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

Moyle Real Estate Development, LLC,

Petitioner,

v

MTT Docket No. 441175

City of Hancock,

Respondent.
_____/

Tribunal Judge Presiding
Paul V. McCord

FINAL OPINION AND JUDGMENT

Jaun Carbonell for Petitioner.

No appearance for Respondent.

I. INTRODUCTION

This property tax assessment dispute comes before the Tribunal for decision after a default hearing in the Entire Tribunal Division on December 4, 2013, in Dimondale, Michigan. At issue is the market value (true cash value or "TCV") of Petitioner's 21 unit apartment building located at 75 Navy Street, Hancock, Michigan (the "Subject"). Respondent's assessment, produced by means of mass-appraisal, indicated that the TCV of the Subject was $3,584,112 for the tax year at issue. Petitioner alleged in its petition that the market value of its property likely did not exceed $800,000. At hearing, Petitioner presented evidence that the TCV of the Subject likely did not exceed $1,453,500. Respondent did not appear at the default hearing and has submitted no information or evidence of value. The issues for decision are: (1) the true cash, state equalized and taxable values of Petitioner's property for the tax year at issue, and (2) whether Petitioner is entitled to a cost. It is.

II. JUDGMENT

This Tribunal holds that the Subject's TCV, state equalized value (SEV), and taxable value (TV) for the tax year at issue are as follows:

Tax Year	Parcel Number	TCV	SEV	TV
2012	31-051-038-011-10	$1,488,000	$744,000	$744,000

We further hold that Petitioner is entitled to its costs incurred in prosecuting this case.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After hearing and observing the witnesses who testified at the evidentiary hearing, allowing for the Tribunal to assess credibility, and having further considered the exhibits submitted by the parties, the arguments presented by counsel, and applying the governing legal principles, the Tribunal makes the following independent findings of fact and conclusions of law[1] set forth below in memorandum form. See MCL 205.751(1) ("A decision and opinion of the tribunal . . . shall be in writing or stated in the record, and shall include a concise statement of facts and conclusions of law, stated separately . . ."); see also MCL 24.285.

IV. FINDINGS OF FACT

This section presents a "concise, separate, statement of facts" within the meaning of MCL 205.751(1), and, unless stated otherwise, the matters stated or summarized are "findings of fact" within the meaning of MCL 24.285. The findings of fact are set forth in narrative form based on the Tribunal's conclusion that it is the most expeditious manner of proceeding where there are few disputes about facts and the main focus of the controversy is the valuation of the Subject as of the tax year at issue.

1. Assessment

The Subject is identified on Respondent's assessment roll by Parcel No. 31-051-038-011-10. For the 2012 tax year, Respondent determined that the true cash value of the Subject, by method of mass appraisal, was $3,584,112. Specifically, true cash value (TCV), state equalized value (SEV), assessed value (AV), and taxable value (TV) of the Subject as appearing on Respondent's assessment roll for the tax years at issue are as follows:

Year	TCV	SEV	AV	TV
2012	$3,584,112	$1,792,056	$1,792,056	$1,189,713

The Subject is classified as "residential" property.[2] During the tax year at issue, the level of assessment for residential real property within Respondent's jurisdiction equaled 50 percent of true cash value as determined by method of mass appraisal.

[1] To the extent that a finding of fact is more properly a conclusion of law, and to the extent that a conclusion of law is more properly a finding of fact, it should be so construed.

[2] This Tribunal notes that the Subject's classification as "residential" may be in error as the Subject is currently used as a 15 unit apartment building with an additional 6 unfinished units. See MCL 211.34c(2)(b)(*iii*). Classification of property under MCL 211.34c is not, however, within the Tribunal's subject matter jurisdiction. See *Midland Cogeneration Venture, Ltd Partnership v Naftaly*, 489 Mich 83, 95; 803 NW2d 674 (2011).

2. The Subject Property

The Subject is an irregularly shaped 0.80 acre lot with a four-story multi-family rental building located thereon. Presently, the Subject is operated as a 15 unit apartment building commonly known as "Canal Crossing." The Subject is located at 75 Navy Street, Hancock, Michigan, adjacent to and facing the Portage Lake Lift Bridge and backing on the Portage Canal. Hancock, Michigan is located in Houghton County and is located on Copper Island which is part of the Keweenaw Peninsula. As of the 2010 census, the population of Hancock was about 4,634.

The Subject building sits on a raised basement sitting on a slab. The first floor level provides garage parking, ground floor storage and utility space, with the upper three floors, the second, third floors, and fourth, designed to accommodate 21 condominium units. Surface parking is also available at the Subject. Access to garage parking is through an automatic roll-up garage door located on the north side of the Subject building.

When Petitioner began construction of the Subject building in 2007, it was to be completed as a 21-unit condominium. With the downturn in both the national and state economy, the development ran into economic difficulties, causing Petitioner to suspend completion of 6 of the planned 21 units. Petitioner was unsuccessful in its attempts to sell the 15 completed units with the last listing expiring in May 2010. The development also ran into a legal issue. Petitioner needed to obtain an easement across a snowmobile trail owned by the State of Michigan. Without a permit issued by the Department Natural Resources, the Subject could not obtain insurance for its access to this snowmobile trial. Petitioner was unable to obtain the necessary easement/permitting. As a result, Petitioner converted the Subject from its original intended designed use as a condominium development to an apartment building.

As of the relevant tax day at issue (December 31, 2011), the 15 completed units were converted into rental apartment units. All of the units feature two bedrooms and two baths in three different floor plans. Each completed units boasts cherry wood cabinetry, kitchen appliances, in-suite laundry equipment, a fire place, central air conditioning, and private balconies with a view of the canal. As of the tax day at issue, 12 of the completed 15 units were rented and two units were vacant. Rents at the Subject varied from $1330 to $1,850 per month. The average rent at the Subject was about $1,304 per month. The six unfinished apartments are all located on the third living level (fourth floor above grade) units 301-306. These units require approximately $45,000 per unit in final finish work to complete or $270,000 in total. In addition, as of the tax day at issue, Petitioner had resolved the situation regarding the snow mobile trial easement.

3. Petitioner's Value Evidence

Petitioner offered a summary appraisal report of the Subject prepared by Mr. Thomas D. Gilbert. Mr. Gilbert is a licensed state certified general estate appraiser and had been appraising properties for almost 30 years. Mr. Gilbert stated that while the Hancock, Michigan area is not his typical geographic area, he consulted with another state licensed appraiser in the area who has experience in the Hancock, Michigan market. Petitioner's expert determined a value for the Subject as set forth in his appraisal admitted as Petitioner's Exhibit1. Specifically, Mr. Gilbert opined that for tax year at issue, 2012, the market value of the Subject was $1,453,500.

Petitioner's appraiser considered all three approaches to value, but did not develop either a cost or sales comparison approach to value. With regard to the sales comparison approach, Petitioner expert opined that he was unable to identify any recent comparable sales (within the past three years) from within the Upper Peninsula of Michigan. After citing that neither the cost nor sales approaches were necessary to develop credible results, Mr. Gilbert developed an income approach.

Mr. Gilbert's analysis is premised on his belief that the highest and best use of the Subject would be as a 21-unit apartment building, although at this time of his report, only 15 units were complete and rented or available for rental. The remaining 6 units were in an unfinished state with an estimated total cost to complete of $270,000.

Petitioner's expert testified that he looked at rental comparables and what he believed would be a market rent for the Subject, noting the actual rents the Subject commands and the fact that the Subject is an overbuild, as it was originally designed and completed as a condominium project and offers features and amenities that are not typical in the rental market. After determining an average rental rate based on the 15 completed units, he then applied that to the Subject as a 21-unit apartment building to arrive at the Subject's potential gross income. After applying a 5 percent vacancy rate, Mr. Gilbert concluded that the effective gross income for the Subject would be $312,178. After subtracting expenses, the net operating income of the Subject was concluded to be $107,479. Using the Banded Rate of Investment, Petitioner's appraiser concluded that the overall capitalization rate of 0.118 percent. This resulted in a potential value via the income approach of $1,758,000 if the Subject was completed as the envisioned apartment building. Next, Mr. Gilbert subtracted from this conclusion the cost to complete the final six units ($270,000), and a $34,500 estimated cost of the contributory value of certain appliance assets such as kitchen equipment, laundry equipment and electric fireplaces.

V. CONCLUSIONS OF LAW

1. Default

TTR 231(1) provides that if a party has failed to plead, appear, or otherwise proceed as provided by the Tribunal's rules or orders, the Tribunal may, upon motion or its own initiative, hold that party in default. On December 10, 2012, the Tribunal entered an Order of Default in the above-captioned case, finding that Respondent had failed to file an Answer in this case as required by former TTR 245 (now TTR 229).[3] Respondent did not cure its default. As Respondent was the defaulting party to which it does not bear the burden of proof as to the TCV of the Subject (see MCL 205.737(3)), this Tribunal issued a Default Hearing Scheduling Order on October 28, 2013. Under the Tax Tribunal's rules a "default hearing" is a hearing at which the respondent is precluded from presenting any testimony, submitting any evidence, and examining the other party's witnesses unless, in the Tribunal's discretion, it allows otherwise. TTR 231(2). A default hearing, pursuant to TTR 231, was held on December 4, 2013. Petitioner appeared through its

[3] See TTR 229(1) providing that the failure to file either an answer or a responsive motion within 28 day may result in the holding of respondent in default and the conduction of a default hearing as provided in TTR 231.

counsel and offered the testimony of its expert witness together with documentary evidence in support of its value claim. Respondent, City of Hancock, was not present at the hearing, offered no motion to set aside the default, proofs that it had a meritorious defense to Petitioner's appeal, evidence as to the market value of the Subject, or that its default in this matter was other than willful.

2. Burden of proof

Although Respondent is in default and this case is being heard as a default hearing, Petitioner nevertheless bears the burden of proof as to the true cash value of its property. MCL 205.737(3); *Samonek v Norvell Twp*, 208 Mich App 80, 84; 527 NW2d 24 (1994). In other words, merely because Respondent is precluded from presenting any testimony, submitting any evidence, and examining Petitioner's witnesses, Petitioner is not automatically entitled to judgment in its favor. Instead, Petitioner's obligation to establish through the evidence it presents its right to relief remains unaltered. In this regard, a default hearing is analogous to the situation where a respondent moves pursuant to MCR 2.504(B)(2) for involuntary dismissal at the close of a petitioner's proofs (knowing, of course, that neither party actually so moved). Therefore, this Tribunal weighs and analyzes the evidence presented in this case employing the evidentiary standard applicable to such a motion. Meaning that this Tribunal must "weigh the evidence, pass upon the credibility of witnesses and select between conflicting inferences." *Marderosian v Stroh Brewery Co*, 123 Mich App 719, 724; 333 NW2d 341(1983). Under this formulation, Petitioner is not given the advantage of the most favorable interpretation of the evidence. *Id.*

The burden of proof in a tax case encompasses two concepts: (1) the burden of going forward with the evidence, and (2) the burden of persuasion, which remains with Petitioner throughout the course of the hearing. *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 409-410; 576 NW2d 667 (1998). In order to meet its burden of going forward with the evidence (sometimes referred to as the burden of production), the evidence offered by Petitioner must be sufficient and reliable to demonstrate that the assessment at issue is in error. *Id.* at 410. If the evidence introduced by Petitioner is sufficient, albeit not necessarily conclusive, that the challenged assessment may be wrong, then the Tribunal must appraise the testimony, make a determination of true value of the property and fix the assessment. *Id.*; see also *Jones & Laughlin Steel Corp v Warren*, 193 Mich App 348, 355; 483 NW2d 416 (1992). In the end, however, whether Petitioner is entitled to any relief depends on Petitioner meeting its burden of persuasion. The "burden of persuasion" refers to Petitioner's obligation to introduce evidence sufficient to convince this Tribunal, to a requisite degree of belief[4], that its claim as to the TCV of its property is in fact true. *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich 167, 178–179; 405 NW2d 88 (1987).

[4] In valuation cases, the petitioner's burden is "by a preponderance of the evidence." That is, that in the opinion of the Tribunal it is "more likely than not" that the true cash value of the petitioner's property is as the petitioner claims it to be. See MCL 205.737(3); see also *President Inn Properties, LLC v Grand Rapids*, 291 Mich App 625, 631; 806 NW2d 342 (2011).

In this case, this Tribunal finds that Petitioner has produced sufficient evidence to meet its burden of going forward with the evidence.[5] See *President Inn Props LLC v Grand Rapids*, 291 Mich App 625, 631; 806 NW2d 342 (2011); *Great Lakes Div of Nat'l Steel Corp, supra* at 408-409. Petitioner presented independent evidence of the value of the Subject by a competent appraiser with a rational basis for his appraisal. If taken as true, the opinion of Petitioner's expert and the facts upon which he relied create a sufficient question regarding the correctness of the assessment at issue to allow this Tribunal to make an independent determination of the value of Petitioner's property.

3. Valuation

The true cash value of property must "reflect the probable price that a willing buyer and a willing seller would arrive at through arm's length negotiation." *Huron Ridge LP v Ypsilanti Twp*, 275 Mich App 23, 28; 737 NW2d 187 (2007), see also MCL 211.27(1). Ultimately, the true cash value of property is a question of fact. See *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 638; 462 NW2d 325 (1990). In deciding valuation cases, we often look to the opinions of witnesses. See TTR 255(2). To this end, our rules generally make the submission of an appraisal or documents supporting the contended value, together with supporting expert valuation testimony, a practical requirement. See TTR 237(1) and 255(2). The Tribunal has broad discretion in forming its own conclusions about the record. See *President Inn, supra* at 351, citing *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985). We can find facts and accept or reject expert testimony and theories as we see fit. *Jones & Laughlin*, 193 Mich App at 356. But regardless of the method employed, this Tribunal must determine the most accurate valuation under the individual circumstances of the case. *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437, 485-486, 502; 473 NW2d 473 NW2d 636 (1991).

While there are three common approaches employed to value property: the income approach, the sales comparison approach, and the cost approach, see *Great Lakes Div. of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 390; 576 NW2d 667 (1998); *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984), only the income approach was developed by Petitioner's expert and presented at hearing. The income approach is generally considered the most accurate method for valuing income-producing property. See *CAF Investment Co v Saginaw Twp*, 410 Mich 428, 476; 302 NW2d 164 (1981) (LEVIN, J., concurring). This is because the income approach parallels the thinking of buyers and sellers who actively seek investment properties like the Subject. After reviewing and weighing the evidence presented, this Tribunal finds that the income approach offers the most accurate method for determining the true cash value of Petitioner's property. See *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984). Petitioner argues that, given the opinion of its expert, and his analysis of the

[5] This Tribunal notes, however, that a finding that Petitioner has met its burden of going forward with the evidence does not equate to a finding that the value of the property is less than that on the assessment roll. To the contrary, by meeting its burden of going forward with the evidence, Petitioner trips the Tax Tribunal's obligation under the Tax Tribunal Act to address the question of what value should be accorded the property. See MCL 205.735a(2). Once the burden of going forward with the evidence is met, "[t]he Tax Tribunal has a duty to make its own, independent determination of true cash value." *President Inn Properties, LLC v City of Grand Rapids*, 291 Mich App 625; 806 NW2d 342, 352 (2011).

capitalized income potential of the Subject, any potential buyer for the Subject as of the relevant tax day would pay no more than $1,453,500. This Tribunal agrees as to the approach, but modifies the computation and conclusion as discussed below.

Petitioner's expert was qualified by the Tribunal as an expert in real property valuation, and his appraisal was admitted into evidence thereby permitting him to offer opinion testimony. See TTR 255(2). However, being qualified as an expert is but the first part of accepting an expert's opinion. With regard to Petitioner's analysis, this Tribunal finds Petitioner's final step of removing the contributory value of certain personal property located in each of the 15 rental units as unsupported.

Each of the rental units includes kitchen appliances, such as dishwashers, stoves, refrigerators, etc., laundry equipment and a fire place. While the appraisal identifies these non-reality components, it does not indicate if they are or are not included in the ownership interest of the Subject, *i.e.*, if they are to be treated as "fixtures" and are part of the real estate or if they are personal property. See Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p 3247. In this regard, this Tribunal notes that the Michigan Supreme Court has held that appliances located in apartments that are necessary for the property to operate as apartments are fixtures and, thus, reality under Michigan law. See *First Mortgage Bond Co v London*, 259 Mich 688, 692; 244 NW 203, 204 (1932).

In this case, the assets identified by Petitioner's expert are assets included in each apartment and support the Subject's operation as an apartment building. These assets rent with each unit and support the rental rate. Petitioner presented no evidence that rental units are offered without these assets and/or other that there is a separate rate charged for the use of these assets, nor did Petitioner present any evidence or controlling legal authority as to why this Tribunal should not treat these assets as fixtures. In the view of this Tribunal, these assets are fixtures, tenant amenities that are necessary and enhance Subject's operation as an apartment building and the rental rate charge. Accordingly, this Tribunal finds that this adjustment to the value conclusion reached as unsupported. Taking into consideration our adjustment to Petitioner's analysis, this Tribunal finds that a market value conclusion for the Subject of $1,488,000 for the tax years at issue is supported.

As the probative value of an expert's opinion must stand or fall upon the facts and reasoning offered in support of that opinion, this Tribunal is convinced by the appropriate standard of proof that the income approach yields the most accurate valuation of the Subject under the circumstance of this case. That said, this Tribunal has modified Petitioner income analysis as discussed above.

4. *Costs and Fees*

Generally speaking, litigation costs and legal expenses are not recoverable unless otherwise authorized by statute, case law, or contract. MCL 205.752(1) authorizes the Tribunal to award costs incurred by a party in pursuing an appeal in this forum. Although the Tribunal is hesitant to award costs, Rule 209(1) nevertheless provides that a party may be entitled to an award of costs, either on motion or on the Tribunal's own initiative, when provided for by the Tribunal in

a decision or order. TTR 209(1). The decision to award costs is solely within the discretion of the Tribunal judge. Here, Respondent has failed to timely submit an answer and failed to appropriately respond to the Tribunal's Orders. The Tribunal finds that Respondent has failed to participate in this appeal in any manner and has failed to provide any meritorious defense to Petitioner's case. As a result, Respondent has burdened both Petitioner and this Tribunal with a case. Therefore, awarding Petitioner costs is appropriate in this case.

VI. CONCLUSION

Respondent has failed to provide any evidence in support of the values assessed on the roll. Accordingly, it cannot be determined that Respondent's assessments accurately reflect the value of the subject properties. After a careful review and weighing of the testimony and exhibits presented by Petitioner, Petitioner's sales approach is found to be the only reliable evidence as to the value of the Subject for the 2012 tax year. The Tribunal finds that Petitioner has met its burden of proof and that a reduction in the assessments is warranted. For the reasons discussed above, the conclusion of this Tribunal is that the true cash, state equalized, and taxable values of the Subject are as follows:

Parcel Number: 31-051-038-011-10

Year	TCV	SEV	TV
2012	$1,488,000	$744,000	$744,000

Further, this Tribunal has found that an award of cost to Petitioner is warranted. In reaching the holdings in this opinion, this Tribunal has considered all arguments for contrary holdings, and has rejected all arguments not discussed as without merit or irrelevant. To reflect the foregoing:

IT IS SO ORDERED.

IT IS FURTHER ORDERED that Petitioner shall submit to the Tribunal and Respondent within 14 days of the entry of this Order a bill of costs, prepared in compliance with TTR 209(3), reflecting the costs incurred by Petitioner in this matter.

IT IS FURTHER ORDERED that Respondent may respond to the bill of costs within seven (7) days of the service of the bill of costs.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year 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 90 days of the entry of the Final Opinion and Judgment, the 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 28 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, and (xiii) after December 31, 2007, at the rate of 5.81% for calendar year 2008 (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, and (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010, at the rate of 1.12% for calendar year 2011, and (xvi) after December 31, 2011, at the rate of 1.09 for calendar year 2012, (iv) after June 30, 2012, through December 31, 2013, at the rate of 4.25%, and (v) after December 31, 2013, and through June 30, 2014, at the rate of 4.25%.

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

By: Paul V. McCord

Entered: