



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

Cav-Core-Allendale LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MAHS Docket No. 17-001338

Allendale Township,
Respondent.

Presiding Judge
Marcus L. Abood

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Cav-Core-Allendale LLC, appeals ad valorem property tax assessment levied by Respondent, Allendale Township, against Parcel No. 70-09-25-400-051 for the 2017 tax year. Sean P. Fitzgerald, Attorney, represented Petitioner, and Bradley J. Fisher, Attorney, represented Respondent.

A hearing on this matter was held on July 16, 2018. Petitioner’s witnesses were Logan Hollensteiner and Laurence Allen. Respondent’s witness was Douglas Adams. 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 for the 2017 tax year are as follows:

Parcel No.	Year	TCV	SEV	TV
70-09-25-400-051	2017	\$30,000,000	\$15,000,000	\$11,302,134

PETITIONER'S CONTENTIONS

Petitioner contends the subject property was previously mis-managed and that there is an over-supply of student housing for the demand in the Grand Valley State University rental market.

Petitioner's appraiser considered all three approaches to value but asserts that the income approach is the most applicable methodology for this tax appeal appraisal assignment.

Laurence describes his initial research which included publicly available information regarding the subject development, student housing trends and the impact of pre-leasing to the subject. His appraisal report includes a highest and best use analysis and claims his report is consistent with *The Appraisal of Real Estate* (Chicago: 14th ed, 2013) published by the Appraisal Institute. Regarding the approaches to value, Petitioner contends the income approach is the most applicable and reliable while the sales and cost approaches are given less weight in the final reconciliation of market value for the subject property.

PETITIONER'S ADMITTED EXHIBITS

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

- P-1: Appraisal Report with Retrospective Date of Value as of December 31, 2016.
- P-2: Market Preleasing Summary.
- P-3: 2016 Summary of Revenue & Expenses.
- P-4: Rent Roll for December 2016.
- P-5: Social Media Reviews of Evolve.
- P-6: Photographs of Evolve.

PETITIONER'S WITNESSES

Petitioner's first witness, Logan Hollensteiner, described the subject student housing development and its characteristics and amenities. He pointed out that Cav-Core is part of 47 student housing projects owned by CA Ventures.¹ Further, Petitioner has an in-house management firm named Campus Acquisitions Management that handles the subject's day-to-day management. He summarized the subject's budget, prior property management and the impact of social media on leasing.² Petitioner's management tracks approximately 10 competing developments in a 10-mile radius to the subject.³

Petitioner's second witness, Laurence Allen, MAI, prepared an appraisal report for the subject property. He is primarily a commercial appraiser with nearly 45 years of valuation experience. He is licensed in the state of Michigan and designated through the Appraisal Institute. Based on his education and experience, the Tribunal accepted Mr. Allen as an expert real estate appraiser.

RESPONDENT'S CONTENTIONS

Respondent contends analyzing pre-leasing from the subject's student housing amounts to looking into a crystal ball and is not germane to the tax year under appeal. The demand for student housing in the subject market area has steadily grown as evidenced by the recently constructed student housing developments. Respondent developed and analyzed all three approaches to value but places most weight and reliance on the income approach. Respondent's appraiser lives and works in west

¹ Tr., 16.

² Hollensteiner's intimate knowledge of the subject's amenities was not believable based on his testimony that an in-ground swimming pool stays open until early October in a Michigan climate.

³ Tr., 25.

Michigan market area. Moreover, Respondent's data is relevant and proximate to the subject development.

RESPONDENT'S ADMITTED EXHIBITS

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

- R-1: Respondent's Appraisal by Douglas C. Adams, MAI.
- R-2: Petitioner's Appraisal.
- R-3: GVSU Off-Campus Housing Survey.
- R-4: AxioMetrics GVSU Leasing & Occupancy Survey.
- R-5: AxioMetrics GVSU Enrollment Trends.

RESPONDENT'S WITNESS(ES)

Respondent presented testimony from Douglas Adams, MAI. He is a commercial appraiser licensed in the state of Michigan. He does work throughout the lower peninsula of Michigan and has appraised between 50 and 100 multi-unit apartment complexes. Based on his background, education and experience, the Tribunal accepted Mr. Adams as an expert real estate appraiser.

FINDINGS OF FACT

1. The subject property is located at 4967 Pierce Street, located in Ottawa County and within Allendale Township.
2. The subject parcel code number is 70-09-25-400-051 and is zoned R-4, Medium Density Multiple Family.
3. The subject is a student rental development (commonly referred to as "Evolve") convenient to Grand Valley State University.
4. The subject development is comprised of 19.17 acres and is improved with 13 buildings (YB: 2016), 224 apartments and 600 beds.
5. The highest and best of the subject is as a multi-student housing development.
6. Regarding a unit of comparison⁴, the subject was analyzed on the basis of price per bed and not exclusively by price per unit.

⁴ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 6th ed, 2015), p 240.

7. Petitioner submitted two valuation disclosures in the form of narrative appraisal reports prepared by Laurence Allen.⁵ Petitioner's prehearing appraisal report concluded to a value of \$20,010,000. Petitioner's hearing appraisal report concluded to a value of \$20,510,000.
8. In testimony, Petitioner's appraiser was unable to explain the differences between his two appraisal reports.⁶ Moreover, he was unable to explain the existence of his prehearing appraisal report.
9. Respondent submitted a valuation disclosure in the form of a narrative appraisal report prepared by Douglas Adams.
10. Respondent's appraisal report developed and analyzed all three approaches to value. Respondent placed most weight on the income approach.
11. In testimony, Respondent's appraiser points to corrections on pages 63 and 71 of his appraisal report.⁷ These corrections impact the appraiser's final conclusion of value. However, Respondent did not wish to change his final conclusion of value based on those revised calculations.
12. Respondent's appraiser appraised the Lodge, the Trio and Mystic Woods student housing developments.⁸
13. Respondent's appraiser lives and works in west Michigan.
14. The parties' appraisers analyzed Axiometrics surveys. Pre-leasing analysis is a component of these student house surveys.

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.⁹

⁵ Petitioner's former legal counsel submitted an appraisal report prepared by Laurence Allen for the prehearing conference. The prehearing conference resulted in the scheduling of a 3-day hearing. Subsequently, Petitioner engaged new legal counsel (prior to the hearing date certain). The actual hearing lasted one day as the parties stipulated to expert witnesses and exhibits in a fast-track fashion. When questioned by the Tribunal, Petitioner's appraiser was unable to explain the difference between his two appraisal reports. Each party is at its own volition to conduct its case-in-chief but a 1-day hearing with apparent shortcuts including a transcript with a total of 85 "inaudible" entries does not garner credibility.

⁶ Allen's appraisal reports identify Cav-Core-Allendale and its "counsel" without specifically naming the legal counsel to this tax appeal matter. Professional standards and ethics do not condone an appraiser's inability to properly identify clients and intended users when maintaining **public trust** in an appraisal assignment. [bold and italics added]

⁷ Tr., 114-116.

⁸ Tr., 160.

⁹ See MCL 211.27a.

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. . . .¹⁰

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.¹¹

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”¹²

“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.”¹³ The Tribunal is not bound to accept either of the parties' theories of valuation.¹⁴ “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 case.”¹⁵ 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.”¹⁶

¹⁰ Const 1963, art 9, sec 3.

¹¹ MCL 211.27(1).

¹² *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

¹³ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

¹⁴ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

¹⁵ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

¹⁶ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

A proceeding before the Tax Tribunal is original, independent, and de novo.¹⁷ The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”¹⁸ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”¹⁹

“The petitioner has the burden of proof in establishing the true cash value of the property.”²⁰ “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.”²¹ 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.”²²

The three most common approaches to valuation are the capitalization of income approach, the sales comparison, or market, approach, and the cost-less-depreciation approach.²³ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”²⁴ The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the

¹⁷ MCL 205.735a(2).

¹⁸ *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

¹⁹ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

²⁰ MCL 205.737(3).

²¹ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

²² MCL 205.737(3).

²³ *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).

²⁴ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances.²⁵

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.²⁶

Respondent's development and analysis of all three approaches to value is relevant as the subject is a newer student housing development that is income producing and competes with comparable student housing developments proximate to Grand Valley State University.

From Respondent's sales comparison approach, all of the sales are student housing developments located in college settings. Adjustments applied to the sales were reasonably supported and explained by the appraiser. However, the reconciliation of the sales based on a statistical indication of value is unpersuasive. The reconciliation of sales data is similar to the reconciliation of approaches. Respondent averages 6 adjusted sales to arrive at a value conclusion. "The measures of central tendency (mean, median, and mode) may serve as useful tools in final reconciliation, but the final value opinion does not simply represent the average of different value opinions."²⁷ The reconciliation of sales data is the opportunity to weigh strengths and weaknesses that are unattainable from quantitative methodologies. Valuation practice and theory provides a basis of comparative analysis above and beyond a simple average to arrive at a conclusion of value. Two sales are located at Michigan State University, two sales are located at Western Michigan University, one sale is located at Ferris State

²⁵ *Antisdale, supra* at 277.

²⁶ See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

²⁷ Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 14th ed, 2013) p 370.

University, one sale is located at Central Michigan University and one sale is located at Grand Valley State University.²⁸ Sale 4 (48 West Apartments) has relatively few net adjustments and is the most similar to the subject in location. Sale 4 is the most reliable comparable sale and is given the most weight from Respondent's sales data.

Therefore, a reasoned and reconciled indication from the comparative analysis is \$50,000 per bed (600 beds x \$50,000) equating to \$30,000,000.

From Respondent's cost approach, the land sales analysis is persuasive as six parcels were considered (including the subject parcel).²⁹ The indication of land value for the subject is well supported and explained by Respondent's appraiser. Next, the replacement cost calculations (taken from Marshall Valuation Service) as of December 2016 are also presented in a logical format. However, the cost analysis only identified the depreciated replacement cost of the improvements per Corelogic totaling \$28,132.725.³⁰ The Tribunal is unable to ascertain how Respondent derived and analyzed depreciation (physical, functional, external) for the subject property. Merely relying on valuation software (Corelogic-SwiftEstimator) is not meaningful without explanatory narration from the appraiser. Therefore, Respondent's cost approach is given no weight or credibility in the determination of market value for the subject property.

²⁸ The parties' have three common comparable sales identified as Block 36 Apartments, Rocks Apartments and 48 West Apartments.

²⁹ The parties have three common comparable land sales identified as the Enclave, the Lodge and Conifer Creek West.

³⁰ Resp's Exh R-1, p 46.

From Respondent's income approach, the initial analysis of six student housing rental developments is convincing.³¹ The potential gross income was presented in a logical fashion (including market support) with succeeding income elements for effective gross income, vacancy/credit loss, effective gross income and operating expenses/reserves. Moreover, extensive market derived capitalization rates and investor surveys provided a supported capitalization rate applicable to the subject property. Therefore, Respondent's income approach indication of value of \$30,000,000 is given weight and credibility in the determination of market value for the subject property.

Petitioner also developed and analyzed all three approaches to value. However, the Tribunal is unable to solve the mystery of two appraisal reports rendered by Petitioner's appraiser.³² As a trier of fact, the Tribunal must weigh an expert's testimony and documentary evidence to determine credibility. An appraisal report is based on the opinions, analyses and conclusions of an appraiser. In this instance, the Tribunal cannot determine how Petitioner's appraiser changed value conclusions when Petitioner's appraiser could not explain this valuation conundrum. The duplication of data between Petitioner's two appraisal reports could be relied upon but the appraiser's analyses changed based on his value indications and conclusions. Both appraisal reports signify the same report date, effective appraisal date and signature of the appraiser. Typographical errors and mistakes sometimes occur and are

³¹ The parties' have four common comparable rental developments identified as 48 West, Copper Beech, Enclave and Lodge.

³² Two separate appraisal reports under very suspect and unexplained circumstances does not foster public trust in valuation practice. As the appraiser comports to comply with professional standards and ethics, the two appraisal reports (with different conclusions of value) are not meaningful and are quite misleading.

explained/corrected in the midst of expert testimony. “Perfection is impossible to attain, and competence does not require perfection. However, an appraiser must not render appraisal services in a careless or negligent manner. This Standards Rule requires an appraiser to use due diligence and due care.”³³ Again, the reports carry different opinions, analyses and conclusions of value. When questioned about this fact, Petitioner’s appraiser was unable to give any explanation for this deviation. The Tribunal cannot rely on valuation disclosures where an expert appraiser does not know how his analytics changed from one report to a second report. Therefore, Petitioner’s appraisal reports are given no weight or credibility in the independent determination of market value for the subject property.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner has failed to demonstrate that the subject property was over-assessed for 2017. Respondent’s appraiser’s geographical competence was manifested by his knowledge of the subject market area and intimate knowledge of specific student housing developments. Respondent’s sales and income approaches to value provide the most credible and reliable evidence of market value for the subject property.³⁴ The subject property’s TCV, SEV, and TV for the tax year(s) at issue are as stated in the Introduction section above.

³³ The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (Chicago: 2018-2019 Edition), p 15.

³⁴ The parties’ use of common data (sales and rentals) gives credence and support to Respondent’s analysis whereas Petitioner’s analyses were left unexplained. Any attempt to decipher data between Petitioner’s two appraisal reports without an underlying analysis or explanation from an appraiser is futile.

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%, and (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%.

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.³⁵ 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.³⁶ 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.³⁷ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.³⁸ 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."³⁹ A copy of the claim must be filed with the Tribunal with the filing fee required for

³⁵ See TTR 261 and 257.

³⁶ See TTR 217 and 267.

³⁷ See TTR 261 and 225.

³⁸ See TTR 261 and 257.

³⁹ See MCL 205.753 and MCR 7.204.

certification of the record on appeal.⁴⁰ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.⁴¹

By Marcus L. Abood

Entered: October 26, 2018

⁴⁰ See TTR 213.

⁴¹ See TTR 217 and 267.