STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

GRETCHEN WHITMER
GOVERNOR

ORLENE HAWKS
DIRECTOR

DRSN Real Estate GP LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 17-001117

City of Grosse Pointe Woods,
Respondent.

Presiding Judge
Marcus L Abood

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, DRSN Real Estate GP LLC, appeals ad valorem property tax assessment levied by Respondent, City of Grosse Pointe Woods, against Parcel No. 82-40-014-99-0004-001 for the 2017 tax year. Scott T. Seabolt and Adam G. Winnie, Attorneys, represented Petitioner. Laura Hallahan and Seth O'Loughlin, Attorneys, represented Respondent.

A hearing on this matter was held on December 10-12, 2018 and May 7-9, 2019. Petitioner's witnesses were Richard Levin, Timothy Kamego and Gerald Rasmussen. Respondent's witness was Michael Ellis.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values ("TCV"), state equalized values ("SEV"), and taxable values ("TV") of the subject property are as follows:

Parcel No.	Year	TCV	SEV	TV
82-40-014-99-0004-001	2017	$29,400,000	$14,700,000	$14,700,000

PETITIONER'S CONTENTIONS

Petitioner contends its financing transactions for the development of the subject were complex. Petitioner was prohibited from charging a contractor's fee.[1] Petitioner became licensed for a personal/moral obligation and for a future goal to be reimbursed for providing assisted living.[2] Further, Petitioner did not develop the subject property to sell for a profit and is prohibited from doing so by its bondholders. Petitioner argues the subject is over-built and references the common areas, the glass atrium, the saltwater pool and ceiling heights of the building.[3]

Petitioner's financing for the subject property involved the specialized underwriting group, HJ Sims, which deals with senior industry projects. Financing involved the issuance of two bonds (one taxable and one tax exempt). Petitioner argues that the substantial costs are typical for this complex development which is for the benefit of the community.[4] Further, there is no difference between bank financing and cash for the development of the subject property. In essence, the subject's financing is within market parameters.[5] The aging population and the wants/needs of those individuals has increased. The demand for assisted living has increased and continues to grow.[6]

Petitioner's appraiser considered and developed all three approaches to value the subject property. Through its interior inspection and photographs, Petitioner's appraiser described the subject as "average."

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[1] Tr, Vol 1, pp 61-62.
[2] Tr, Vol 1, pp 62-64.
[3] Tr, Vol 1, p 66.
[4] Tr, Vol 1, pp 69-75.
[5] Tr, Vol 2, p 318.
[6] Tr, Vol 2, p 302-304.

Petitioner's appraiser contends the subject has greater potential value with licenses in place for senior care facilities.[7]

Petitioner analyzed eight lease comparables of senior housing properties across the United States. This data was verified internally through the Cushman & Wakefield database. Income analysis for market rent, expenses and a capitalization rate were developed to arrive at an indication of value for the subject. Petitioner's income analysis is supported in testimony by a discounted cash flow (DCF) used to determine the impact of the land use restriction and the occupied units.

Petitioner's cost analysis was developed with consideration to actual building costs, as well as Marshall Valuation Service (MVS) costs. Necessary multipliers were applied to the replacement costs. An indication of land value was supported by vacant land sales. Petitioner's appraiser analyzed the subject's effective age for the determination of 5% for physical depreciation. Functional obsolescence was determined to be 20% and external obsolescence was analyzed from Zillow and Experian zip code area residential sales for a 10% deduction. In addition, other competing senior care facilities in the area further supported the external impact on the subject property.[8] Entrepreneurial profit of 7.5% was factored into the cost calculations. Lastly, a deduction was made for a land use restriction adjustment[9] to the total replacement cost new.

In parallel fashion, Petitioner analyzed actual construction costs, and the land value included a deduction for demolition costs for a determination of total hard costs.

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[7] Tr, Vol 2, p 295.
[8] Tr, Vol 2, p 329.
[9] This adjustment was derived from the loss in value attributed to the 16 independent living units set aside for low income residents as prescribed by the land use restriction agreement.

Indirect costs or soft costs were taken from Petitioner's Exhibit P-14. A similar entrepreneurial profit of 7.5% was included into the actual construction costs. Likewise, the same depreciation percentages were applied to the actual costs. Lastly, a deduction was made for a land use restriction adjustment to the total actual improvement costs. Petitioner's appraiser averaged the two separate cost indications to arrive at a conclusion of value from the cost approach.

Petitioner's comparative analysis included sales of eight senior housing properties in Michigan from June 2014 to October 2016. Descriptive write-up sheets were included for each property which were verified internally through the Cushman & Wakefield database. The majority of the sales were on a going-concern basis, but each sale's real property was allocated from its overall sale price. A sales adjustment grid illustrates the necessary adjustments to each comparable sale. The adjusted sale prices were reconciled for an indication of value, which then required a deduction for the land use restriction.

Petitioner's appraiser reconciled the indications of value from all three approaches. The sales comparison approach was developed as additional support to the income analysis.

PETITIONER'S ADMITTED EXHIBITS

In support of its value contentions, Petitioner offered the following exhibits, which were admitted into evidence:

P-1: Petitioner's Valuation Disclosure.
P-2: Grosse Pointe Woods Zoning Ordinance-Community Facilities District.
P-3: Grosse Pointe Woods Zoning Map.
P-4: The Rivers Site Plan.
P-5: The Rivers Independent Living Floor Plan.
P-6: The Rivers Assisted Living Floor Plan.

P-7: Land Use Restriction Agreement.
P-9: Cushman & Wakefield Photographs.
P-14: DRSN Real Estate GP Pay Applications 1-23.
P-15: DRSN Real Estate GP Pay Applications 24-25 **(under protective order)**
P-18: The Rivers of Grosse Pointe Obligated Group 2016 Audited Financial Statements.
P-23: The Rivers of Grosse Pointe Obligated Group 2017 Audited Financial Statements.
P-24: The Rivers of Grosse Pointe Obligated Group 2018 Budget.
P-25: The Rivers of Grosse Pointe Obligated Group 2014 Combined Financial Statements.
P-33: MTT Docket No. 438234 Consent Judgment.
P-34: MVS – Depreciation, Section 97, pages 2-3, December 2016.
P-35: DRSN01965 (excerpt).
P-36: The Rivers of Grosse Pointe Obligated Group – Summary of Significant Forecast Assumptions and Accounting Policies, Years Ending December 31, 2013 through 2017 (Project Sources and Uses of Funds).
P-37: The Rivers of Grosse Pointe Obligated Group – Summary of Significant Forecast Assumptions and Accounting Policies, Years Ending December 31, 2013 through 2017 (Project Sources and Uses of Funds - continued).
P-39: Ellis' handwritten calculations between Pozar Report and Actual numbers.

PETITIONER'S WITNESSES

Petitioner's 1st witness, Richard Levin, an attorney and accountant, is the owner, chief executive officer and manager of Riverview Health. His professional experience includes work on complex transactions within the tax department of the former accounting firm, Coopers & Lybrand, (now known as PriceWaterhouseCoopers or PwC). From 1984 to 2000, Levin worked at the law firm of Timmis & Inman on transactions of publicly traded companies and real estate investment trusts. Subsequently, he worked as the chief executive officer for the development group DiMatteo Group which is believed to be one of the largest developers of industrial and commercial building properties in southeast Michigan. Levin eventually started his own law practice with a focus on estate planning and wealth/succession planning for

businesses, which segued into the involvement in a large complex transaction for a healthcare provider or nationally known hospital system. Levin's advice to hospital system client resulted in his development of the property and his continued activity as an investor. Levin's own personal experience with a family member in a skilled nursing facility impacted his motivations. Through research into the healthcare industry in 2006/2007, Levin was approached with the opportunity to develop a property into a skilled nursing facility in 2009.

Petitioner's 2nd witness, Timothy Kamego, has a vast history and experience in commercial construction projects in the Detroit area. Kamego supervised the construction of the Windemere facility which formerly was converted from an old hotel to a senior center. He was the operations manager for three years after the facility was opened. It was this facility where Kamego met Levin to join efforts in the construction of the subject property.[10] Kamego was the construction manager for the 7-story hospital, (including a 4-story building), at the Jefferson location. He was the general contractor for the subject development. Regarding the subject, Kamego contends the subject was over-built with a large atrium, a saltwalter pool and ceiling heights as super-adequacies. The subject building comprises approximately 211,000 square feet; there are 94,000 square feet of living area, with the remaining 117,000 square feet designated as common area.

Petitioner's 3rd witness, Gerald Rasmussen, MAI, prepared an appraisal report for the subject property. His primary valuation focus is on continuing care facilities, (assisted living, skilled nursing and independent living), with over 20 years of valuation

[10] Tr, Vol 1, p 166.

experience. He is licensed in every state in the union with the exception of Florida and the District of Columbia. Further, he is designated through the Appraisal Institute. For the past 17 years, he has been the executive managing director and national leader for senior housing and healthcare valuation advisory practice group within Cushman & Wakefield. Based on his background, education and experience, the Tribunal accepted Mr. Rasmussen as an expert real estate appraiser.

RESPONDENT'S CONTENTIONS

Respondent contends that the market value of the subject property is based on fee simple and not on a leased fee. Specifically, Respondent argues the bond financing for the subject property is not typical for the market or similar to conventional bank financing. The complex nature of both taxable and exempt bonds included a land use restriction agreement which amounts to rental concessions to units within the subject development. Ad valorem tax appeals are predicated on true cash value (synonymous with market value), at market rent, and not on contract rent.

Respondent considered all three approaches to value but only developed the cost approach to value.

Regarding consideration for a comparative analysis, Respondent asserts the variables from the combination of assisted living, independent living, and skilled nursing make this approach unreasonable.

> All the different type units are properties you look at. They're all different in one way or another. They have different tenant mixes, different units, different rent structures and the like, and making a direct apples-to-apples comparison, it's more like an apples and oranges from one property to another.[11]

[11] Tr, Vol 5, p 962.

Respondent further contends that senior care facilities are sold on a going-concern basis and allocating the value to the real estate is very difficult.

For the income analysis, Respondent researched the market for leases of CCRC facilities, but concluded that they are internal leases and are not considered to be arm's length. Therefore, Respondent elected to not develop an indication of value from the income approach. However, Respondent's appraiser developed two income tests to determine whether or not entrepreneurial profit existed for the construction of the subject property. The first test involved a report prepared by Alexia Pozar (Pozar) for Petitioner's bond financing. In conjunction with the Pozar report, Respondent consulted with Michael Boehm of Senior Living Valuation Service in San Francisco. The second test involved information taken from an online bond financing site relative to the subject's 2016, 2017 and 2018 projected budgets, for an absorption and stabilization for the subject. The difference between the two tests deals with occupancy for the subject. Nonetheless, the range for each test is above the indication of value from the cost approach. Therefore, the summation of the two different income tests prove that entrepreneurial incentive was appropriate to include in the cost approach analysis for the subject.[12]

Respondent's cost approach began with the research, resulting in 7 land sales, for a comparative analysis which also supported its highest and best use conclusions. The land sales were analyzed and adjusted on the basis of market conditions, location, functional utility, density, excess/surplus etc. As further consideration, Respondent's

[12] Tr, Vol 5, pp 1090-1093.

appraiser cited other land sales outside of his adjustment grid. This included the sale of the subject land for sales trends in the market area.

Respondent's consideration for the subject's quality rested between average and good with the reasoning that there are many nice amenities and improvements. While not believing the subject is over-improved, the subject is not average quality if it is alleged to be overbuilt.[13]

Respondent developed both actual construction costs and MVS costs for comparison. Direct and indirect costs, contractor's profit and entrepreneurial profits were also examined. Respondent asserts (with reference to *The Appraisal of Real Estate*) that market value less the cost to build supports an entrepreneurial profit to the subject.

Respondent's cost analysis included research of an online website for bond issuance information relative to the subject's financing. Specifically, Respondent reviewed AIA construction pay applications (soft costs) for the subject development from "The Rivers of Grosse Pointe Obligated Group, Financial Feasibility Study, Five Years, from December 31, 2013 through 2017." Respondent contends certain soft costs, contractor profits and entrepreneurial profits needed to be included into the cost analysis. Respondent reviewed several sources for contractor's profit including MVS, CSIMarket.com, and The Appraisal Institute's publication, *The Appraisal of Real Estate,* 14th edition.

Respondent estimated entrepreneurial incentive between 10% to 25%. Research for this estimation included: 1) discussions with various appraisers, 2)

[13] Tr, Vol 5, p 1068.

discussions with a commercial broker, 3) discussion with a local developer of similar properties, and 4) review of several commercial projects for the abstraction of this type of profit. In turn, Respondent's appraiser concluded to a 15% entrepreneurial profit.[14]

Respondent further contends the physical depreciation attributed to the subject is 1% and the property does not suffer from functional or external obsolescence. Specifically, the subject has varied ceiling heights, which are not considered to be excessive, even though a 9-foot base ceiling height is referenced in the MVS.

After developing both actual costs and MVS costs, Respondent reconciled to the actual costs because MVS is not necessarily suited to a nuanced property like the subject.[15]

RESPONDENT'S ADMITTED EXHIBITS

In support of its value contentions, Respondent offered the following exhibits, which were admitted into evidence:

R-1: Respondent's **Unredacted** Valuation Disclosure.
(Pages 23, 24, 140 - 145 under Protective Order)
R-2a: Page 36 – Bond Issuance Agreement (excerpt).
R-2b: The Rivers of Grosse Pointe Obligated Group, Summary of Significant Forecast Assumptions and Accounting Policies, Project Sources and Uses of Funds, Years Ending December 31, 2013 through 2017.
R-2c: The Economic Development Corporation of the Charter County of Wayne, First Mortgage of Revenue Bonds (The Rivers of Grosse Pointe Project).
R-3: Respondent's Redacted Valuation Disclosure.
(Redacted Pages 23, 24, 140 - 145)
R-4: Property Transfer Affidavit for 2400 and 2430 East Lincoln Street.
R-5: Summary of Land Sales – Cushman & Wakefield 1008.
R-6: MVS Calculator Method, Residences and Motels, Section 12, Page 38, August 2016.
R-7: MVS Calculator Method, Multiple Residences – Retirement Community Complex, Section 12, Page 22, August 2016.
R-8: MVS Depreciation Tables, Section 97, Pages 23-26, August 2016.

[14] Tr, Vol 5, p 1046-1053.
[15] Tr, Vol 5, p 1070.

R-9: MVS Calculator Method, Multiple Residences – Senior Citizen, Section 12, page 18, August 2016.
R-10 Comparable Sales (Zillow Zip Code) Cushman & Wakefield 1006.

RESPONDENT'S WITNESS

Respondent presented testimony from Michael Ellis. He is a commercial appraiser licensed in the state of Michigan. He has experience in senior care facilities in the state of Michigan and has appraised the subject property in the past 5 years. Based on his background, education and experience, the Tribunal accepted Mr. Ellis as an expert real estate appraiser.

FINDINGS OF FACT

1. The subject property is located at 900 Cook Road and is located in Wayne County.
2. Petitioner purchased the initial 15-acre parcel for $3,500,000 in May 2010.
3. The subject consists of 8.8 acres and is developed with continuing care retirement community ("CCRC"). The community facilities include independent living, skilled nursing, and assisted living. The subject has gross building area of 211,065 square feet.
4. As of December 31, 2016, the subject property was improved as a CCRC facility.
5. Petitioner developed the abutting approximate 6-acre parcel into 40 condominium units.
6. The subject is zoned Community Facilities.
7. Grosse Pointe Woods is an affluent upper-middle class area.[16] The Grosse Pointe community includes Grosse Pointe Shores, Grosse Pointe Woods, Grosse Pointe Farms, Grosse Pointe and Grosse Pointe Park.
8. The city of Grosse Pointe Woods is fully developed. In other words, there is a scarcity of land for development.[17]
9. The subject entity is identified as The Rivers of Grosse Pointe ("The Rivers").
10. The Rivers is part of a larger organization known as Riverview Health.
11. As part of the bond financing for the development of the subject, Petitioner was precluded from charging a contractor's fee because the builders were affiliated with the borrowers.[18]
12. Members' Equity Contribution of $7,190,000 was an addition to the municipal bonding financing for the subject development.[19]

[16] Tr, Vol 1, p 228; Vol 5, p 944; Vol 6, p 1234.
[17] Tr, Vol 5, p 949.
[18] Tr, Vol 1, pp 61 and 200.
[19] Tr, Vol 5, p 1040 and Vol 6, p 1259.

13. Petitioner's bond financing includes a land use restriction agreement which requires Petitioner to make 16 units available for low-income residents.
14. The subject's assisted living facility is licensed with the state of Michigan.
15. In January 2011, Petitioner purchased Riverview Jefferson, a 400,000 square foot skilled nursing facility for $4,500,000 and Riverview North, a 115,000 square foot facility in January for $3,040,000.[20]
16. Petitioner submitted a valuation disclosure in the form of a narrative appraisal report prepared by Gerald Rasmussen.
17. Petitioner's appraiser communicated with and relied upon Tim Eisenbraun,[21] John Watkins,[22] Kendall Winegar,[23] Brendan File,[24] and Mark Wright[25] for data research and analysis.
18. Petitioner's appraiser acknowledged the contributions of John Watkins in the appraiser's signed certification.
19. Petitioner's appraiser considered and developed the sales comparison, income and cost approaches to value.
20. Petitioner's appraiser relies on the Federal Register (banking) for the definition of market value.[26] In testimony, he admitted that ad valorem tax appeals in the state of Michigan are predicated on fee simple rights for market value.[27]
21. Petitioner's appraiser did not inspect any of his vacant land sales. Further, he only visited improved sales located in Clinton Township, Roseville and Harper Woods.[28]
22. Petitioner's appraiser did not know any of the underlying search criteria, boundaries, number of homes, etc. from its zip code searches through Zillow and Experian.[29]
23. Petitioner engaged the architectural services of Edmund London & Associates for the design of the subject. Kamego worked with and recommended this architectural firm prior to the construction of the subject.[30]
24. Edmund London & Associates has designed approximately 50 care facilities around the world.[31]
25. Kamego has inspected three buildings located in Michigan which were designed by Edmund London & Associates prior to the construction of the subject property. Kamego admitted that "the physical features, the amenities, the interior finishes are comparable to the subject."[32]

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[20] Tr, Vol 1, pp 40-41.
[21] Tr, Vol 2, p 367.
[22] Tr, Vol 2, pp 368 and 376.
[23] Tr, Vol 3, pp 479 and 567.
[24] Tr, Vol 3, p 557.
[25] Tr, Vol 4, p 814.
[26] Tr, Vol 2, pp 274-275.
[27] Tr, Vol 2, p 414.
[28] Tr, Vol 2, p 361.
[29] Tr, Vol 3, pp 493-495.
[30] Tr, Vol 1, pp 118 and 230.
[31] Tr, Vol 1, p 232.
[32] *Id*

26. Petitioner's reasons for choosing the Grosse Pointe area for development were 1) the availability of a larger parcel in an affluent community, 2) results from a favorable feasibility study of the area, and 3) the Grosse Pointe area lacked a senior care facility.[33]
27. Petitioner's bond financing is tied to a land use restriction agreement.[34] Further, this agreement applies only to independent living units.[35]
28. In testimony, Levin admits that Petitioner's two other facilities, Riverview Jefferson and Riverview North, derive most of their revenue from Medicaid and Medicare.[36]
29. People residing in assisted living and independent living pay from a private pay source.[37]
30. Petitioner admits its independent living wing was developed with a non-institutional feel (akin to a high-end hotel) for residents.[38]
31. The builder of the subject property was CCLA Building and Development LLC which is owned by Riverview Health. Levin admitted that Riverview Health would forgo a builder's profit as part of the bond financing agreement.[39]
32. Rivers Independent Living LLC is part of a going-concern which does not own the subject real estate. The Rivers Assisted Living LLC signs the contractual agreements for the residents in the assisted living facility. CCLA6 LLC signs the contractual agreements for the residents in the skilled nursing facility.[40]
33. A certificate of need is a per-bed license for a nursing home.[41]
34. Petitioner's assisted living and independent living wings are licensed facilities.[42]
35. Kamego is the chief operating officer for all three facilities under the entity Riverview Health.[43]
36. The subject building has varying ceiling heights.
37. Petitioner had no market data support for its claim that the subject's common area is a super-adequacy.[44]
38. Petitioner's determination of an overall 35.5% depreciation did not include analysis for the heating/cooling system and saltwater pool (as part of Petitioner's alleged functional obsolescence).[45]
39. Petitioner's contention of external obsolescence did not include any demographics to analyze residential households to the subject facility.[46]

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[33] Tr, Vol 1, pp 121-122.
[34] Tr, Vol 1, pp 140-141.
[35] Tr, Vol 2, p 419 and Tr, Vol 5, 1098.
[36] Tr, Vol 1, p 114.
[37] Tr, Vol 1, p 115.
[38] Tr, Vol 1, pp 116 and 123.
[39] Tr, Vol 1, pp 151-152.
[40] Tr, Vol 1, p 154.
[41] Tr, Vol 1, p 169.
[42] Tr, Vol 1, p 187.
[43] Kamego's extensive experience in construction, management and administration of senior care facilities is quite substantial (Tr, Vol 1, pp 176-209 and 216) but he was not offered as an expert in any of those denoted areas.
[44] Tr, Vol 4, pp 695-696.
[45] Tr, Vol 4, p 696.
[46] Tr, Vol 4, p 701.

40. Respondent submitted a valuation disclosure in the form of a narrative appraisal report prepared by Michael Ellis.
41. Respondent's appraiser considered all three approaches to value. The cost approach was developed and communicated as the primary indication of value.
42. Respondent's appraiser did not develop a sales comparison approach to value but cited improved sales for the analysis of the market.[47]
43. Respondent's appraiser developed an income analysis in order to support the inclusion of an entrepreneurial profit.[48]
44. Ellis completed his appraisal report without assistance from any other individuals. In other words, his signed certification does not acknowledge or denote assistance from anyone else.
45. Ellis has appraised three other Michigan CCRC facilities located in Holland, Brighton and Utica.
46. The parties' appraisers each developed a cost approach.
47. Petitioner's determination of land value for the subject is $3,320,000 and Respondent's land value determination is $3,800,000. Neither appraiser's analysis of land value was beholden to MCLA 211.27(a). In other words, neither appraiser acknowledged or analyzed this statute in their respective determinations of land value for the subject.
48. Respondent obtained cost information (i.e. contractor's statements) for the subject development from a public domain website for bond financing, as well as, from Petitioner.
49. Both appraisers developed actual construction costs and MVS construction costs for the subject property.
50. The parties' appraisers acknowledge entrepreneurial profit in their respective cost analyses.
51. Petitioner's appraiser denoted a range of 5% to 20% for entrepreneurial profit and a conclusion of 7.5% in its cost analysis.
52. Respondent's appraiser denoted a range of 10% to 25% for entrepreneurial profit, and a conclusion of 15% in its cost analysis.
53. In this appeal, TCV is based on the subject's real estate (land and improvements). The TCV does not include the going-concern value of the subject. The market value of the going concern is different than the market value of the subject's real estate.

[47] A sales comparison approach for the vacant unimproved land is not the equivalent of a comparative analysis for the improved subject property. Both analyses include highest and best considerations (i.e. zoning) but as testified by Respondent's appraiser, the nuances and complexities of a CCRC facility make a comparative analysis very difficult. The analysis of vacant land sales is pertinent to a cost approach analysis. Land comparisons within a cost approach methodology is well founded in appraisal practice and theory and do not contradict an appraiser's scope of work decision to not develop a sales comparison approach for an improved property. (Tr, Vol 5, pp 1112 and 1123)
[48] Tr, Vol 6, p 1219.

CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value.[49]

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50 percent. . . .[50]

The Michigan Legislature has defined "true cash value" to mean:

> The usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.[51]

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."[52]

"By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment."[53] The Tribunal is not bound to accept either of the parties' theories of valuation.[54] "It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each

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[49] See MCL 211.27a.
[50] Const 1963, art 9, sec 3.
[51] MCL 211.27(1).
[52] *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).
[53] *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).
[54] *Teledyne Continental Motors v Muskegon Twp,* 145 Mich App 749, 754; 378 NW2d 590 (1985).

case."[55] In that regard, 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."[56]

A proceeding before the Tax Tribunal is original, independent, and de novo.[57] The Tribunal's factual findings must be supported "by competent, material, and substantial evidence."[58] "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[59]

"The petitioner has the burden of proof in establishing the true cash value of the property."[60] "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."[61] However, "[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question."[62]

The three most common approaches to valuation are the capitalization of income approach, the sales comparison, or market, approach, and the cost-less-depreciation

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[55] *Meadowlanes Ltd Dividend Housing Ass'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991).
[56] *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).
[57] MCL 205.735a(2).
[58] *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).
[59] *Jones & Laughlin Steel Corp, supra* at 352-353.
[60] MCL 205.737(3).
[61] *Jones & Laughlin Steel Corp, supra* at 354-355.
[62] MCL 205.737(3).

approach.[63] "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading."[64] 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.[65] Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.[66]

The extensive Findings of Fact prove Petitioner did not embark alone on its journey to find an acceptable parcel to develop and operate a senior care facility. Petitioner's reliance on key individuals for a large multi-care facility was convincingly demonstrated through the testimony of Levin and Kamego. Petitioner was not proven to be under any duress in the search for a suitable property. Petitioner's level of knowledge, confidence and certainty reveals its true intentions along with the thought of developing the subject property for investment purposes. Reliance on an established architect that develops senior care facilities around the world is equally notable. The subject was developed as a going-concern operation on a for-profit basis.

Next, Petitioner's confidence in the negotiation and consummation of bond financing for such a complex development resulted in a tax-exempt bond, (while also accepting a land use restriction agreement), in fulfilling the market demand for a senior care facility. Levin's expertise in securing advantageous bond financing outweighed the

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[63] *Meadowlanes, supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968).
[64] *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).
[65] *Antisdale, supra* at 277.
[66] See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

land use restriction agreement. Further, the significant equity applied to the bond financing denotes Petitioner's "skin in the game" regardless of certain other requirements placed upon Petitioner. Petitioner's equity portion towards the bond financing is an indication of an unyielding commitment to the project. Levin's search for financing outside of conventional lenders infers that bond financing was more favorable with a tax exemption, even with a land use restriction in place.[67] Specifically, the land use restriction agreement requires Petitioner to hold 16 units aside for low income residents. The testimony amply showed Levin's knowledge and expertise for a very specialized development. In other words, the testimony showed Levin's knowledge of associated risks and benefits for such an undertaking. Levin's testimony demonstrating his command and familiarity of technical terminology is so extensive as to validate his position as a knowledgeable purchaser of a commercial parcel for a senior care development.[68]

Levin's own personal and moral obligations to create a senior care facility flows through to the financing obligations for low income tenants. In other words, Petitioner's acceptance of a complex financial agreement which creates an allowance for low income individuals is parallel to Levin's own self-described moral obligations and personal experiences.[69]

Overall, Levin's testimony regarding financing, the bonds, and restrictions go primarily to the going-concern aspect of the property. Petitioner's endeavors as a "for-

[67] Tr, Vol 1, p 146.
[68] Levin's noted professional background as an attorney and as a non-practicing certified public accountant (CPA) give credence to his decision-making abilities to develop a multi-faceted senior care facility. Curiously, Levin was also not offered as an expert in any regard.
[69] Tr, Vol 1, p 76.

profit" business do not impede a "non-profit" element of compassion/care. Rather, the going-concern element was pervasive through Petitioner's testimony and documentary evidence. Petitioner's vision to develop a multi-care facility further bolsters its mission as a going-concern.

Petitioner's alleged imposed costs are actually self-realized expenses in the pursuit of a multi-faceted care facility in the affluent market area of Grosse Pointe Woods. The simple fact remains that Petitioner's intention to purchase land to build a large facility took precedence over the certain costs, expenses or restrictions to this property. Petitioner's alleged mistakes made in the development of the subject property are negated by Petitioner's knowledge, experience and resourcefulness for such a large, complex project. Kamego's testimony (as a general contractor) regarding necessary layout issues for the subject building indicate a construction knowledge that considers, and even counteracts, alleged functional obsolescence and perceived super-adequacies.[70] Kamego (as the chief operating officer) gave a detailed description of the building processes, materials and layout for a senior care facility which were consistent with Respondent's cost analysis. Again, Kamego's dual role as a general contractor and chief operating officer for three separate facilities in southeast Michigan spotlights an individual with a great wherewithal. The building codes and licensing requirements for a senior care facility of this size were elaborate. Strikingly, Petitioner details enormous costs for such a building which it admitted is constructed in an affluent community, but only then to claim the building is over-built. The testimony of Levin and Kamego reflects a great knowledge and expertise for such a building with independent,

[70] Tr, Vol 1, p 231.

assisted and skilled nursing facilities, while keeping a keen eye on minimizing risk factors.

Levin's description of financing complexities which were beyond conventional bank financing conflicts with Rasmussen's testimony that the bond financing is within market parameters. Specifically, contractor's costs[71] are a typical entry in a cost analysis and are a part of conventional bank financing. Overall, the subject's bond financing (and land use restriction agreement) does not appear to mirror typical elements found in conventional financing for such a unique and complex property such as the subject. Petitioner's actions do not epitomize the very elements of market value[72] for the true cash value of the subject property. In other words, Petitioner is more astute than the average market participant. The development and operation of the subject facilities are significantly greater than many types of commercial developments which are financed by a conventional lender. The subject is not valued as leased fee or as a going-concern in this tax appeal matter.

Petitioner's valuation disclosure is a presentation of a conventional framework for a narrative appraisal report. However, the comparative analysis contained deficiencies and inconsistencies which were pointed out through an exhaustive cross-examination. First, all of Petitioner's comparable sales are going-concern sales.[73] As testified to by Respondent's appraiser, a comparative analysis is very difficult in parsing real property from business valuation. Allocations for the real property (separate from the business

[71] Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 6th ed, 2015), pp 49-50.
[72] *Id,* 2015), pp 141-142.
[73] Tr, Vol 4, p 750. Both parties acknowledge the going-concern elements of a CCRC. The complexities and nuances for the business side of such an elaborate senior care facility magnify the difficulties in developing the sales comparison and income approaches to value.

value) were taken from property transfer affidavits (PTAs) but lacked due diligence and verification on the part of Petitioner's appraiser. Second, descriptive data for each comparable sale is incomplete or undisclosed. Petitioner's verification source for its sales 1, 2 and 3 was Allen McMurtry and these sales were determined to be part of a portfolio sale.[74] The difficulties of allocating values between real property and the going-concern, is thus, compounded by properly disclosing and allocating the value for each of these particular sales. Similarly, Petitioner's sales 6 and 7 were part of a portfolio sale. Third, Petitioner's appraiser admitted to not having details regarding occupancy, ceiling heights, bedrooms etc. for Sales 4, 5, 6, 7 and 8. Further, Rasmussen only knows what's on each write-up sheet for each comparable sale.[75] Petitioner's appraiser did not analyze its sale comparables in terms of ceiling heights or common areas as forms of functional obsolescence. An individual signing a certification for an appraisal report is signifying his/her responsibility for the opinions, analyses and conclusions. This extends to the data content provided by others and utilized in analysis.[76] Fourth, with regards to sales comparison adjustments, Petitioner's appraiser admitted that there is no market support for the market conditions adjustments and the 3% adjustment comes from national participants.[77] In addition, age adjustments were based on judgment.[78] Fifth, similar to its vacant land sales analysis,

[74] Tr, Vol 4, p 834.
[75] Tr, Vol 4, p 839.
[76] Reliance on staff members to verify information input by an appraiser for sale transaction is quite cumbersome. An appraiser can rely on all kinds of resources and staff for verification of data BUT once again the signed certification points exclusively to those authors of an appraisal report. (Tr, Vol 3, pp 498-499) The premise that staff and resources in each state to bolster a lead appraiser's licensing in all 50 states does not overcome geographical competency in this instance.
[77] Tr, Vol 4, pp 755-756.
[78] Tr, Vol 4, p 824.

Petitioner's utilization of Zillow and Experian residential sales data, based on zip codes, were utilized to determine location adjustments.[79] The lack of underlying criteria, the inconsistency of various zip codes and the incoherent application to the subject facility are unpersuasive.[80] As admitted, none of the comparable sales are superior to the subject and none of the sales are CCRCs. The adjusted range of prices per unit is greater than the unadjusted prices per unit. The premise of a comparative adjustment grid is to refine sale prices to the subject property. On the other hand, Respondent successfully demonstrated that senior care facilities sell on the basis of a going-concern value; separating the real property value from the business valuation is extremely difficult. Likewise, property transfer affidavits are often unreliable and difficult to verify. Therefore, Petitioner's comparative analysis is given no weight or credibility in the determination of market value for the subject property.

Petitioner's income analysis is also presented in a conventional framework, but certain elements are either deficient or inconsistent. Eight comparable leases were analyzed to determine a market supported lease rate. However, all eight leases came from the Cushman & Wakefield database.[81] Reliance on an internal database which did not disclose any Michigan lease data is not logical when Petitioner identified the "primary market area" (PMA) is within the state of Michigan. None of the eight leases are located within Michigan. Petitioner's market analysis also identified 16 existing facilities in the state of Michigan,[82] but none of these facilities were analyzed in terms of

[79] Tr, Vol 4, pp 758 and 761.
[80] Tr, Vol 4, pp 766-788.
[81] Tr, Vol 2, p 418 and Vol 4, p 850.
[82] Petitioner's Exh. P-1, p 36.

lease rates. For example, the Tribunal is unable to ascertain the comparison of a lease in Hayward, California to the subject's income.

Next, none of the comparable leases include independent living facilities. The comparative lease analysis did not compare or contrast varying types of facilities to the subject's CCRC. More specifically, each state regulates senior care facilities differently, but Petitioner did not perform any analysis of similarities or differences (i.e. rental rates) for each type of facility.[83] Testimony claiming considerations for the lease analysis was not coupled with any narration or any lease adjustment analysis.[84] Petitioner's appraisal report did not include any calculations or analyses of lease coverage ratios or mortgage coverage ratios.[85] In testimony, Rasmussen admitted that the different types of facilities (skilled nursing, independent living, assisted living) would have different effects on lease rates and net operating income (NOI).[86]

Regarding the expense analysis, Rasmussen admitted that the only support for the 3% management fee is his professional opinion.[87] Merely stating that the bulk of expenses would be the responsibility of the lessee was not supported by any market data. Further, the capitalization rate analysis was based on leased fee sales of skilled nursing facilities (with only 1 facility located in Michigan).[88] Again, analysis and narration for differences between leased fee and fee simple properties was absent from Petitioner's appraisal report.

[83] Tr, Vol 4, pp 852-853.
[84] Tr, Vol 4, p 864.
[85] Tr, Vol 4, p 858.
[86] Tr, Vol 2, pp 420-421.
[87] Tr, Vol 4, p 877.
[88] Tr, Vol 4, p 878.

Regarding the land use restriction agreement, there was a lack of clarity from testimony about the base rent for the 16 units from market-supported evidence. Similarly, it was unclear as to which 16 units are set aside for the low-income residents under this agreement. In compounding fashion, Petitioner's appraiser looked at some units, but could not recall if those were the units held aside for low-income residents.[89] Petitioner's appraiser did not consider whether or not the lost rental income from the land use restriction agreement was offset by a lower interest payment on the construction loan for the subject development.[90] The Tribunal is not persuaded that the land use restriction agreement and unspecified 16 units set aside for low income residents adversely affects the Rivers extensive facilities for independent living, assisted living and skilled nursing. Again, Levin's own personal mission to provide needed senior care, based on his own experiences, is noteworthy.

Lastly, excessive testimony carried over into the confusion of supposed variables and inputs for a discounted cash flow (DCF) analysis which was not included in Petitioner's appraisal report. The development of a DCF for the land use restriction agreement, without narration for the variables, lease comparables and assumptions is not commonplace. Testimony for unsupported DCF assumptions illustrates the very concerns for this methodology within valuation practice and theory.[91] In other words, conclusory statements are not the equivalent of summary analysis. Valuation practice and theory encompasses the support and articulation of market data which results in a defensible methodology and analysis. On the other hand, Respondent successfully

[89] Tr, Vol 2, pp 395-408.
[90] Tr, Vol 2, p 411.
[91] The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (Washington, DC: 2018-19 ed), p 162.

demonstrated that senior care facilities sell on the basis of a going-concern value; identifying the income between the real property value from the business valuation is extremely difficult. Respondent's application of an income methodology for the cost approach is noteworthy though. Therefore, Petitioner's direct capitalization and yield capitalization income analyses are given no weight or credibility in the determination of market value for the subject property.

As noted, both parties have developed the cost approach to value for the subject property. The validity of the MVS and actual cost calculations for a newer building is reasonable towards a determination of true cash value for the subject property.

Petitioner also utilized Zillow residential sales data to formulate a location adjustment to the land sales analysis. Overall, the appraisal report did not describe or outline underlying attributes for these adjustments.[92] Various considerations for adjustments were not bolstered by cogent testimony or meaningful descriptive write-ups.[93] In other words, having given consideration to various property elements was not consistent with the lack of customary details that would be found in a write-up sheet for a comparative analysis. Next, size adjustments based on proposed number of units must entail a hypothetical condition or extraordinary assumption on the part of the appraiser. The actual number of units to a vacant parcel has yet to occur as of the date of sale. The proposed number units for each vacant unimproved land sale does not necessarily carry greater persuasion for the site analysis based on price per acre. The analysis of the proposed number of units for each land sale and corresponding 5%

[92] Tr, Vol 2, pp 429-430.
[93] Tr, Vol 2, pp 448-450.

adjustments were vexing as Rasmussen admitted to having no personal knowledge about his vacant land sales.[94] The Tribunal is unable to ascertain his determination of each land sale's number of units before or after the sale transaction date.[95]

Petitioner's appraiser admitted that adjustments to his land sale comparables were subjectively based.[96] The admission that adjustments are subjective (including nebulous considerations for any and all underlying elements) is not persuasive, especially when Rasmussen admitted that he relied on Eisenbraun's analysis for the land sales adjustments.[97] Again, Rasmussen's testimony is not consistent with the analysis within his report. Merely testifying that any elements missing from written narration and were "taken into consideration" is not persuasive to a comparative analysis.[98] Testifying with a standard answer of "taken into consideration" without any underlying support is unpersuasive. Reliance on staff to decide adjustments points to a lack of knowledge in the southeast market area of Michigan.[99] On the other hand, Respondent analyzed 7 land sales in southeast Michigan on a price/acre and price/unit basis. These descriptive write-ups carried greater detail and analysis with market-supported adjustments. In addition, Respondent cited two improved property sales within the subject market area which showed the demand for land redevelopment

[94] Adjustments just for the sake of making adjustments is not reasonable in valuation practice and theory. Again, adjustments based on judgment and experience without market support is unpersuasive.
[95] Tr, Vol 3, pp 497, 517, 532 and 538.
[96] Tr, Vol 3, p 507.
[97] Tr, Vol 3, pp 524-525 and 530.
[98] Home prices don't necessarily articulate the impact of visibility for a senior care facility. (Tr, Vol 3, p 466-470) The correlation of visibility, access and proximity to residential home pricing was claimed to be inferred from Rasmussen's comparative analysis. Rasmussen admitted that no other elements besides average home price were used to support the location adjustment. (Tr, Vol 3, 472) Rasmussen contends size adjustments were made for "unit size parcels" and not for "land parcels" as denoted in his appraisal report. (Tr, Vol 3, 476)
[99] Tr, Vol 4, p 668.

through demolition. For these reasons, Petitioner's vacant land sales analysis is given no weight or credibility in the indication of market value for the cost approach.

Petitioner's description of alleged deficiencies and over-improvements are not consistent with interior photographs of the subject. Further, testimony regarding average versus good quality for the subject was unclear. Specifically, Levin testified that the subject was over-built, but Rasmussen stated the subject should have the look and feel of a luxury hotel. Petitioner realized cost savings in the construction phase (no contractor's costs) but still claims over-improvement for "average" quality construction. A relatively new facility built in an affluent market area (with amenities that appeal to residents) but tabbed as average is not logical. The chronological age of the subject is 3 years and photographs from both parties' appraisal reports depict a building that is in good condition. Moreover, the vast knowledge and experience of Petitioner's owner, architect, general contractor, chief operating officer and appraiser are consistent with the subject's multi-faceted facility.[100] Petitioner's intended quality of construction for such an elaborate facility satisfies both building codes and market tastes/needs. Therefore, the subject's condition and quality are credibly depicted and supported by the parties' photographs, along with Respondent's reasoned MVS quality rating.

Regarding the depreciation analysis, Petitioner determined physical depreciation based on an age/life methodology, resulting in 5.5% (3 years divided by life expectancy of 55 years). However, this method is a straight-line lump-sum depreciation.[101] In other words, the three forms of depreciation (along with short-lived and long-lived

[100] Petitioner's argument that contractor's profits were precluded from the bond financing is unconvincing as Kamego receives a salary and bonuses in order to be a jack of all trades.
[101] Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 6th ed, 2015), p 71; and *The Appraisal of Real Estate* (Chicago, 14th ed, 2013), pp 611-612.

components) were not delineated in Petitioner's analysis. Without narration or specific analysis, Petitioner's physical, functional and external percentages overlap and amount to double counting (aka double-dipping). On the other hand, Respondent's determination of 1% physical depreciation is supported by its photographs, material descriptions, condition rating and MVS quality rating. The subject building and improvements are relatively new and are consistently depicted as good condition and good quality. Therefore, Petitioner's determination of 5.5% physical depreciation to the subject building and improvements is given no weight or credibility in the cost analysis of the subject property.

Issues concerning ceiling heights, a glass atrium and a saltwater swimming pool were raised. Petitioner's contention of functional obsolescence was impacted by these items and were alleged to be above market standards/expectations. However, Rasmussen admitted that he developed no baseline/benchmark to measure the subject's interior finishes as super-adequacies.[102] Similarly, Petitioner's appraisal report makes no mention of market expectations for ornate chapels in senior care facilities, yet Rasmussen testified that the subject's chapel is understated.[103] Pointing to ceiling heights, heating/cooling systems, large atriums & common areas and a saltwater pool as super-adequacies, without market examples, is equally unpersuasive.[104] Given the size of the subject development (with 3 types of facilities), the elaborate layout,

[102] Tr, Vol 4, p 644.
[103] An ornate chapel in such a large facility could vary greatly depending on any religious faith and denomination. The subject's neutral chapel décor appears to offer a flexible spiritual setting for everyone to utilize.
[104] Tr, Vol 4, pp 647-663.

floorplan, varied ceiling heights, cooling/heating would reasonably be expected for a CCRC facility.

Petitioner's recitation and reliance on the MVS for the definition of obsolescence and super-adequacies is not determinative. The MVS is a national service that drills down to each region of the country but does not pinpoint directly down to the local level. Regional and local multipliers help to fill gaps, but it's the appraiser's job to analyze the local market for nuances not captured within the MVS. Marshall Valuation Service does not determine obsolescence. Over-improvements and under-improvements are determined by market participants. Again, cost figures on a regional basis must be compared, contrasted and applied to local markets. Specifically, Petitioner's appraiser did not make use of methodologies pertaining to the alleged obsolescence from ceiling heights, a glass atrium and/or a saltwater swimming pool.[105] Here, Petitioner admits to no data support for obsolescence and super-adequacies, other than his own experience with such facilities all over the country. With such vast knowledge, demonstrating an example of obsolescence and super-adequacy would be a reasonable expectation. Conclusory statements based on experience do not come before the presentation and analysis of actual data support. Moreover, Rasmussen did not have any non-foreclosure sales of CCRCs to support his 35% total accrued depreciation.[106] Calculations from a cost service (on a regional basis) must not only be refined to a local market, but compared to the actions of other developers, builders and operators of such facilities. In the context of replacement cost new, Rasmussen admitted that if value is

[105] Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 14th ed, 2013), pp 623-632.
[106] Tr, Vol 4, pp 708-709.

equal to the cost, it's not a super-adequacy.[107] For these reasons, Petitioner's 20% functional obsolescence is given no weight or credibility in the cost analysis and cost indication for the subject property.

Petitioner contended that external obsolescence exists because elderly residents can afford to be in their own homes longer before entering a CCRC facility. Negative influences outside of the boundaries of the subject property were presented in terms of a 1-mile, 3-mile and 5-mile radius. However, reliance on median home prices was not supported by search criteria, etc. Petitioner was unable to quantify this form of obsolescence and was countered by its own condominium development (which abuts the subject facility) and acts as a segue for elderly residents transitioning into the CCRC. Again, Rasmussen's list of local competitors (within his market analysis) would indicate familiarity within southeast Michigan, but his heavy reliance on numerous individuals for his alleged analysis was rounded out only by experience, judgment and endless considerations. Competition from other senior care facilities demonstrated market demand and not necessarily obsolescence. On the other hand, Respondent's direct knowledge of the southeast Michigan market demonstrated geographical competence to analyze relevant data in a meaningful manner. Therefore, Petitioner's determination of 10% external obsolescence is given no weight or credibility in the cost analysis of the subject property.

Respondent's use and reliance on soft costs documentation was challenged by Petitioner for different reasons. First, Petitioner asserted that certain information was strictly confidential and such information was critical to Petitioner's business operations.

[107] Tr, Vol 5, pp 910-911.

However, after the Tribunal conducted an *in-camera review*, only a small portion of voluminous documentation was deemed to be confidential. Second, Petitioner contended that certain soft cost information was originally provided by Petitioner to Respondent. The origination of such information would infer that Petitioner did consider its own information. Third, Petitioner cross-examined Respondent's appraiser on the application of the soft costs in Respondent's cost analysis. Overall, Respondent's appraiser's testimony and documentary evidence point to information found in a bond financing public domain website. The use and application of publicly available information was reasonable and legitimate. Attempts to discredit the possession and analysis of such data (which was part of a public domain website and Petitioner's bond issuance) does not make sense.[108] Rasmussen's claim that cash or cash equivalency (within market parameters) is acceptable belies his admission of not receiving or reviewing Petitioner's financing documents.[109]

Respondent's due diligence in obtaining documents from a bond financing website is significant because certain information was not presented within Petitioner's own appraisal report. For example, Rasmussen's use of AIA documents did not include an entry for contractor's profit in his cost analysis.[110] He contends contractor's profits are already built into the construction costs.[111] This analysis of contractor's profits

[108] Creating issues over the possession, use and application of soft costs by Respondent's appraiser does not alleviate Petitioner's burden and responsibility for its own information. Either Petitioner placed no reliance on its own bond information or Petitioner was hoping that no one else would utilize/analyze such information from an obscure bond financing website.
[109] Tr, Vol 2, p 388.
[110] Tr, Vol 4, p 731.
[111] An appraiser is cautioned to analyze contractor's profits, entrepreneurial profits/incentives based on market actions. Carrying the assumption that such profits are built into the construction costs could amount to double counting (aka double-dipping). See *The Appraisal of Real Estate* (Chicago: 14th ed, 2013), pp 573-576 and *Appraising Residential Properties* (Chicago: 4th ed, 2007), pp 264-265 published through the Appraisal Institute.

contradicted Petitioner's position that the bond financing precluded such profits. This contradiction further weakens the contention that Petitioner's bond financing is typical for the market. Therefore, Respondent's research and analysis of soft costs (from a public domain website), including contractor's profit are given the most weight and credibility in the cost analysis of the subject property.

Included in the cost analysis of the subject are the parties' contentions involving an entrepreneurial profit from the development. Both appraisers recognized the existence of this element in the cost analysis. Distinguishing between entrepreneurial incentive[112] and entrepreneurial profit[113] is relevant to the cost analysis for the subject. While the terms have separate meanings, both are reflective of Petitioner's actions in the development and operation of the subject property. Petitioner's incentive for future economic rewards is demonstrated by the expertise and acumen of Petitioner's various professionals. The anticipated going-concern profits from a stabilized occupancy is at the heart of an entrepreneurial incentive. While going-concern value is separate from TCV, the going-concern is an indication of the subject's viability in the market, especially given the higher risk (for a special use property), and thus, an expected greater return from the development. In this regard, TCV represents the value of the real estate, whereas the going-concern value is represented by market value. For this reason, TCV is not synonymous with market value in the analysis of entrepreneurial profit in the context of an ad valorem tax appeal of the subject property.

[112] Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 6th ed, 2015), p 76.
[113] *Id*, pp 76-77.

Petitioner's profit is "A market-derived figure that represents the amount an entrepreneur receives for his or her contribution to a project and risk . . ." This is calculated from the difference between total cost of the property and the market value of the property after completion. "In short, incentive is anticipated while profit is earned."[114] Incentive takes place in the midst of the development whereas profit is realized at the point the property is sold. Petitioner has created value through a new development and reasonably would expect to be rewarded.

Respondent's entrepreneurial profit of 15% is within Petitioner's stated range of 5% to 20%. Petitioner's initial support for this cost entry was based on conversations between Rasmussen and Levin. Rasmussen also relied on his 30-plus years in valuation experience for the 5% to 20% range. The conclusion of 7.5% was made without any other underlying support.[115] On the other hand, Respondent developed an extensive analysis from two tests. Specifically, Respondent's test 1 involved a Pozar Report (initially rendered for Petitioner) which projected net operating incomes for the subject development. Test 2 involved the subject's level of occupancy and the absorption of units. Through the detailed analyses, Respondent's appraiser states, "In this instance, a sufficient spread appears to exist between that of the subject's Going Concern Value and that of Total Development Cost, which in turn warrants inclusion of Entrepreneurial incentive within the Cost Approach."[116] The difference between the two appraisers' analyses is Respondent's methodology which is more detailed with articulation and support from the market. Creating extended hypothetical examples did

[114] Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 14th ed, 2013), pp 573-576.
[115] Tr, Vol 4, pp 615-620.
[116] Respondent's Exh. R-3, p 171.

deter Respondent's appraiser from his credible testimony and reasonable tests in support of entrepreneurial profit.[117]

Nonetheless, Petitioner's contention that entrepreneurial profit should not be applied to the cost calculations has merit.[118] Petitioner's reference to *Meijer, Inc v City of Midland*, 240 Mich App 1; 610 NW2d 242 (2000) provides a two-part test for the inclusion of entrepreneurial profit. The subject is ". . .a type that is developed to make a profit as a direct consequence of the development." Again, the subject was developed as a for-profit, going concern with multi-care senior facilities. While Petitioner's bond issuance 1) precludes a contractor's profit, 2) requires units for low-income residents and 3) precludes the sale of the property until it has reached stabilized occupancy, Petitioner's admission that the subject is a going-concern validates its actions and intent to make money in this type of business. The second test requires ". . . evidence that the market price will bear the inclusion of such profit." As previously discussed, the subject property has yet to sell and determining entrepreneurial profit through a hypothetical going concern value is not logical to the TCV for the subject property. Respondent's equation for the determination of entrepreneurial incentive is *market value less total cost of development*. The market value of the subject real estate is not the market value of the going concern as Respondent has analyzed. As admitted by Ellis, separating the real estate value from the going concern for a multi-care senior facility is very difficult. Again, a going-concern value is not the equivalent of true cash value for the subject property. Therefore, entrepreneurial incentive and profit shall be omitted from the cost

[117] Petitioner's Exhibit P-39 was not persuasive or efficient to the proceeding. Handwritten calculations for hypothetical conclusions were unrelated to Respondent's tests for the support of entrepreneurial profit.
[118] However, Petitioner's contention of TCV remained unchanged even after Petitioner's counsel raised the argument for the omission of entrepreneurial profit.

calculations because going-concern value is not germane to the TCV of the subject property.

An appraiser's decision to develop certain approaches to value is tied to the appraiser's scope of work for a specific assignment. Merely developing all three approaches to value to demonstrate a level of due diligence does not comport to the understanding of a given subject property and real estate market. In this case, the development of all three approaches to value did not foster a complete analysis of the subject property. Petitioner believes that "…as long as you have some data, whether or not it's good data, just like your sales comparable[s], as long as you have some data, you can form a conclusion."[119] Data analysis means more than direct analysis to a subject property. It first means investigating a real estate market for the quality and quantity of data to first determine the strength of a given approach to value. In other words, each approach is considered relative to the inter-relationship to the other approaches. The overlap of the approaches from market data is a compelling element of persuasion. Respondent's development of the cost approach was not a singular analysis. Respondent did not ignore the sales comparison and income approaches, but rather articulated the consideration of each approach to value. As demonstrated, Respondent cited improved sales and analyzed them to the actions of buyers and sellers in the market. The absence of a formal comparative analysis did not hinder Respondent's due diligence in investigating and considering market elements. Further, Respondent's consideration of going-concern value to sales data gives deference to an income analysis in parsing real property from intangible components. The variables for

[119] Tr, Vol 4, p 879.

a CCRC are more significant than a single facility (independent living, assisted living or skilled nursing).

Respondent's MVS costs and actual costs carry greater depth and detail. The detail attributed to each material component of the subject property surpasses Petitioner's presentation. Respondent's assiduous efforts in analyzing actual contractor's statements was persuasive as Respondent's appraiser states, "The contractor's statements did not include contractors' profit, entrepreneurial profit, or indirect costs. These items had to be estimated individually or were taken from an Official Statement relating to the issuance and sale of revenue bonds to finance the construction of the subject."[120] Petitioner's cost approach is not more persuasive than Respondent's cost approach.

The Tribunal is not at liberty to take Petitioner's appraiser's conclusory testimony and apply it to an appraisal report that lacks fundamental concepts. Judgment, experience and a plethora of vaguely undocumented considerations do not come before customary due diligence in developing qualitative and quantitative methodologies. Opinions of value must be ***supportable and defensible***. Regardless of type of analysis, an appraiser must lead all readers through an appraisal report to the conclusion of value. This is the responsibility of rendering analysis which is meaningful and not misleading.

From data research and market support then does an appraiser apply his/her knowledge, experience and judgment for an adjustment. Someone else's analysis (without attribution in the signed certification) does not properly signify the signing

[120] Respondent's Exh. R-3, p 158.

appraiser's own opinions, analyses and conclusions.[121] Even subjective qualitative adjustments need meaningful explanation, analysis, logic. Such a heavy reliance on the Detroit office staff should have been acknowledged in the signed certification within Petitioner's appraisal report, especially as Rasmussen admitted that an appraiser's conclusions should have factual support.[122] The developed sales and income approaches were unsuccessful in separating the subject's real estate from the going concern. The totality of Respondent's cost components, research and analysis (including Petitioner's statements) and applied to the market is the most reliable evidence for the independent determination of market value for the subject property.

Therefore, Respondent's cost analysis from Petitioner's contractor's statements (with support from MVS cost calculations) is the most reliable and credible valuation evidence for the independent determination of TCV for the subject property.

Contractor's Development Cost	$21,226,760
Contractor's Profit	$ 1,592,007
Total Indirect Costs	$ 3,043,000
Cost New from Contractor Stmts	$25,861,767
Less Depreciation (1%)	$ 258,617
Depreciation Cost of Improvements	$25,603,150
Plus Land Value	$ 3,800,000
Indicated Value via Cost Approach	$29,403,150
(Rounded)	$29,400,000

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner has successfully demonstrated that the subject property

[121] Tr, Vol 3, pp 516, 535 and 552-554.
[122] Tr, Vol 4, p 702.

was over-assessed for 2017. Respondent's appraiser's analysis of market data and articulation to the subject was well supported. Respondent's cost approach to value provide the most credible and reliable evidence of market value for the subject property. The subject property's TCV, SEV, and TV for the tax year(s) at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax year(s) at issue are AFFIRMED as set forth in the Introduction 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 the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of 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 penalty and interest paid on delinquent taxes. The refund shall also separately indicate the

amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, and (xi) after June 30, 2019 through December 31, 2019, at the rate of 6.39%. This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[123] Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.[124] A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.[125] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[126]

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[127] A copy of the claim must be filed with the Tribunal with the filing fee required for

[123] See TTR 261 and 257.
[124] See TTR 217 and 267.
[125] See TTR 261 and 225.
[126] See TTR 261 and 257.
[127] See MCL 205.753 and MCR 7.204.

certification of the record on appeal.[128] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[129]

By _____

Entered: December 17, 2019

[128] See TTR 213.
[129] See TTR 217 and 267.