was sold September 13, 2004 and the purchase price was \$795,000. The park has 65 single wide pads, and is of the same layout; and vintage as the subject property. Ypsilanti Mobile Village does not have a pool or other recreational facilities. Also there are no amenities nearby. The pad rents were \$305 per month. The vacancy rate and bad debt rate was a total of 20%. She believes that this facility has had a high level of criminal activity, and that the state of Michigan has found it substantially noncompliant with mobile home park regulations. She believes she should have given this comparable an upward adjustment. Her adjusted per pad sale price for 2006-2008 is \$12,720.

Respondent Comparable #2 is Lakeview Mobile Home Park, developed in 1972, located on Textile Road in Ypsilanti Township. The park was sold on July 30, 2004, for \$11,564,000. The park has 392 pads, a clubhouse and a pool. The pad rents as of August 2007 range from \$360 to \$380 per month. Ms. Frischman believes this comparable is located in a superior school district. She made a downward adjustment, because the site has on-site amenities, and because she has a high opinion of the school district. The adjusted per pad sale price for 2006-2008 is \$17,700.

However, she believes that this comparable is not reliable because too many adjustments are required.

Respondent Comparable #3 is The Timberlands located on E. Michigan Ave in Ypsilanti Township, which sold March 17, 2006 for \$3,695,000. The park has 177 single wide pads, and eight double wide pads for a total of 185 pads. The park was developed in the late 60s and is experiencing about 20% vacancy at the time of sale. Pad rents at the time of sale were \$369 per month. She believes there are no amenities in the park or public recreational facilities nearby. The adjusted per pad sale price for 2006-2007 is \$17,809 and \$17,776 for 2008.

Respondent comparable #4 is Village Estates, located on Holmes Road in Ypsilanti Township, developed in the early 60s (this comparable was also used by Petitioner). This park sold December 2005 for a reported \$978,628. The park has 75 sites with a monthly rental of \$295 at the time of sale, and it was experiencing about 20% in vacancies. Ms. Frischman believes there are no public recreational facilities nearby. This comparable is not used in Respondent's 2008 tax year appraisal because of perceived faulty information. The adjusted per pad sale price for 2006-2007 is \$13,700.

Respondent comparable #5, Rawsonville Woods, was added to Respondent's 2008 tax year appraisal apparently to replace comparable #4. The park was sold March 29, 2007, for \$19,400,000. The park is located on Rawsonville Road in Sumpter Township. Ms. Frischman believes the park was developed during the 1980s or 1990s. There are 535 sites that run \$413 per month. The park has a pool and a clubhouse. The adjusted per pad sale price for 2008 is \$27,197.

Ms. Frischman concluded a per pad value for tax years 2006-2008, all the tax years at issue, of \$13,500, and based on 112 sites, a market value of \$1,512,000 for tax years 2006-2008.

Ms. Frischman noted that the subject property's 112 sites, less the average 20% vacancy bad debt rate, would yield 89 sites, which was Ms. McMichael's beginning number of sites for her sales price analysis. Also the December 31, 2007 rent roll indicated 107 sites, which she believes was because of the combination of sites.

Ms. Frischman's testimony then turned to the income analysis approach. She noted that contract rent does not necessarily equal market rent. She did not have the rent rolls for the first two years from the current owners of the subject property. It is her practice to make calls to site managers to determine actual rents. She determined the market rent as of December 31, 2005 to be \$305 and \$310 as of December 31, 2006. She then multiplied these monthly rental rates times the 112 sites to determine a gross potential rent for the years in question. She used a vacancy in bad debt factor of 20% for all tax years and applied to the gross potential income.

Ms. Frischman used comparables to establish market rents as follows:

Respondent income comparable #1 is Village Estates Mobile Park, which does not have any amenities and currently rents for \$305 and rents were \$295 in 2005.

Respondent income comparable #2 is Willow Run Timberlands, which also does not have amenities, has been renting since December 2005 for \$369.

Respondent income comparable #3 is Rawsonville Woods on Rawsonville Road. This site has a pool and a clubhouse and is substantially newer than the subject property. Current rents are \$413-\$433 per month.

Respondent income comparable #4 is Wagon Wheels South and E. Michigan Ave. There is no pool, but there is a clubhouse and private park. The rents, which have not changed in recent years, are \$390 per month.

Respondent income comparable #5 is Lakeview Mobile Home Park on Textile Road. Ms. Frischman indicated that the park has a clubhouse and a pool, and is approximately 30 years old. Current rents are \$360-\$380 per month.

Based on the assumption the expenses of running a mobile home park would be low, because tenants are responsible for their own utilities including electricity and water, and the infrastructure is essentially durable, Ms. Frischman considered a 40% expense rate would be generous to Petitioner. In addition, she calculated another 5% for reserves. She testified that with the non-existence of amenities there would not be pool and clubhouse maintenance costs. Ms. Frischman calculated a net operating income based on the computation of total income less expense as of December 31, 2005 at \$194,794, and as of December 31, 2006 at \$215,986. Subsequently, she calculated net operating income as of December 31, 2007 at \$199,643. Ms. Frischman was able to calculate the capitalization rate directly from the market based on two sales, which indicated capitalization rates of 11.06% and 9.6% (although on cross examination she could not remember the location of either sale). Averaging the two sales she determined a capitalization rate of 10.33%. Then based on the property taxes, she determined an effective tax rate for 2006 and 2007 at 3.02% and arrived at a total capitalization rate are both years at 13.35%. By dividing the net operating income by the derived capitalization rate, she calculated a value as of December 31, 2005 of \$1,459,131 and as of December 31, 2006 a value of \$1,617,873.

In addition to the two sales used for the 2006/2007 capitalization rate, for 2008 Ms. Frischman believed that a band of investment rate could be calculated by using the prevailing interest rate, percentage of value mortgaged, rate of return and percentage of equity. The prevailing interest rate as of December 2007 as reported by the State Tax Commission was 6.10%. That is based on the assumption that a buyer would mortgage 75% of the purchase price to be amortized over 30 years, and assuming a rate of return of 10%, would yield a capitalization rate of 7.93%.

Factoring in an effective tax rate of 3.01% would yield a total capitalization rate of 10.93%.

However, given that the subject property is an older park and does not comply with current zoning, Ms. Frischman assumed that an owner would consider this purchase more risky and require a higher rate of return. Therefore, she assumed a blended rate of 12.5%. Dividing the 2008 net operating income of \$199,643 by 12.5%, yields a value of \$1,597,100.

Respondent determined the 2006 and 2007 sales comparison approach values were the same for both years, \$1,512,000. Factoring in the values reached in the income approach, she concluded for 2006 a value of \$1.5 million and for 2007 a value of \$1,550,000.

For 2008, Respondent's income approach indicated a value of \$1,597,100 utilizing direct capitalization and \$1,624,900 using gross rent multipliers. She asserted that the gross rent multipliers were consistent for the properties most comparable to the subject. And she concluded a market value of \$1,550,000 as of December 31, 2007.

On cross examination, Ms. Frischman acknowledged that she did not personally inspect Ypsilanti Mobile Village for the purpose of preparing the appraisal, nor did she inspect Lakeview Mobile Home Park or Rawsonville Woods. She also could not remember when she had been to Timberlands. She acknowledged that Lakeview is more than three times the size of Elmcrest and has a clubhouse and a pool. Further, based on reviewing photographs of the property, she had to retract her assertion that Willow Run Timberlands/Timberlands had no amenities. Indeed, she admitted that all of her data regarding Timberland was not correct and it had to be withdrawn as a comparable. As to Rawsonville, although listed as a comparable, she admitted it is not similar to Elmcrest and that it was not used in her value conclusion, but it was used to demonstrate the difference between newer and older mobile home parks. Petitioner's counsel noted a mathematical error in Respondent's comparable #1, Ypsilanti Mobile Village, which corrected would yield an adjusted value of \$12,720 per pad (instead of \$12,740 per pad). Petitioner's counsel also took issue with Ms. Frischman not visiting all the comparables she listed in Respondent's appraisals, as this was contrary to USPAP standards requiring as standard practice visiting the comparables.

FINDINGS OF FACT

The subject property is commonly known as Elmcrest Mobile Home Park located in Ypsilanti Township at 1320 Ridge Road. Both Petitioner's appraiser and Respondent's assessor agree that the current use as a mobile home park is the highest and best use. However, Petitioner's appraiser believes that Elmcrest is undergoing a state of decline.

The site measures 238.65' x 1,372.68' x 238.94 x 1,367.50', and comprises 7.5 acres. A threshold issue is the number of mobile home sites or pads on the property.

Both Petitioner and Respondent agree that Elmcrest was originally licensed for 112 sites. Over a period of time, some of the sites were combined in order to accommodate larger more modern mobile homes. The December 31, 2007, rent roll listed 107 sites. The Tribunal finds, based on that rent roll, 107 sites to be the number of sites on the subject property.

Both Petitioner's appraiser and Respondent's assessor agree that the cost approach was not applicable given the age of the mobile home park and the durability of the improvements, pavement, water mains, electric lines, etc. Consequently, neither party submitted any evidence or opinion on the cost approach.

Ms. McMichael's market sales analysis was based on four comparables. Petitioner's market comparable #1 is the subject property, Elmcrest, at 1320 Ridge Rd. Initially, she used the number of licensed sites, 112, and divided that into the purchase price, \$1,300,000 and determined a per site value of \$11,607. The Tribunal notes that assuming 107 sites, the per pad value is \$12,150.

Petitioner's market comparable #2 is Village Estate, also in Ypsilanti Township, which was purchased in December 2005. This comparable was used by both Petitioner and Respondent in their 2006/2007 appraisals and valuations. Based on the recorded sale price of \$732,644, a per site value of \$9,769 was reached. Respondent did not use this comparable in the 2008 valuation, because Ms. Frischman testified that she had subsequent information that indicated the \$732,644 on the record was understated and that the price from an internet source was \$978,000.

Petitioner's market comparable #3, Riverview Mobile Home Park, is in the city of Inkster. This property was purchased February 15, 2005 for \$625,000, which yielded a per site value of \$8,929. Respondent strenuously objected to this comparable asserting that the city of Inkster was losing population, while Ypsilanti Township was gaining population. Ms. Frischman thought this was because Ypsilanti Township is a much more desirable community than the city of Inkster and therefore real estate values would be higher in the Township.

Petitioner's market comparable #4, Ypsilanti Mobile Village, was purchased September 13, 2004 for \$795,000 and had a resulting value of \$12,230 per site. This comparable was also used by Respondent as market comparable #1 in its 2006/2007 and 2008 valuations. However, Respondent questioned the reliability of this comparable, because it had been the subject of numerous health and safety violations and nuisance abatement actions. Respondent gave this comparable an adjusted per pad sale price of \$12,720 for 2006/2007.

Ms. McMichael's 2008 market sales study used the same comparables as the 2006/2007 studies and adjusted the per pad value downwards by \$1000 from \$11,500 per site to \$10,500 per site based on her perception that given general market declines, the subject property was particularly vulnerable. The Tribunal finds that Petitioner's 2008 market sales analysis is not probative or persuasive, for lack of hard evidence. Further Ms. McMichael's reduction of the number of sites from 112 as licensed, to 89 as productive for the 2007/2007 appraisal, to 80 as occupied for her 2008 market sales analysis is not appropriate under the market sales approach. The reduction in the number of sites would have been more appropriate under an income analysis by adjusting the vacancy rate.

Ms. Frischman relied on five comparables. Respondent's market comparable #1, as noted above, was Ypsilanti Mobile Village which Respondent concluded an adjusted value per pad site for 2006/2008 of \$12,720.

Respondent's market comparable #2 is Lakeview Mobile Home Park, which was purchased July 30, 2004, for \$11,564,000. Ms. Frischman noted that this park had 392 pads, a clubhouse and a pool, and asserted that this comparable was not reliable because too many adjustments were required.

Respondent's market comparable #3, The Timberlands, was purchased March 17, 2006, for \$3,695,000. Based on 177 single wide pads and eight double pads she determined an adjusted per pad sale price for 2006/2007 of \$17,809 and \$17,776 for 2008. She asserted that there were no amenities in the park or public recreational facilities nearby. However, on cross examination, she agreed that she was incorrect on the lack of amenities at The Timberlands when shown pictures of the amenities there, and that this was not an appropriate comparable for this matter.

As noted above, Respondent withdrew market comparable #4, Village Estates, because Ms. Frischman had reservations about the reliability of the sales information for this property. For the 2008 valuation Ms. Frischman substituted Respondent's market comparable #5, Rawsonville Woods, which was purchased March 29, 2007 for \$19,400,000. This park has a pool and a clubhouse. The adjusted per pad sale price for 2008 was \$27,197. However on cross examination, she admitted that this comparable was not similar to Elmcrest and she did not use it

in her value conclusion, but it was used to be demonstrative of the difference between newer and older mobile home parks.

For tax years 2006 and 2007, the Tribunal finds for the market sales approach based on 107 sites for the subject property, a per site value of \$12,150. This is supported by the evidence furnished for Ypsilanti Mobile Village, Petitioner's comparable #4 and Respondent's comparable #1, where Petitioner concluded a value of \$12,230 per site and Respondent concluded an adjusted value of \$12,720 per site. Petitioner's comparable #2, Village Estates, was given less weight because of Ms. Frischman's testimony regarding the reliability of the sale price. Also, Petitioner's comparable #3, Riverview Mobile Home Park, was given less weight, because it was not in Ypsilanti Township. Ypsilanti Mobile Village, notwithstanding Respondent's assertions regarding health code violations and criminal activity, is found to be the most reliable comparable, in part because it was relied upon by both Petitioner and Respondent and because it has the same lack of amenities and is of the same era as Elmcrest. Therefore, the Tribunal finds the TCV pursuant to the market approach for tax years 2006, 2007, and 2008 is \$1,300,000.

Petitioner's income analysis, as Ms. McMichael testified, was based on a blend of actual and market derived expenses. For 2006/2007 she assumed 89 sites times \$290 monthly rent, less 10% vacancy and credit loss, yielding a gross income of \$278,748.00. This was close to, but more optimistic than the actual income, as of December 31, 2006, \$247,145. She calculated expenses at 55% of gross income without providing probative evidence to substantiate this part of her analysis. She noted that vacancy rates were higher in subsequent years. She excluded the taxes

and operating expenses from the capitalization rate. She used a 12% capitalization rate for all three years, believing that this rate reflected the higher risk involved.

For 2008, Ms. McMichael's income analysis was based on the assumption that there are 80 sites with rent at \$300 a month, with a vacancy and credit loss of 20% and operating expenses at 55% and with \$5,000 in reserves yielding a net operating income of \$98,680, which with a 12% capitalization rate, yielded a value of \$822,333.

Further, Ms. McMichael's reduction of the number of sites from 112 as licensed, to 89 as productive, for Petitioner's 2006/2007 income analysis, to 80 as occupied, for her 2008 income analysis is not appropriate under the income analysis. Reducing the number of sites in the calculation of gross income, and then factoring in an additional vacancy and credit loss, whether at 10% or 20%, is of questionable reliability.

Ms. Frischman noted that contract rent does not necessarily equal market rent. She was not given the rent rolls for the first two years from the current owners of the subject property. It is her practice to make calls to site managers to determine actual rents. She determined the market rent as of December 31, 2005, to be \$305, and \$310 as of December 31, 2006. She then multiplied these monthly rental rates times the 112 sites to determine a gross potential rent for the years in question. She used a vacancy and bad debt factor of 20% for all tax years and applied it to the gross potential income.

Respondent's income comparable #1, Village Estate Mobile Home Park, was used in the 2006/2007 valuation with rents at \$305 per month and in the 2008 valuation at \$310 per month. Respondent's income comparable #5 for the 2008 valuation, Greenbrier Estates, was presented as being of similar age without amenities and within one-half mile of the subject property with market rentals of \$310 per month. The Tribunal finds that Respondent's other income comparables, Willow Run Timberlands, Rawsonville Woods, Wagon Wheels South, and Lakeview Mobile Home Park, are not like kind income comparables, because they have amenities that the subject property lacks. Ms. McMichael, after reviewing the rent rolls, determined a \$290 per month rent for 2006/2007 and \$300 a month for 2008. The Tribunal determines that Petitioner's market rental rates are probative and persuasive, and they are supported by Respondent's income comparables #1 and #5.

Petitioner's capitalization rate, based on discussions with knowledgeable participants in the real estate market, is 12%. Ms. Frischmann calculated the capitalization rate directly from the market based on two sales, which indicated capitalization rates of 11.06% and 9.6%; however, on cross examination she could not remember the location of either sale. Averaging the sales, she came up with the capitalization rate of 10.33%, and then factoring in property taxes, derived a capitalization rate of 13.35%. It is not clear whether the 12% as determined by Ms. McMichael or the 13.35% as determined by Ms. Frischmann is the most reliable. Further it is not certain whether McMichael's discussion based 12% capitalization rate included property taxes as part of the capitalization rate.

For 2008 Ms. Frischmann believed that a band of investment rate could be calculated by using the prevailing interest rate, percentage of value mortgaged, rate of return and percentage of equity. The prevailing interest rate as of December 2007 as reported by the State Tax Commission was 6.10%. That is based on the assumption that a buyer would mortgage 75% of the purchase price to be amortized over 30 years, and assuming a rate of return of 10% would yield a capitalization rate of 7.93%. Factoring in an effective tax rate of 3.01% would yield a total capitalization rate of 10.93%. However, given that the subject property is an older park and does not comply with current zoning, Ms. Frischman assumed that an owner would consider this purchase more risky and require a higher rate of return. Therefore, she assumed a blended rate of 12.5%.

The capitalization rates as derived by Ms. McMichael and Ms. Frischmann support a rate of 12.5% for all three years at issue. Therefore, relying primarily on Respondent's band of investment rate analysis, the Tribunal adopts 12.5% as the capitalization rate for determining the values under the income approach.

The Tribunal further determines TCV based on the income approach for 2006/2007 as follows: Based on the adjusted number of sites determined by the Tribunal being 107 and the market rent, based on all the evidence submitted, being \$290 per month, the gross annual income is \$372,360, which, after a 20% vacancy and bad debt rate, yields an effective gross income of \$297,888. Applying Respondent's factor of 8.5% for other income yields a total of \$323,880, to which a 45% negative factor is applied for operating expenses, which includes 5% for replacement, yielding a net operating income of \$178,138. Dividing net operating income by the

capitalization rate as determined by the Tribunal, 12.5% yields a value of \$1,165,997, which rounded up is \$1,166,000.

The Tribunal further determines TCV based on the income approach for 2008 as follows:

Based on the adjusted number of sites determined by the Tribunal being 107 and the market rent, based on all the evidence submitted, being \$300 per month, the gross annual income is \$385,360, which, after a 20% vacancy and bad debt rate, yields an effective gross income of \$308,320.

Applying Respondent's factor of 8.5% for other income yields a total of \$334,527, to which a 45% negative factor for operating expenses, which includes 5% for replacement, yields a net operating income of \$183,990. Dividing net operating income by the capitalization rate as determined by the Tribunal, 12.5% yields a value of \$1,204,297, which rounded up is \$1,204,300.

CONCLUSIONS OF LAW

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. MCL 211.27(1).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735(1). "The petitioner has the burden of establishing the true cash value of the property...." MCL 205.737(3); MCL 211.27(1); *Meadowlands Limited Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 483-484; 473 NW2d 363 (1991). "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 and Laughlin Steel Corp v City of Warren*, 193 Mich App 348; 483 NW2d 416 (1992), 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).

“True cash value” is synonymous with “fair market value.” *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

The Michigan Supreme Court, in *Meadowlanes, supra*, held 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; 362 NW2d 632 (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; *Pantilind 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.

Under MCL 205.737(1), the Tribunal must find a property’s true cash value in

determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). 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).

In this case, the Tribunal concludes that the law and appraisal practice favor the application of the income approach to this income-producing rental property. *Northwood Apartments v City of Royal Oak*, 98 Mich App 721; 296 NW2d 639 (1980); *Eversdyk v City of Wyoming*, 10 MTT 664 (1999), MTT Docket No. 195925. "The capitalization-of-income method has been described as the most appropriate method for evaluating the TCV of income-producing property." *First City Corp v Lansing*, 153 Mich App 106, 116 (1986). However, both Petitioner and Respondent relied more heavily on the market sales approach. Further, Petitioner's income analysis, with the apparent compounding of the vacancy rates is not deemed to be probative and persuasive.

Based on all the testimony and evidence provided, the Tribunal determines that the TCV, based on market value for 2006 through 2008, is \$1,300,000. Further, the Tribunal determines that the TCV based on the income approach is \$1,166,000 for tax years 2006 and 2007, and \$1,204,300 for tax year 2008. Relying more on the income approach, the Tribunal concludes the TCV for tax year 2006 and 2007 to be \$1,200,000, and for tax year 2008 is \$1,250,000. The final values are as indicated in the “Tribunal’s Conclusions of Assessed and True Cash Value” section of this Opinion and Judgment.

JUDGMENT

IT IS ORDERED that the subject property’s true cash value, assessed and taxable values for 2006, 2007, and 2008 are those shown in the “Tribunal’s Conclusions of AV and TV” section of this Opinion and Judgment.

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 90 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, 1995, at a rate of 6.55% for calendar year

1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a 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, and (xiv) after December 31, 2009, at the rate of 1.23% for calendar year 2010.

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

MICHIGAN TAX TRIBUNAL

Entered: March 8, 2010

By: Stuart Trager, Tribunal Judge