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

Lansing Tower Apartments,
Petitioner,

MTT Docket No. 314856

v

City of Lansing,
Respondent.

Tribunal Judge Presiding
Rachel J. Asbury

FINAL OPINION AND JUDGMENT

INTRODUCTION

A hearing was held in the above-captioned case on April 15, 2008. Petitioner was represented by Randall P. Whately, Attorney. Respondent was represented by Donald J. Kulhanek, Attorney.

BACKGROUND

Petitioner appeals Respondent's ad valorem property tax assessments for the 2005 and 2006 tax years levied upon commercial real property owned by Petitioner. The assessment at issue was appealed to Respondent's March, 2005 Board of Review. Petitioner filed its petition in this matter with the Tribunal on May 17, 2005.

The subject property is located at 610 West Ottawa Street, Lansing, Ingham County, Michigan. The property is improved with a 14-story high rise structure with an attached four-level parking ramp. The first floor of the building has 13,039 square feet and contains offices on each side of the lobby. There are two elevators in the lobby and a 24-hour security guard. One half of the east side office is occupied by the manager's office. The property contains 1.25 acres and was constructed in 1967.

The second floor of the building contains 3,745 square feet with two community rooms. The community rooms each have cooking facilities and are available for use by tenants. Sliding glass doors open to an outside patio area, which is also the upper deck of the attached parking ramp. The second level contains a stainless steel swimming pool.

The basement is 14,965 square feet and has a laundry room with six coin operated washing machines and six dryers. There is tenant storage space and the electrical equipment for the building on the basement level.

Floors three through fourteen contain the individual apartments. The floors are 12,087 square feet each and with a total of 140 apartments. The breakdown of units is as follows:

Studio	12 Units	465 SF
	20 Units	500 SF
One BR/One BA[1]	68 Units	770 SF
Two BR /Two BA	12 Units	1,090 SF
	4 Units	1,150 SF
	20 Units	1,340 SF
Three BR /Two BA	4 Units	1,515 SF

The roof of the subject property has a 3,475 square foot penthouse with the mechanical equipment. The parking ramp has a total area of 46,306 square feet plus an adjacent paved parking area.

Construction is reinforced concrete beams and slab. The heating system is gas forced hot water heat with boilers and evaporative air conditioners.

[1] Bedroom ("BR) and Bath ("BA")

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

Parcel No. 33-01-01-16-156-041

Year	TCV	SEV	TV
2005	$3,250,800	$1,525,200	$1,426,449
2006	$3,166,800	$1,583,400	$1,473,521

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

Parcel No. 33-01-01-16-156-041

Year	TCV	SEV	TV
2005	$1,927,076	$936,538	$936,538
2006	$1,800,000	$900,000	$900,000

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

Parcel No. 33-01-01-16-156-041

Year	TCV	SEV	TV
2005	$2,984,651	$1,492,320	$1,426,449
2006	$3,166,800	$1,583,400	$1,473,521

<u>PETITIONER'S CONTENTIONS</u>

Petitioner offered the following proposed exhibits:

P-1 Petitioner's valuation disclosure dated 8/22/2006; TCV as of 12/31/2004
P-2 Respondent's valuation disclosure dated 5/18/2006; effective: 12/31/2004 and 12/31/2005
P-3 Respondent's revised income approach: 12/29/2006
P-4 City of Lansing property record cards

Petitioner offered the following exhibits for rebuttal purposes:

P-5 Consumer Alert article entitled "Prepare for Higher Natural Gas Costs!"
P-6 Public Service Commission publication entitled "Michigan Energy Appraisal, Winter 2005/2006
P-7 Monthly Labor Review April 2005 article entitled "Consumer Price index, 2004"

P-8 Monthly Labor Review May 2006 article entitled “Consumer prices rose 3.4 percent in 2005, about the same as last year”

Petitioner asserts that the assessments for the tax years at issue “exceed the amounts permitted by the Michigan Constitution and applicable statutes.”[2] Petitioner further contends that “there is a dispute relative to the value of a loss in determining taxable value.”[3]

Petitioner offered the testimony of Daniel J. Tomlinson, MAI. Mr. Tomlinson has sixteen years in fee appraisal work experience. His appraisal of subject property was for the 2005 tax year only. Mr. Tomlinson testified that the subject property is “a high-rise complex, has 140 apartment units, was built in 1967, and that the first floor has some commercial office space available to lease. Behind the high-rise apartment complex is a parking garage.”[4] Mr. Tomlinson reported that when he inspected the property he saw “extensive water leakage in the parking garage. There’s cracks in the concrete.”[5] Mr. Tomlinson reported that in his appraisal he characterized the subject property as “class C apartment high-rise, calling the constructions average.”[6] He asserts that the “single-pipe system for heating and air conditioning . . . [is] a significant inefficient piece of construction, incurable functional obsolescence.”[7]

Mr. Tomlinson further testified that there “was quite a bit [of deferred maintenance].”[8] Mr. Tomlinson based his “total deferred maintenance of $489,324. . . [on] actual quotes from companies”[9] received by Petitioner.

[2] Petition, paragraph 8(a)
[3] Petition, paragraph 6
[4] Transcript, April 15, 2008, page 11, ll 15-19
[5] Transcript, April 15, 2008, page 13, ll 4-6
[6] Transcript, April 15, 2008, page 13, l 24 – page 14, l 1
[7] Transcript, April 15, 2008, page 16, ll 11-14
[8] Transcript, April 15, 2008, page 19, l 1
[9] Transcript, April 15, 2008, page 21, ll 8-10

Mr. Tomlinson testified that he considered, "[a]s in any appraisal, . . . all three approaches: sales comparison, income capitalization and the cost approach."[10] He determined that, due to the age of subject property, the cost approach would not be applicable as the cost approach is difficult on a property the age of the subject. Mr. Tomlinson applied the sales comparison approach and the income capitalization approach but emphasized "that the income approach was the most relevant, . . People would buy it for its cash flows. And the disciplined investor, buyer, would certainly place the greatest reliance on that approach."[11]

For his sales comparison analysis, Mr. Tomlinson selected four properties, all located in Lansing, that sold between December 30, 2002 and June 17, 2005. The following sales were used in this determination of market value:

> Sale 1: Maplewood Manor, 36 garden apartments, two story wood frame construction, no pool, no covered parking. The average unit size was 475 square feet. Sold June, 2005, for $581,319.
>
> Sale 2: Midtown Apartments, 35 efficiency apartments, four stories, no parking, constructed in 1922, but in superior condition to subject property. The average unit size is 588 square feet. Sold for $712,500, April 2003.
>
> Sale 3: Executive House Apartments, 52 garden apartments, three stories, with a brick veneer exterior and covered parking. The average size unit is 493 square feet. Sold April 2003, for $1,154,250.
>
> Sale 4: Lansing Park Apartments, 82 garden apartments, two stories with vinyl siding and brick veneer with carports. The average size unit is 528 square feet. Sold December 2002, for $2,080,000.

Mr. Tomlinson discussed each sale and its amenities and adjustments he made for differences between the sales he used as comparables and subject property. The sales were all adjusted 1%

[10] Transcript, April 15, 2008, page 25, ll 4-6
[11] Transcript, April 15, 2008, page 25, ll 18-23

per year for time differences between the time of the sale and the valuation date of the appraisal. All of the properties had significantly fewer units. Sales 1 and 2 had approximately 75% fewer units, Sale 2 had approximately 66% fewer units, and Sale 4 had approximately 40% fewer units. All of the sales had between 40% and 50% less average square footage per unit. Sale 1 was adjusted -5% for number of units; 5% for size of units; -5% for superior condition to subject property. Sale 2 was adjusted -5% for number of units; 5% for size of units; -5% for superior condition to subject property. Sale 3 was adjusted -5% for number of units; 5% for size of units; -5% for superior condition to subject property. Sale 4 was adjusted -5% for number of units; 5% for size of units; -5% for superior condition to subject property. The end result was a net adjustment of negative five percent for all of the sales.[12]

Only Sale 2 has a parking garage, Sales 1 and 4 have carports and Sale 3 is adjacent to a parking structure. Sales 1, 3, and 4 were all built in the 1960's, as was the subject property. Sale 2 was built in 1922. The Sales were all garden style and had no security while the subject property has a 24 hour security guard on site.

Mr. Tomlinson's unadjusted value conclusion based upon the sales comparison approach was $2,800,000 before deferred maintenance and lease-up.

For his income approach, Mr. Tomlinson used rent comparables to determine the market rent for the various types of units. He used the following four rent comparables to determine monthly rent:

[12] Petitioner's appraisal page 58, sales comparison grid

Rent 1 Fountain Place Apartments:

Studio	16 units	600 SF	$565
1 BR/1 BA	46 units	800 SF	$660
2 BR/1 BA	46 units	975 SF	$780

Rent 2 Summerhill Estates Apartments:

Studio	2 units	550 SF	$475
1 BR/1 BA	70 units	750 SF	$538
2 BR/1 BA	24 units	960 SF	$663
2 BR/2 BA	22 units	1,039 SF	$825

Rent 3 Woodbridge Manor Apartments:

1 BR/1 BA	Unknown	650 SF	$510
2 BR/2 BA	Unknown	900 SF	$645

Rent 4 University Court

3 BR/2 BA	36 units	1,098 SF	$1,455

Based on the asking rents for subject property and the rent comparables Mr. Tomlinson determined that market rents should be as follows:

Studio	12 Units	465 SF	$590
	20 Units	500 SF	$610
One BR/One BA	68 Units	770 SF	$700
Two BR /Two BA	12 Units	1,090 SF	$890
	4 Units	1,150 SF	$960
	20 Units	1,340 SF	$1,340
Three BR /Two BA	4 Units	1,515 SF	$1,110

After considering rents for similar properties, Mr. Tomlinson determined that the subject's actual rental rates are reasonable. The appraisal report indicates that the subject property's rental rates "are on the high-end of the market on a per SF basis."[13] The report further notes that "the economy has worsened since the valuation date [and] the concessions being offered rental properties has increased generally.[14] Mr. Tomlinson states "[t]he Subject Property is in inferior condition but has similar amenities as compared to the presented comparable rentals. Therefore, it is reasonable to conclude that the Subject Property will be able to rent units at the concluded

[13] Petitioner's exhibit 1 page 29
[14] Petitioner's exhibit 1 page 29

rental rates."[15] Based upon these determinations, Mr. Tomlinson determined that the potential gross income for the subject property is $1,363,284. With a 10% stabilized vacancy rate, which he stated is reasonable, Mr. Tomlinson determined effective gross income to be $1,235,212 for the 2005 tax year.

Mr. Tomlinson then deducted $913,661, or 74%, for operating expenses that include insurance, utilities, maintenance and repair, grounds, advertising, security, professional fees, office expense, payroll taxes and benefits, and replacement reserves. Mr. Tomlinson used an estimated increase in utility expenses for the 2005 tax year of 44% in his calculations. He based this percentage on "historical utility expenses"[16] of the subject property for the three immediately preceding years and on his assertion that "[t]he energy base in the United States was disrupted, and . . . a knowledgeable buyer would reflect . . . a significant increase in utilities."[17] Additionally, he "would recognize the effects of the hurricane in '04 . . . and . . . would expect a very steep increase."[18]

After these deductions from the effective gross income, Mr. Tomlinson concluded net operating income of $321,551. Mr. Tomlinson divided the net operating income by the overall capitalization rate of 12.15% to conclude an "unadjusted" indication of value based on the income approach rounded to $2,600,000.

[15] Petitioner's exhibit 1 page 29
[16] Transcript, April 15, 2008, page 49, l 4
[17] Transcript, April 15, 2008, page 49, l 17-21
[18] Transcript, April 15, 2008, page 50, ll 11-15

Mr. Tomlinson's overall capitalization rate was determined using a blend of several methods including a market derived rate based on sales of apartment complexes on the east side of the state. He used an investor survey and concluded that subject property would not be considered an investment grade property due to the age and income producing potential of subject. Mr. Tomlinson also calculated a mortgage and equity methodology or a band of investment. This was based on the assumption of an interest rate of 6.67%, an amortization period of 25 years, and a 65% loan-to-value ratio. The effective tax rate was then added to result in the 12.15% overall capitalization rate used to determine the value of subject property based on an income approach.

Although Mr. Tomlinson had assistance with the report, he testified that he did personally drive by each of the comparable properties to familiarize himself with the neighborhood.

Mr. Tomlinson testified that the subject property, which is 40 years old, has issues with deferred maintenance. Mr. Tomlinson defined deferred maintenance as,

> . . . maintenance items that need to be corrected. Obviously, you have short-term and long-term items. And as short-life items get worn out, they need to be replaced. An excellent example would be a roof or asphalt parking lot, or in this case the parking garage itself or painting. And prudent owners or managers continue to do that on a regular basis. But sometimes, either they don't have the money or they put money aside or they have lower than—lower cash flows that they need, so they don't do it. And so they're deferring that, those items. And when you defer it, then at a time when the purchase buyer is going to say, "Well, okay, here are the items, I need to bring the property up to a normal level of maintenance, and I need to deduct that from the sales price."[19]

Those items, as listed in his appraisal,[20] are:

Roof Deck Covering	$ 61,434
Resurface Parking Lot	$ 5,895
Patch Crack Seal Coating	$ 2,995

[19] Transcript, April 15, 2008, page 18, ll 5-23
[20] Petitioner's exhibit 1 page 79

Exterior Masonry Cut Clean Patch	$ 18,000
Exterior Cut out and Replace Sealants	$ 63,000
Masonry Powerwash and Paint	$338,000
Total Deferred Maintenance	$489,324

Mr. Tomlinson stated that the above information is based on professional quotes, in anticipation of having the work done, received by the subject property's owner.

For each of the approaches to value used by Mr. Tomlinson, he deducted a total of $489,324 for deferred maintenance and, in addition, deducted "lease up" costs.[21] He determined that, for the apartments, the stabilized occupancy for the total net rental units was 90% and that it would take 6 months for the market to absorb the vacant units. The total lease up costs for the apartments was $29,300.

For the office space, Mr. Tomlinson estimated lease up time as 36 months. The total office space is 6,948 square feet and was determined to be 100% vacant for nine months. The remainder of the office space was scheduled to be filled after the tax years at issue, 18 months later. Mr. Tomlinson deducted $91,295 for all of the lost rent as "opportunity rent loss."[22] He determined that tenant improvements would be $141,080 and the leasing cost for commissions would be $21,948. The total lease up costs for the office area is $254,300.[23]

Mr. Tomlinson concluded by deducting the $772,924 total deferred maintenance and lease up costs from the $2,800,000 estimate of value based on his sales comparison approach and the

[21] Petitioner's exhibit 1 page 76-78
[22] Petitioner's exhibit 1 pages 75 and 77
[23] Petitioner's exhibit 1 page 76-78

$2,600,000 estimate of value based on his income approach. Mr. Tomlinson's final estimate of true cash value for subject property as of December 31, 2004 was $1,927,076.

On cross examination of Mr. Tomlinson, Respondent asserted that Rent Comparable 1 was not the property identified in Mr. Tomlinson's appraisal as Fountain Place Apartments. Respondent questioned the accuracy of the address, picture, and number of 2-bedroom units as represented in Mr. Tomlinson's appraisal and therefore the merit of its inclusion as a comparable. Respondent also pointed out less significant discrepancies related to Rent Comparable 2. Further, based upon Respondent's information, Rent Comparable 3 was not within the downtown area and rent was based not on a per unit basis but based on the number of bedrooms. Respondent questioned Mr. Tomlinson on whether he made adjustments based on whether tenants paid for heat, had available laundry facilities, patios or balconies, or 24 hour security. Mr. Tomlinson testified that "even though I did not do it in an adjustment grid, I just looked at the general differences between the comparables and the subject."[24]

On cross examination, Mr. Tomlinson agreed that his Sale 1 has only 36 units versus the subject property's 140 units, has no pool, and is wood frame and newer construction.[25] Sale 2, used in the sales comparison approach, has only 35 units, was built in 1922, has no parking, and the efficiency apartments are 585 square feet.[26] Respondent also questioned the sale price reported by Mr. Tomlinson for Sale Comparable 2. Mr. Tomlinson testified that he relied on the sale price of $712,500 reflected on the warranty deed. However, Mr. Tomlinson read into the record, at

[24] Transcript, April 15, 2008, page 103, ll 11-14
[25] Transcript, April 15, 2008, pages 107-108
[26] Transcript, April 15, 2008, pages 109-110

Respondent's direction, the actual language of the deed[27] which indicated that the price paid was $712,500 "for easements and restrictions of record and further subject to a mortgage recorded on liber 2996, page 811, Ingham County records, which mortgage grantee hereby assumes and agrees to pay."[28] Respondent asserted, based on the recorded mortgage, that the actual sale price for the property was $1,269,550.[29] Respondent further contended that Mr. Tomlinson's Sale 3 is 52 units with an average unit size of 493 SF and that, based on the property transfer affidavit,[30] the transfer was between related entities. That being the situation, it was questionable whether the sale was an arms-length transaction as reported in Mr. Tomlinson's appraisal.[31]

Petitioner offered the testimony of Gordon Wendling, as a rebuttal witness. Mr. Wendling was employed by Lansing Towers as the facility manager; however, he did not prepare any valuation disclosure. Petitioner offered his testimony as to his belief, as facility manager, of what the deferred maintenance issues with the subject property were and the costs of remediation. Mr. Wendling did not prepare a list of work projects and had no independent evidence. Although he is a licensed plumber and a certified apprentice for a mechanical contractor for 40 years, and came to work for Lansing Towers when he retired, the Tribunal ruled that Mr. Wendling was not an appraiser or otherwise qualified as an expert to testify about deferred maintenance in the context of an appraisal. The Tribunal ruled that Mr. Wendling could not testify for purposes of rebuttal of Respondent's appraisal and as he had not prepared any valuation or cost documents, there were no documents in evidence to which he could testify.

[27] Respondent's exhibit 4
[28] Transcript, April 15, 2008, page 111, ll 21-25
[29] Transcript, April 15, 2008, page 114, ll 7-8
[30] Respondent's exhibit 18
[31] Transcript, April 15, 2008, pages 120-121

Petitioner offered no evidence as to valuation for the 2006 tax year.

RESPONDENT'S CONTENTIONS

Respondent offered the following proposed exhibits:

R-1 Property record cards for subject property
R-2 Memorandum of Land Contract recorded in Liber 1543, pp 1073-1074
R-3 Memorandum of Land Contract recorded in Liber 1641, pp 1165-1167
R-4 Warranty Deed recorded in Liber 3031, p 433
R-5 Warranty Deed recorded in Liber 3150, p 1254
R-6 Quit Claim Deed recorded in Liber 3172, p 960
R-7 Memorandum of Land Contract recorded in Liber 1457, pp 469-470
R-8 Warranty Deed recorded in Liber 3040, p 1135
R-9 Warranty Deed recorded in Liber 3150, p 1255
R-10 Covenant Deed recorded in Liber 2577, pp 95-98
R-11 Deed recorded in Liber 3176, p 155
R-12 Warranty Deed recorded in Liber 3040, p 139
R-13 Quit Claim Deed recorded in Liber 3010, p 606
R-14 Property Transfer Affidavit dated 12/30/02 with Assignment of Purchaser's Interest in Land Contract recorded in Liber 3087, p 489
R-15 Warranty Deed recorded in Liber 2939, p 842
R-16 Property Transfer Affidavit dated 06/23/2005 for 2509 Maplewood Avenue
R-17 Property Transfer Affidavit dated 06/23/2005 for 224 W. Kalamazoo Street
R-18 Property Transfer Affidavit dated 04/17/2003 for 420 S. Walnut
R-19 Future Advance Mortgage, sales comparable #2
R-20 Respondent's appraisal with revisions

Respondent's exhibits 1, 5, 10, 11, 12, 14, 18, 19, and 20 were admitted.

Respondent contends that the assessments for the subject property for the tax years at issue represent 50% of true cash value and that its appraisal supports the assessments. Respondent asserts that Petitioner's true cash value "appears to be based upon erroneous estimates of the cost, income and market value approaches."[32]

Respondent offered the testimony of Diane Lee, Principal Appraiser in the City of Lansing assessor's office. Ms. Lee testified that the subject property was assessed in 2005 for $1,525,200

[32] Respondent's Prehearing Statement page 2

and for $1,583,400 in 2006. The taxable values were $1,426,449 for 2005 and $1,473,521 for 2006.

Respondent offered the testimony of Sharon Cady, Senior Commercial Industrial Property Appraiser for the City of Lansing. Ms. Cady is a Level III assessor and a certified appraiser in the State of Michigan. She prepared Respondent's valuation disclosure for both tax years at issue. She used all three approaches to value to determine the market value of subject property.

Ms. Cady describes the three approaches that she used as follows:

> In the cost approach an estimate of the value of the subject property is made by first considering the current replacement cost new of the subject's various building components. A deduction is then made to this replacement cost which considers the accrued depreciation that affects the subject property. Finally, the value of the land as if vacant is added for a conclusion of market value by way of the Cost Approach.
>
> The Direct Sales Comparison approach involves the comparison of the subject property to similar properties which have recently sold. Units of comparison are then developed and analyzed from each sale and applied to the subject property.
>
> The Income approach to value is an estimate of what an investor in real estate would pay today to receive a future income stream (generated by rent) from a property. This is referred to as capitalization or net income. Basic steps to follow in the income approach are as follows: 1) Estimate potential gross income assuming 100% occupancy; 2) Deduct rent loss due to vacancy and bad debt; 3) Add any miscellaneous income; 4) Determine operating expenses; 5) Subtract expenses from income to arrive at a net operating income; 6) Determine proper capitalization rate to arrive at an estimate of value. 7) Divide net operating income by the capitalization rate to arrive at an estimate of value.[33]

Ms. Cady testified that "the neighborhood is important because there are social economic forces in effect in the neighborhood which an income-producing property would be affected by. . . .

[33] Respondent's exhibit 1 page 4

there are many legislative offices . . . Cooley Law School and Lansing Community College . . . within blocks of the subject property."[34]

Ms. Cady did a cost approach using the State's Cost Manual. Land value was determined to be $280,000. The subject property was constructed in 1967 and the building was depreciated generally for physical deterioration. Ms. Cady noted that previous inspections indicated that there had been problems with water leakage in the parking ramp. She believed that the issue had been corrected but stated that "[t]here is notable deterioration of the concrete on the building exterior in many areas."[35] The physical deterioration for subject property was 35% good. An additional depreciation was applied due to the vacancy and 10% for mixed occupancy usage. Overall depreciation was 28% good indicating a 72% depreciation factor.

Ms. Cady indicated that the apartment buildings are required to pass an inspection by Code Compliance at the City's Building Department. The subject property passed such an inspection in October, 2003 and does not need another inspection until August, 2006. The inspectors look at structural soundness, plumbing, furnaces, etc. Ms. Cady found no functional or external obsolescence for purposes of her cost approach analysis. Ms. Cady determined "an indicated value by way of the Cost Approach for the tax years under contention . . . [of] . . . 2005 . . . $4,270,700 - ROUNDED. . . 2006 . . . $4,452,100 – ROUNDED."[36]

In her sales comparison approach to value for the subject property, Ms. Cady used the following sales as comparables:

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[34] Transcript, April 16, 2008, page 13, ll 12-23
[35] Respondent's exhibit 1 page 70
[36] Respondent's exhibit 1 page 71

> Sale 1: Fountain Place, 105 high rise apartments, nine stories, pool, carports and average size is 984 square feet. Sold January, 1998, for $2,500,000.
>
> Sale 2: Porter Apartments, 98 one bedroom high rise apartments for the elderly, no pool or covered parking and average size is 650 square feet. Sold June, 2005, for $2,530,000.
>
> Sale 3: Burnt Tree Apartments, 96 garden style units, with carports, no pool and average size is 795 square feet. Sold October, 2003, for $3,525,000.
>
> Sale 4: East Kalamazoo Street, 82 garden style units; with no carports or pool and average size is 528 square feet. Sold December, 2002, for $2,080,000.
>
> Sale 5: Richwood Apartments, 80 units with no carports or pool and average size is 850 square feet. Sold January, 2002, for $2,100,000.

Ms. Cady adjusted the sales comparables 1% per year for date of sale; -5% for the difference in number of units; and a -5% adjustment for garden apartments. No adjustments were made for condition as Ms. Cady believed that all of the parcels were in average condition for their age. She did make a -2% adjustment to the comparable properties based on the superior construction of subject property. Lack of pool was a +1% adjustment and she adjusted +2% and +3% for garages and carports. Land to building ratio was 5%.

Sale 1 was adjusted for date of sale, location, and carports for a total +10% adjustments. Sale 2 was adjusted for age, unit number and size, pool, and carports for total net adjustment of + 9%. Sale 3 was adjusted for date of sale, year built, unit number and size, type of unit type of construction, location, pool, land-to-building ratio, and carports for a total net adjustment of -29%. Sale 4 was adjusted for sale date, number and type of units, construction, amenities, pool, and carport for a total net adjustment of + 1%. Sale 5 was adjusted for sale date, number and type of units, construction, location, amenities, pool, carport, and land-to-building ratio for a total net adjustment of -2%. The adjustments for 2006 included an additional one percent adjustment for age.

Ms. Cady determined an "adjusted price per unit."[37] She further determined a mean and median price per unit,[38] weighting each comparable, and arrived at a cost per unit of "$26,500" [39] for the 2005 tax year, and $27,000 for the 2006 tax year.[40] Ms. Cady's resulting indicated value based on the sales comparison approach was $3,710,000 for 2005 and $3,780,000 for 2006.

In her income approach to value for the subject property, Ms. Cady used three rent comparables to determine the market rent for subject property. The rent comparables are:

Rent 1 Fountain Place Apartments:				
	Studio	17 units	600 SF	$540
	1 BR/1 BA	36 units	806 SF	$660
	2 BR/1 BA	34 units	946 SF	$750
	3 BR/2 BA	18 units	1,231 SF	$805
Rent 2 Ferris Park Towers:				
	Studio	52 units	685 SF	$605
	1 BR/1 BA	36 units	967 SF	$710
	2 BR/	18 units	1,230 SF	$830
Rent 3 Riverfront Apartments:				
	1 BR/	34 units	560 SF	$545
	2 BR	32 units	720 SF	$630
	2 BR Twnhse	12 units	950 SF	$705

Ms. Cady did a rent grid for both the 2005 tax year[41] and the 2006 tax year.[42] Rent 1 was adjusted 10% for carports and 20% for location for a total net adjustment of +30%. Rent 2 was

[37] Transcript, April 16, 2008, page 35, l 10
[38] Respondent's exhibit 20, page 56
[39] Transcript, April 16, 2008, page 38, l 23
[40] Transcript, April 16, 2008, page 39, l 11
[41] Respondent's exhibit 20, supplement, page 80

adjusted 10% for carports and 5% for lack of pool for a total net adjustment of +15%. Rent 3 was adjusted -5% for age, 20% for lack of covered parking, 30% because tenants pay the heat, and 10% for location for a total net adjustment of +75%.

Based on the asking rents for subject property and the rent comparables, Ms. Cady determined that market rents should be as follows:

			2005	2006
Studio	12 Units	465 SF	$610	$620
	20 Units	500 SF		
One BR/One BA	68 Units	770 SF	$700	$710
Two BR /Two BA	12 Units	1,090 SF	$970	$980
	4 Units	1,150 SF		
	20 Units	1,340 SF		
Three BR /Two BA	4 Units	1,515 SF	$1,135	$1,145

Petitioner gave Respondent the actual rent rolls for 2004, applicable for the 2005 tax year. Ms. Cady determined that the subject property's rents were in the general range of market rent but used the rents above to determine potential gross income of $1,361,378 for 2005 and $1,404,430 for 2006. Potential gross income includes not only the apartments but the offices and other miscellaneous income as well.

Ms. Cady used a 13% vacancy and credit loss for both tax years at issue. She used historical income and expense statements that indicated that the subject property's vacancy rate was similar to other apartment complexes in the area or slightly higher. She determined that the effective gross income was $1,184,398 for 2005 and $1,221,575 for 2006.

[42] Respondent's exhibit 20, supplement, page 81

After considering Petitioner's actual operating expenses of 74% and 75%, Ms. Cady determined that, based upon other similar multi-family dwellings, normal expense should be between 45% and 55% of the effective gross income. Ms. Cady stated "the subject property shows a high percentage of income attributable to wages at almost 24 percent"[43] and "the 8.6% management expense is considered high for an owner managed structure."[44] Ms. Cady also noted that "[n]o allowance for a reserves for replacement had been included or accounted for in owner's statement."[45] She included a 4% allowance in her reconstructed statement. Ms. Cady stated that expenses are 64.5% and 64.95% of the effective gross income for the two years at issue. She determined the 2005 operating expenses to be $763,937 for a net operating income of $420,461 which, using a capitalization rate of 12.9958%, results in an estimated value of $3,235,365. She determined the 2006 operating expenses to be $793,594 for a net operating income of $428,259 which, using a capitalization rate of 13.1717%, results in an estimated value of $3,251,363.

Ms. Cady used a mortgage equity rate to determine the overall capitalization rate. This was based on her assumption of a 6.75% interest rate for 2005 and a 7.00% interest rate for 2006. Both years were amortized over 20 years, with a 75% loan-to-value ratio. The effective tax rate was added to both to result in an overall capitalization rate of 12.9958% for 2005 and 13.1717% for 2006. The resulting indicated value based on the income approach was $3,235,000 for 2005 and $3,251,000 for 2006.

In her analysis, Ms. Cady gave the cost approach the least amount of consideration determining that it was the least reliable indicator of value for the subject property. Ms. Cady considered the

[43] Respondent's exhibit 20, supplement, page 91
[44] Respondent's exhibit 20, supplement, page 91
[45] Respondent's exhibit 20, supplement, page 91

income approach to be the most reliable. And she considered the sales comparison approach "to be supportive of the Income Approach."[46] Based upon her data, Ms. Cady offered an estimated market value for the subject property of $3,200,000 for the 2005 tax year and $3,300,000 for the 2006 tax year.

Ms. Cady testified that she reviewed Petitioner's appraisal. She testified that it was her belief that Petitioner's rent comparable number 1 was a different property than named in the appraisal, rent comparable number 2 was not in the downtown area, and the address of Petitioner's rent comparable number 3 was incorrect as was the number of stories .[47]

On cross examination, Ms. Cady testified that she considered Respondent's Sale 1, dated 1998, to be "recent" as required by the Appraisal of Real Estate although it was seven years old.[48] Ms. Cady further testified that Respondent's Sale 2 is a foreclosure sale[49]and the property is subsidized housing at a fixed rental rate.[50] Respondent's Sale 3 is outside of the city limits and is closer to Michigan State University. Petitioner stated that Respondent's Sale 3 sold June 2003 for $3,511,800 and October 2003 for $3,525,000.[51] Petitioner questioned Ms. Cady's use of Respondent's Sale 4, which is garden-style apartments rather than a high-rise building as is the subject property. Further, Respondent's Sale 4 was reported as a land contract with unknown terms, although the contract stated that the $1,585,197 balance of the prior land contract was added to the $2,080,000 purchase price for an adjusted sale price of $3,665,197.[52] Ms. Cady

[46] Respondent's exhibit 20, supplement, page 98
[47] Transcript, April 16, 2008, pages 61-82
[48] Transcript, April 16, 2008, pages 80-82
[49] Transcript, April 16, 2008, page 92, ll 19-22
[50] Transcript, April 16, 2008, pages 95-97
[51] Transcript, April 16, 2008, page 111, ll 2-10
[52] Respondent's exhibit 14

testified in response to questioning that Respondent's Sale 5 was sold twice, in January, 2002, for $2,100,000 and again in April, 2004, closer to the valuation date, for $2,025,000.[53]

FINDINGS OF FACT

The Tribunal finds, at the outset, that Petitioner's appraisal was for the 2005 tax year only. Petitioner offered no evidence as to value for the 2006 tax year.

The Tribunal finds that the evidence submitted by both parties in support of their sales approach to value was flawed. Respondent had access to all of the sales information available and, although contained in their appraisal, Respondent's appraiser did not include all of the applicable data from the relevant transfer instruments for the sales used. The information provided by both parties was incorrect on most of the sale comparables and both Petitioner's and Respondent's appraisers did not verify the information used in their analyses.

In Respondent's sales comparison approach, only Sale 1 and Sale 2 were high-rise buildings. Sale 1 was sold in 1998 and has the most units, still only two-thirds the number of the subject. Sale 2 is the only reinforced concrete building, as is the subject, however, it was built 50 years before the subject and sold after the valuation date for the 2005 assessment. None of the comparables were even close in number of units and none of them had underground parking. Only Sale 1 had a swimming pool.

In Petitioner's sales comparison approach, the disparity between the number of units in the comparables and that of the subject is even more pronounced. Two of the comparables have fewer than 25% of the number of units of the subject, Sale 3 had 37% of the number of units, and

[53] Transcript, April 16, 2008, pages 119-120

Sale 4 is the closest with 58%. However, the same -5% adjustment was made for size for all comparables. Petitioner's appraiser used one "amenities" category. Although there was a general description of what might be included in that category, specific amenities for each comparable were not enumerated. No adjustments were made for amenities although the descriptions of the properties indicated differences in parking, security, pool and community rooms, and construction. None of Petitioner's comparables were high-rise buildings.

The parties used no common comparable properties. In considering the parties' sales comparable approaches, the Tribunal finds that Petitioner's Sale 4 and Respondent's Sale 1 are the most similar to the subject and most reasonably comparable recent sales for a sales comparison analysis. The Tribunal finds, based on those comparables, an adjusted sale price of $25,000 per unit resulting in an estimated market value of $3,500,000 for both tax years 2005 and 2006 for the subject property.

In considering the income approach to value, the Tribunal finds that the overall capitalization rate used by both parties is substantially the same and acceptable.

The Tribunal finds that both parties argued that the opposing party's approach had errors. However, except for Petitioner's deductions of "below the line" expenses, both parties were very close in their market value estimates based upon an income approach. The Tribunal finds that, in general, Petitioner used the actual income and expenses and projections based on those values for the 2005 tax year. Petitioner's ratio for expenses was slightly in excess of 71% of income. Respondent based its determination on reconstructed income arguing that it considered

Petitioner's expenses excessive, and used a percentage, 45%, extrapolated from general market data that Ms. Cady determined would be more appropriate. In general, the Tribunal finds that Petitioner's itemizations in its income approach are redundant and unsupported and does not, in its totality, offer a reliable indicator of value. However, certain of Petitioner's expense items more closely reflect reasonable deductions and expenses than those similar items in Respondent's appraisal. More specifically, the Tribunal does not find Respondent's value for utilities based upon an increase of .05% to be credible. Petitioner's actual utility costs as provided in its appraisal[54] indicate increasing utility costs over a three year period. While the Tribunal does not find that Petitioner's projection of a 41% increase in utility costs for the subject property to be adequately supported, the Tribunal does find that the actual reported utility costs of $248,521, rounded to $250,000 is supportable.

The Tribunal finds that certain of Petitioner's expenses and deductions are redundant. Specifically, the Tribunal finds that Petitioner's inclusion of $29,300 lease up costs and $148,959 vacancy and credit loss is adjusting for the loss of income from the apartments twice. While the $148,959 deducted for the 11% vacancy and credit loss is an appropriate deduction, the Tribunal finds that $29,300 for additional lease up costs should not also be allowed.

Additionally, tenant improvements are considered as "below the line" expenses. A "below the line" expense is defined in Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p 480 as:

> An expense that is recorded below the net operating income line in a reconstructed operating statement and therefore is not considered part of the total

[54] Petitioner's exhibit 1, page 66

> operating expenses for the property; tenant improvements and leasing concessions are the most common items recorded below the net operating income line.

Tenant improvements are the amount provided to the tenant by the landlord for the construction of tenant improvements, which may or may not equal the cost of remodeling. Mr. Tomlinson determined that tenant improvements for the office portion of the subject property were $141,080 and leasing costs were $21,948 for a total of $163,028. The Tribunal finds that $163,028 for tenant improvements and leasing costs for the office is an appropriate deduction. However, Mr. Tomlinson included both the vacancy rate of the office in the income approach as well as a loss for "opportunity rent loss" for the vacant square footage of the office. In doing this, Mr. Tomlinson has double dipped. The actual vacancy was considered in the 11% vacancy and credit loss in the income approach, thus the $91,295 deduction for opportunity rent loss should not also be allowed.

Petitioner argued that the subject has functional obsolescence in the form of deferred maintenance. Respondent asserted that there are no apparent functional inadequacies that would affect the property. The Appraisal of Real Estate defines replacement allowance as:

> An allowance that provides for the periodic replacement of building components that wear out more rapidly than the building itself and must be replaced during the building's economic life; sometimes referred to as reserves.
>
> Examples include *roof covering*; carpeting; kitchen, bath, and laundry equipment; HVAC compressors, elevators, boilers; specific structural items and equipment that have limited economic life expectancies; sidewalks; driveways; *parking* areas, and *exterior painting* and weatherproofing windows. (*Emphasis added*) Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p 491

In arriving at his final estimate of market value, Petitioner's appraiser deducted $489,324 for deferred maintenance. Petitioner's appraisal[55] contains an itemized expense for maintenance fee

[55] Petitioner's exhibit 1, page 70

of $245,000 and replacement reserves of $35,000. The Tribunal finds that Petitioner listed the items included in its deferred maintenance allocation of $489,324, the following:

Roof Deck Covering	$ 61,434
Resurface Parking Lot	$ 5,895
Patch Crack Seal Coating	$ 2,995
Exterior Masonry Cut Clean Patch	$ 18,000
Exterior Cut out and Replace Sealants	$ 63,000
Masonry Powerwash and Paint	$338,000
Total Deferred Maintenance	$489,324

While this may be a consideration of a willing buyer in determining what it would pay for subject property if the investor-buyer was aware of the deferred maintenance, as Petitioner's appraiser testified, the Tribunal finds that all of the items are included in what would generally be accepted as part of the replacement reserve in the income approach. However, the reserve for replacement should be closer to $50,000 annually to account for all the deferred maintenance items, as reflected in Respondent's appraisal. Respondent's income approach includes $20,052 for replacements.

Based upon the above analysis, the Tribunal finds that Petitioner's income approach is not a reliable indicator of value. The Tribunal finds that Respondent's income approach, although based upon reliable and credible information, requires adjustment for utilities expense and, once adjusted, would be the most reliable indicator of value for the 2005 tax year. As Petitioner provided no evidence as to value for the 2006 tax year, Respondent's cost-less-depreciation approach, as reflected on Respondent's property record card, is the most reliable indicator of value for the 2006 tax year.

CONCLUSIONS OF LAW

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value. 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 the assessment, being the price which could be obtained for the property at private sale and not forced or auction sale. See MCL 211.27(1). The Michigan Supreme Court in *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450 (1974), has also held that true cash value is synonymous with fair market value.

In that regard, the Tribunal is charged in such cases with finding a property's true cash value to determine the property's lawful assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767 (1981). The determination of the lawful assessment will, in turn, facilitate the calculation of the property's taxable value as provided by MCL 211.27a. A petitioner does, however, have the burden of establishing the property's true cash value. See MCL 205.737(3) and *Kern v Pontiac Twp,* 93 Mich App 612 (1974).

Under MCL 205.737(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal may not automatically adopt a respondent's assessment but must make its own findings of fact and arrive at a legally supportable true cash value. *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. *Meadowlanes*, at 485-486; *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980). A similar position is stated in *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982): The Tax Tribunal is not required to accept the valuation figure advanced by the taxpayer, the valuation figure advanced by the assessing unit, or some figure in between these two. It may reject both the taxpayer's and assessing unit's approaches.

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. *Meadowlanes Limited Dividend Housing Assn v City of Holland*, 437, 484-485; 473 NW2d 636 (1991); *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (1966); 380 Mich 390; 157 NW2d 293 (1968); *Antisdale v City of Galesburg*, 420 Mich 265, 276; 362 NW2d 632 (1984). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in the marketplace trading. *Antisdale* at 276, n 1. The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale*, at 277.

It is Petitioner's burden of proof to present sufficient reliable and credible evidence to overcome the presumption of the accuracy of the assessment. The Tribunal finds that Petitioner's conclusions of market value for the 2005 tax year were based on errors and inconsistencies found in the appraisal and not sufficiently reliable. Petitioner offered no evidence of value or conclusions of market value for the 2006 tax year.

Therefore, based upon the file, the applicable statutory and case law, and the testimony and evidence presented, the Tribunal concludes that Petitioner failed to meet its burden of proof to establish that the true cash value, state equalized value, and taxable value of the subject property are other than that as assessed. Therefore, the Tribunal concludes that the true cash value, state equalized value, and taxable value for the 2005 tax year is the market value as determined pursuant to the income capitalization method by Respondent's appraisal, adjusted as discussed above and, as Petitioner provided no evidence as to the true cash value, state equalized value, and taxable value for 2006 tax year, those values are affirmed as assessed and are as follows:

Parcel No. 33-01-01-16-156-041

Year	TCV	SEV	TV
2005	$2,984,651	$1,492,320	$1,426,449
2006	$3,166,800	$1,583,400	$1,473,521

JUDGMENT

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

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of this Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Final Opinion and Judgment within 28 days of the entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue interest shall accrue (i) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (ii) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (iii) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (iv) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (v) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and (vi) after December 31, 2008, at the rate of 3.31% for calendar year 2009.

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

MICHIGAN TAX TRIBUNAL

Entered: June 10, 2009 By: Rachel J. Asbury