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

New Michigan LP,
Petitioner,

v MTT Docket No. 326489

City of Roosevelt Park,
Respondent. Tribunal Judge Presiding
Rachel J. Asbury

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner appeals Respondent's ad valorem property tax assessments of commercial real property owned by Petitioner for the 2006 and 2007 tax years. The assessment at issue was appealed to Respondent's March, 2006 Board of Review, which affirmed the assessments for the tax year appealed. Petitioner filed its petition in this matter with the Tribunal on June 30, 2006 and timely filed a motion to amend to include the 2007 tax year. A hearing was held in this case on May 11 and 12, 2009. Petitioner was represented by Daniel P. Perk, Miller Johnson. Respondent was represented by Steven F. Stapleton, Law Weathers & Richardson.

BACKGROUND

The subject property is located at 3050 Maple Grove, Roosevelt Park, Muskegon County. Petitioner purchased the subject property in 1994 and has owned it continually since that time. The property is classified commercial and zoned as multi-family residential.

The subject property is a 244-unit apartment complex built in 1976-1977 and consists of approximately 7.2 acres with four 2 ½ story garden-style apartment buildings. The breakdown of units is as follows:

Studio	28 units
One bdrm/one bath	168 units
Two bdrm/one bath	48 units

The basic construction is concrete foundation with wood and masonry box framing with mansard roof. There is paved parking for 292 vehicles, including 216 spaces in metal carports, an outdoor swimming pool, with fence and concrete sun deck, and a small storage shed.

Respondent's contentions of true cash value, state equalized value, and taxable value, as confirmed by the Board of Review, are:

Parcel No. 61-25-001-400-0001-00

Year	TCV	SEV	TV
2006	$6,711,200	$3,421,200	$2,918,047
2007	$6,711,200	$3,355,600	$3,026,014

Petitioner's contentions of true cash value, state equalized value, and taxable value are:

Parcel No. 61-25-001-400-0001-00

Year	TCV	SEV	TV
2006	$4,200,000	$2,100,000	$2,100,000
2007	$4,365,000	$2,182,500	$2,182,500

The Tribunal, having considered the testimony and evidence properly submitted, and the file in the above-captioned case, finds that the property's true cash value, state equalized value, and taxable value are:

Parcel No. 61-25-001-400-0001-00

Year	TCV	SEV	TV
2006	$6,711,200	$3,421,200	$2,918,047
2007	$6,711,200	$3,355,600	$3,026,014

PETITIONER'S CONTENTIONS

Petitioner offered the following proposed exhibits:

P-1 December 27, 2007 Appraisal of Real Property for Lakecrest Shores Apartments, prepared by Susan P. Shipman of Stout Risius Ross, Inc.

P-2 December 27, 2007 Appraisal of Real Property for Lakecrest Park Apartments, prepared by Susan P. Shipman of Stout Risius Ross, Inc. (as corrected)
P-3 Appraisal Institute, The Appraisal of Real Estate (13th ed., 2008)
P-4 Petitioner's Pre-Hearing Statement
P-5 Summary Statement of Operations for period ending December 31, 2003 through December 31, 2006 for both Roosevelt Park & Norton Shores
P-6 December 31, 2007 engagement letter for Lake Crest Park Apartments from Daniel Tomlinson of Stout Risius Ross to Morgan Thomas of Marvin F. Poer & Company
P-7 December 31, 2007 engagement letter for Lake Crest Shores Apartments from Daniel Tomlinson of Stout Risius Ross to Morgan Thomas of Marvin F. Poer & Company
P-8 Information Request for Property Tax Appeal for Stout Risius Ross
P-9 Lakecrest Apartments Floorplans
P-10 Lakecrest (Park & Shores) Building Layout
P-11 Lakecrest Park and Lakecrest Shores Property Surveys
P-12 Summary Statement of Operations (Park & Shores Combined) for the period ending December 31, 2007 (Accrual Basis)
P-13 Summary Statement of Operations (Park & Shores Combined) for the period ending December 31, 2008 (Accrual Basis)
P-14 Muskegon Market Rents, December 5, 2007, prepared by K. Rosado
P-15 Market Surveys from MPA, Primary Competitive Set (B/C Product), June 12, 2007
P-16 Lakecrest Shores Rent Roll As of December 31, 2005
P-17 Lakecrest Shores Rent Roll As of December 31, 2006
P-18 Lakecrest Shores Rent Roll As of December 31, 2007
P-19 Lakecrest Shores Rent Roll As of December 31, 2008
P-20 Lakecrest Park Rent Roll As of December 31, 2005
P-21 Lakecrest Park Rent Roll As of December 31, 2006
P-22 Lakecrest Park Rent Roll As of December 31, 2007
P-23 Lakecrest Park Rent Roll As of December 31, 2008
P-24 Lakecrest Park & Shores Homeless and Section 8 Rent Rolls
P-25 Lakecrest Apartments Apartment Pricing List, December 31, 2007
P-26 Lakecrest Park & Shores Occupancy Percentage by Property And Month for years 2004 through 2007
P-27 Lakecrest Park & Shores Vacancy Summary
P-28 Lakecrest Park and Shores Vacancy Trend Years 2007-2008
P-29 Rental Comparable and Improvement Sale Comparable Market Data
P-30 Historic Unemployment Rates in Muskegon County
P-31 Location Map of Lakecrest Park Apartments and Lakecrest Shores Apartments
P-32 Lakecrest Park & Shores Flood Data
P-33 Muskegon County Demographics
P-34 Zoning Notes by Susan Shipman
P-35 2006 City of Norton Shores Winter and Summer Tax Bills
P-36 2007 City of Norton Shores Winter and Summer Tax Bills
P-37 2006 City of Roosevelt Park Winter and Summer Tax Bills

P-38 2007 City of Roosevelt Park Winter and Summer Tax Bills
P-39 Lakecrest Shores Apartments Photographs
P-40 Lakecrest Park Apartments Photographs
P-41 Improved Sale Comparable Photographs
P-42 Comparable Rentals Photographs
P-43 Baker Townhomes Information
P-44 Grand West Apartments Information
P-45 North Muskegon Apartments Information
P-46 Tiffany Woods Apartments Information
P-47 Professional Qualifications of Susan F. Shipman, MAI
P-48 Amended pages to Petitioner's exhibit 2

Petitioner's exhibit P-1, was an appraisal of Lakecrest Shores Apartments. Petitioner offered the exhibit into evidence and Respondent objected to its admission on the basis that it was not relevant as it was not an appraisal of the subject property. The Tribunal found that the exhibit did not provide evidence or conclusions of value of the subject property but of a separate and distinct property in a different taxing jurisdiction. The Tribunal sustained Respondent's objection and the exhibit was not admitted. Respondent objected to the admission of Petitioner's exhibit 2, the appraisal of the subject property. The exhibit was admitted and allowed with the Tribunal's admonition that "based on the methodology Ms. Shipman used in valuing [the property] as an entirety and then her allocation process, it's going to be difficult for us to not take some of the Norton Shores base data and use that . . . for solely Roosevelt Park and . . . review of the underlying method of calculating, analysis and allocation."[1] Petitioner's exhibit 5, income and expense statements, was admitted as to the Roosevelt Park data only. Respondent objected to Petitioner's exhibits 16-20, rent rolls for both properties and for years other than those at issue. The Tribunal admitted the exhibits as they represented the underlying data Ms. Shipman used in her valuation methodology. The Tribunal admitted Petitioner's exhibit 26, combined annual occupancy rates, with the caveat that "the way in which this data was used in determining your

[1] Transcript, May 11, 2009, page 33, ll 17-23

overall value will be taken into consideration when I make my determination of . . . value."[2] Petitioner's exhibit 30, table of unemployment rates was admitted, limited to the years at issue.

Exhibits 6, 9, 10, 21, 29, 37, 38, 40, 46, 47, and 48 were admitted without objection. Respondent's objection to Exhibit 33 was overruled and the exhibit was admitted. Petitioner's exhibits 22 and 23 were withdrawn.

Petitioner asserts that the subject property's "state equalized value, assessed value, and taxable value are in excess of 50% of the subject's true cash value."[3] Petitioner asserts that the highest and best use of the subject property is as multifamily apartments operated "together with the Norton Shores property. So we're not looking at 244 units in Roosevelt Park and then 58 units in Norton Shores. We're looking at a combined 302 units of the 2 properties."[4] In determining the value of the subject property, Petitioner's appraiser "didn't look at them [the properties] as separate properties. She looked at them as a combined whole. And that's how she valued them."[5]

Petitioner offered the testimony of Ms. Susan Shipman. Ms. Shipman was employed by Stout Risius & Ross when she performed the appraisal of the subject property and testified that she has done many commercial appraisals. Additionally, she testified that she has performed approximately 50 appraisals of apartment complexes. Ms. Shipman was engaged "to value Lakecrest Park and Lakecrest Shores Apartments"[6] for the 2006 and 2007 tax years.[7] Ms.

[2] Transcript, May 11, 2009, page 53, ll 2-4
[3] Petitioner's prehearing statement
[4] Transcript, May 11, 2009, page 13, ll 20-23
[5] Transcript, May 11, 2009, page 15, ll 18-20
[6] Transcript, May 11, 2009, page 31, ll 1-2
[7] Petitioner's exhibit 6

Shipman testified that she learned "the 2 properties have been owned, operated and sold in the past as one operation. . . they function that way. . . . all of the operating data is actually consolidated."[8] She was initially given summary financial statements. These were separated out at her request. However, "once I got into the analysis, then I thought they should be consolidated"[9] and she concluded that "based on the history[10] of sales and the history of operation, and based on just the highest and best use analysis, that the most valued use of these 2 properties would be to sell them together." Ms. Shipman further testified in response to the question, "[d]id you then make some attempt to make separate determinations of true cash value at least for the tax appeal purposes as to these 2 properties?"[11] that she "made an allocation."[12] Ms. Shipman testified that she initially made a "pure straight line allocation based on the number of units"[13] which she adjusted to give Lakecrest Park a higher allocation "given that Lakecrest Park was larger and would probably benefit from some economies of scale and. . . the leasing office was there, the model was there, and the amenities were . . . there."[14]

Ms. Shipman testified that her summary appraisal report specific to the subject property[15] included "information unique to . . . Lakecrest . . . Park"[16] The report included a physical description of the subject property and a neighborhood analysis. Ms. Shipman testified that there was 'an input error in the Excel chart"[17] resulting in an increase of $20,000 in gross annual

[8] Transcript, May 11, 2009, page 31, ll 5-12
[9] Transcript, May 11, 2009, page 135, ll 9-10
[10] Transcript, May 11, 2009, page 31, ll 15-18
[11] Transcript, May 11, 2009, page 32, l 25 – page 32, l 2
[12] Transcript, May 11, 2009, page 32, l 3
[13] Transcript, May 11, 2009, page 32, ll 6-7
[14] Transcript, May 11, 2009, page 32, ll 8-12
[15] Petitioner' exhibit 2
[16] Transcript, May 11, 2009, page 34, ll 5-11
[17] Transcript, May 11, 2009, page 40, l 25

potential rental income and Petitioner offered a correction page.[18] To prepare her appraisal report, Ms. Shipman was provided financial statements, income and expense statements, vacancy reports, building site plan, unit floor plans, a building layout plan, rent rolls, and . . . historic competitive rent surveys by the property owner. Ms. Shipman testified that she was given "the statement of operations[19]. . . income and expense statements . . . separated out"[20] for the Lakecrest Park property.

Ms. Shipman testified,

> . . . when the engagement first came through I was . . . just told that I would be valuing 2 apartment complexes. And the financial statements are normally consolidated. But that . . . the property management company and the owners do it that way . . . they just keep one set of records. . . . But there were 2 apartment complexes. So when I asked for them [the records], I asked for them separated out. . . . But I ended up using them consolidated after I went to the property and interviewed the property owner and the management and . . . came to my highest and best use conclusion.[21]

Ms. Shipman testified that she relied on the rent rolls[22] for Lakecrest Park and Lakecrest Shores and that both were relevant "[b]ecause of my highest and best use decision of the property, which was that they were more valuable together than as separate entities."[23] Ms. Shipman further testified that she relied on "a report[24] generated by the property management company that show the combined . . . annual occupancy analysis . . . and it shows the combined monthly occupancy rate for Lakecrest Park and Lakecrest Shores."[25] Ms. Shipman "didn't derive one

[18] Petitioner's exhibit 48
[19] Petitioner's exhibit 5
[20] Transcript, May 11, 2009, page 41, ll 3-8
[21] Transcript, May 11, 2009, page 44, ll 9-25
[22] Petitioner's exhibits 16-23
[23] Transcript, May 11, 2009, page 45, ll 22-24
[24] Petitioner's exhibit 26
[25] Transcript, May 11, 2009, page 49, ll1-5

[vacancy rate] for this individual property. I valued the properties together, and then made an allocation. So my vacancy and collection loss factor applies to both properties together."[26]

Ms. Shipman personally inspected the subject property. She characterized the subject property as typical looking and, as compared to the comparable properties used in her analysis, the subject property had more trees and natural landscaping and a higher ratio of studio apartments. Additionally, she looked at county demographics,[27] unemployment rates,[28] neighborhood condition and composition, and market occupancy surveys. Ms. Shipman testified as to the physical characteristics of the subject property identifying that it has 244 units on 7 acres, garden level apartments, carports, swimming pool, and exercise room.

Ms. Shipment testified it is her opinion "as a professional real estate appraiser that the highest and best use of the 2 properties is to value them as one economic unit or one operating unit."[29] She based this opinion on

> several factors . . . looking at the history of the property, it's been owned and operated as one, I believe since it was built, . . . [t]he current owners acquired the property . . .in 1994. And so that transaction, both the seller and the buyer, agreed to sell them together. And they continued operating together up until . . . today as best I know. But then I also considered . . . how I would value them if they were separated. . . . Lakecrest Shores [is] a one building, 58-unit complex. It does not have a leasing office, it does not have a model unit, it does not have a maintenance office. All of that is handled out of Lakecrest Park. So to value Lakecrest Shores on its own I would have to make deductions to accommodate those costs. [30]

[26] Transcript, May 11, 2009, page 50, ll 21-24
[27] Petitioner's exhibit 33
[28] Petitioner's exhibit 30
[29] Transcript, May 11, 2009, page 65, l 24-page 66, l 2
[30] Transcript, May 11, 2009, page 66, ll 5-23

Ms. Shipman testified as to the economies of scale possible with a larger property and stated that "what I was trying to do was to understand how the market would behave if these properties were for sale"[31] and she determined that a potential seller would realize more value if the properties were sold together.

Ms. Shipman used the income capitalization and sales comparison approaches in making her determination of true cash value. She did not rely on a cost approach as that approach is not typically relied on by "buyers of properties like the subject."[32] Ms. Shipman placed more reliance on the income approach "[b]ecause the subject property is an income producing property."[33] Ms. Shipman used the combined Lakecrest Park and Lakecrest Shores as the subject property for her comparable rental survey.[34]

Ms. Shipman used historical data[35] and operating data from the combined properties. Ms. Shipman's total operating expense determinations were made on a per unit basis using the combined expenses of Lakecrest Park and Lakecrest Shores and properties comparable in size to those combined properties. Ms. Shipman made a determination of effective gross income for the combined properties, from which she subtracted operating expenses, to determine net operating income. She then subtracted replacement allowance, based on the combined properties, to calculate net operating income[36] to which the capitalization rate was applied resulting in Ms.

[31] Transcript, May 11, 2009, page 67, ll 12-13
[32] Transcript, May 11, 2009, page 68, l 6
[33] Transcript, May 11, 2009, page 68, ll 14-15
[34] Petitioner's exhibit 29
[35] Petitioner's exhibit 5
[36] Petitioner's exhibit 2, page 44

Shipman's determination of an "indicated value."[37] Ms. Shipman used the same methodology and made separate calculations and valuation conclusions for the combined properties for each of the tax years at issue.

Ms. Shipman testified that she also utilized the sales comparison methodology[38] and that, consistent with her income approach, she did it "on a combined basis."[39] Ms. Shipman identified and inspected properties comparable to the combined properties. In her analysis, she made adjustments using the combined properties as the standard.

Ms. Shipman made adjustments for location; property size (number of units); average unit size (SF); age, quality, condition; amenities; and economic characteristics. Ms. Shipman made the following adjustments:

Comp 1	-10% unit size -10% age, quality, condition -25% economic characteristics
Comp 2	-10% unit size -30% economic characteristics
Comp 3	-10% location - 5% number of units -10% unit size +5%, age, quality, condition -20% economic characteristics
Comp 4	-20% location - 5% age, quality, condition -25% economic characteristics

[37] Petitioner's exhibit 2, page 44
[38] Transcript, May 11, 2009, page 102, ll 7-9
[39] Transcript, May 11, 2009, page 102, ll 14-15

The adjustment for unit size was made for comps in which the units were "significantly larger"[40] than units in the subject. Comp 3 had 1/3 the number of units as the subject for which Ms. Shipman made the negative 5% adjustment. Comp 3 was considered to be of inferior quality while the other comps were of equal or better quality. Ms. Shipman considered Kent County a better overall location, and made adjustments to reflect that to comps 3 and 4. The negative adjustments for economic characteristics were made to account for differences in net operating income Ms. Shipman stated that she didn't "know how to tie into these traditional elements of comparison with certainty."[41] She made the specific economic characteristics adjustments based on differences in net operating income between the each comparable property and the combined properties.[42]

Ms. Shipman then determined a final adjusted price per unit.[43] She performed the same analysis for both the 2006 and 2007 tax years. Her final opinion of value based on the sales comparison approach for the combined properties was $5,590,000 for the 2006 tax year[44] and $5,590,000 for the 2007 tax year.[45]

Ms. Shipman's final opinion "of the combined value for the properties as of" [46] 12/31/2005 was $4,925,000 and, as of 12/31/2006, was $5,100,000.

[40] Transcript, May 11, 2009, page 111, ll 24
[41] Transcript, May 11, 2009, page 117, ll 3-4
[42] Transcript, May 11, 2009, page 117, l1 8-page 118, l 5
[43] Petitioner's exhibit 48
[44] Transcript, May 11, 2009, page 119, l 22-page 120, l 1
[45] Transcript, May 11, 2009, page 122, ll2-5
[46] Transcript, May 11, 2009, page 123, ll 8-11

Ms. Shipman then allocated her final value between the two properties to determine the value of the subject property. She testified that had she allocated strictly on a per unit basis, 81% of the value would have applied to the subject property. She adjusted the percentages, in consideration of "the fact that the Lakecrest Shores property . . . would have had to put in like a leasing office, it would had to have staff and everything, so it struck me that the allocation should be made a little bit higher to Lakecrest Park."[47] Ms. Shipman then subtracted the personal property, using the same allocation percentage, and arrived at a value for the subject property of $4,200,000 for the 2006 tax year and $4,365,000 for the 2007 tax year.[48]

On cross examination, Ms. Shipman testified she has "done several appraisals for tax appeal purposes."[49] She further testified that she had, in the past, grouped together more than one property that were in different taxing jurisdictions and appraised those properties together but that it was not for ad valorem taxation purposes but to determine market value for financing purposes.[50] Ms. Shipman testified that she has prepared appraisals for properties that are contiguous but in different taxing jurisdictions when the properties were operated together. She admitted that the subject property is not contiguous to the other property with which she combined it. Ms. Shipman responded "no I have not, until now" to Respondent's question, "[h]ave you ever performed an appraisal for . . . taxation purposes where the properties are not contiguous?"[51] Ms. Shipman testified that her "job as an appraiser is to do what the market would do," and admitted that "the market in this case could certainly sell those 2 [properties] off

[47] Transcript, May 11, 2009, page 124, ll 5-9
[48] Transcript, May 11, 2009, page 125, ll 16-19
[49] Transcript, May 11, 2009, page 128, 1 7
[50] Transcript, May 11, 2009, page 129, ll 12-21
[51] Transcript, May 11, 2009, page 131, ll 7-9

individually."[52] Ms. Shipman testified that she disregarded the cost method, which is what the market would do for this type of property, and further stated that although she reviewed Respondent's valuation disclosure, she did not look at them in depth. She had no opinion as to Respondent's cost approach except "generally thinking that there should have been some economic obsolescence taken into account."[53] Ms. Shipman admitted that, although her appraisal included a clubhouse under the listing of amenities, the subject property does not have a clubhouse.

Ms. Shipman testified that there is no property in Roosevelt Park called Lakecrest with 302 units. Ms. Shipman testified that although she used a combined vacancy rate in her value determination, she had Lakecrest Park specific data included in her report. For the tax year ending December 31, 2005, the occupancy of the subject property was 82.8% and for the tax year ending December 31, 2006, the occupancy rate was 90.6%.[54] Lakecrest Park had a higher occupancy . . on that specific date and time. . . than almost anyone on that rate study [Ms. Shipman] did."[55] In response to Respondent's question, "[d]id you make any attempt . . . to clarify or somehow determine the total operating expenses just applied to the Roosevelt Park complex?" Ms. Shipman replied, "[n]o."[56] She did not determine a separate vacancy and collection loss for the subject property. The totals "on the operating expenses"[57] were all numbers provided to her and her "projections [were] for the subject property combined."[58]

[52] Transcript, May 11, 2009, page 132, ll 16-20
[53] Transcript, May 11, 2009, page 136, ll 11-12
[54] Petitioner's exhibit 1, attachments F and G
[55] Transcript, May 11, 2009, page 146, l 25-page 147, l 3
[56] Transcript, May 11, 2009, page 152, ll 17-21
[57] Transcript, May 11, 2009, page 154, l 10
[58] Transcript, May 11, 2009, page 154, ll 12-13

On cross examination, in response to Respondent's question, "[d]o you know how you came up with the 30 percent or the 25 percent or 20 percent?" as economic characteristics adjustments, Ms. Shipman explained,

> I looked at the difference in the NOI of each comparable. And I looked at the projected NOI for the subject. And then I looked at the adjustments that I had made before I got to economic characteristics based on individual elements of comparison. And I looked to see how much of a difference there still remained. And it was substantive, very substantive. It wasn't 25 or 30 or 20 or 25. it was more than that. . . . I was trying to come up with a fraction of what the remaining difference was. And to me it seemed reasonable that it would be 25 percent, give or take, for all of these.[59]

Respondent read the following excerpt from the 12th edition of the Appraisal of Real Estate section on "Economic Characteristics," into the record

> Appraisers must take care not to attribute differences in real property rights conveyed or changes in market conditions to different economic characteristics.[60] Caution must also be exercised in regard to units of comparison such as net operating income per unit.[61] Sales comparison analysis must not be presented simply as a variation of the income capitalization approach applying the same techniques to reach an identical value in the case. Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 12th ed, 2001), p 436

Ms. Shipman stated that she did not make adjustments based on differences in property rights and she stated "I looked at the NOI per unit, adjusted it for the adjustments already made to it, and then looked at the differential that was remaining. I did not make the straight line percentage adjustment, which is what they're talking about here."[62] Ms. Shipman conceded that her sales comparison approach would have generated much higher values had she not, in Respondent's words, "made significant suggestive adjustments" or in her words, "accounted for the factors that we just talked about . . . based on observations in the market."[63]

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[59] Transcript, May 11, 2009, page 166, l 1-page 167, l 4
[60] Transcript, May 11, 2009, page 171, ll 8-11
[61] Transcript, May 11, 2009, page 171, ll 21-23
[62] Transcript, May 11, 2009, page 172, ll 2-4
[63] Transcript, May 11, 2009, page 172, ll 19-25

Respondent read from page 457 of *The Appraisal of Real Estate*,[64] "[s]ome appraisers analyze net operating income per unit to account for differences in economic characteristics, but the technique is not widely used because it essentially duplicates the techniques used in direct capitalization."[65] Ms. Shipman testified that that was only a piece of what she did as part of the economic characteristics adjustments were based on differences in occupancy levels.

Petitioner offered the testimony of Ms. Sophia Iglesias, Regional Vice President for Metropolitan Properties of America, which manages Lakecrest Park Apartments. Ms. Iglesias testified that the subject property is owned by New Michigan Limited Partnership and that the "individual who owns Metropolitan Properties is . . . a partner in New Michigan."[66] Ms. Iglesias' "responsibilities are to oversee the staffing on-site, to put together marketing plans, budgeting. Just primarily make sure that I'm looking out for the owner's best interests. . . . And to maximize the income of the"[67] of 3,500 units in 4 different states that are in her portfolio. Ms. Iglesias testified that as part of her responsibility as the regional vice president she was familiar with "financial records, including the operating statements, rent rolls, vacancy reports, [and] other business information of the property"[68] for 2006. She further testified that she was familiar with similar records for 2007 and 2005. Ms. Iglesias stated that she used the information to establish projections of rental rates and "budgeting projections, expenses, all of those things that are relative to putting together a budget for the property."[69]

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[64] Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 12th ed, 2001), p 457
[65] Transcript, May 11, 2009, page 173, ll 21-25
[66] Transcript, May 12, 2009, page 78, ll 1-2
[67] Transcript, May 12, 2009, page 78, l 24-page 79, l 2
[68] Transcript, May 12, 2009, page 84, ll 13-22
[69] Transcript, May 12, 2009, page 85, ll 10-12

Ms. Iglesias testified that the Roosevelt Park and Norton Shores properties were purchased together and have been operated as one entity and that the properties are "marketed together. They're . . . one property to us."[70] Ms. Iglesias testified that it was her opinion that the properties "need to be managed together because it's not economically feasible to run a 58-unit property by itself in Norton Shores."[71] Ms. Iglesias testified that vacancy reports were only generated on a combined basis and there are no reports that are "broken down for each property."[72]

On cross examination, Ms. Iglesias admitted that she is not "versed in Michigan law and what the highest and best use of property is"[73] and that she doesn't have "any appraisal background."[74] Ms. Iglesias testified that she had no income or bad debt data specific to the subject property. The rent rolls are a single document in Petitioner's files but had been separated for Ms. Shipman. Petitioner's program cannot separate out occupancy rates. Ms. Iglesias testified that the income statements were based on allocated income and expenses and not actual, although the statement uses the term actual.[75] Ms. Iglesias further testified that she did not prepare the report and didn't "know the formula [the accountant] used."[76] Replacement expenses, financial and capital expenses, and collection loss are all allocation amounts.

RESPONDENT'S CONTENTIONS

Respondent offered the following proposed exhibits:

R-1 Respondent's Initial Valuation Disclosure (submitted January 3, 2008)

[70] Transcript, May 12, 2009, page 90, ll 24-25
[71] Transcript, May 12, 2009, page 91, ll 6-8
[72] Transcript, May 12, 2009, page 110, ll 17-19
[73] Transcript, May 12, 2009, page 110, ll 20-22
[74] Transcript, May 12, 2009, page 110, ll 14-16
[75] Transcript, May 12, 2009, page 114, l 19-page 115, l 3
[76] Transcript, May 12, 2009, page 115, ll 19-23

R-2 Curriculum Vitae of Ms. Donna Beth Stokes

Additionally, Respondent offered a Supplemental Valuation Disclosure, which it did not exchange with Petitioner until March, 2009, and submitted to the Tribunal on the first day of the hearing. In an Order entered November 1, 2007, the Tribunal denied Respondent's motion for an extension of time in which to file a supplemental valuation disclosure and in an Order entered October 29, 2008, the Tribunal denied a joint motion to reconsider its Order of November 1, 2007. The Tribunal did not allow Respondent's Supplemental Valuation Disclosure to be admitted into evidence.[77]

Respondent asserts that the subject property encompasses approximately 7.21 acres and consists of 244 apartment units, a leasing office, and an outdoor pool. Respondent contends that its valuation methods are in compliance with prevailing State Tax Commission procedures and requests that the Tribunal affirm the assessed value, state equalized value, and taxable value for the tax years at issue. Respondent argues that to support its claims, Petitioner "utilizes an appraisal of a property that does not exist in the City of Roosevelt Park . . . and . . . has attempted to determine the true cash value of the subject property not as it actually existed on the dates at issue, but rather, has created a hypothetical property."[78]

Respondent offered the testimony of Eldon (Jim) Nedeau. Mr. Nedeau is the senior appraiser at the Muskegon Equalization Department. His duties are primarily equalization studies and he also works on tax appeals. Mr. Nedeau is a Level II Assessor and a state licensed appraiser. Mr. Nedeau has performed appraisals of residential and vacant commercial properties and has not

[77] See Transcript, May 11, 2009, pages 211-222
[78] Respondent's post hearing brief, pp 1-2

performed any appraisals of apartment complexes. Mr. Nedeau prepared Respondent's valuation disclosure of the subject property. Mr. Nedeau was not involved in the original assessment of the subject property but reviewed the file.

Respondent used the cost approach, as reflected on its property record cards, to determine the true cash value, assessed value, state equalized value, and taxable value of the subject property. Respondent "utilized land tables to calculate the land value. . . . [and for] each separate building -- we estimated replacement cost, less depreciation and unit in place items, which consists of carports and the wall air conditioning units."[79] Respondent's valuation is "for the property only located in the city of Roosevelt Park. . . [and] does not make any reference to anything located in the city of Norton Shores."[80] Respondent's valuation disclosure identified 4 separate buildings. The type of construction is noted on the valuation disclosure as is the square footage, stories above ground, depreciation, effective age, physical percentage good. Mr. Nedeau testified that the state assessor's manual "has a base rate of $44.95. . .to that are made adjustments for different type of heating systems, substructure, et cetera."[81] Respondent made downward adjustments because the units are garden units and part of the building is below grade. An upward adjustment was made for the water baseboard heat. Respondent used a story multiplier, height multiplier, floor area and the number of units multiplier, and determined a refined square foot cost of $44.10. The county multiplier, as provided by the State Tax Commission, was applied and the final per square foot cost was $54.24, or a value of $2,530,714.[82] Respondent

[79] Transcript, May 11, 2009, page 223, ll 17-20
[80] Transcript, May 11, 2009, page 224, ll 5-10
[81] Transcript, May 11, 2009, page 225, ll 10-13
[82] Transcript, May 11, 2009, page 223, l 11-page 225, l 9

then took "into account any depreciation, which would be physical, functional or economic."[83] Respondent used a 54% good depreciation factor resulting in a depreciated cost of $1,266,580. An ECF of 1.05 was used and the final true cash value for Building 1 was $1,610,460. Respondent's property record cards indicates that the same process was used for the remaining buildings. True cash value for Building 2 was determined to be $1,474,367; for Building 3, $1,474,367; and for Building 4, $1,474,367. Mr. Nedeau testified that the "total estimated true cash value of the buildings is $6,033,561. And then when you add in the land and land improvements, it has an estimated true cash value of $6,711.283."[84]

On cross examination, Mr. Nedeau agreed that Respondent's valuation was based upon a depreciated replacement cost approach and that "for a prospective purchaser, that particular cost approach doesn't really have a whole lot of relevance for this particular property."[85] Mr. Nedeau testified that land value was determined based on land value tables for which the underlying data was not disclosed as part of Respondent's valuation disclosure. Land improvements for the subject property were "asphalt paving, the pool, some other items, public water, public sewer,"[86] and valued at $147,000.

Mr. Nedeau testified that the 2006 property record card included at page 10 of Respondent's valuation disclosure indicates the 2006 assessment values and tentative values for 2007.[87] Mr. Nedeau agreed that the property record card indicates a "2007 Est TCV of 7,407,171,"[88] which is

[83] Transcript, May 11, 2009, page 226, ll 10-12
[84] Transcript, May 11, 2009, page 229, ll 3-6
[85] Transcript, May 11, 2009, page 236, ll 8-11
[86] Transcript, May 12, 2009, page 46, ll 10-13
[87] Transcript, May 12, 2009, page 40, ll 18-21, Respondent's exhibit 1
[88] Respondent's exhibit 1, page 10

a tentative true cash value. Mr. Nedeau testified that the calculations on pages 11 through 14 are for the 2006 tax year and the calculations on pages 1 through 5 are for the 2007 tax year.[89] Mr. Nedeau further testified that page 10 of the exhibit included the 2006 values and the tentative 2007 values. Page 1 of Respondent's exhibit 1 contained the final 2007 values. Respondent's exhibit 1 did not include a calculation of a tentative 2006 true cash value.[90] Mr. Nedeau further testified that he did not participate in the preparation of the "property tax cards . . . for the exhibit"[91] although he understands "the general process in how these cards are put together. But in terms of specific information that's contained in this property tax card and the basis for the calculation," [92] he wasn't involved in any of that. Mr. Nedeau was unable to explain the discrepancy between the indication that the size of the asphalt paving was "90,000" on page 10 but "153,100" on page 1 of Respondent's exhibit 1. Mr. Nedeau also could not explain the discrepancy in the size of concrete listed on the property record card as "5,000" on page 10 and "6,048" on page 1 of Respondent's exhibit 1.

Petitioner questioned Mr. Nedeau regarding the increase in base rate from $3,955 for the tentative 2007 values to $4,495 used as the final 2007 base rate. Mr. Nedeau testified that the discrepancy was due to "a difference of opinion which affected that base rate when it was calculated by a different person."[93] Mr. Nedeau indicated how the base rate was adjusted from the upper floor value to a reduced rate for the garden level apartments.

[89] Transcript, May 12, 2009, page 48, ll 24-page 49, l 4
[90] Transcript, May 12, 2009, page 50, l 24-page 51, l 1
[91] Transcript, May 12, 2009, page 51, ll 2-13
[92] Transcript, May 12, 2009, page 53, l 24-page 54, l 4
[93] Transcript, May 12, 2009, page 61, ll 9-11

Respondent used a 65% good depreciation factor for the tentative 2007 value. However, Mr. Nedeau testified that for the final values, a 54% good factor was used. In determining the tentative 2007 value, Respondent used an ECF of 1.00. Mr. Nedeau testified that the assessor established the specific ECF neighborhoods and the applicable ECF. Based on sales data, the final value for 2007, an ECF of 1.05 was used.[94] Mr. Nedeau did not have at the hearing nor include in the valuation disclosure, the sales data used to establish the ECF applied to the subject property for the tax years at issue.

On redirect, Mr. Nedeau, using Respondent's exhibit 1, calculated the "per unit value for the Lakecrest Park Apartments"[95] by using the 2006 assessed value of $3,421,200, multiplying that by 2, and then dividing that result by 244, the number of units. Mr. Nedeau determined a value per unit of $28,042. Mr. Nedeau made the same calculation for the 2007 tax year and computed a per unit value of $27,505.[96]

Respondent offered the testimony of Ms. Donna Stokes, Equalization Director for Muskegon County since 2008. Previously, Ms. Stokes was employed as "a Real Property Appraiser III with the city of Grand Rapids."[97] Ms. Stokes testified that she is a Level IV Assessor and a "certified general appraiser"[98] and has reviewed appraisals for the Tribunal and testified before the Tribunal. Ms. Stokes is a certified public accountant, an attorney, has a masters degree in taxation, has an assessment administration specialist designation, and is a certified assessment evaluator. She testified that she has appraised property and been qualified to testify as to those

[94] Transcript, May 12, 2009, page 67, ll 9-25
[95] Transcript, May 12, 2009, page 71, ll 1-2
[96] Transcript, May 12, 2009, page 71, ll 10-17
[97] Transcript, May 12, 2009, page 119, ll 20-21
[98] Transcript, May 12, 2009, page 120, l 10

appraisals and valuations before the Tribunal. After extensive evasion and obfuscation, and clarification by Ms. Stokes as to what she defined as an appraisal, she responded "no" to the question, ". . . have you been in a circumstance where the expectation of the client was that you conduct an appraisal and that you conducted the appraisal under USPAP?"[99] Respondent's motion to qualify Ms. Stokes as an expert appraiser was partially granted. As Ms. Stokes did not prepare an appraisal or valuation disclosure for this matter, and her testimony as to whether she had or had not ever prepared an appraisal was contradictory and confusing, the Tribunal limited her testimony to "general assessing practices . . . to the components of an appropriate valuation disclosure, and . . . what might be or might not be an appropriate practice"[100] consistent with her knowledge and position as equalization director of Muskegon County.

Ms. Stokes testified that in her experience with the city of Grand Rapids, she did not "ever see a valuation disclosure which placed a value on property which took into consideration property located outside of that political subdivision."[101] She further testified that as the Muskegon County Equalization Director, no one in her "department ever valued property located in one political subdivision by considering as part of that value property located in another political subdivision."[102]

FINDINGS OF FACT

The Tribunal finds that the subject of this appeal is Parcel No. 61-25-001-400-0001-00, commonly referred to as Lakecrest Park Apartments, located at 3050 Maple Grove Road,

[99] Transcript, May 12, 2009, page 137, ll 9-13
[100] Transcript, May 12, 2009, page 137, ll 18-22
[101] Transcript, May 12, 2009, page 141, ll 14-18
[102] Transcript, May 12, 2009, page 144, ll 12-16

Roosevelt Park, Michigan. The subject property is a 244-unit apartment complex with a model unit, leasing office, and swimming pool.

Respondent's valuation disclosure consists of property record cards reflecting the 1994 through 2000 tax assessments and the 2004 through estimated 2007 values; Respondent's records of its cost less depreciation determination of value; copy of a building permit dated February 20, 1996; equalization records from 1985; various pictures and sketches of the property; and financial data labeled "1988 Appraisal" containing an income approach valuation and supporting documents for the 1988 tax year.[103]

The subject property is an apartment complex and classified commercial. It is an income producing property. The most appropriate method for determining the value in an income producing property, such as the subject property, is the income capitalization method. Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 12th ed, 2001), page 471. Respondent, in assessing the value of the property, used a mass valuation approach, and utilized a cost-less-depreciation method. Respondent did not conclude an estimate of value based upon the income capitalization approach or the sales comparison approach but submitted only an opinion of value based upon a cost less depreciation approach.

Notwithstanding the inadequacy of Respondent's evidence, Petitioner has the burden of proof to establish a value other than that as assessed by Respondent. In that regard, Petitioner fell far short of meeting that burden. The Tribunal finds that Petitioner's appraisal was of a property that

[103] Respondent's exhibit 1

did not exist for the tax years at issue. Petitioner combined the subject property with a separate property located in a different taxing jurisdiction and used the combined property, a 302-unit apartment complex, as the subject property. For Petitioner's sales comparison approach, comparables to that 302 unit property were chosen and adjustments were made to the standard of 302 units. For its income capitalization approach, Petitioner used data from the combined properties, the 302 units, to come to collective conclusions of value, which it allocated between the separate parcels. Petitioner's allocation of the combined conclusions were subjective and without clear measurable criteria.

In its post hearing brief, Petitioner states in a conclusory manner that Ms. Shipman's determination that the highest and best use is to value the subject property "in combination with the Lakecrest Shores" is consistent with the "definition of highest and best use contained in the Dictionary of Real Estate Appraisal, edition, (2002)." Petitioner offers this without quoting that definition or applying it to this case. Petitioner further states, again in a conclusory manner and in contradiction to the list of cases and quotations provided in its post hearing brief, that there is "no Constitution or statutory proscription against combining properties even when located in different taxing jurisdictions, when determining a highest and best use." Petitioner lists numerous cases in support of its methodology but fails to successfully show how the facts, circumstances, or law of these cases applies to this matter.

Specifically, in support of its position, Petitioner cites *Great Lakes Division of National Steel Corp v City of Ecorse*, 227 Mich App 379; 576 NW2d 667 (1998). In the portion of that decision quoted by Respondent, the Court stated that the general rule is that different parcels of land in the

same ownership must be separately valued and assessed. The decision further states that property should be assessed as a unit when it "cannot be . . . subdivided" but that there are situations in which the determination of whether "there is a unit or separate assessment is regarded as within the discretion of the assessors." The petitioner in the *Great Lakes* case was a steel mill and the Court specifically held that the Tax Tribunal may make a determination that the usual selling price for *the integrated steel mill* in its entirety is the most accurate. (emphasis added)

Respondent next cites *County of Wayne v Michigan State Tax Commission*, 261 Mich App 174; 682 NW2d 100 (2004), and argues that, in that case, affirmed by the Court of Appeals, the Tribunal recognized as acceptable, valuing properties that function as a unit rather than valuing each component part. *County of Wayne* involved a utility company in which all parties agreed that valuation as a unit was applicable as the properties were "integrated" and *were not capable of functioning except as a unit*. (emphasis added) In that case, the Court stated quite clearly what it meant by integrated:

> [a]n appraiser cannot correctly and accurately determine the true cash value of a property by appraising only half of a facility that is "integrated" and without question dependent upon all interrelated functions. That would be analogous to valuing a car for resale based upon the individual parts. By selling a potential buyer the shell, based on its value, and separately selling the chassis, based on its value, and finally the engine and other components, a $20,000 car would be worth substantially more.

In the instant matter, the two properties are not integrated. They can function separately. Nothing prevents the two properties from being owned by two different owners and operating as apartment complexes individually and separately. No part of one property is integral and necessary to the fundamental ability of the other to function as an apartment building. Neither of the properties combined by Petitioner will automatically cease to function or be unable to exist if

the other ceases to function. As the facts in this case are easily differentiated from the other cases cited by Petitioner, which involve contiguous properties operated as a single unit, they are not persuasive.

That the subject property has been historically owned, operated, and sold as a single economic unit does not require that they be assessed as a single unit. That their operating statements are consolidated is a decision based upon business considerations and not valuation. Further, that it "is not clear that the properties could be sold separately under current financing arrangements," especially when Petitioner's appraiser admits that the properties could be sold separately, does not change the fundamental fact that the property subject to the appeal in this matter is only Lakecrest Park Apartments.

In its post hearing brief and reply brief, Respondent argues that "highest and best use means the most profitable and advantageous use the owner may make of the property even if the property is presently used for a different purpose or is vacant." The Tribunal finds that Respondent's assertion is that the highest and best use of the subject property is as a 244-unit apartment complex. Once the highest and best use is decided, market value of that property must be determined. If the sales comparison approach is used, the comparables must be similar to the subject property, recently sold or offered for sale in the open market. The sales used by Petitioner in its sales comparison approach have values almost identical to the values placed on the property by the City of Roosevelt Park. The Tribunal agrees with Respondent that only after questionable downward adjustments does Petitioner arrive at the values it places on the property. Petitioner's adjustments for economic characteristics to account for the fact that the net operating

income of the comparables is much higher than that projected for the subject properties is especially suspect and appraisers are specifically cautioned against such manipulations.

Further, none of Petitioner's comparable properties are two non-contiguous properties, combined for valuation purposes, which makes those properties fundamentally different than the subject. The Tribunal finds Petitioner's determination of highest and best use highly suspect as none of the comparables Petitioner chose are two non-contiguous combined properties but are stand alone apartment complexes. Petitioner's value conclusions are further flawed as adjustments were made for a clubhouse, gym, and other amenities that do not exist.

CONCLUSIONS OF LAW

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735(1); MSA 7.650(35) (1). The Tribunal's factual findings are to be supported by competent, material, and substantial evidence. *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Dept of Treasury*, 185 Mich App 458, 462-463; 452 NW2d 765 (1990). Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. (Citations omitted) *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

The petitioner has the burden of 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* 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). There are three traditional methods of determining true cash value, or fair market value, which have been found acceptable and reliable by the Tax Tribunal and the courts. They are: (1) the cost-less-depreciation approach, (2) the sales-comparison or market approach, and (3) the capitalization-of-income approach. *Meadowlanes Limited Dividend Housing Assn v City of Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991); *Antisdale* at 276-277, n1. The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. *Antisdale* at 276, n1 It is the duty of the Tribunal to select the approach which provides the most accurate valuation under the circumstances of the individual case. *Antisdale* at 277, citing *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968).

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*, 10 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal may not automatically accept a respondent's assessment but must make its own findings 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). A similar

position is stated in *Tatham v City of Birmingham,* 119 Mich App 583, 597; 326 NW2d 568 (1982) The Tax Tribunal is not required to accept the valuation figure advanced by the taxpayer, the valuation figure advanced by the assessing unit, or some figure in between these two. It may reject both the taxpayer's and assessing unit's approaches. The Supreme Court has recognized that under the definition of fair market value the concept of "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 Tribunal's quest for true cash value begins with a determination of subject's highest and best use. "Highest and best use" is a concept fundamental to the determination of true cash value. It recognizes that the *use* to which a prospective buyer would put *the property* will influence the price which the buyer would be willing to pay. (emphasis added) *Rose Bldg Co* v *Independence Twp*, 436 Mich App 620, 633; 462 NW2d 325 (1990). The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum profitability. Appraisal Institute, *The Dictionary of Real Estate Appraisal*, (Chicago: 4th ed, 2002). The relationship between highest and best use, and market value, is explained in The Appraisal Institute, *The Appraisal of Real Estate***,** (Chicago: 12th ed, 2001), p 24:

> . . . When the purpose of an appraisal is to estimate market value, highest and best use analysis identifies the most profitable, competitive *use* to which *the property* can be put. Therefore, highest and best use is a market driven concept.
> . . .
> Market forces also shape market value, so the general data that are collected and analyzed to estimate property value are also used to formulate an opinion of the property's highest and best use as of the appraisal date. In all valuation assignments, value estimates are based on *use*. The highest and best use of *a property* to be appraised provides the foundation for a thorough investigation of the competitive positions of market participants. Consequently, highest and best use can be described as the foundation on which market value rests.
> . . .

> The *use* that maximizes value represents the highest and best use. (emphasis added)
>
> "The tests of legal permissibility and physical possibility *must* be applied before the remaining test of financial feasibility and maximal productivity." *The Appraisal of Real Estate*, p 303.

Fundamental to a highest and best use determination is the identification of the property. In this case the property is Lakecrest Park Apartments, Parcel No. 61-25-001-400-0001-00. And all parties agree that the best legally permissible and physically possible use of that property is as a multi-family residential 244-unit apartment complex. The property cannot easily be used for anything but an apartment complex. Thus the highest and best use of the subject property is as an apartment complex. Petitioner has provided no evidence or argument to persuade the Tribunal that any further analysis is needed to determine this is the highest and best use of the subject property. That the properties may be considered by the owners, for business or management purposes, “more valuable” if certain functions are consolidated with another nearby property, is not the basis on which a determination of highest and best use, by definition, is made.

Petitioner’s reliance on *Richwood Village Associates v City of Lansing*, MT Docket Nos. 226798 and 237968 is misplaced. In that case, petitioner was a single self-contained apartment complex in one taxing jurisdiction with ten contiguous buildings. To make that case analogous to the instant case, the issue would have to be whether to value the four buildings within the complex separately or as a unit. That is simply not the case in this matter. Petitioner asserts that the two apartment complexes are combined by Petitioner based on shared ownership and economies of scale. Ms. Iglesias testified that Petitioner owns many apartments in many locations. Those characteristics can be applied to Petitioner’s other properties as well. The two properties combined by Petitioner are very different, as outlined in the appraisal reports, which cannot be

taken into account if the subject property is not individually valued. Allocation on a unit basis, adjusted by unclear subjective criteria, does not meet Petitioner's burden to present a value of the unique property that is Lakecrest Park Apartments.

Although *Country Meadows, GP v Township of Macomb*, COA Docket No. 182305 (April 1, 1997), is an unpublished decision by the Michigan Court of Appeals, the Court's decision does provided some guidance for the Tribunal in situations where neither party provides sufficient and reliable evidence of the subject property's true cash and taxable values. In that regard, the Court stated:

> Plaintiffs cite *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348; 483 NW2d 416 (1992), for the proposition that even when the plaintiff fails to meet his burden of proof, the tribunal must still make an independent determination of the true cash value of the property in question. However, unlike the plaintiff in *Jones & Laughlin*, in the present case plaintiffs did not meet their burden of going forward with evidence. See *id.* at 354-356. Under the circumstances, the tribunal could not make an independent determination of the true cash value of the property because it had no evidence on which to base such a determination except that provided by defendant. A contrary holding would be tantamount to requiring the tribunal to hire its own appraiser.

The Tribunal finds that Petitioner's appraisal did not provide sufficient reliable evidence on which the Tribunal could make an independent determination of value using either the income capitalization method or the comparable sales approach. Petitioner's highest and best use analysis and determination is fundamentally flawed. Petitioner stated that the highest and best use of the two noncontiguous parcels is to be valued as a unit, yet Petitioner did not choose one comparable for either its sales or income analysis that supported this. Petitioner's choice actually indicates that the opposite would be the case. The Tribunal concludes that Petitioner's appraisal lacks credibility and does not provide reliable conclusions of value. Further, Petitioner did not

provide evidence contending that the factors used to determine the value of the property by Respondent for the tax years at issue were inaccurate.

Therefore, based upon the file, the applicable statutory and case law, and the testimony and evidence presented, the Tribunal concludes that Petitioner failed to meet its burden of proof to establish that the true cash value, state equalized value, and taxable value of the subject property are other than that as assessed. Therefore, the Tribunal concludes that the true cash value, state equalized value, and taxable value for the 2006 and 2007 tax years are as assessed by Respondent's and are as follows:

Parcel No. 61-25-001-400-0001-00

Year	TCV	SEV	TV
2006	$6,711,200	$3,421,200	$2,918,047
2007	$6,711,200	$3,355,600	$3,026,014

JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the tax years at issue shall be as set forth in the *Conclusions of Law* section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years 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 20 days of the entry of this 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 this Final Opinion and Judgment within 28 days of the entry of this 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 interest shall accrue (i) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (ii) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (iii) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (iv) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (v) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and (vi) after December 31, 2008, at the rate of 3.31% for calendar year 2009.

MICHIGAN TAX TRIBUNAL

Entered: September 1, 2009 By: Rachel J. Asbury