

STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

TG Lansing, LLC,
Petitioner,

v

MTT Docket Nos. 350285
and 369463

City of Lansing,
Respondent.

Tribunal Judge Presiding
Marcus L. Abood

FINAL OPINION AND JUDGMENT

Introduction

Petitioner, TG Lansing, LLC, appeals the assessed value, taxable value and true cash value levied by Respondent, City of Lansing, against the real property owned by Petitioner for the 2008, 2009 and 2010 tax years. Nanci W. Freedman, attorney, appeared on behalf of Petitioner. Michael D. Homier, attorney, appeared on behalf of Respondent. Witnesses appeared on behalf of both parties. They include: L. Richard Parker, real estate appraiser for TG Lansing, LLC; Steven E. Rogers, and Maria L. Irish, assessor, for the City of Lansing.

The proceedings were brought before this Tribunal on May 11, 2011, to resolve the real property dispute.

At issue before the Tribunal is the determination of the assessed value, taxable value and true cash value of Petitioner's real property.

- A. The property's state equalized value (SEV), assessed value (AV), and taxable value (TV), as confirmed by Board of Review or on the assessment roll:

Parcel Number 33-01-05-09-251-107

Year	SEV	AV	TV
2008	\$646,400	\$646,400	\$628,813
2009	\$634,200	\$634,200	\$628,500
2010	\$528,500	\$528,500	\$528,500

B. Respondent's revised contentions of the property's True Cash Value (TCV), SEV, and TV:

Parcel Number 33-01-05-09-251-107

Year	TCV	SEV	TV
2008	\$1,283,000	\$641,500	\$628,813
2009	\$1,255,000	\$627,500	\$627,500
2010	\$1,246,000	\$623,000	\$528,500

C. Petitioner's contentions of the property's True Cash Value (TCV), SEV, and TV:

Parcel Number 33-01-05-09-251-107

Year	TCV	SEV	TV
2008	\$ 965,000	\$482,500	\$482,500
2009	\$ 920,000	\$460,000	\$460,000
2010	\$ 860,000	\$430,000	\$430,000

D. The Tribunal finds the values shall be:

Parcel Number 33-01-05-09-251-107

Year	TCV	SEV	TV
2008	\$1,292,800	\$646,400	\$628,813
2009	\$1,268,400	\$634,200	\$628,500
2010	\$1,057,000	\$528,500	\$528,500

Background and Introduction

At issue for the tax years is the true cash value, assessed value and taxable value for the property located at 101 E. Edgewood Boulevard, Lansing, Michigan. The subject parcel of land is located in the south quadrant of the city of Lansing and within Ingham County, north of I-96 and west of South Cedar Street. The subject property is comprised of 1-story, pre-manufactured

units built in 1983, commonly referred to as Wildwood Apartments. The property was purchased by Petitioner from Michigan National Bank for \$950,000 on January 29, 1998.

Petitioner's initial appeal was received by the Tribunal on May 30, 2008, and Petitioner filed motions to consolidate Docket 369463 (2009 appeal) and amend to include subsequent tax year 2010 and Orders were entered on December 28, 2010, granting those motions.

Petitioner's Arguments

Petitioner states that the subject is assessed at greater than 50% of the true cash value, in violation of the Michigan Constitution and statutes. Petitioner claims that Respondent has improperly failed to consider all items that negatively affect the value of the subject.

The subject building is a pre-manufactured apartment development consisting of ten buildings and a total of 58 units.

Petitioner's first witness was L. Richard Parker, MAI appraiser, called to discuss the valuation of the property. Mr. Parker is a certified general licensed real estate appraiser in the state of Michigan. Mr. Parker is a member of the Appraisal Institute and is familiar with the Uniform Standards of Professional Appraisal Practice. Mr. Parker admitted to having educational coursework that is equivalent to a college degree.

The majority of his work is concentrated in the state of Michigan. He appraises commercial properties, including apartment buildings, office buildings, shopping centers and industrial buildings. His primary emphasis is the appraisal of apartment buildings.

Mr. Parker testified to the steps he took in appraising the subject property. He stated that he obtained information on the property, leases, operating expenses, costs, and sales data. He inspected the property and interviewed the property owners. Regarding the initial analysis, Mr. Parker considered the cost approach. However, this approach was not developed because of the

age of the buildings. Further, Mr. Parker states, “Second of all, if I was to utilize the cost approach, I would have to determine obsolescence depreciation, if you will, both physical and economic. Well, trying to extract physical depreciation on an over 25-year-old property is very speculative to say the least.” Day 1, TR p 45. The cost approach would not provide credible determination of value for the property. The Sales Comparison and Income Approaches to value are developed in the appraisal report.

Mr. Parker denotes that the subject development has 57 units. There is one more unit that is used as the manager’s office. He inspected the property on December 2, 2010; he observed five or six of the units. Based on those observed units, Mr. Parker made an assumption that all of the subject units were in average condition as of the effective appraisal dates.

The subject’s type of pre-manufactured quality of construction has a shorter economic life. This results in higher maintenance and repair costs. Mr. Parker has gathered this information from apartment developers, engineers, and other appraisers. The subject property is commonly referred to as a “Cardinal” development.

Respondent’s Argument

Respondent contends that it has properly determined the true cash value of the subject property, and that the assessments accurately reflect 50% of the true cash value.

Respondent’s first witness was Mr. Steven E. Rogers, senior commercial industrial appraiser for the city of Lansing. Mr. Rogers has an associate’s degree from Lansing Community College and a bachelor’s degree from Northwood University. He has been employed by the city of Lansing since January, 1995.

Mr. Rogers described the condition, quality and design of the buildings. He had assessor’s records to determine the total gross building area. Further, he verified this information

by personally measuring all of the apartment buildings.

Respondent's second witness was Ms. Maria Irish, city of Lansing assessor. Ms. Irish described her duties and functions as assessor for the city of Lansing. Prior to her employment with the city of Lansing, Ms. Irish was the assessor for the city of Adrian. Ms. Irish described the background of several of Petitioner's sales comparison data. Petitioner's sale 1 was a foreclosure. Sale 2 included related parties – Keith Schroeder and S and P Investments. Sale 3 sold in 2006. The 2008 sale was a deed in lieu of foreclosure. Sale 9 was not an actual sale. Meridian Township confirmed that there is no sales information for this property. Sale 10 was a MSHDA subsidized housing project.

Tribunal's Findings of Fact

The subject property is located within the city of Lansing and within Ingham County. Specifically, the subject property is located north of I-96, east of South Washington Avenue, and west of South Cedar Street. The subject property was constructed in 1983 as a multi-unit apartment complex. The site has 169,585 square feet or 3.89 acres. The development has a total of 58 units. However, 57 units are actually rented, and one unit is used as a property manager's office.

Both parties have presented valuation disclosures in the form of appraisal reports. Each appraiser has claimed compliance with the Uniform Standards of Professional Appraisal Practice. Petitioner's appraiser, Mr. Parker, is a certified general appraiser in the state of Michigan. Respondent's appraiser, Mr. Rogers, is a Michigan advanced assessing officer (formerly known as a level three state assessor). Mr. Rogers is not licensed as an appraiser in the state of Michigan.

Petitioner's appraiser observed the property on December 2, 2010. Mr. Parker observed five or six units out the 58 total units. Mr. Parker developed the income and sales comparison approaches to value.

Respondent's appraiser observed the property on October 26, 2010. Mr. Rogers observed two units out the total 58 units, a vacant unit as well as the manager's office. He requested access to more units but was denied. Mr. Rogers developed the cost, income and sales comparison approaches.

The parties utilized similar rental and sales data. Specifically, the parties have used the rental comparable located at 301 East Edgewood Boulevard known as Villas of Woodgate, and the sale comparable located at 201 South Waverly Road known as Waverly Woods.

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).

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.

The burden of proof in a tax matter encompasses two 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.” *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at pages 404-409. The Tribunal has a duty to make its own independent determination of true cash value only when the plaintiff has met its burden of going forward with the evidence. *Id.* at 410. In this instance, Petitioner has provided a valuation disclosure to show that the subject property was improperly assessed. This valuation disclosure was presented as an appraisal report that is purported to comply with the Uniform Standards of Professional Appraisal Practice (USPAP). The appraisal report is communicated as a “summary appraisal report.” Specifically, the appraisal report develops two approaches to value – the Income Approach and the Sales Comparison Approach. The Cost Approach was omitted from analysis.

Petitioner's appraiser, Mr. Parker, testified that the effective dates for the appraisal report were set forth in a “retrospective” fashion. Moreover, Mr. Parker analyzed the subject property

on an “AS-IS” basis. However, he has no basis or knowledge of the subject property as of 7-31-2007 or 7-31-2008. Mr. Parker was unable to personally attest to the condition of the subject property as of those dates. Since Mr. Parker was unable to personally inspect or verify the condition of the subject property as of those dates, an “extraordinary” assumption must be made. Extraordinary Assumption is defined as “an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser’s opinions or conclusions.” (The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice*, Washington DC: 2010-2011 edition), p U-3. Mr. Parker’s reliance upon someone else’s statements as the reason for omitting conditions or assumptions is not valid. He assumes the condition of the units is the same for all three years. This assumption is significant because Mr. Parker admits to viewing only five or six units out of a total of 58 units.

Petitioner has developed an income approach to value. Mr. Parker initially gathered rental data to arrive at a rental rate for the subject property. However, he does not differentiate the rental data for the three years under appeal. Mr. Parker testified that there was little change in rental rates for the three years. Mr. Parker believes that a general table outlining rental data is sufficient for a reader to understand his mindset and analysis. There is no narration about this rental data in Mr. Parker’s report. Moreover, Mr. Parker testifies about the lack of adjustments to the rental data.

I did not adjust the comparables, no. I just recorded what the range was, what the average was, and that the subject in that. Quite naturally it should have fallen toward the lower end for a lack of amenities, but because the units were smaller in some cases, that increases the per square foot. There’s a whole bunch of, you know, considerations that you would make, but no, I did not adjust anything on the rental chart for discrepancies in amenity, size, age, anything like that. Day 1, TR p 121.

Mr. Parker's lack of adjustments diminishes the applicability of the rental data to the subject. The rental data then becomes raw data in the absence of analysis and adjustments. Mr. Parker places reliance upon rental rates that had changed significantly from 2007 to 2009. For example, he received information for rental 6 (Newberry Apartments) from the property manager. For 2009, a studio apartment rents for \$475; a one-bedroom, one-bath apartment rents for \$569; a two-bedroom, one-bath apartment rents for \$675; and a two-bedroom, two-bath apartment rents for \$700. On cross-examination, Respondent provided a Delta Charter Township Apartment Study showing rents are \$529, \$589, \$769, and \$769, respectively. Mr. Parker relied on the property manager's information without additional verification. Respondent asked, "Did you ever inquire with Delta Township to acquire the rates for the apartments, as they clearly had done a study?" *Answer*: "No. Typically, assessing offices don't give me rental rates." Day 1, TR p 124.

Mr. Parker relied on various sales and the net operating income (NOI) in the income analysis. Respondent asks, "...You've relied on these people to simply tell you, without verifying, what the NOI was, and you've taken that and you've compared that against the subject property. True?" *Answer*: "This is true. Well, talking to the person --- I would think is verification enough, yes." Day 1, TR p 152.

Next, Mr. Parker received income statements from the property owner. In the process of discovery, Respondent received income statements for the subject property from the property owner's accountant. There is a discrepancy in the information from the two statements. Mr. Parker did not verify the income statements that he received from the property owner. On cross-

examination, Mr. Parker admits that the property owner has a bias to produce information that may not be accurate.

Well, it appears to me, looking at the two statements, that he has increased the value of the property by the statement that he's given me, because it shows a higher income and lower expenses, which would result in a higher profit. So to answer your question, yeah, it looks like he was trying to --- based on what you're saying, he was trying to inflate the value somewhat. Day 1, TR p 103-104.

Mr. Parker relies on rent rolls to render a reconstructed income statement for the subject property. Further, Petitioner assumes that Respondent also has a copy of the rent rolls for the subject property. Respondent states, "Well, see, I got this response from the Petitioner saying there are no historical rent rolls, so how could I have a copy of them?" There is confusion about this particular data in performing the income approach to value. Mr. Parker requested income information from the law firm handling the property owner's real estate affairs. After Mr. Parker received this information, he claims the law firm changed accounting systems and no longer had the historical rent rolls. The validity and verification of income statements and rent rolls is highly questionable. The Tribunal is not persuaded by inconsistent income data that is accessible to one or the other party at any given time.

Within the sales comparison analysis, Petitioner places significant reliance upon an economic conditions adjustment. Mr. Parker assumes that all location and physical differences are reflected in the rent generated by the property. He does not make any adjustments for location or physical traits. He states, "And basically how that works is, you take this subject's NOI per unit over the comparables' NOI per unit and subtract a whole number 1 from it." Day 1, TR p 76. Mr. Parker's methodology results in eleven out of twelve comparable sales adjusted downward. His testimony for the justification of an economic conditions adjustment is not

convincing. The adjustment grids are void of any specific adjustments for location or physical differences. Mr. Parker gives a brief statement about the economic conditions adjustment but does not convey any narration after all adjustments have been made to the sales data. His analysis is further unclear because he does not discuss any location or physical differences between the comparables and the subject property. “Some appraisers analyze net operating income per unit to account for differences in economic characteristics, but the technique is not widely used because it essentially duplicates the techniques use in direct capitalization.”

Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13 ed, 2008), p 341. Differences in net operating income do not inclusively cover all other characteristics and amenities in comparison analysis. Moreover, combining characteristics of a comparable in a singular adjustment potentially negates the relevance of direct sales comparison analysis. “Given the problems associated with net income multiplier analysis and the possibility of double-counting for value influences reflected in other elements of comparison, appraisers *must* take great care in estimating and supporting adjustments for economic characteristics.” *Id* at 341. Petitioner’s sales comparison approach is not meaningful to the final opinion of value.

Again, Petitioner claims its appraisal report is in compliance with USPAP. Mr. Parker has developed and communicated an appraisal report that says otherwise. Mr. Parker’s report omits several necessary elements that are common in appraisal practice and appraisal theory. He testified that he observed five or six units in the subject development. He does not disclose this in his appraisal report. Mr. Parker explains, “I never thought it was really that important as to how many units I inspected, although I grant you, if I’m doing a strip center or something like that, I list every one of the units and I go into every one of the units.” Day 1, TR p 184. Mr. Parker fails to realize that regardless of property type, an appraiser has a professional obligation

to disclose what he performed to create credible assignment results. Mr. Parker's lack of disclosure about the number of units inspected demonstrates his lack of USPAP compliance. Mr. Parker further admits to drafting a generic "scope of work" in his appraisal report. The scope of work entry would encompass everything an appraiser did in his assignment. For example, Mr. Parker does not include a copy of the engagement letter from the client. This document links the appraiser, the client and the scope of work for the given assignment. Knowing what the appraiser did to arrive at the opinions, analyses, and conclusions is the very essence of ethical compliance.

Petitioner must prove that its applied approaches are more credible and thus meet its burden of proof. Petitioner is unsuccessful in this regard. Petitioner's opinions, analyses, and conclusions are not reasonably supported. Moreover, Petitioner's valuation disclosure presented as an appraisal report is not meaningful (Standard 1) and is misleading (Standard 2) by the very standards and ethics that Petitioner's appraiser invokes.

Respondent has developed the cost, income and sales comparison approaches to value. The cost approach is given the least consideration because of the age of the subject property. Therefore, this approach to value is not given any weight in this opinion.

Respondent next develops an income approach to value for the subject property. Mr. Rogers relies on market data to arrive at a potential gross rent for the subject property. He was unable to get rent rolls from the property owner. Mr. Rogers searched various national sources for advertised rents. These sources include Landmark and Golden Apartment Guide. He admitted that he did not seek out any local sources for rental and expense information. For the three years under appeal, Mr. Rogers increased rents by \$10 to account for the change in market conditions. Mr. Rogers did not disclose the rationale or basis for this increase in market rents for

each year. Mr. Rogers followed a similar pattern of research and analysis for vacancy rates and capitalization rates. The support for this data came from national investor surveys. There was no evidence of local market surveys for Respondent's income analysis. The Tribunal is unable to rely on Respondent's development of the income approach to value.

Respondent next develops a sales comparison approach to value for the subject property. Mr. Rogers uses six sales that occurred between 2005 and 2007. These same six sales are analyzed for each year under appeal. He admits that additional sales should have been used in the analysis.

Because originally I did the report for 12-31 of '07, and then we don't know when the hearing's going to be so each year gets added on, and I came back and I'm adjusting those sales, and for the many years that we went from '07 to now, I should have put newer sales in for -09 instead of trying to adjust, you know, the older sales. I should have used newer ones. Day 2, TR pages 181-182.

Respondent uses a combined qualitative and quantitative blended set of adjustments to the comparable sales. Each of the adjustments is made on a predetermined allocation. This methodology is explained by Mr. Rogers.

What I did was, a lot of times people will either use percentages, like 2, 3, 4, or they'll use cash adjustments. To me, this blended adjustment of slight to moderate to fair to significant to large, negative or positively, is more user friendly. If you're reading this report, you can see that, and I'm going to state that when I'm making my adjustments to each comparable, what I did and why I used these rates. But instead of trying to come up with a dollar amount, which, you know, you need to have very similar apartments and say, okay, now, this one's got covered parking and this one doesn't so what is the total difference in the sales price because of this covered parking; or to come up with just a percentage – I used slight, moderate, fair, significant and large, and then I award 5 percent, 10, 15, 20, 25, or more if needed. Day 2, TR p 74.

Mr. Rogers' explanation of his adjustments is not understandable. He was unable to define the difference between a qualitative adjustment and a quantitative adjustment. There was

no testimony for the rationale or support for these adjustments. Respondent did not give any indication that the adjustments were derived from the real estate market. The Tribunal is unable to rely on Respondent's sales comparison approach. The sales data and the method of adjustments are not supported by written or oral testimony.

Respondent conveys a valuation disclosure in the form of an appraisal report. The author of the report is Mr. Rogers, who is not a licensed real estate appraiser in the state of Michigan. Mr. Rogers developed an appraisal report and invoked USPAP to create a credible opinion of value. Mr. Rogers claims to be independent, impartial, and unbiased; however, the fact remains he is an employee of the city of Lansing. He has a fiduciary relationship with the city of Lansing. Simply, Mr. Rogers is an advocate for the city of Lansing. Under USPAP, an appraiser cannot be an advocate nor have a fiduciary relationship. Mr. Rogers invokes USPAP without relevance or justification. A valuation disclosure does not carry the same gravity or responsibility of an appraisal report. Further, an individual not acting as a licensed appraiser would not necessarily be compelled to invoke USPAP.

The Tribunal finds that Petitioner was not able to show that the property was over-assessed for the tax years at issue. As such, and in light of the above, the Tribunal finds that Petitioner has failed to meet its burden of going forward with competent evidence on the issue of true cash value, assessed value and taxable value. Respondent has not provided credible documentary evidence and testimony to support the subject property's revised assessment for the tax years at issue and, as such, the Tribunal finds that the original assessment is fair and reasonable.

Judgment

IT IS ORDERED that the original assessments at issue are AFFIRMED.

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

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

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Order within 28 days of the entry of this Order. 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 the Tribunal's order. As provided in 1994 PA 254, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest rate of the 94-day discount treasury bill rate for the first Monday in each month plus 1%. As provided in 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after January 1, 1996 at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 2006 at the rate of 5.42% for calendar year 2007, (ii) after December 31, 2007 at the rate of 5.81% for calendar year 2008, (iii) after December 31, 2008, at the rate of 3.31% for calendar year 2009, (iv) after December 31, 2009, at the rate of 1.23% for calendar year 2010, and (v) after December 31, 2010, at the rate of 1.12% for calendar year 2011.

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

MICHIGAN TAX TRIBUNAL

Entered: August 5, 2011 By: Marcus L. Abood