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

Aberdeen of Brighton, LLC,
Petitioner,

v MTT Docket No. 345517

City of Brighton,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

OPINION AND JUDGMENT

A hearing was held in the above-captioned matter on October 6 and 7, 2010. Petitioner was represented by Jason Conti of Honigman, Miller, Schwartz & Cohn, LLC. Respondent was represented by Paul E. Burns, Brighton City Attorney.

This matter currently involves seventy-two (72) Sidwell parcels identifying real property located in the city of Brighton, Livingston County, Michigan. The Sidwell identification numbers extend from 4718-30-202-001 to 4718-30-202-036 and from 4718-30-202-085 to 4718-30-202-120. The property can also be described as: Aberdeen of Brighton Apartments.

Petitioner timely invoked the jurisdiction of the Tribunal for tax years 2008, 2009 and 2010. At issue are assessed, taxable, and true cash values for each of those years for the subject property.

Information relevant to the property's contested true cash, assessed and taxable values on the assessment roll is as follows:

Parcel Number: 4718-30-202-001

Year	TCV	SEV	TV
2008	$158,280	$79,140	$72,142
2009	$152,120	$76,060	$75,316
2010	$141,660	$70,830	$70,830

Parcel Number: 4718-30-202-002

Year	TCV	SEV	TV
2008	$158,280	$79,140	$72,142
2009	$152,120	$76,060	$75,316
2010	$141,660	$70,830	$70,830

Parcel Number: 4718-30-202-003

Year	TCV	SEV	TV
2008	$158,280	$79,140	$72,142
2009	$152,120	$76,060	$75,316
2010	$141,660	$70,830	$70,830

Parcel Number: 4718-30-202-004

Year	TCV	SEV	TV
2008	$158,280	$79,140	$72,142
2009	$152,120	$76,060	$75,316
2010	$141,660	$70,830	$70,830

Parcel Number: 4718-30-202-005

Year	TCV	SEV	TV
2008	$178,140	$89,070	$82,072
2009	$171,000	$85,500	$85,500
2010	$159,020	$79,510	$79,510

Parcel Number: 4718-30-202-006

Year	TCV	SEV	TV
2008	$178,140	$89,070	$82,072
2009	$171,000	$85,500	$85,500
2010	$159,020	$79,510	$79,510

Parcel Number: 4718-30-202-007

Year	TCV	SEV	TV
2008	$178,140	$89,070	$82,072
2009	$171,000	$85,500	$85,500
2010	$159,020	$79,510	$79,510

Parcel Number: 4718-30-202-008

Year	TCV	SEV	TV
2008	$178,140	$89,070	$82,072
2009	$171,000	$85,500	$85,500
2010	$159,020	$79,510	$79,510

Parcel Number: 4718-30-202-009

Year	TCV	SEV	TV
2008	$139,740	$69,870	$62,872
2009	$134,500	$67,250	$65,638
2010	$125,820	$62,910	$62,910

Parcel Number: 4718-30-202-010

Year	TCV	SEV	TV
2008	$139,740	$69,870	$62,872
2009	$134,500	$67,250	$65,638
2010	$125,820	$62,910	$62,910

Parcel Number: 4718-30-202-011

Year	TCV	SEV	TV
2008	$139,740	$69,870	$62,872
2009	$134,500	$67,250	$65,638
2010	$125,820	$62,910	$62,910

Parcel Number: 4718-30-202-012

Year	TCV	SEV	TV
2008	$139,740	$69,870	$62,872
2009	$134,500	$67,250	$65,638
2010	$125,820	$62,910	$62,910

Parcel Number: 4718-30-202-013

Year	TCV	SEV	TV
2008	$35,000	$17,500	$10,502
2009	$105,980	$52,990	$46,454
2010	$137,900	$68,950	$68,950

Parcel Number: 4718-30-202-014

Year	TCV	SEV	TV
2008	$35,000	$17,500	$10,502
2009	$104,360	$52,180	$45,644
2010	$137,900	$68,950	$68,950

Parcel Number: 4718-30-202-015

Year	TCV	SEV	TV
2008	$35,000	$17,500	$10,502
2009	$104,360	$52,180	$45,644
2010	$137,900	$68,950	$68,950

Parcel Number: 4718-30-202-016

Year	TCV	SEV	TV
2008	$35,000	$17,500	$10,502
2009	$105,980	$52,990	$46,454
2010	$137,900	$68,950	$68,950

Parcel Number: 4718-30-202-017

Year	TCV	SEV	TV

2008	$35,000	$17,500	$10,502
2009	$117,120	$58,560	$52,024
2010	$160,300	$80,150	$80,150

Parcel Number: 4718-30-202-018

Year	TCV	SEV	TV
2008	$35,000	$17,500	$10,502
2009	$117,580	$58,790	$52,254
2010	$160,300	$80,150	$80,150

Parcel Number: 4718-30-202-019

Year	TCV	SEV	TV
2008	$35,000	$17,500	$10,502
2009	$108,300	$54,150	$47,614
2010	$160,300	$80,150	$80,150

Parcel Number: 4718-30-202-020

Year	TCV	SEV	TV
2008	$35,000	$17,500	$10,502
2009	$117,120	$58,560	$52,024
2010	$160,300	$80,150	$80,150

Parcel Number: 4718-30-202-021

Year	TCV	SEV	TV
2008	$35,000	$17,500	$10,502
2009	$112,400	$56,200	$49,664
2010	$132,840	$66,420	$64,705

Parcel Number: 4718-30-202-022

Year	TCV	SEV	TV
2008	$35,000	$17,500	$10,502
2009	$95,180	$47,590	$41,054
2010	$131,600	$65,800	$64,401

Parcel Number: 4718-30-202-023

Year	TCV	SEV	TV
2008	$35,000	$17,500	$10,502

2009	$94,180	$47,090	$40,554
2010	$131,600	$65,800	$64,132

Parcel Number: 4718-30-202-024

Year	TCV	SEV	TV
2008	$35,000	$17,500	$10,502
2009	$95,180	$47,590	$41,054
2010	$131,600	$65,800	$64,121

Parcel Number: 4718-30-202-025

Year	TCV	SEV	TV
2008	$158,280	$79,140	$72,522
2009	$152,120	$76,060	$75,713
2010	$140,540	$70,270	$70,270

Parcel Number: 4718-30-202-026

Year	TCV	SEV	TV
2008	$158,280	$79,140	$72,522
2009	$152,120	$76,060	$75,713
2010	$140,540	$70,270	$70,270

Parcel Number: 4718-30-202-027

Year	TCV	SEV	TV
2008	$158,280	$79,140	$72,522
2009	$152,120	$76,060	$75,713
2010	$140,540	$70,270	$70,270

Parcel Number: 4718-30-202-028

Year	TCV	SEV	TV
2008	$158,280	$79,140	$72,522
2009	$152,120	$76,060	$75,713
2010	$140,540	$70,270	$70,270

Parcel Number: 4718-30-202-029

Year	TCV	SEV	TV
2008	$178,140	$89,070	$82,497
2009	$171,000	$85,500	$85,500

2010	$157,740	$78,870	$78,870

Parcel Number: 4718-30-202-030

Year	TCV	SEV	TV
2008	$178,140	$89,070	$82,497
2009	$171,000	$85,500	$85,500
2010	$157,740	$78,870	$78,870

Parcel Number: 4718-30-202-031

Year	TCV	SEV	TV
2008	$178,140	$89,070	$82,497
2009	$171,000	$85,500	$85,500
2010	$157,740	$78,870	$78,870

Parcel Number: 4718-30-202-032

Year	TCV	SEV	TV
2008	$178,400	$89,200	$82,627
2009	$171,260	$85,630	$85,630
2010	$157,740	$78,870	$78,870

Parcel Number: 4718-30-202-033

Year	TCV	SEV	TV
2008	$139,740	$69,870	$63,207
2009	$134,500	$67,250	$65,988
2010	$124,880	$62,440	$62,440

Parcel Number: 4718-30-202-034

Year	TCV	SEV	TV
2008	$139,740	$69,870	$63,207
2009	$134,500	$67,250	$65,988
2010	$124,880	$62,440	$62,440

Parcel Number: 4718-30-202-035

Year	TCV	SEV	TV
2008	$138,700	$69,350	$62,687
2009	$133,520	$66,760	$65,445
2010	$124,880	$62,440	$62,440

Parcel Number: 4718-30-202-036

Year	TCV	SEV	TV
2008	$139,740	$69,870	$63,207
2009	$134,500	$67,250	$65,988
2010	$124,880	$62,440	$62,440

Parcel Number: 4718-30-202-085

Year	TCV	SEV	TV
2008	$35,000	$17,500	$10,502
2009	$146,800	$73,400	$66,864
2010	$137,900	$68,950	$66,663

Parcel Number: 4718-30-202-086

Year	TCV	SEV	TV
2008	$35,000	$17,500	$10,502
2009	$146,840	$73,420	$66,864
2010	$137,900	$68,950	$66,663

Parcel Number: 4718-30-202-087

Year	TCV	SEV	TV
2008	$35,000	$17,500	$10,502
2009	$146,800	$73,400	$66,864
2010	$137,900	$68,950	$66,663

Parcel Number: 4718-30-202-088

Year	TCV	SEV	TV
2008	$35,000	$17,500	$10,502
2009	$146,800	$73,400	$66,864
2010	$137,900	$68,950	$66,663

Parcel Number: 4718-30-202-089

Year	TCV	SEV	TV
2008	$35,000	$17,500	$10,502
2009	$171,000	$85,500	$78,964
2010	$160,300	$80,150	$78,727

Parcel Number: 4718-30-202-090

Year	TCV	SEV	TV
2008	$35,000	$17,500	$10,502
2009	$171,000	$85,500	$78,964
2010	$160,300	$80,150	$78,727

Parcel Number: 4718-30-202-091

Year	TCV	SEV	TV
2008	$35,000	$17,500	$10,502
2009	$171,000	$85,500	$78,964
2010	$160,300	$80,150	$78,727

Parcel Number: 4718-30-202-092

Year	TCV	SEV	TV
2008	$35,000	$17,500	$10,502
2009	$171,000	$85,500	$78,964
2010	$160,300	$80,150	$78,727

Parcel Number: 4718-30-202-093

Year	TCV	SEV	TV
2008	$35,000	$17,500	$10,502
2009	$139,780	$69,890	$63,354
2010	$131,600	$65,800	$63,164

Parcel Number: 4718-30-202-094

Year	TCV	SEV	TV
2008	$35,000	$17,500	$10,502
2009	$139,480	$69,740	$63,204
2010	$131,600	$65,800	$63,014

Parcel Number: 4718-30-202-095

Year	TCV	SEV	TV
2008	$35,000	$17,500	$10,502
2009	$139,780	$69,890	$63,354
2010	$131,600	$65,800	$63,164

Parcel Number: 4718-30-202-096

Year	TCV	SEV	TV

2008	$35,000	$17,500	$10,502
2009	$139,780	$69,890	$63,354
2010	$131,600	$65,800	$63,164

Parcel Number: 4718-30-202-097

Year	TCV	SEV	TV
2008	$161,840	$80,920	$73,922
2009	$155,500	$77,750	$77,174
2010	$141,660	$70,830	$70,830

Parcel Number: 4718-30-202-098

Year	TCV	SEV	TV
2008	$161,840	$80,920	$73,922
2009	$155,500	$77,750	$77,174
2010	$141,660	$70,830	$70,830

Parcel Number: 4718-30-202-099

Year	TCV	SEV	TV
2008	$161,840	$80,920	$73,922
2009	$155,500	$77,750	$77,174
2010	$141,660	$70,830	$70,830

Parcel Number: 4718-30-202-100

Year	TCV	SEV	TV
2008	$161,840	$80,920	$73,922
2009	$155,500	$77,750	$77,174
2010	$141,660	$70,830	$70,830

Parcel Number: 4718-30-202-101

Year	TCV	SEV	TV
2008	$181,700	$90,850	$83,852
2009	$174,360	$87,180	$87,180
2010	$159,020	$79,510	$79,510

Parcel Number: 4718-30-202-102

Year	TCV	SEV	TV
2008	$181,700	$90,850	$83,852

2009	$174,360	$87,180	$87,180
2010	$159,020	$79,510	$79,510

Parcel Number: 4718-30-202-103

Year	TCV	SEV	TV
2008	$181,700	$90,850	$83,852
2009	$174,360	$87,180	$87,180
2010	$159,020	$79,510	$79,510

Parcel Number: 4718-30-202-104

Year	TCV	SEV	TV
2008	$181,700	$90,850	$83,852
2009	$174,360	$87,180	$87,180
2010	$159,020	$79,510	$79,510

Parcel Number: 4718-30-202-105

Year	TCV	SEV	TV
2008	$143,540	$71,770	$64,772
2009	$138,120	$69,060	$67,622
2010	$125,820	$62,910	$62,910

Parcel Number: 4718-30-202-106

Year	TCV	SEV	TV
2008	$143,540	$71,770	$64,772
2009	$138,120	$69,060	$67,622
2010	$125,820	$62,910	$62,910

Parcel Number: 4718-30-202-107

Year	TCV	SEV	TV
2008	$143,540	$71,770	$64,772
2009	$138,120	$69,060	$67,622
2010	$125,820	$62,910	$62,910

Parcel Number: 4718-30-202-108

Year	TCV	SEV	TV
2008	$143,540	$71,770	$64,772
2009	$138,120	$69,060	$67,622

2010	$125,820	$62,910	$62,910

Parcel Number: 4718-30-202-109

Year	TCV	SEV	TV
2008	$47,920	$23,960	$16,962
2009	$149,940	$74,970	$71,728
2010	$136,840	$68,420	$68,420

Parcel Number: 4718-30-202-110

Year	TCV	SEV	TV
2008	$47,920	$23,960	$16,962
2009	$149,940	$74,970	$71,728
2010	$136,840	$68,420	$68,420

Parcel Number: 4718-30-202-111

Year	TCV	SEV	TV
2008	$47,920	$23,960	$16,962
2009	$149,940	$74,970	$71,728
2010	$136,840	$68,420	$68,420

Parcel Number: 4718-30-202-112

Year	TCV	SEV	TV
2008	$47,920	$23,960	$16,962
2009	$149,940	$74,970	$71,728
2010	$136,840	$68,420	$68,420

Parcel Number: 4718-30-202-113

Year	TCV	SEV	TV
2008	$49,660	$24,830	$17,832
2009	$174,360	$87,180	$84,636
2010	$159,020	$79,510	$79,510

Parcel Number: 4718-30-202-114

Year	TCV	SEV	TV
2008	$49,660	$24,830	$17,832
2009	$174,360	$87,180	$84,636
2010	$159,020	$79,510	$79,510

Parcel Number: 4718-30-202-115

Year	TCV	SEV	TV
2008	$49,660	$24,830	$17,832
2009	$174,360	$87,180	$84,636
2010	$159,020	$79,510	$79,510

Parcel Number: 4718-30-202-116

Year	TCV	SEV	TV
2008	$49,660	$24,830	$17,832
2009	$174,360	$87,180	$84,636
2010	$159,020	$79,510	$79,510

Parcel Number: 4718-30-202-117

Year	TCV	SEV	TV
2008	$45,860	$22,930	$15,932
2009	$143,180	$71,590	$68,133
2010	$130,620	$65,310	$65,310

Parcel Number: 4718-30-202-118

Year	TCV	SEV	TV
2008	$45,860	$22,930	$15,932
2009	$143,180	$71,590	$68,133
2010	$130,620	$65,310	$65,310

Parcel Number: 4718-30-202-119

Year	TCV	SEV	TV
2008	$45,860	$22,930	$15,932
2009	$143,180	$71,590	$68,133
2010	$130,620	$65,310	$65,310

Parcel Number: 4718-30-202-120

Year	TCV	SEV	TV
2008	$45,860	$22,930	$15,932
2009	$143,180	$71,590	$68,133
2010	$130,620	$65,310	$65,310

FINAL VALUES

The properties' final TCV, SEV and TV for the tax years at issue as determined by the Tribunal are:

Parcel Number: 4718-30-202-001

Year	TCV	SEV	TV
2008	$90,501	$45,250	$45,250
2009	$88,291	$44,145	$44,145
2010	$83,612	$41,806	$41,806

Parcel Number: 4718-30-202-002

Year	TCV	SEV	TV
2008	$90,501	$45,250	$45,250
2009	$88,291	$44,145	$44,145
2010	$83,612	$41,806	$41,806

Parcel Number: 4718-30-202-003

Year	TCV	SEV	TV
2008	$90,501	$45,250	$45,250
2009	$88,291	$44,145	$44,145
2010	$83,612	$41,806	$41,806

Parcel Number: 4718-30-202-004

Year	TCV	SEV	TV
2008	$90,501	$45,250	$45,250
2009	$88,291	$44,145	$44,145
2010	$83,612	$41,806	$41,806

Parcel Number: 4718-30-202-005

Year	TCV	SEV	TV
2008	$101,857	$50,928	$50,928
2009	$99,249	$49,625	$49,625
2010	$93,859	$46,930	$46,930

Parcel Number: 4718-30-202-006

Year	TCV	SEV	TV

2008	$101,857	$50,928	$50,928
2009	$99,249	$49,625	$49,625
2010	$93,859	$46,930	$46,930

Parcel Number: 4718-30-202-007

Year	TCV	SEV	TV
2008	$101,857	$50,928	$50,928
2009	$99,249	$49,625	$49,625
2010	$93,859	$46,930	$46,930

Parcel Number: 4718-30-202-008

Year	TCV	SEV	TV
2008	$101,857	$50,928	$50,928
2009	$99,249	$49,625	$49,625
2010	$93,859	$46,930	$46,930

Parcel Number: 4718-30-202-009

Year	TCV	SEV	TV
2008	$79,901	$39,950	$39,950
2009	$78,065	$39,032	$39,032
2010	$74,263	$37,131	$37,131

Parcel Number: 4718-30-202-010

Year	TCV	SEV	TV
2008	$79,901	$39,950	$39,950
2009	$78,065	$39,032	$39,032
2010	$74,263	$37,131	$37,131

Parcel Number: 4718-30-202-011

Year	TCV	SEV	TV
2008	$79,901	$39,950	$39,950
2009	$78,065	$39,032	$39,032
2010	$74,263	$37,131	$37,131

Parcel Number: 4718-30-202-012

Year	TCV	SEV	TV
2008	$79,901	$39,950	$39,950

2009	$78,065	$39,032	$39,032
2010	$74,263	$37,131	$37,131

Parcel Number: 4718-30-202-013

Year	TCV	SEV	TV
2008	$20,012	$10,006	$10,006
2009	$61,511	$30,755	$30,755
2010	$81,393	$	$

Parcel Number: 4718-30-202-014

Year	TCV	SEV	TV
2008	$20,012	$10,006	$10,006
2009	$60,571	$30,285	$30,285
2010	$81,393	$40,696	$40,696

Parcel Number: 4718-30-202-015

Year	TCV	SEV	TV
2008	$20,012	$10,006	$10,006
2009	$60,571	$30,285	$30,285
2010	$81,393	$40,696	$40,696

Parcel Number: 4718-30-202-016

Year	TCV	SEV	TV
2008	$20,012	$10,006	$10,006
2009	$61,511	$30,755	$30,755
2010	$81,393	$40,696	$40,696

Parcel Number: 4718-30-202-017

Year	TCV	SEV	TV
2008	$20,012	$10,006	$10,006
2009	$67,977	$33,988	$33,988
2010	$94,614	$47,307	$47,307

Parcel Number: 4718-30-202-018

Year	TCV	SEV	TV
2008	$20,012	$10,006	$10,006
2009	$68,244	$34,122	$34,122

2010	$94,614	$47,307	$47,307

Parcel Number: 4718-30-202-019

Year	TCV	SEV	TV
2008	$20,012	$10,006	$10,006
2009	$62,858	$31,429	$31,429
2010	$94,614	$47,307	$47,307

Parcel Number: 4718-30-202-020

Year	TCV	SEV	TV
2008	$20,012	$10,006	$10,006
2009	$67,977	$33,988	$33,988
2010	$94,614	$47,307	$47,307

Parcel Number: 4718-30-202-021

Year	TCV	SEV	TV
2008	$20,012	$10,006	$10,006
2009	$65,238	$32,619	$32,619
2010	$78,406	$39,203	$39,203

Parcel Number: 4718-30-202-022

Year	TCV	SEV	TV
2008	$20,012	$10,006	$10,006
2009	$55,243	$27,621	$27,621
2010	$77,675	$38,837	$38,837

Parcel Number: 4718-30-202-023

Year	TCV	SEV	TV
2008	$20,012	$10,006	$10,006
2009	$54,663	$27,331	$27,331
2010	$77,675	$38,837	$38,837

Parcel Number: 4718-30-202-024

Year	TCV	SEV	TV
2008	$20,012	$10,006	$10,006
2009	$55,243	$27,621	$27,621
2010	$77,675	$38,837	$38,837

Parcel Number: 4718-30-202-025

Year	TCV	SEV	TV
2008	$90,501	$45,250	$45,250
2009	$88,291	$44,145	$44,145
2010	$82,951	$41,475	$41,475

Parcel Number: 4718-30-202-026

Year	TCV	SEV	TV
2008	$90,501	$45,250	$45,250
2009	$88,291	$44,145	$44,145
2010	$82,951	$41,475	$41,475

Parcel Number: 4718-30-202-027

Year	TCV	SEV	TV
2008	$90,501	$45,250	$45,250
2009	$88,291	$44,145	$44,145
2010	$82,951	$41,475	$41,475

Parcel Number: 4718-30-202-028

Year	TCV	SEV	TV
2008	$90,501	$45,250	$45,250
2009	$88,291	$44,145	$44,145
2010	$82,951	$41,475	$41,475

Parcel Number: 4718-30-202-029

Year	TCV	SEV	TV
2008	$101,857	$50,928	$50,928
2009	$99,249	$49,624	$49,624
2010	$93,103	$46,551	$46,551

Parcel Number: 4718-30-202-030

Year	TCV	SEV	TV
2008	$101,857	$50,928	$50,928
2009	$99,249	$49,624	$49,624
2010	$93,103	$46,551	$46,551

Parcel Number: 4718-30-202-031

Year	TCV	SEV	TV
2008	$101,857	$50,928	$50,928
2009	$99,249	$49,624	$49,624
2010	$93,103	$46,551	$46,551

Parcel Number: 4718-30-202-032

Year	TCV	SEV	TV
2008	$102,006	$51,003	$51,003
2009	$99,400	$49,700	$49,700
2010	$93,103	$46,551	$46,551

Parcel Number: 4718-30-202-033

Year	TCV	SEV	TV
2008	$79,901	$39,950	$39,950
2009	$78,065	$39,032	$39,032
2010	$73,708	$46,551	$46,551

Parcel Number: 4718-30-202-034

Year	TCV	SEV	TV
2008	$79,901	$39,950	$39,950
2009	$78,065	$39,032	$39,032
2010	$73,708	$46,551	$46,551

Parcel Number: 4718-30-202-035

Year	TCV	SEV	TV
2008	$79,306	$39,653	$39,653
2009	$77,496	$38,748	$38,748
2010	$73,708	$46,551	$46,551

Parcel Number: 4718-30-202-036

Year	TCV	SEV	TV
2008	$79,901	$39,950	$39,950
2009	$78,065	$39,032	$39,032
2010	$73,708	$46,551	$46,551

Parcel Number: 4718-30-202-085

Year	TCV	SEV	TV

2008	$20,012	$10,006	$10,006
2009	$85,204	$42,602	$42,602
2010	$81,393	$40,696	$40,696

Parcel Number: 4718-30-202-086

Year	TCV	SEV	TV
2008	$20,012	$10,006	$10,006
2009	$85,227	$	$
2010	$81,393	$40,696	$40,696

Parcel Number: 4718-30-202-087

Year	TCV	SEV	TV
2008	$20,012	$10,006	$10,006
2009	$85,204	$42,602	$42,602
2010	$81,393	$40,696	$40,696

Parcel Number: 4718-30-202-088

Year	TCV	SEV	TV
2008	$20,012	$10,006	$10,006
2009	$85,204	$42,602	$42,602
2010	$81,393	$40,696	$40,696

Parcel Number: 4718-30-202-089

Year	TCV	SEV	TV
2008	$20,012	$10,006	$10,006
2009	$99,249	$49,624	$49,624
2010	$94,614	$47,307	$47,307

Parcel Number: 4718-30-202-090

Year	TCV	SEV	TV
2008	$20,012	$10,006	$10,006
2009	$99,249	$49,624	$49,624
2010	$94,614	$47,307	$47,307

Parcel Number: 4718-30-202-091

Year	TCV	SEV	TV
2008	$20,012	$10,006	$10,006

2009	$99,249	$49,624	$49,624
2010	$94,614	$47,307	$47,307

Parcel Number: 4718-30-202-092

Year	TCV	SEV	TV
2008	$20,012	$10,006	$10,006
2009	$99,249	$49,624	$49,624
2010	$94,614	$47,307	$47,307

Parcel Number: 4718-30-202-093

Year	TCV	SEV	TV
2008	$20,012	$10,006	$10,006
2009	$81,129	$40,564	$40,564
2010	$77,675	$38,837	$38,837

Parcel Number: 4718-30-202-094

Year	TCV	SEV	TV
2008	$20,012	$10,006	$10,006
2009	$80,955	$40,477	$40,477
2010	$77,675	$38,837	$38,837

Parcel Number: 4718-30-202-095

Year	TCV	SEV	TV
2008	$20,012	$10,006	$10,006
2009	$81,129	$40,564	$40,564
2010	$77,675	$38,837	$38,837

Parcel Number: 4718-30-202-096

Year	TCV	SEV	TV
2008	$20,012	$10,006	$10,006
2009	$81,129	$40,564	$40,564
2010	$77,675	$38,837	$38,837

Parcel Number: 4718-30-202-097

Year	TCV	SEV	TV
2008	$92,537	$46,268	$46,268
2009	$90,253	$45,126	$45,126

2010	$83,612	$41,806	$41,806

Parcel Number: 4718-30-202-098

Year	TCV	SEV	TV
2008	$92,537	$46,268	$46,268
2009	$90,253	$45,126	$45,126
2010	$83,612	$41,806	$41,806

Parcel Number: 4718-30-202-099

Year	TCV	SEV	TV
2008	$92,537	$46,268	$46,268
2009	$90,253	$45,126	$45,126
2010	$83,612	$41,806	$41,806

Parcel Number: 4718-30-202-100

Year	TCV	SEV	TV
2008	$92,537	$46,268	$46,268
2009	$90,253	$45,126	$45,126
2010	$83,612	$41,806	$41,806

Parcel Number: 4718-30-202-101

Year	TCV	SEV	TV
2008	$103,893	$51,946	$51,946
2009	$101,200	$50,600	$50,600
2010	$93,859	$46,929	$46,929

Parcel Number: 4718-30-202-102

Year	TCV	SEV	TV
2008	$103,893	$51,946	$51,946
2009	$101,200	$50,600	$50,600
2010	$93,859	$46,929	$46,929

Parcel Number: 4718-30-202-103

Year	TCV	SEV	TV
2008	$103,893	$51,946	$51,946
2009	$101,200	$50,600	$50,600
2010	$93,859	$46,929	$46,929

Parcel Number: 4718-30-202-104

Year	TCV	SEV	TV
2008	$103,893	$51,946	$51,946
2009	$101,200	$50,600	$50,600
2010	$93,859	$46,929	$46,929

Parcel Number: 4718-30-202-105

Year	TCV	SEV	TV
2008	$82,073	$41,036	$41,036
2009	$80,166	$40,083	$40,083
2010	$74,263	$37,131	$37,131

Parcel Number: 4718-30-202-106

Year	TCV	SEV	TV
2008	$82,073	$41,036	$41,036
2009	$80,166	$40,083	$40,083
2010	$74,263	$37,131	$37,131

Parcel Number: 4718-30-202-107

Year	TCV	SEV	TV
2008	$82,073	$41,036	$41,036
2009	$80,166	$40,083	$40,083
2010	$74,263	$37,131	$37,131

Parcel Number: 4718-30-202-108

Year	TCV	SEV	TV
2008	$82,073	$41,036	$41,036
2009	$80,166	$40,083	$40,083
2010	$74,263	$37,131	$37,131

Parcel Number: 4718-30-202-109

Year	TCV	SEV	TV
2008	$27,400	$13,700	$13,700
2009	$87,026	$43,513	$43,513
2010	$80,767	$40,383	$40,383

Parcel Number: 4718-30-202-110

Year	TCV	SEV	TV
2008	$27,400	$13,700	$13,700
2009	$87,026	$43,513	$43,513
2010	$80,767	$40,383	$40,383

Parcel Number: 4718-30-202-111

Year	TCV	SEV	TV
2008	$27,400	$13,700	$13,700
2009	$87,026	$43,513	$43,513
2010	$80,767	$40,383	$40,383

Parcel Number: 4718-30-202-112

Year	TCV	SEV	TV
2008	$27,400	$13,700	$13,700
2009	$87,026	$43,513	$43,513
2010	$80,767	$40,383	$40,383

Parcel Number: 4718-30-202-113

Year	TCV	SEV	TV
2008	$28,395	$14,197	$14,197
2009	$101,200	$50,600	$50,600
2010	$93,859	$46,929	$46,929

Parcel Number: 4718-30-202-114

Year	TCV	SEV	TV
2008	$28,395	$14,197	$14,197
2009	$101,200	$50,600	$50,600
2010	$93,859	$46,929	$46,929

Parcel Number: 4718-30-202-115

Year	TCV	SEV	TV
2008	$28,395	$14,197	$14,197
2009	$101,200	$50,600	$50,600
2010	$93,859	$46,929	$46,929

Parcel Number: 4718-30-202-116

Year	TCV	SEV	TV

2008	$28,395	$14,197	$14,197
2009	$101,200	$50,600	$50,600
2010	$93,859	$46,929	$46,929

Parcel Number: 4718-30-202-117

Year	TCV	SEV	TV
2008	$26,222	$13,111	$13,111
2009	$83,103	$41,551	$41,551
2010	$77,096	$38,548	$38,548

Parcel Number: 4718-30-202-118

Year	TCV	SEV	TV
2008	$26,222	$13,111	$13,111
2009	$83,103	$41,551	$41,551
2010	$77,096	$38,548	$38,548

Parcel Number: 4718-30-202-119

Year	TCV	SEV	TV
2008	$26,222	$13,111	$13,111
2009	$83,103	$41,551	$41,551
2010	$77,096	$38,548	$38,548

Parcel Number: 4718-30-202-120

Year	TCV	SEV	TV
2008	$26,222	$13,111	$13,111
2009	$83,103	$41,551	$41,551
2010	$77,096	$38,548	$38,548

ISSUES PRESENTED

Prior to the Tribunal's determination of the true cash, assessed and taxable values of the property subject to this action for each of the three tax years under appeal, the Tribunal must first determine the highest and best use of the subject property as

improved, together with a determination of whether or not the property was legally part of a condominium project under MCL 559.108 with each separate tax parcel individually valued as residential condominiums or whether the highest and best use of the subject property as improved is as six 12-unit apartment buildings.

CASE OVERVIEW

Although the parties dispute how the subject property should be valued (individually by Sidwell number, or as one property consisting of six 12-unit apartment buildings), the essential facts surrounding this matter are not in dispute; rather, the parties dispute the proper method to value the property and the legal effect of actions taken by the parties in this matter.

Petitioner is owned by a large real estate developer who, in 2003, purchased approximately 21 +/- acres of land in the City of Brighton. It was Petitioner's intent to develop a 120-unit condominium project. Petitioner presented a site plan for approval to Respondent, which was ultimately approved. Petitioner prepared and filed, pursuant to MCL 559.108 (Michigan Condominium Act), a Master Deed setting forth the project, which provided among other matters for the construction of 120 condo units with a provision that the developer was required to construct a

minimum of 48 units, but also allowed for the withdrawal of units and land from the Master Deed.

Included in the Master Deed, reviewed and approved by the appropriate governmental authorities, is Article VIII titled "Contraction of Condominium." This provision reserves to the developer the right to "establish a Condominium Project consisting of fewer Units than described above and to withdraw from the Project all or some portion of the land described in Article II hereof (the 'Contractible Area')." The contraction remained an option, at the sole discretion of the developer, up until but no later than six years after the filing of the Master Deed, and includes withdrawal of lands for any development, other condominium project, or apartment projects.

The same land, "so reduced" or "withdrawn," may be added back to the original condominium project so long as such addition occurs within the same six-year window from the time of the filing of the original Master Deed. The vacant property at issue is specifically described in Article II and is comprised ONLY of that portion of the original project which was not required to be built.

Following the approval of the Master Deed, Respondent assigned 120 parcel numbers for each individual condo unit, although none was completed at that time. Petitioner completed the first 48 units, as required by the Master Deed. The units began selling and, between 2004 and mid-2006, 27 of the 48 units had sold. Seeing the market cool, Petitioner did not undertake the completion of the remaining condominiums. Instead, Petitioner exercised its right to amend the Master Deed to contract certain portions of the vacant land. That contracted portion, although with the improvements later added, are the subject of this appeal. Petitioner accomplished the contraction by way of the Second Amendment to the Master Deed, executed December 20, 2006.

Thereafter, Petitioner constructed apartment buildings substantially similar in appearance and features to the existing 48 condo units. Respondent assessed each of the previously assigned parcel numbers, now representing individual apartments, as if still condominiums. Petitioner appeals the assessments of these properties.

Respondent assessed each apartment as a condominium because Petitioner still had the option, at its sole discretion, to convert the apartments back to individual saleable condominiums. Because the properties remained convertible back to the

condo development, and considering the apartments are largely indistinguishable from the condos, Respondent asserts that such assessments are proper.

Petitioner asserts that the properties should be assessed as apartments with corresponding income property values, and in the alternative, that the market for condos is such that the only sales are substantially lower than the original assessments. In fact, Petitioner contends that if valued as condominiums, the entire project would be worth somewhat less on the market than if valued as apartments. Petitioner in addition requests that the Tribunal award costs.

PETITIONER'S CASE IN CHIEF

In support of Petitioner's position that the subject property had been over assessed for each of the tax years at issue, Petitioner presented two witnesses and introduced 12 exhibits:

P-1 Master Deed
P-2 Second Amendment to Master Deed
P-3 Petitioner's Valuation Disclosure
P-4 Site Map
P-7- 1/7/10 Property Transfer Affidavit
P-8 5/15/09 Property transfer Affidavit
P-9 Real Estate One Listing
P-10 Stipulation for Consent Judgment
P-13 Blow-up of P4
P-14 Corrected pages to P-3

Petitioner's Witnesses:

Petitioner presented Anthony Lombardo as both a fact and expert witness. Mr. Lombardo indicated that since 1981 he had been a real estate investor, which included being involved in home building, owning apartments, and land investment. He is employed by the Lombardo family, which includes his brothers and sisters; he is the president and manages all of the family's real estate investments. One of the businesses the witness is involved with is Lombardo Homes, which consists of multiple investments in real estate, including purchasing land for future development. It also builds single family homes and apartments and is one of the largest home builders in Michigan. In addition, Lombardo Homes builds and manages apartment communities and manufactured home communities. (Tr. Vol. 1, p. 18) Over the last ten years Lombardo homes had built over 1,500 single-family homes and over 2,500 condominium units. It also owns and manages over 800 apartment units (Tr. p. 19) Based on the witness's background and experience, he was offered and qualified as an expert in residential development projects in Michigan, including single family homes, condominiums and apartment units and communities. (Tr. p. 22)

Lombardo explained that in 2004, Aberdeen of Brighton purchased property of which the subject property was a part. (Tr. p. 22) The initial purchase was a tract of approximately 21 acres in size and on February 10, 2005, Petitioner filed a Master Deed for the Aberdeen of Brighton Development (Pet Ex. 1), which had been reviewed by the City of Brighton as part of its site plan approval process.

Petitioner's original intent as evidenced by the Master Deed and site plan was to construct and sell 120 individual condominium units in eleven buildings. Construction on the initial 48 units of the project was commenced in 2005 and 2006 and was completed in the latter part of 2006. The units were marketed and attempted to be sold as they were completed and certificates of occupancy issued. As of the date of this hearing, Lombardo testified that 29 of the original 48 units had been sold (Tr. p. 29) with all but two of the sales occurring before the end of 2006. The sale of the last of the 29 units sold to date occurred in August 2008 and was the result of special incentives offered by Petitioner including taking two older mobile homes in on trade. (Tr. p. 30) The witness further indicated that after the bank crisis which occurred in the fall of 2008, he was unable to offer such incentives. (Tr. p. 30) Further, FHA mortgage guidelines changed to make it much more difficult to obtain mortgages on this type of unit.

Lombardo testified that beginning in 2006 it became economically unfeasible to construct the remaining 72 condominium units that were included in the original Master Deed and site plan because the existing 21 of the original 48 units already constructed remained unsold. (Tr. p. 31) He stated:

> First, I didn't sell the nineteen I had in the first condominium, and secondly, with the mortgages being gone and not available and the values deteriorated to less than replacement cost or less than actually direct construction cost, it was not feasible. (Tr. p. 32)

Lombardo indicated that due to the deteriorating economic conditions he was faced with defaulting and abandoning the project or continuing the development by building 72 apartment units, which he ultimately determined to do. (Tr. p. 33) He explained that the reason he did not simply walk away from the project was to preserve the Lombardo reputation.

Prior to the commencement of construction of any of the 72 originally planned condominium units, Lombardo exercised under Article VIII, section 2 of the Master Deed to remove the units from the master deed and construct them as apartments. (Second Amendment to Master Deed, P-2). Construction of the apartment units were commenced and upon completion (Certificates of Occupancy

issued by Respondent) were offered and rented as apartments and have never been offered for sale as individual units. (Tr. p. 36)

On cross-examination, Lombardo acknowledged that when he had originally applied to the City of Brighton for site plan approval he had applied under the R-4 zoning ordinance. (Tr. p.36) He further indicated that the units generally described in the site plan were twelve-plexes built by his partners in other projects in Southeast Michigan, which were sold as condominiums. (Tr. p.38) Lombardo testified that approximately 3,000 to 5,000 similar units have been built in southeast Michigan, but denied that all of the units had been built as condominiums. (Tr. p. 41)

Of the nineteen of the original 48 units which remained unsold, Petitioner now rents these units out, but since they remain under the original Master Deed they could be sold as condominium units. (Tr. p. 49)

In response to inquiry from Respondent's counsel, Lombardo stated that the 72 units removed from the original Master Deed could theoretically be turned back

into condominiums at any time, but because “there’s no market to sell them as condos” (Tr. p. 51) Petitioner would not do so.

Michael E. Ellis, MAI, was called to testify in support of the appraisal he had prepared dated May 30, 2010, which valued the subject property as of December 31, 2007, 2008, and 2009 for the 2008, 2009 and 2010 tax years, respectively. Ellis indicated that he was a member of the Appraisal Institute and had received the designation of MAI (Tr. p. 84) and had been a licensed appraiser in the State of Michigan for 38 years. Mr. Ellis was qualified, without objection, as an expert in the valuation of real property, specifically including apartment communities. (Tr. p. 87)

Ellis indicated that he was familiar with the subject property, which consists of 72 apartment units located in the City of Brighton. (Tr. p. 88) In the course of direct examination, Ellis indicated that in preparing for the hearing, he had reviewed his appraisal and had ascertained minor errors existed in the report and that he had corrected the errors prior to the hearing. (Tr. p. 89) The corrected pages of the appraisal were offered into evidence, to which Respondent’s counsel objected on the basis that he had not had an opportunity to review the pages prior to the hearing

and prepare his cross-examination (Tr. p. 92), and further, that the appraisal was not in conformance with MCL 211.24 and not in conformance with the Condominium Act. (Tr. p. 93) Respondent's objections were denied because, among other matters, his cited statute, MCL 211.24, deals with the assessment of property and preparation of the tax roll and not the appraisal of property or the determination of true cash value by the Tribunal. The Tribunal did, however, separately admit the revised pages of Petitioner's appraisal as P-14 to allow Respondent's counsel to cross examine on the changes.

Ellis explained in great detail the basis of his conclusion that the highest and best use of the subject property was "as vacant" on all valuation dates.

Ellis's conclusion of highest and best use "as vacant" after he had considered all factors surrounding the marketing of the property as vacant was:

> Because of all of these factors, it is my opinion that none of the permitted uses under the zoning ordinance would be financially feasible as of either December 31, 2008 or December 31, 2009. In fact, this condition continues to hold true today. **Having reviewed market conditions, it is apparent that the highest and best use of the subject site on December 31, 2007, would have been for multi-family apartment development. As of both December 31, 2008 and December 31, 2009, market conditions had declined to the extent that the property's highest and best use was a speculative land holding.** (P-3, p. 76, emphasis in original)

Ellis further explained that, beginning in early 2008 and continuing forward, the economy continued showing additional signs of distress as unemployment continued to rise.

Ellis explained his "highest and best use as improved" as follows:

> The highest and best use of the subject "as improved" is determined for two reasons. The first reason is to identify the use that will produce the highest return of the subject. This involves testing five alternatives: making no changes to the subject, remodeling the subject, renovating the building, conversion to another use, or demolishing the improvements. The second reason is to help in identifying comparable properties to be used in approach to value.
>
> The appraised property was a development in progress as of the earlier two dates of valuation and was completed for the valuation dated December 31, 2009. Because the development was partially completed for the earlier date valuations, **the highest and best use of the property in this instance requires completion of the project.** (Emphasis added) Assuming completion of the project as of each date of valuation, the contributory value of the improvements would have exceeded the underlying land value. It is apparent that conversion of the completed project to another use is not economically viable. Therefore, the highest and best use of the project as of each date of valuation is considered to be a multiple-family apartment development. (P-3, pp. 76-77)

After having explained this highest and best use determination, Ellis went on to describe his valuation methodology and described that he considered all three approaches to value: sales comparable, income capitalization, and cost. Although considered, he did not utilize the cost approach for the following reasons:

> In this instance, the real property that is the subject of this valuation pertains to a 72 unit apartment development that was constructed between 2007 and 2009. In considering implementation of the cost approach a number of difficulties are present. As of the December 31, 2007 and December 31, 2008 dates of valuation, the Aberdeen of Brighton Apartment project was a partially completed project. Owner is able to disclose how much had been spent on this date, but some of these cost are for construction materials that were not yet incorporated into the physical construction of the buildings and other cost were outstanding for labor and other items that had not yet been paid. As a result, the cost figures reviewed add to confusion, as opposed to providing a clear understanding of the work completed and its related cost.
>
> Another difficulty with the cost approach is that in recent years, the region's severe recession has resulted in significant external obsolescence being present in nearly all real estate. External obsolescence is difficult to quantify and for the most part has been expressed as the difference between the dollar amount indicated by the cost approach and correlated value obtained by the income and market approaches. Market participants recognize this and in this situation would look first toward the income approach and next toward the sales comparison approach to determine what they might pay. Doing so, they would ignore the cost approach [in] establishing a purchase price at which the subject might be sold. **For these reasons, the cost approach is not included with this report.** (P-3, p. 12) (Emphasis added)

Ellis went on to explain his sales comparison and income approaches in valuing the subject, together with his valuation conclusion for each valuation date.

For his sales comparison approach he utilized 11 sales, which sold between April 2006 and May 2010. Comparable #9 was a listing. These sales are summarized at

Petitioner's Exhibit 3, page 154. The year which the various comparables were constructed ranged from 1968 for comparable #2 to 1988 for comparables #5 and #7. In arriving at his valuation conclusions using the sales comparison approach, Ellis utilized a Gross Rent Multiplier (GRM) methodology. This technique converts the relationship between a comparable's sale price and its gross income into a multiplier that can be factored by a subject's potential gross income into an indication of value. Ellis concluded to a value using this method as of December 31, 2007; December 31, 2008; and December 31, 2009, of $7,413,120; $6,549,480; and $6,097,608, respectively (P-3, p.155) from which he deducted the value of personal property present on the sites. In deducting the value of the personal property, Ellis utilized the value of the personal property based on the personal property assessments for each year to arrive at a value for the real property of $7,261,920 for tax year 2008; $6,403,980 for tax year 2009; and $5,961,788 for tax year 2010.

As of the December 31, 2007 and 2008 dates of valuation, all 72 of the Aberdeen of Brighton Apartments had not been completed; therefore, Ellis, using his sales comparison methodology, valued only those units fully completed. Since construction on buildings 2 and 9 had not yet begun as of December 31, 2007, Ellis valued that portion of the property that consisted of land only. He valued what is

described as building 11 based on work actually completed; the completed improvements' assessments ranged from $5,430 to $7,330 per unit averaging $6,406. (P-3, p. 156)

Ellis determined a value for the subject's 36 "as completed" apartment units as of December 31, 2007 to be $100,860 per unit or $3,630,000, to which he added his concluded land value of $13,056 for the 24 units on which construction had not commenced ($313,344). The remaining 12 units were determined to have a contributory land value of $156,672, plus a contributory value attributed to the partial improvements of $6,406 with an ultimate **value conclusion as of December 31, 2007 (2008 tax year) of $4,177,848.**

As of December 31, 2008, 60 of the 72 units had been fully completed and Ellis determined the 12 units which remained under construction were 62 per cent complete. Based on his per unit value determination using his sales comparison methodology of $88,944 per unit, the 12 units still under construction were valued at $53,367 ($88,944 x 62%) to arrive at a value **conclusion for the subject for the 2009 tax year of $6,000,000.**

In addition, Ellis explained the methods he employed in arriving at his value estimation using the income capitalization approach, which he stated one buying income-producing properties would consider in determining the price one would pay for the property.

Ellis first analyzed the subject's rental rates and income as of each of the three valuation dates, December 31, 2007, December 31, 2008 and December 31, 2009. Ellis stated that as of December 31, 2007, 36 units were completed with 25 units occupied. As of December 31, 2008, 60 units had been completed with 52 occupied and as of December 31, 2009 all units were completed and 68 of the 72 total units were occupied. As of each valuation date, the vacancy rate based on total units completed was 30.56, 12.33, and 5.56, respectively. (P-3, p. 88)

Ellis reviewed the subject's actual rental rate schedule in effect during the tax years at issue (P-3, p. 87) for the various units both for the respective floor plans and also on a monthly rental rate per square foot.

To determine market rents, Ellis utilized four rental comparables. These four comparables were all located in Livingston County and were constructed between

2001 and 2004. Ellis found comparable 1 (Westbury Apartments and comparable 3 (Mallard Pond Apartments) to be most similar to the subject (P-3, p. 101) and tend to support that the subject's rental rates are reasonable.

Based both on the subject's actual rental rates, together with his rental comparison analysis that considered both income and expenses of his comparables, Ellis concluded to a 6% vacancy factor and miscellaneous income at the rate of 1.5% of Effective Gross Income (EGI).

For each valuation date, Ellis assumed that the property's net income had stabilized to arrive at an Effective Gross Income of $1,088,132 as of December 31, 2007, $1,086,758 as of December 31, 2008 and $1,057,769 as of December 31, 2009.

After considering the subject's historical expenses (P-3, p. 103, with explanations found on pp. 104 -105) and excluding property taxes because they are not expensed in the income/expense statement utilized to capitalize income into value but are rather handled by adding a tax/capitalization rate component to the overall rate, Ellis developed a pro forma Income & Expense Statement (stabilized) with concluded net operating income of **$793,698, $821,528 and $822,847**for the

December 31 2007, 2008, and 2009 tax days, respectively. (P-3, p. 106 as modified by P-14, p. 106)

Ellis then proceeded to utilize three sources to assist in his determination of an appropriate overall capitalization rate. These sources were abstracted overall rates, utilization of the band of investment techniques and the Korpacz Market Survey. Ellis noted that the statistics provided and utilized for all three sources are national in nature and do not reflect the economic conditions in Southeast Michigan, which had been worsening since 2000/2001. (P-3, p. 11) After considering all three rate sources Ellis concluded to a capitalization rate before tax loading of 8% as of December 31, 2007; 9.30% as of December 31, 2008; and 10.25% as of December 31, 2009. After loading the appropriate tax rate (P-3, p. 112 as modified by P-14, p. 113), overall capitalization rates of 10.98%, 12.27% and 13.23% for the respective tax years were utilized to arrive at his value conclusion range using the income capitalization approach (as stabilized) from which he deducted the value of personal property.

Since the subject property was only partially completed as of December 31, 2007, he determined the value of the 36 completed units to range from $108,341 to

$110,000, which resulted in a contributory value for the completed units of $3,900,000+/-. There also existed 12 units that were partially constructed as of this date for which Ellis determined a contributory value of $2,333,533. No construction whatsoever had started on 23 of the remaining units to which Ellis applied a land value of $13,056 per unit based on his land value analysis. As a result, Ellis concluded to a range of value as of December 31, 2007 of $4,447,157 to $4,539,791.

For the December 31, 2008, valuation date using the same methodology but determining that 60 of the 72 units were now complete and that the remaining 12 units were 62% complete and combining the values he had determined for the completed and partially completed units, Ellis arrived at a range of value of $6,518,828 to $6,685,108.

Ultimately, Ellis determined the indicated value of the subject using the income approach as of December 31, 2007 to be $4,125,000; December 31, 2008 to be $6,200,000; and December 31, 2009 to be $6,150,000. (P-3, p. 115 as modified by P-14)

Ellis then proceeded to reconcile the values he had determined using the sales comparison and income capitalization approaches to value. In doing so he explained that

> the incentive for owning an apartment complex is to generate net operating income. Hence, the income approach traditionally has been considered the most appropriate and reliable technique for valuing this type of property. (P-3, p. 160)

He then went on to explain why he gave primary reliance to the income approach, although he had considered the sales comparison approach and given it some weight.

His ultimate value conclusion as of December 31, 2007 was $4,100,000; as of December 31, 2008 was $6,100,000; and as of December 31, 2009 was $6,050,000.

RESPONDENT'S CASE IN CHIEF

In support of Respondent's position that the subject property had been properly assessed for each of the tax years at issue, Respondent presented two witnesses and introduced ten exhibits:

R-1 Improved Land Appraisal prepared by Kathy Lupi dated July 23, 2009

R-2	Resume of Kathy Lupi
R-3	Resume of Amy Cyphert, City of Brighton Deputy City Planner
R-4	Sales in Aberdeen 2005-2008
R5	City Council Minutes-Site Plan dated December 4, 2003
R-6	City of Brighton R-4 Zoning District and Article II Districts and Regulations; Article X R-4 Districts; and Article XXII Exceptions and Variations to Use, Height and Area Restrictions
R-8	First Amendment to Master Deed dated August 4, 2004
R-12	Aberdeen Marketing Literature
R-14	Photograph of Entrance taken July 10, 2008
R-15	Letter to Lombardo regarding split Application dated January 25, 2008; Denial of split Application dated July 17, 2008 and Denial of Reconsideration dated December 23, 2009

Respondent's Witness:

Kathleen Lupi, the assessor for the City of Brighton, identified herself as a level three assessor, and was qualified as an expert level three assessor. Ms. Lupi indicated that she prepared and signed the tax rolls for the City of Brighton for all of the tax years at issue.

In support of the values appearing on the tax roll for each of the years at issue, Lupi prepared a Valuation Disclosure that was admitted over objection as Respondent's Exhibit 1 (R-1). Petitioner's counsel, during voir dire of the witness, inquired whether the document met the Uniform Standards of Professional Appraisal Practice (USPAP), to which the witness indicated that she was not subject to USPAP and was uncertain as to whether her valuation disclosure complied. (Tr. Vol. 2, p. 11)

The witness stated that her valuation consisted of valuing 72 residential parcels as of the tax dates at issue pursuant to MCL 211.24.

Ms. Lupi stated that she viewed "this project" for purposes of her "appraisal" (Tr. Vol. 2, p. 14) as "the project was originally applied for, cited and approved for nothing other than single family residential condominiums," and in early 2005 Petitioner applied for 120 individual condominium parcels for development.

According to Ms. Lupi, the original 21 acre +/- site was purchased by Petitioner for two million ($2,000,000) dollars (Tr. Vol. 2, p. 14). Prior to the property becoming a condominium, it was split, platted, and 120 Sidwell numbers were

assigned. The witness indicated that she relied on an order from the State Tax Commission dated October 8, 2008 determining the property classification of the subject properties as "residential real" rather than commercial (R-1, exhibit C) and stated "this is single family residential. It's the highest and best use and, therefore, we are affirming as to residential property." (Tr. Vol. 2, p. 26) Lupi indicated that she believed that, as a result of the STC order, she had to value the property as single family residential.

For all years under appeal, Respondent valued the property as 72 condominium units using State Tax Commission cost multipliers. *See* Respondent's Valuation Disclosure (R-1), which she prepared and certified to on July 23, 2009, valuing the property as of December 31, 2007; December 31, 2008; and December 31, 2009. (The Tribunal takes specific note that Ms. Lupi's valuation disclosure was certified to on July 23, 2009, and that she must have utilized a crystal ball to determine the value of the subject property on December 31, 2009, which was some four plus months after her valuation disclosure.) The general method that Ms. Lupi used both to assess and value the subject property was to cost each of the three basic floor plans using the STC multipliers to arrive at a cost value. The land value utilized by Ms. Lupi remained the same for each year under appeal for each parcel.

In addition to utilizing STC mass appraisal cost multipliers to value the property, Ms. Lupi presented what she characterized as a sales comparison analysis in which she utilized sales of condominiums in the 48-unit condo project covered by the Master Deed (R-1, pp. 16-19). Adjustments were made by her for size (square footage) and time (market conditions). The Tribunal notes that Ms. Lupi made no time market condition adjustments in her December 31, 2008 value conclusions for her three units identified as Astoria, Bostonian, and Crestwood units, using comparable sales that occurred on August 1 and August 25, 2008.

Ms. Lupi explained the basis of her reasoning for valuing the property as 72 residential condominiums rather than as apartments as did Petitioner's expert.

Amy Cyphert, deputy city planner for the city of Brighton, testified that she had been employed by the City for five plus years and that her responsibilities included the enforcement of zoning ordinances, as well as taking plans through the plan review process, reviewing building plans, etc. (Tr. Vol. 2, p. 280) She indicated that she was familiar with Respondent's zoning ordinance (R-4) as it applies to the Aberdeen development. (Tr. Vol. 2, p. 229) At the assessor's request, Cyphert

indicated that she reviewed the legal descriptions for two new legal descriptions for the remaining 72 units (the subject property) and she concluded that the proposed legal descriptions did not meet the density and some set back requirements of the zoning ordinance.

On cross-examination, the witness indicated that in determining whether or not there is a zoning violation she does not review the Condominium Act (Tr. Vol. 2, p. 246), but did acknowledge that the Master Deed, which had been reviewed by her office and approved by the City, did allow the developer at its sole discretion to remove up to 72 units from the Master Deed. (Tr. Vol. 2, p. 248) Cyphert further indicated that she had not, prior to the hearing, seen the second amendment to Master Deed at the time she had received a call from Ms. Lupi asking her to review the legal description provided by the developer (Petitioner) requesting the creation of two parcels (Tr. Vol 2, p. 250) and did not know that the 72 units were outside the Master Deed as amended by the second amendment.

The witness further in response to Petitioner's counsel's inquiry answered to the following: (Tr. Vol 2, pp. 259-261)

Q. So you're assuming that these have been retracted from the master deed and they're operated as apartments. Now, is that a zoning violation, just that one fact?

A. Is the property remaining twenty-one acres?

Q. The property is the—there is no difference except these have been retracted from the master deed. That's the only fact that I'm giving you.

A. So there's not a lot split?

Q. No, just retracted from the master deed, the seventy-two units.

* * *

A. If the site remains as one whole site, no, it is not violating the zoning ordinance.

FINDINGS OF FACT

The Tribunal, having considered all of the documentary evidence and testimony submitted by the parties, and based upon the record before it, and further based upon that portion of the evidence and testimony that it finds competent, material and substantial concludes:

Petitioner acquired a tract of property (21.15 acres +/-) of which the subject property is part on February 9, 2004 for $2,000,000.

Petitioner executed and recorded Master Deed #330 Aberdeen Brighton on February 10, 2005, creating a 120-unit condominium development (P-1) and requested and obtained from Respondent 120 tax identification parcel numbers (Sidwell) evidencing the 120 units.

The subject property is classified as residential for taxation purposes.

Petitioner obtained conditional Site Plan approval from Respondent as a result of City Council action on December 4, 2003. (R-5)

The Master Deed provided that Petitioner construct not less than 48 condominium units, the construction of which was commenced in 2005 with completion of the building containing the last of the 48 condominium units in 2006.

Between November 11, 2005 and October 18, 2006, 27 of the 48 units were sold, one additional unit was sold in 2007, and two units sold in 2008 although the units continued to be marketed. The two 2008 sales include sales concessions wherein Petitioner took in two used mobile homes in trade.

By mid-2006 it became apparent to Petitioner that the market for condominiums was slowing (inadequate demand) in the general area of the subject. Further, the beginning of the general deterioration of economic conditions in southeast Michigan made it doubtful that the remaining 21 units of the first phase of the project could be sold in a timely manner let alone the construction and sale of the remaining 72 units to be built within the original site plan and Master Deed.

Rather than abandoning the balance of the project in its entirety or defaulting on its obligations to its financial backers and existing owners of the sold condo units, Petitioner decided to find an alternative use for the remainder of the project.

On December 6, 2006, Petitioner executed "Second Amendment to Master Deed of Aberdeen of Brighton," which was recorded on December 20, 2006 in the Office of the Livingston County Register of Deeds. (R- 9). The amendment to the Master Deed removed the remaining 72 units, together with land set forth in the original master deed. The removal of the units and accompanying land was sanctioned under Article 8, section 2 of the original Master Deed. (P-1)

The Second Amendment to the Master Deed in Article XI provided, at Article XI, Section 1:

> The Condominium Project pursuant to this Second Amendment to the Master Deed of Aberdeen of Brighton shall consist of 48 units is intended to be an Expandable Condominium under the Act which may contain in its entirety a maximum of approximately 120 Units. Additional units, if any, will be constructed upon all or some portion or portions of the following described land:

Specific legal descriptions were set forth under the respective titles of "Proposed Future Development 'A'" and "Proposed Future Development 'B'."

Although the Second Amendment provided that the number of condominium units could be increased in the sole discretion of Petitioner any such increase was not mandatory. The right to add back contained in the amended Master Deed was in accordance with Michigan Law.

As of the date of the execution and recording of the Second Amendment to the Master Deed, no construction had been commenced on any of the buildings subject to this appeal.

The subject property consists of a total of six buildings. These buildings are identified in Exhibits P-4 and P-14 as buildings 1, 2, 3, 9, 10 and 11. Each building contains 12 units. Buildings 1, 3 and 10 obtained their certificates of occupancy from the City in June, September and December, 2007, respectively. Buildings 9 and 11 received their certificates of occupancy in July and December,

2008, with the final certificate of occupancy being issued on building 2 in May, 2009.

The six apartment buildings in which the 72 units are located are not part of the Aberdeen Condominium project as of the date they were constructed, occupied and rented.

The economic conditions that existed as of December, 2006, the date of the execution of the Second Amendment to the Master Deed, together with the fact that 19 of the original condominium units remained unsold, made it financially not feasible for Petitioner to proceed to construct the remaining 72 units as condominiums, but rather dictated that if Petitioner was to proceed at all with the remaining 72 units that they be withdrawn from the Master Deed as condominiums and constructed as apartments.

As the respective buildings were completed and certificates of occupancy issued, they were offered for rent and rented as individual apartment units. At no time were any of the 72 units offered for sale.

At no time relevant to this matter has Petitioner been cited by Respondent for any zoning land use violations for the subject property.

Although the Master Deed Amendments and Michigan Law provide that units removed from a Master Deed can be added back into the project for a period of six years after the recording of the original Master Deed (MCL 559.133), Petitioner has at no time from removal of the 72 units from the Master Deed to the present, done so. The Tribunal specifically finds, based on the record before it, that no prudent developer, from the date of the execution of the Second Amendment of the Master Deed to the present, would have added the 72 units back into the project as condominiums nor is there economic likelihood that Petitioner would do so prior to the expiration of the add back in period in February 2011.

At all times relevant to this action the six apartment structures identified by the 72 Sidwell numbers have not been part of the Aberdeen of Brighton condominium project and, in fact, to the extent actually constructed, have been owned, rented and offered for rent as apartments.

Petitioner has valued the parcels making up this case as one apartment complex and utilized the sales comparison method and income capitalization method to arrive at its contentions of true cash value for the years under appeal. This is a proper valuation method where the record is clear that Petitioner constructed the units as apartments and that the normal reason for one to operate apartments is to generate net operating income.

Building these 72 units as condominiums would have been an economic disaster for Petitioner as 20 plus units in the original project remained unsold.

Respondent valued the subject property as 72 residential condominiums using a mass market cost less depreciation approach and attempted to support its value conclusions using a sales comparison analysis by analyzing the sales of condominiums in the Aberdeen Condominium project.

The subject properties, as of each valuation date, were not contained within the Master Deed and were legally incapable of being individually conveyed by property tax identification numbers.

APPLICABLE 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, as equalized, and that beginning in 1995, the taxable value is limited by statutorily determined general price increases, adjusted for additions and losses.

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law...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%...; and for a system of equalization of assessments. For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value. Const 1963, Art IX, Sec 3.

MCL 211.27a (2) provides:

> (2) Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:
> (a) The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. For taxes levied in 1995, the property's

taxable value in the immediately preceding year is the property's state equalized valuation in 1994.

(b) The property's current state equalized valuation.

MCL 211.34d(1)(b)(iii) provides that "new construction" constitutes an "addition" for the calculation of a property's taxable value and provides in pertinent part:

> (c) For taxes levied after 1994, "additions" means, except as provided in subdivision (c) all of the following:
>
> ***
>
> (iii) New construction. As used in this subparagraph, "new construction" means property not in existence on the immediately preceding tax day and not replacement construction. New construction includes the physical addition of equipment or furnishings, subject to the provisions set forth in Section 27(2)(a) to (o). For purposes of determining the taxable value of property under Section 27a, the value of new construction is the true cash value of the new construction multiplied by 0.50.

The Michigan Legislature has defined "true cash value" to mean "the usual selling price."

> As used in this act, "cash value" means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. MCL 211.27(1); MSA 7.27(1).

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

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735 (1); MSA 7.650 (35)(1). The Tribunal's factual findings are to be supported by competent, material, and substantial evidence. *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 452 NW2d 765 (1990). "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence." (Citations omitted) *Jones and Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

"The petitioner has the burden of establishing the true cash value of the property...." MCL 205.737 (3); MSA 7.650 (37)(3). "This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party." *Jones and Laughlin* at 354-355, citing: *Kar v Hogan*, 399 Mich 529, 539-540; 251 NW2d 77 (1976); *Holy Spirit Ass'n for the Unification of World Christianity v Dep't of Treasury*, 131 Mich App 743, 752; 347 NW2d 707 (1984).

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

Under MCL 205.737(1); MSA 7.650 (37)(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal may not automatically accept a respondent's assessment but must make its own findings of fact and arrive at a legally supportable true cash value. *Pinelake Housing*

Cooperative v Ann Arbor, 159 Mich App 208, 220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979).

The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 377 NW2d 908 (1985). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. *Meadowlanes* at 485-486; *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980). A similar position is stated in *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982): "The Tax Tribunal is not required to accept the valuation figure advanced by the taxpayer, the valuation figure advanced by the assessing unit, or some figure in between these two. It may reject both the taxpayer's and assessing unit's approaches."

CONCLUSIONS OF LAW

The Tribunal, having considered all of the evidence properly before it in this matter and having made its findings of fact based upon evidence that it has found credible, competent and material, concludes that the approach to value which provide the most accurate valuation of the subject property in this case is

Petitioner's Income Capitalization method, which valued the subject property as apartments for each of the years under appeal. The Tribunal does not give any weight to Petitioner's value conclusions using the sales comparison approach for the reason that all of the sales that Petitioner's expert utilized were from projects significantly older than the subject and the Tribunal is uncertain of the methodology used in Petitioner's conclusions using this approach.

The Tribunal further concludes that Petitioner utilized appropriate appraisal principals in reaching its value conclusions for each of the years in question and the income and expense analysis together with capitalization rates applied were well supported, documented, and not contradicted on this record. The methodology applied by Petitioner in accounting for the partial construction of some of the 72 units on the respective valuation dates was the result of the application of accepted valuation practices.

The Tribunal further gives no weight whatsoever to Respondent's value conclusion using the cost less depreciation approach via the State Tax Commission's cost tables for residential condominiums for the simple reason that the subject is not factually or legally condominiums for any of the tax years in dispute. Further, Respondent's attempt to justify its cost conclusions by comparing sales of condos,

with most of the sales occurring before the significant downturn, to the subject is like comparing apples to oranges.

The cost approach is not an appropriate method to value the subject property even if it were properly costed as apartments, especially in a distressed or declining market, and represents absolutely no indication of the true cash value of the subject on any the valuation dates.

The Tribunal concurs with Petitioner's expert's "highest and best use" analysis. Ellis stated that as a result of the huge economic downturn in Southeast Michigan, and the immediate area of the subject property in particular, that it was not financially feasible to construct and offer for sale 72 additional condominium units when approximately 20 of the original 48 condominium units remained unsold at the time Petitioner decided to withdraw the 72 unbuilt units from the Master Deed and to construct the subject of the present litigation as apartments. Further, a close review of R-6 (City of Brighton R-4 Zoning District) reveals nothing that would preclude the subject apartments. Respondent's assertion that this project somehow violates the R-4 zoning is unfounded. As indicated above, the City never issued

zoning violation notices and also the testimony of its deputy planning director indicated that the project was not in violation as of the date of her testimony.

The Tribunal finds that Respondent's contention that, even though no longer covered under the Master Deed and being legally incapable of being individually conveyed, these apartment units should be valued as residential condominium is a disingenuous attempt to increase the value of the subject by valuing it as something that it is not.

The Tribunal therefore concludes that the **True Cash Value of the subject property,** identified by the 72 tax identification numbers set forth above, as of the respective valuation dates are: **Tax Year 2008 (December 31, 2007) $4,100,000; Tax Year 2009 (December 31, 2008) $6,100,000; and Tax Year 2010 (December 31, 2009) $6,050,000.**

Having concluded to the true cash value of the entire property for each of the valuation dates, the Tribunal is faced with how to properly allocate the true cash value between the 72 parcels. The Tribunal believes that it has the authority to direct Respondent to create a new parcel which actually reflects the current use and

occupancy of the property. However, it will not do so, but rather will allocate the true cash values set forth above to the 72 parcels for each year under appeal in the same proportion as each parcel bore to the total assessed and true cash value as established by Respondent and reflected on the 2008, 2009 and 2010 tax rolls.

Petitioner in its opening statement requested costs. The Tribunal is generally hesitant to award costs in this matter; however, because Respondent failed to properly consider Petitioner's Second Amendment to the Master Deed as removing 72 units from the Condominium project, and continued to value the property as condominiums, which they clearly were not, Respondent caused Petitioner to incur costs that would otherwise have been unnecessary had the property been properly assessed. Pursuant to TTR 145(1), the Tribunal may, upon motion or upon its own initiative, allow a prevailing party in a decision or order to request costs. Having carefully considered this case in totality, and because there can be no question that Petitioner is the prevailing party, the Tribunal awards Petitioner costs as provided by MCL 600.2421b.

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 *Final Values* section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that Petitioner is awarded costs. Petitioner may submit a bill of costs in accordance with TTR 145.

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 as

required by the Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998, at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar year

2005, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (xiii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, (xiv), after December 31, 2008 at the rate of 3.315 for calendar year 2009, and (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010.

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

MICHIGAN TAX TRIBUNAL

Entered: December 3, 2010 By: Kimbal R. Smith III