



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

ORLENE HAWKS  
DIRECTOR

Cambridge Square of Grand Rapids,  
Associates I, a Limited Dividend  
Housing Association, and Cambridge  
Square of Grand Rapids Associates II,  
a Limited Dividend Housing Association,  
Petitioners,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket Nos. 20-000991  
and 20-000992

City of Grand Rapids,  
Respondent.

Presiding Judge  
Patricia L. Halm

FINAL OPINION AND JUDGMENT

INTRODUCTION

Cambridge Square of Grand Rapids Associates I, a Limited Dividend Housing Association, and Cambridge Square of Grand Rapids Associates II, a Limited Dividend Housing Association (collectively Petitioners), appeal ad valorem property tax assessments levied by Respondent, the City of Grand Rapids, against Parcel Numbers 41-14-21-195-004 and 41-14-21-195-002 (the subject property), for the 2020 tax year. A hearing began in this matter on August 23, 2021, and continued through August 25, 2021. Mr. Adam Cohen and Mr. Jason Long, attorneys, appeared on behalf of Petitioners. Mr. Tobijah Koenig, attorney, appeared on behalf of Respondent. Petitioners' witnesses included Mr. Brian Poore, Vice-President of the Gene B. Glick Company, and Mr. Kevin Kernan, appraiser. Respondent's witnesses included Mr. Ryan Lake, appraiser, and Paula Jastifer, the assessor for the City of Grand Rapids.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash value (TCV), state equalized value (SEV), and taxable value (TV) of the subject property are as follows:

Parcel Number: 41-14-21-195-004

Year	TCV	SEV	TV
2020	\$5,605,500	\$2,802,750	\$2,802,750

Parcel Number: 41-14-21-195-002

Year	TCV	SEV	TV
2020	\$5,475,300	\$2,737,650	\$2,737,650

## PETITIONERS' CONTENTIONS

Petitioners' contentions of TCV, SEV, and TV are as follows:

Parcel Number: 41-14-21-195-004

Year	TCV	SEV	TV
2020	\$4,800,000	\$2,400,000	\$2,400,000

Parcel Number: 41-14-21-195-002

Year	TCV	SEV	TV
2020	\$4,900,000	\$2,450,000	\$2,450,000

The subject property is a garden-style apartment complex known as Cambridge Square Apartments, located in Grand Rapids, Michigan. While the apartment complex is operated and managed as one property, it consists of two adjacent parcels of property. Parcel No. 41-14-21-195-004, known as Cambridge Square I, is located at 832 Plymouth Avenue, NE. This property was built in 1970<sup>1</sup> and contains 10.10 acres of land. Parcel No. 41-14-21-195-002, known as Cambridge Square II, is located at 1901 Bradford Street, NE. This property was built in 1971 and contains 10.15 acres of land. Each parcel of property contains 14 apartment buildings and 124 apartments, for a total of 28 apartment buildings and 248 apartments. There are four types of apartments, including one and two-bedroom garden-style apartments, and two and three-bedroom townhomes. There are paved parking lots but no garages or carports. "Coin laundry facilities are available in the basements of the one and two bedroom apartments, and laundry hook-ups are available in the basements of the two- and three-bedroom townhouse units."<sup>2</sup>

The subject property is located approximately two miles east of downtown Grand Rapids and abuts I-196. The subject property's "immediate neighbors are other low-income housing projects and the Kent County Jail."<sup>3</sup>

As of December 31, 2019,<sup>4</sup> each parcel of property was encumbered by a contract with the United States Department of Housing and Urban Development (HUD) under the Section 8 Housing Assistance Payment Program, commonly referred to as Section 8 (HUD contract). Fifty-seven, or approximately 46%, of Parcel No. 41-14-21-195-004's 124 apartment units were subject to the contract, while 62, or 50%, of Parcel No. 41-14-21-195-002's 124 apartment units were subject to the contract.<sup>5</sup>

---

<sup>1</sup> The parties disagree as to when the subject properties were built. Petitioners contends that Cambridge I was built in 1970, while Respondent contends it was built in 1971. Petitioners contend that Cambridge II, was built in 1971, while Respondent contends that it was built in 1972.

<sup>2</sup> Petitioners' Exhibit P-5 (P-5) at 24.

<sup>3</sup> Petitioners' Post-Hearing Brief at 2.

<sup>4</sup> Pursuant to MCL 211.2: "The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day . . . ."

<sup>5</sup> Transcript, Day 1 (T1) at 167.

Additionally:

The subject has historically been tax exempt based on being part of the PILOT Housing program. This program is for low income housing property owners using federal loans to reduce their tax burden. This allows the rental owner to pay a service fee instead of property taxes. In a sale, the new owner would have to reapply for the program. The subject property is now out of the PILOT program and the 2020 tax year is the first year of assessment.<sup>6</sup>

Petitioners' first witness was Mr. Brian Poore, Vice-President of the Gene B. Glick Company (Glick Company). Mr. Poore testified that the Glick Company, located in Indianapolis, Indiana, owns and manages approximately 20,000 apartment units nationwide, including the subject property. Mr. Poore further testified that approximately half of those apartment units, or 10,000 units, were under the Section 8 housing program. Mr. Poore provided the following explanation of the Section 8 program:

[W]hen you're under contract with HUD for [ ] Section 8 units, they have, first of all, income limits so that residents that want to move in the property cannot make more than a certain income amount, and once they're approved to move in it, then the rental payment for the resident is calculated based on 30 percent of their income, and then the difference in that, the government, HUD, picks up the rest of that rent for the resident.<sup>7</sup>

The subject property's original HUD contracts had an effective date of October 1, 1976. Mr. Poore explained that while the early HUD contracts were for terms of five years, the latest contracts have been for terms of one-year. Mr. Poore testified that the Glick Company still has the option of entering into HUD contracts for longer periods of time, but that the "practice is to continue these Section 8 contracts on a year-to-year basis, which provides flexibility not only for us, but if we did choose to sell this property, a potential buyer would have the flexibility of what they would choose for these units."<sup>8</sup>

However, according to Mr. Poore, converting Section 8 housing to market rent<sup>9</sup> housing takes time because HUD has specific rules and requirements. First, a resident must be given notice of the intent to terminate the HUD contract one year in advance. HUD also has to be provided notice, and it could take a year or more to process the paperwork. After the HUD contract is terminated, if the resident chooses to stay in the unit, HUD gives the resident a rent voucher so that they may remain in the unit as long as they meet the Section 8 income requirements.

---

<sup>6</sup> P-5 at 26.

<sup>7</sup> T1 at 27.

<sup>8</sup> T1 at 30.

<sup>9</sup> "Market rent" is "[t]he rental income a property would likely command in the open market." Appraisal Institute, *The Valuation of Apartment Properties*, at 98.

Mr. Poore testified that a few years ago, the Glick Company explored the possibility of terminating the subject property's HUD contract and converting the Section 8 apartments to market rent apartments. Eventually, it was decided that it would not be economically feasible to do so. Mr. Poore described the properties as still being representative of their original 1970's features, in that they have not been rehabilitated. Mr. Poore also described the properties as being in average condition for their age. Mr. Poore explained that to convert the subject property to market rent apartments, each apartment would have to be rehabilitated, the cost of which would currently be over \$20,000 per unit. In addition, there would be transition costs associated with vacancy and turnover, etc. Finally, Mr. Poore testified that there is a stigma associated with Section 8 housing that would hinder its conversion.

Mr. Poore explained that participation in the Section 8 housing program provides certain benefits to the owners of the property, such as Petitioners. For example, in the Grand Rapids area, there is a high demand for housing for low-income people. Participation in the program, in turn, helps the subject property maintain a high occupancy level. Another benefit is that HUD is reliable in paying its share of the rent, which is 70%. Additionally, if a person falls behind on the rent it is easier to collect the rent because it is a smaller amount (30% of the total rent.)

On the other hand, there are disadvantages to participation in the Section 8 housing program. For example, HUD imposes certain requirements, such as additional record keeping and annual audits. In addition, HUD inspects the property and requires that it be maintained at a certain level. Often repairs required by HUD are not something that an owner of a market rent property would deal with, or deal with under the same time constraint. It is also Mr. Poore's opinion that low-income families are harder on the apartment units, creating additional wear and tear, which in turn adds to the cost of maintenance.

Mr. Poore explained that the maximum amount of rent charged for a Section 8 unit is set by HUD. To determine this amount, HUD requires each property owner to complete a "rent comparability study" every five years. This study must be prepared by an outside appraiser. The purpose of this study is to ensure that the rents charged do not exceed market rents. In the years in which a study is not completed, HUD applies an "operating cost adjustment factor" to account for cost increases. Finally, units that are not Section 8 units are rented at market rents. However, these "rents are very close to what we're getting for our Section 8 units. They're not exact."<sup>10</sup>

In terms of expenses, Mr. Poore testified that HUD must approve the amount of management fees. The subject property's management fees for the year ending December 31, 2019, were approximately 9.3% of effective gross income. It was Mr. Poore's opinion that this fee was higher than that for market rent properties.

---

<sup>10</sup> T2 at 9.

Petitioners' next witness was Kevin Kernen, managing director of Stout. Mr. Kernen is a real estate appraiser with a Michigan certified general appraiser license. Mr. Kernen also holds the MAI designation through the Appraisal Institute. Mr. Kernen testified that he has appraised more than 100 apartment properties, including a few dozen Section 8 apartments. Due to his education, training, and experience, Mr. Kernen was qualified as an expert real estate appraiser.

Mr. Kernen described "garden-style" apartment complexes as typically containing two- or four-story buildings with common entry hallways. Mr. Kernen testified that the subject property's buildings are garden-style buildings and townhomes, and that they contain one-, two-, and three-bedroom units. The average size per unit is 844 square feet. The units were built in 1970 and are of Class D construction, meaning the construction is wood frame. Mr. Kernen described the subject property as being near the end of its useful life. In Mr. Kernen's opinion, the buildings are in average condition. The subject property also contains a clubhouse and a playground.

Mr. Kernen testified that he prepared separate appraisal reports for Cambridge Square I and Cambridge Square II. Mr. Kernen explained that while there are minor differences between the two appraisals, the valuation process was the same for both complexes.<sup>11</sup> In the appraisals, Mr. Kernen opined that the subject property's highest and best use was its continued use as an apartment complex, subject to the HUD contract.

In valuing the subject property, Mr. Kernen considered three approaches to value: the cost-less-depreciation approach (cost approach), the sales comparison approach, and the income capitalization approach (income approach). However, Mr. Kernen determined that the cost approach was not reliable due to the age of the subject property and the amount of depreciation associated with the property. In addition, Mr. Kernen explained that the cost approach was not utilized because this is not an approach an investor would consider. Ultimately, Mr. Kernen valued the subject property using the sales comparison approach and the income approach, placing the most weight on the income approach. Accounting for the minor differences between the properties, Mr. Kernen valued Cambridge Square I at \$4,800,000 for the 2020 tax year, and Cambridge Square II at \$4,900,000.

Mr. Kernen explained that in preparing his sales comparison approach, he searched for sales of Section 8 housing complexes but was unable to find any. Ultimately, Mr. Kernen relied on the sales of five comparable market rent properties (i.e., properties that were not encumbered by a low-income housing subsidy). In his sales comparison approach, Mr. Kernen determined the average sale price per unit of each property. Mr. Kernen then adjusted these average sales prices to reflect any changes in the market that may have occurred after the comparable property sold. Mr. Kernen relied upon CoStar Analytics for this adjustment and determined an annual 2% adjustment was appropriate.

---

<sup>11</sup> Given this, the appraisal information discussed in this Final Opinion and Judgment should be inferred to apply to both appraisals unless indicated otherwise.

Mr. Kernen then adjusted the adjusted sales price per unit to account for the differences between the subject property and the comparable properties. These differences included location, number of units, average unit size, condition, amenities, and other economic factors. In this case, other economic factors included consideration of the net operating income generated at the comparable sales compared to the subject property.<sup>12</sup>

The following properties were considered comparable sales in Petitioners' sales comparison approach:

1. Comparable one: This property is known as the "Dwelling Zone Apartments" and is located at 226 Endeavor Blvd., Grant, Michigan. This property sold on July 17, 2019, for \$1,825,000. The complex was built in 2003 and contains 48 housing units with an average size per unit of 542 square feet. The complex does not contain any amenities. Adjustments were made for market conditions, location, number of units, average size per unit, condition, and lack of amenities. The final adjusted sale price per unit was \$40,281.
2. Comparable two: This property is known as "Cottonwood Forest Condominiums" and is located at 7701 Riverview Drive, Jenison, Michigan. This property sold on July 17, 2019, for 12,000,000. This complex was built in 1981 and contains 168 units with an average size per unit of 790 square feet. This complex contains a playground and pond/river walking trails. Adjustments were made for market conditions, condition, amenities, land-to-building ratio, and other economic factors. The final adjusted sale price per unit was \$50,450.
3. Comparable three: This property is known as "Executive Estates Apartments" and is located at 2320 30<sup>th</sup> Street SW, Wyoming, Michigan. This property sold on September 18, 2018, for \$2,130,000. This complex was built in 1971 and contains 40 units with an average size per unit of 792 square feet. This complex does not contain any amenities. Adjustments were made for market conditions, number of units, lack of amenities, and land-to-building ratio. The final adjusted sale price per unit was \$57,366.
4. Comparable four: This property is known as "Easter Avenue Southeast" and is located at 2055 Eastern Avenue SE, Grand Rapids, Michigan. This property sold on August 15, 2018, for \$2,050,000. This complex was built in 1960 and contains 36 units with an average size per unit of 739 square feet. This complex does not contain any amenities. Adjustments were made for market conditions, number of units, lack of amenities, and other economic factors. The final adjusted sale price per unit was \$52,685.
5. Comparable five: This property is known as "Beverly Hills Apartments" and is located at 415 Mitzi Street, North Muskegon, Michigan. This property sold on September 28, 2017, for \$6,850,000. This complex was built in 1965 and contains 138 units with average size per unit of 794 square feet. This property

---

<sup>12</sup> P-5 at 33.

contains a courtyard. Adjustments were made for market conditions and lack of amenities. The final adjusted sale price per unit was \$54,465.

With these adjustments, Mr. Kernen concluded to a per unit value for the subject property under the sales comparison approach of \$41,000. With 124 units each, the resulting TCV for each parcel of property is \$5,100,000.

When asked why he concluded to a per unit value at the low end of the range for adjusted sales price per unit, Mr. Kernen explained that he chose this value because the subject property hasn't been renovated, while some of the comparables have been renovated. Also, none of comparable properties are Section 8 properties. Finally, Mr. Kernen compared the income potential of the subject property to the comparable properties.

Turning to his income approach, Mr. Kernen explained how the subject property's Section 8 status impacts this approach. Specifically, being subject to a HUD contract impacts occupancy and the stabilized occupancy projection. It also impacts operating expenses and the "risk profile" of the property's cash flow.<sup>13</sup>

Mr. Kernen began his income approach by estimating market rent. Mr. Kernen considered the rent charged at subject property in addition to that charged by four comparable market rent properties. These properties include:

1. Rent comparable one: This property is known as "Pheasant Ridge Apartments" and is located at 3395 Pheasant Ridge Avenue SE, Kentwood, Michigan. This complex was built in 1974 and contains 166 units with a similar mix of units (bedrooms/bathrooms) as the subject property.
2. Rent comparable two: This property is known as "Viewpointe Apartments" and is located at 2745 Birchcrest Drive SE, Grand Rapids, Michigan. This complex was built in 1973 and contains 138 units with a similar mix of units as the subject property.
3. Rent comparable three: This property is known as "Brenton Court Apartments" and is located at 4705 North Breton Court SE, Grand Rapids, Michigan. This complex was built in 1974 and contains 220 units with a similar mix of units as the subject property.
4. Rent comparable four: This property is known as "Regency Park Apartments" and is located at 2518 Normandy Drive SE, Grand Rapids, Michigan. This complex was built in 1968 and contains 251 units with a similar mix of units as the subject property.

After considering the market data, it was Mr. Kernen's opinion that "[t]he conventional rent projections are supported by the rent comparables and are in line with the asking rents, and are generally consistent with the Section 8 unit rental rates."<sup>14</sup> "Therefore, it is

---

<sup>13</sup> T1 at 138.

<sup>14</sup> P-5 at 42.

the contract rent<sup>15</sup> that is relied upon in the final conclusion of rent projections for the Section 8 units.”<sup>16</sup>

For Cambridge Square I, Mr. Kernen projected the subject property’s potential rental income to be \$10,099 per unit, or \$1,252,320.<sup>17</sup> This conclusion was reduced by \$10,099, which represents the unit that is unavailable to rent because it has been set aside as a model for potential tenants to view. Mr. Kernen then estimated the subject property’s stabilized occupancy. In doing so, Mr. Kernen considered the comparable sales, the rent comparables, and market data and concluded to a 98% stabilized occupancy rate, or a 2% stabilized vacancy rate. Mr. Kernen also concluded to a 1% credit loss. With this, Mr. Kernen arrived at a net rental income of \$9,715 per unit, or \$1,204,651.<sup>18</sup> Mr. Kernen then added other income at a rate of \$195 per unit to account for income from miscellaneous sources, such as application fees, pet fees, clubhouse rentals, etc.<sup>19</sup> The result is effective gross income of \$9,910 per unit, \$1,228,831.<sup>20</sup>

For Cambridge Square II, Mr. Kernen projected the subject property’s potential rental income to be \$10,071 per unit, or \$1,248,864.<sup>21</sup> This conclusion was reduced by \$10,071, which represents the unit that is unavailable to rent because it has been set aside as a model for potential tenants to view. Mr. Kernen then estimated the subject property’s stabilized occupancy. In doing so, Mr. Kernen considered the comparable sales, the rent comparables, and market data and concluded to a 98% stabilized occupancy rate, or a 2% stabilized vacancy rate. Mr. Kernen also concluded to a 1% credit loss. With this, Mr. Kernen arrived at a net rental income of \$9,688 per unit, or \$1,201,327.<sup>22</sup> Mr. Kernen then added other income at a rate of \$240 per unit to account for income from miscellaneous sources, such as application fees, pet fees, clubhouse rentals, etc.<sup>23</sup> The result is effective gross income of \$9,928 per unit, \$1,231,087.<sup>24</sup>

Mr. Kernen’s next step was to estimate operating expenses. In doing so, Mr. Kernen considered the subject property’s historical operating expenses. In addition, in Cambridge Square I’s appraisal, Mr. Kernen considered Cambridge Square II’s operating expenses and that of two other Section 8 properties. For Cambridge Square II’s appraisal, Mr. Kernen considered Cambridge Square I’s operating expenses and that of the same two properties. Mr. Kernen also consulted market data, including CoStar and IREM. Ultimately, Mr. Kernen gave the subject property’s actual expenses significant weight because the property is operated by a sophisticated operator and because there was a stable operating history.

---

<sup>15</sup> “Contract rent” is “[t]he actual rental income specified in the lease.” Appraisal Institute, *The Valuation of Apartment Properties*, at 98.

<sup>16</sup> P-5 at 42.

<sup>17</sup> P-5 at 43 and 49.

<sup>18</sup> P-5 at 44 and 49.

<sup>19</sup> P-5 at 45.

<sup>20</sup> P-5 at 45 and 49.

<sup>21</sup> P-6 at 43 and 49.

<sup>22</sup> P-6 at 44 and 49.

<sup>23</sup> P-6 at 45.

<sup>24</sup> P-6 at 45 and 49.



Mr. Kernen testified that he agrees with Mr. Poore's opinion that management fees at a Section 8 property are typically higher than those at a market rent property because "[t]he government contract in place at the subject requires more attention by a management company compared to an apartment complex without a government contract."<sup>25</sup> Mr. Kernen concluded that a management fee of 9.3% of effective gross income was appropriate.

Mr. Kernen explained that the subject property's utilities expense includes gas, electricity, water, sewer, and trash removal, and that everything but electricity is included in the resident's rent. Mr. Kernen further explained that the utility costs were significant because the tenants do not pay for them and, as a result, are not conservative in their usage. Ultimately, Mr. Kernen concluded to rate for total operating expenses, including taxes, of 67.5%.

The next step in Mr. Kernen's income approach was to determine an applicable capitalization rate. Mr. Kernen explained that the subject property's HUD contract influences the capitalization rate due to the reduced risk profile. In determining the capitalization rate, Mr. Kernen considered market-derived rates, investor surveys, and the band of investment method. When considering market-derived rates, Mr. Kernen explained that because there were no sales of Section 8 properties, he considered the sale of six "premium" properties. While these properties are not similar to the subject property, they were selected because they had stable cash flows and similar risk profiles. Mr. Kernen testified that his band of investment analysis provided supporting data for the market-derived capitalization rate. Ultimately, Mr. Kernen concluded to a capitalization rate of 6%. Mr. Kernen then adjusted this rate by adding 2.64% to account for property taxes and concluded to a tax-adjusted capitalization rate of 8.64%. This rate was applied to Cambridge Square I's net operating income, resulting in a TCV of \$4,600,000, or \$37,097 per unit. When applied to Cambridge Square II's net operating income, the result was a TCV of \$4,700,000, or \$37,903 per unit.

Mr. Kernen's final step was to reconcile the conclusions reached under the sales comparison approach and the income approach. Mr. Kernen explained that the prospective buyer for an apartment complex is an apartment operator or an apartment investor and that these purchasers are interested in the income that may be derived from the property. Therefore, because the subject property is an income-producing property, Mr. Kernen gave the most weight to the income approach. With this, Mr. Kernen concluded to a 2020 TCV for Cambridge Square I of \$4,800,000, and TCV for Cambridge Square II of \$4,900,000.

On cross examination, Mr. Kernen was questioned regarding his overview of the Grand Rapids apartment market. In the appraisals, Mr. Kernen described the downtown Grand Rapids area as "undergoing a revitalization, creating considerable demand for a new live/work/play environment,"<sup>26</sup> and that close to 2,000 housing units<sup>27</sup> are under

---

<sup>25</sup> P-5 at 46.

<sup>26</sup> P-5 at 15.

<sup>27</sup> Mr. Kernen testified that this figure was actually 1,587. T1 at 197.

construction. This revitalization is particularly true around the downtown area known as the “Medical Mile.”<sup>28</sup>

Mr. Kernen was also questioned about Grand Rapids unemployment rate, which was 2.4% in 2019, compared to Michigan’s overall rate of 3.4%, and about the influence of the Medical Mile. According to Mr. Kernen, while the Medical Mile has a positive impact on housing around the immediate area, this influence does not spread to the subject property. It is Mr. Kernen’s conclusion that “the residents that are looking for apartment units around the Medical Mile are not residents looking for apartments at the subject.”<sup>29</sup> In other words, healthcare professionals and related professional are not looking for low income housing in a 50-year-old apartment complex.<sup>30</sup>

When questioned about his conclusion as to the subject property’s highest and best use, Mr. Kernen testified that it is his opinion that the subject property’s highest and best use is as a garden-style apartment complex. However, he valued the subject property subject to the HUD contract because the HUD contract influences the property’s value.<sup>31</sup>

Mr. Kernen was also questioned as to his use of net adjustments versus gross adjustments in his sales comparison approach. In response to questions concerning how he concluded to a value under the sales comparison approach, Mr. Kernen explained that he doesn’t “do a formulaic approach or give specific weighting percentages to comparables. I want to consider all of the sales and information, all of the influences and factors that influence the value of the subject, and I make an appropriate conclusion from there.”<sup>32</sup> Respondent reminded Mr. Kernen that he chose a per unit value at the low end of the range because the subject property was not renovated and noted that the fact that the subject property was not renovated would have also been accounted for in the adjustments for condition and year built.

Mr. Kernen was then questioned about his expense comparables, to which he acknowledged that while it wasn’t stated in the appraisal, the comparable properties in the report are all owned by the Glick Company. Mr. Kernen explained that he used these comparables because the Glick Company manages over a hundred properties and the information was reliable and the best that was available to him. As it pertains to the reported management fee, Mr. Kernen stated that it is “one of the best indicators of what the market level management fee would be.”<sup>33</sup> When asked whether it would be relevant to compare management fees from management companies other than the Glick Company, Mr. Kernen stated that it was relevant to compare it to fees for similar type properties. In that regard, Mr. Kernen included the applicable CoStar management

---

<sup>28</sup> The “Medical Mile” was described as a cluster of healthcare-related businesses, universities, etc. located about two miles east of the subject property.

<sup>29</sup> T1 at 195.

<sup>30</sup> T1 at 199.

<sup>31</sup> T1 at 203.

<sup>32</sup> T2 at 22.

<sup>33</sup> T2 at 67.

fee for market rent apartments in his report, which equates to 3.2% of effective gross income (EGI), and the applicable IREM management fee for market rent apartments, which equates to 4.4% of EGI.

Respondent's cross-examination included additional questions related to expenses. For example, Respondent asked whether Mr. Kernen considered that approximately half of the subject property's units were not encumbered by the HUD contract when estimating expenses. Mr. Kernen responded that his expense analysis was for the overall property.

#### PETITIONERS' ADMITTED EXHIBITS

- P-1: HUD contract between the Department of Housing and Urban Development and Cambridge Square Grand Rapids I, dated October 1, 1976.
- P-2: Project-based Section 8 Housing Assistance Payments Basic Renewal Contract, One-Year Term, dated December 4, 2018, Cambridge Square I.
- P-3: HUD contract between the Department of Housing and Urban Development and Cambridge Square Grand Rapids II, dated October 1, 1976.
- P-4: Project-based Section 8 Housing Assistance Payments Basic Renewal Contract, One-Year Term, dated December 4, 2018, Cambridge Square II.
- P-5: Appraisal Report as of December 31, 2019, for Cambridge Square I, 1836 Mason Street NE, Grand Rapids, prepared by Kevin Kernen of Stout, dated January 14, 2021.
- P-6: Appraisal Report as of December 31, 2019, for Cambridge Square II, 1836 Mason Street NE, Grand Rapids, prepared by Kevin Kernen of Stout, dated January 14, 2021.
- P-11: Median Income and Operating Costs, Selected Metropolitan Areas – U.S.A., Institute of Real Estate Management.
- P-14: Warranty Deed, from Cottonwood Associates, LLC, to Trillium Cottonwood Owner, LLC, concerning 7701 Riverview Drive, Jenison, MI, dated June 13, 2019.
- P-16: Warranty Deed, from Executive Village Apartments, LLC, to DM Executive, LLC, concerning 2320-2361 30<sup>th</sup> Street, Wyoming, MI, dated September 18, 2018.
- P-26: CoStar Report, 6555 Balsam Dr – Oak Tree Apartments.
- P-27: Oak Tree Apartments, Apartments.com listing.
- P-28: Coldwell Banker listing, 2636 Woodmeadow Dr, Grand Rapids, MI 49546.

P-29: Longmeadow Apartments, Apartments.com listing.

P-30: Multifamily Sale Profile, 1695 Bloomfield Drive, Gaines Township, MI 49508.

P-31: Bloomfield Townhomes, Apartments.com listing.

P-52: Vermont Housing Finance Agency Appraisal Guidelines for Affordable Multi-Family Housing Properties.

### RESPONDENT'S CONTENTIONS

The property's TCV, SEV and TV, as confirmed by the BOR, are as follows:

Parcel Number: 41-14-21-195-004

Year	TCV	SEV	TV
2020	\$7,508,800	\$3,754,400	\$3,754,400

Parcel Number: 41-14-21-195-002

Year	TCV	SEV	TV
2020	\$7,508,800	\$3,754,400	\$3,754,400

Respondent's revised contentions of TCV, SEV and TV are as follows:

Parcel Number: 41-14-21-195-004

Year	TCV	SEV	TV
2020	\$7,225,000	\$3,612,500	\$3,612,500

Parcel Number: 41-14-21-195-002

Year	TCV	SEV	TV
2020	\$7,225,000	\$3,612,500	\$3,612,500

Respondent described the subject properties as being "located in the geographical region known as the Grand Rapids metropolitan area in close proximity to the Medical Mile and numerous other amenities."<sup>34</sup> As Respondent explained, "[p]rior to the 2020 tax year, the subject properties were part of a PILOT program and were not on the property tax roll. Following the conclusion of the PILOT program, for the 2020 tax year, the subject properties were placed on the City of Grand Rapids tax roll . . . ."<sup>35</sup> Citing *Eastwick Sq Townhouse Co-op v City of Roseville*,<sup>36</sup> it is Respondent's position that "there is no legal authority to support Petitioner's position that market value be discounted for a voluntary HUD contract."<sup>37</sup>

<sup>34</sup> Respondent's Opening Statement at 2.

<sup>35</sup> *Id.*

<sup>36</sup> *Eastwick Sq Townhouse Co-op v City of Roseville*, unpublished per curiam opinion of the Court of Appeals, issued August 12, 2014 (Docket No. 309538).

<sup>37</sup> Respondent's Opening Statement at 3.

Respondent's first witness was Ryan Lake. Mr. Lake holds the MAI designation through the Appraisal Institute and is licensed by the State of Michigan as a certified general appraiser. Mr. Lake is employed by the City of Grand Rapids as an appraiser. Due to his education, training, and experience, Mr. Lake was qualified as an expert in appraising commercial property.

On direct examination, Mr. Lake testified that as of the valuation date, December 31, 2019, the COVID-19 pandemic had yet to occur. According to Mr. Lake, the Grand Rapids housing market was very strong; there was a housing shortage and a need for more housing units. "[M]ost of these apartment complexes are experiencing a high occupancy, low vacancy, waiting lists."<sup>38</sup> According to one source relied upon by Mr. Lake, "Grand Rapids is a very hot multifamily market . . . ."<sup>39</sup> Mr. Lake estimated that 4,500 housing units have been added to Grand Rapids since 2011.

Like Mr. Kernen, Mr. Lake prepared an appraisal report for each of the subject properties. Mr. Lake also considered the three approaches to value and like Mr. Kernen, Mr. Lake concluded that the cost approach was not reliable due to the age of the subject property and the amount of depreciation associated with the property. Ultimately, Mr. Lake valued the subject property using the sales comparison approach and the income approach and concluded to a 2020 TCV of \$7,225,000 for each parcel of property.

When questioned about the subject property's highest and best use, Mr. Lake explained that when he performed the appraisal, he was unaware of the HUD contract. Given this, his highest and best use "would look a little different"<sup>40</sup> now that he had this information. However, "[t]he valuation would be exactly the same, and it would follow the highest and best use I used when I wrote the report for Plymouth Arms."<sup>41</sup> According to Mr. Lake, in his Plymouth Arms' appraisal, he contemplated why someone would engage in a HUD contract, given that it would not maximize profits. "You don't get any more income. Your vacancy stays the same. Yet you experience significantly more expenses."<sup>42</sup> Mr. Lake testified that the highest and best use of the subject property was as a market-driven apartment complex and not one subject to a HUD contract because as a market-driven apartment complex, profits would be maximized.

Mr. Lake testified that in concluding to a value for the subject property, he gave more consideration to the sales comparison approach than the income approach. Mr. Lake explained that while he wanted to give more emphasis to the income approach, "after analysis of the expenses, it became evident that this property was not being managed in a market-driven way. So then all of those expenses became suspect."<sup>43</sup>

---

<sup>38</sup> T2 at 207.

<sup>39</sup> T2 at 208.

<sup>40</sup> T2 at 212.

<sup>41</sup> T2 at 212. Plymouth Arms is a Section 8 housing complex located adjacent to the subject property. This property's assessment was also appealed to the Tribunal.

<sup>42</sup> T2 at 212.

<sup>43</sup> T2 at 217-218.

Mr. Lake included five comparable properties in his sales comparison approach.<sup>44</sup> Mr. Lake testified that in selecting the comparable sales, he considered location to be a key consideration and ultimately relied on sales in the Grand Rapids MSA, Kent and Ottawa counties. The five properties included in the sales comparison approach are:

1. Comparable one: This property is located at 6555 Balsam Drive, Hudsonville, Michigan. This property sold on July 1, 2019, for \$5,800,000. At 104 housing units, the price per unit was \$55,769. The complex was built in 1988. Amenities include covered parking, intercom security, on-site management, maintenance staff and playground. Adjustments were made for market condition and location, resulting in a gross adjustment of 10% and an indicated value per unit of \$52,702.
2. Comparable two: This property is located at 7701 Riverview Drive, Georgetown Township, Michigan. This property sold on June 13, 2019, for \$12,00,000. At 160 housing units, the price per unit was \$75,000.<sup>45</sup> The complex was built in 1976 and renovated in 1981. Amenities include covered parking, on-site management and maintenance staff, nature preserve, and walking trails. This property is located on the Grand River and is in a floodplain. Adjustments were made for market conditions, location, and land-to-building ratio, resulting in a gross adjustment of 15% and an indicated value per unit of \$61,542.
3. Comparable three: This property is located at 1695 Bloomfield Drive, SE, Gaines Township, Michigan. This property sold on February 21, 2019, for \$28,800,000. At 200 housing units, the price per unit was \$144,000. The complex was built in 2001. Amenities include garages, private entries, on-site management and maintenance, an outdoor pool, clubhouse, fitness center, and dog park. Adjustments were made for market conditions, location, and age/condition, resulting in a gross adjustment of 40% and an indicated value per unit of \$94,176.
4. Comparable four: This property is located at 2355 30<sup>th</sup> Street, Wyoming, Michigan. This property sold on September 18, 2018, for \$2,070,000. At 40 housing units, the price per unit was \$51,750. This complex was built in 1971/1972. Adjustments were made for market condition, location, and number of units, resulting in a gross adjustment of 15% and an indicated value per unit of \$49,706.
5. Comparable five: This property is located at 2636 Woodmeadow Drive, SE, Grand Rapids, Michigan. This property sold on November 17, 2017, for \$3,400,000. At 54 housing units, the price per unit was \$62,963. This complex was built in 1986. Adjustments were made for market conditions, location, and

---

<sup>44</sup> The same five properties were utilized in the appraisals for both Cambridge Square I and Cambridge Square II.

<sup>45</sup> See T2 at 230 for corrections.

number of units, resulting in a gross adjustment of 15% and an indicated value per unit of \$64,757.

With this, the value ranged from a low of \$49,706 per unit, for an indicated value of \$6,461,780, to a high of \$94,176 per unit, for an indicated value of \$12,242,880.<sup>46</sup> Mr. Lake testified that he gave primary consideration to comparables one and two because they were the most recent sales and required minimal adjustments. Mr. Lake gave the least consideration to comparable three because it was newer and at the high end of the range. Ultimately, Mr. Lake concluded to a value under the sales comparison approach of \$58,790 per unit, or \$7,290,000.

Mr. Lake testified that he began his income approach by considering what the subject property currently generates in rent, what it could potentially generate in rent, and what it is asking for rent. From a variety of sources, Mr. Lake concluded that the potential gross income, or market rent, for each parcel of property was \$1,296,000.

Mr. Lake's next step was to estimate a vacancy allowance. To that end, Mr. Lake considered data for West Michigan from Colliers International and NAI Wisinski, in addition to the subject property's historical occupancy rate, and concluded to a vacancy rate of 5%. With this adjustment, Mr. Lake concluded to an effective gross income (EGI) of \$1,231,200.

Next, Mr. Lake estimated operating expenses. To that end, Mr. Lake reviewed the subject property's historical expenses for 2017, 2018, and 2019. Mr. Lake noted that several expense categories were particularly high, including repairs, maintenance, legal, professional fees, general administrative, contract services, and management fees. Mr. Lake also reviewed expenses from comparable apartment complexes. In those cases, expenses as a percentage of EGI ranged from 39% to 46%, and expenses as a percentage of EGI less real estate taxes ranged from 25% to 34%.<sup>47</sup> Mr. Lake noted that the subject property's expenses were in the range of 70% of EGI<sup>48</sup> and, as a result, concluded that it is underperforming. For this reason, Mr. Lake gave the subject property's expenses minimal weight. Mr. Lake then consulted a survey of income and expenses by the National Apartment Association, which indicated an expense ratio for the period 2014 through 2018 of 35% to 40% for properties more than 20 years old.<sup>49</sup> With that, Mr. Lake concluded to an expense ratio of 30%. Utilizing this figure, Mr. Lake concluded to a NOI of \$861,840, or \$6,950 per unit.

Mr. Lake's next step was to determine a capitalization rate. In doing so, Mr. Lake consulted Realty Rates and reviewed information obtained for his sales comparison approach. Mr. Lake also did a band of investment calculation using Realty Rates data. Mr. Lake concluded to a rate of 9.5%. Finally, Mr. Lake calculated the impact of real estate taxes and concluded that the tax rate to be added to the capitalization rate was

---

<sup>46</sup> R-1 at 43.

<sup>47</sup> R-1 at 48.

<sup>48</sup> See T1 at 46.

<sup>49</sup> R-1 at 50.

2.63%. This resulted in a loaded capitalization rate of 12.13%. Mr. Lake applied this rate to the NOI, which resulted in a rounded 2020 TCV of \$7,105,000, or \$57,298 per unit.

In reconciling the values determined by the sales comparison approach and the income approach, Mr. Lake gave primary emphasis to the sales comparison approach. Mr. Lake explained that there was an adequate supply of recent local sales, and the adjustments were minimal. By comparison, Mr. Lake considered the subject property's historical expenses unreliable. Given this, Mr. Lake concluded to a 2020 TCV of \$7,225,000, or \$58,266 per unit, for each parcel of property.

On cross-examination, Mr. Lake was referred to exhibit R-19, which is a model lease that Petitioners provided to Respondent. Mr. Lake acknowledged that the lease stated that it was a HUD lease and that it was available to him when he prepared the appraisals. Mr. Lake also acknowledged that while he questioned the costs and expenses of the subject property, the Glick Company knows more about the operation of HUD properties than he does.

Mr. Lake was questioned about his sales comparison approach, particularly his lack of adjustments for age. Additionally, Mr. Lake was questioned about his 10% year over year market condition adjustment for sales of multifamily properties. Mr. Lake explained that he obtained the data necessary to make this adjustment from the Kent County Equalization Department. In addition, Mr. Lake considered the sale of comparable four, which sold in 2015 and sold again a few years later. Mr. Lake acknowledged that he did not know how many 50-year-old apartment buildings were included in this data, or whether any subsidized housing projects were included. Mr. Lake also acknowledged that he was not aware whether updates were made to comparable four between the sale dates. Mr. Lake was then questioned about the expense ratios for properties in his sales comparison approach, acknowledging that while some properties were newer, they had higher expense ratios than the subject property's 30% expense ratio. Mr. Lake also acknowledged that he did not adjust for amenities or for differences in the size of apartment units. Finally, Mr. Lake was questioned about an article by the Vermont Housing Finance Agency titled "Appraisal Guidelines for Affordable Multi-family Housing Properties."<sup>50</sup>

Mr. Lake was next questioned about his income approach. Mr. Lake acknowledged that the market rents in his appraisal are extremely close to the subject property's actual rents. Mr. Lake explained that while his vacancy rate was higher than the 2% opined by Mr. Kernan, his vacancy rate also included credit loss. Mr. Lake also acknowledged that his conclusion of effective gross income was virtually identical to that of Mr. Kernan, and that the dispute in this case was not about effective gross rents. Instead, the dispute in this case is about the appropriate expense deduction. In that regard, Mr. Lake was questioned about his six expense comparables, which are located in Kalamazoo and Muskegon. Mr. Lake acknowledged that none of the comparables properties are subject to a HUD contract, and while he couldn't comment on whether there was a substantial

---

<sup>50</sup> P-52.



spread between the highs and lows in each expense category, Mr. Lake acknowledged that there was a spread.

Respondent's second witness was Paula Jastifer. Ms. Jastifer is currently employed by Respondent as its assessor. Ms. Jastifer testified that she has worked as an assessor for approximately 33 years. Due to her education, training, and experience, Ms. Jastifer was qualified as an expert in the field of real property tax assessment.

Ms. Jastifer testified that the subject property had been part of a Payment in Lieu of Taxes (PILOT) program under the Michigan State Housing Development Authority (MSHDA). Ms. Jastifer explained that properties in this program are exempt from ad valorem property taxes and are required to make payments in lieu of property tax. The subject property's participation in this program ended in 2019 and, as a result, the property was placed on the 2020 ad valorem tax roll.

Ms. Jastifer further testified that she reviewed Petitioners' appraisals and visited the properties Petitioners included in their sales comparison approach. Ms. Jastifer explained that she had never been to Grant, Michigan, the location of Petitioners' comparable sale one. As described by Ms. Jastifer, Grant is a very small town with a small population, located in a farming community. In Ms. Jastifer's opinion, Grant is not comparable to Grand Rapids. Nor is comparable one's location comparable to that of the subject property's as the subject property is adjacent to a very large employment center. In addition, Ms. Jastifer testified that some of the information provided by Petitioners for comparable one was incorrect. Specifically, this information related to average unit size and land size.

Ms. Jastifer also testified as to Petitioners' sales comparable two.<sup>51</sup> Ms. Jastifer explained that this sale included 160 condominium units that sold for \$12,000,000, or \$75,000 per condominium. Finally, Ms. Jastifer testified as to Petitioners' comparable three. Ms. Jastifer cited the property transfer affidavit that was filed following the sale of the property, noting that it sold for \$2,070,000, and not \$2,130,000 as listed in Petitioners' appraisals.

#### RESPONDENT'S ADMITTED EXHIBITS

- R-1: Respondent's Cambridge Square of Grand Rapids Associates I Valuation.
- R-2: Respondent's Cambridge Square of Grand Rapids Associates II Valuation.
- R-3: Petitioners' Cambridge Square of Grand Rapids Associates I Valuation.
- R-4: Petitioners' Cambridge Square of Grand Rapids Associates II Valuation.

---

<sup>51</sup> This sale was also included in Respondent's sales comparison approach as comparable two.

- R-5: Cambridge Square of Grand Rapids Associates I 2017 profit and loss statement.
- R-6: Cambridge Square of Grand Rapids Associates I 2018 profit and loss statement.
- R-7: Cambridge Square of Grand Rapids Associates I 2019 profit and loss statement.
- R-13: Cambridge Square of Grand Rapids Associates I 2019 rent roll.
- R-19: Model HUD lease.
- R-28: Documents for Petitioners' sales comparison 1.
- R-29: Documents for Petitioners' sales comparison 2, pages 591-625.
- R-30: Documents for Petitioners' sales comparison 3, page 626.
- R-32: Cambridge Square of Grand Rapids Associates I financial statements.
- R-33: Cambridge Square of Grand Rapids Associates II financial statements.
- R-39: 2017 Cambridge Square of Grand Rapids Associates II profit and loss statement.
- R-40: 2018 Cambridge Square of Grand Rapids Associates II profit and loss statement.
- R-41: 2019 Cambridge Square of Grand Rapids Associates II profit and loss statement.
- R-49: Curriculum Vitae of Paula Grivins-Jastifer.
- R-52: Petitioners' Post-Val Document Production, pages 960-996, 1067-1070, 1273-1294, 1312-1314, 1343-1364, 1422-1447, and 1478-1544.
- R-55: Vermont Housing Finance Agency Appraisal Guidelines for Affordable Multi-Family Housing Properties.

## FINDINGS OF FACT

The Tribunal's Findings of Fact concern only evidence and inferences found to be significantly relevant to the legal issues involved; the Tribunal has not addressed every piece of evidence or every inference that might lead to conflicting conclusions and has rejected evidence contrary to those findings. With that, the Tribunal makes the following findings of fact:

1. The subject property is a garden-style apartment complex known as the Cambridge Square Apartments.
2. The subject property contains two parcels of property:

- i. Parcel No. 41-14-21-195-004, known as Cambridge Square I, was built either in 1970 or 1971 and contains 10.10 acres of land. This property is located at 832 Plymouth Avenue, NE, Grand Rapids, Michigan.
  - ii. Parcel No. 41-14-21-195-002, known as Cambridge Square II, was built in either 1971 or 1972 and contains 10.15 acres of land. This property is located at 1901 Bradford Street, NE, Grand Rapids, Michigan.
3. Each parcel of property contains 14 apartment buildings and 124 apartments, for a total of 28 apartment buildings and 248 apartments.
4. There are four types of apartments, including one and two-bedroom garden-style apartments, and two and three-bedroom townhomes.
5. Each parcel of property contains 48 one-bedroom apartments, 36 two-bedroom apartments, 28 two-bedroom townhomes, and 12 three-bedroom townhomes.
6. There are paved parking lots but no garages or carports.
7. The subject property is subject to a HUD contract that requires Petitioners to provide 57 Section 8 housing units at Cambridge Square I and 62 Section 8 housing units at Cambridge Square II.
8. For the 2020 tax year, valuation date of December 31, 2019, the BOR determined that the TCV of each parcel of property was \$7,508,800, and that the SEVs and TVs were \$3,754,400.
9. Petitioners' appraiser valued the subject property using the sales comparison approach. Under this approach, the appraiser valued both parcels of property at \$5,100,000.
10. Petitioners' appraiser also valued the subject property using the income approach. Under this approach, the appraiser valued Cambridge Square I at \$4,600,000, and Cambridge Square II at \$4,700,000.
11. Petitioners' appraiser concluded to a 2020 TCV of \$4,800,000 for Cambridge Square I and \$4,900,000 for Cambridge Square II.
12. Respondent's appraiser valued the subject property using the sales comparison approach. Under this approach, the appraiser valued each parcel of property at \$7,290,000 each.
13. Respondent's appraiser also valued the subject property using the income approach. Under this approach, the appraiser valued each parcel of property at \$7,105,000.
14. Respondent's appraiser concluded to a 2020 TCV of \$7,225,000 for each parcel of property.

## CONCLUSIONS OF LAW

Pursuant to the Tax Tribunal Act (Act), the Tribunal has exclusive and original jurisdiction over "[a] proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under the property tax laws of this state."<sup>52</sup> A proceeding before the Tax Tribunal is original, independent, and de novo.<sup>53</sup> The

---

<sup>52</sup> MCL 205.731.

<sup>53</sup> MCL 205.735a(2).

Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”<sup>54</sup> “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”<sup>55</sup>

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 TCV. Specifically, Article 9, Section 3 of Michigan’s Constitution provides that:

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not exceed 50 percent.<sup>56</sup>

Michigan’s Legislature complied with this constitutional mandate by enacting Section 27a(1) of the General Property Tax Act (GPTA), which provides that “[e]xcept as otherwise provided in this section, property shall be assessed at 50% of its true cash value under section 3 of article IX of the state constitution of 1963.” In addition, the Legislature defined TCV to mean:

The usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.<sup>57</sup>

Michigan’s Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”<sup>58</sup> Under Section 37 of the Act, the Tribunal is required to make a finding of TCV.<sup>59</sup> In determining a property’s TCV, the “property’s highest and best use is the most relevant factor . . . .”<sup>60</sup>

As defined by the Appraisal Institute, highest and best use is “[t]he reasonably probable use of property that results in the highest value.”<sup>61</sup>

To be *reasonably probable*, traditionally a use must meet certain conditions:

---

<sup>54</sup> *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

<sup>55</sup> *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

<sup>56</sup> Const 1963, art 9, sec 3.

<sup>57</sup> MCL 211.27(1).

<sup>58</sup> *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

<sup>59</sup> See MCL 205.737 and *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

<sup>60</sup> *Huron Ridge LP v Ypsilanti Twp*, 275 Mich App 23, 35-36; 737 NW2d 187 (2007).

<sup>61</sup> Appraisal Institute: *The Appraisal of Real Estate* (Chicago, Appraisal Institute, 14<sup>th</sup> ed, 2013), at 332. While this edition was the most current edition as of the 2020 tax day, the 15<sup>th</sup> edition, published in 2020, contains the same definition at 305.

- The use must be *physically possible* (or it is reasonably probable to render it so).
- The use must be *legally permissible* (or it is reasonably probable to render it so).
- The use must be *financially feasible*.<sup>62</sup>

In this case, both parties submitted appraisals in support of their value contentions. Both appraisers concluded that the subject property's highest and best use is its continued use as an apartment complex. However, Petitioners' appraiser considered the existing HUD contract to be an intangible that influences the value of the subject property.<sup>63</sup> Respondent's appraiser did not consider the HUD contract, arguing instead that the subject property's highest and best use was as a conventional apartment complex not subject to a HUD contract.<sup>64</sup> Given this, the threshold question is whether the HUD contract should be considered in determining the subject property's TCV. The conclusion has implications for both appraisals. For example, both appraisers analyzed the subject property under the income approach. In both appraisals, the effective gross income (EGI) varied little, while operating expenses differed significantly as a result of the HUD contract.

Per the Tribunal's request, the parties addressed this threshold issue in their Post-Hearing Briefs. In their Brief, Petitioners relied on the Supreme Court's decision in *Meadowlanes Ltd Dividend Housing Ass'n v Holland*.<sup>65</sup> In that case, the property at issue was a federally subsidized low-income housing complex. While the complex was subject to a Section 236 mortgage, it also subject to a HUD contract from which it received a Section 8 rent subsidy. Petitioners argued that the *Meadowlanes* Court held that "the valuation process must consider both the positive and negative aspects of the regulatory agreement voluntarily entered into between the owner and the government."<sup>66</sup> According to Petitioners:

The court explained that a regulatory agreement is an intangible value-influencing factor that can "affect the usual selling price of the property," so the agreement must be taken into account.<sup>67</sup> It based this decision on its own precedents, including *Antisdale v City of Galesburg*, 420 Mich 265 (1984), which held that value-influencing factors like federal regulatory agreements "should be reflected in the assessment process to the extent that they increase or decrease the value of the subject real property."<sup>68</sup> The court also surveyed foreign cases, which demonstrated an "overriding

---

<sup>62</sup> *Id.*

<sup>63</sup> Respondent contends that Petitioners' appraisal did not reference the HUD contract and that its income analysis incorporates a "value-in-use" approach. Respondent's Brief at 2.

<sup>64</sup> T2 at 213.

<sup>65</sup> *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

<sup>66</sup> *Id.* at 499-500.

<sup>67</sup> *Id.* at 495.

<sup>68</sup> *Id.* at 495-496.

theme” that the “positive and negative aspects” of such an agreement must be taken into account when determining value.<sup>69</sup>

Petitioners argued that while the property in *Meadowlanes* was subject to a mortgage subsidy, rent subsidies were also provided. Therefore, the Court’s holding in *Meadowlanes* is not limited to those situations involving a subsidized mortgage. Instead, the question is whether there is a “regulatory agreement” between the owner and the government. Petitioners note that the Court cited *Steele v Town of Allenstown*,<sup>70</sup> a case involving Section 8 rent subsidies. In *Steele*, the Court held that the Section 8 agreement must be considered because it was relevant to the property’s value.<sup>71</sup>

Petitioners also cite Tribunal decisions wherein the Court’s holding in *Meadowlanes* was applied. For example, in *Roscommon Props v Higgins Twp*, the Tribunal held that “regardless of the subsidy’s form or title, the clear mandate from *Meadowlanes* requires the Tribunal to consider the effects of all subsidies – not exclusively HUD 236 housing.”<sup>72</sup> Finally, Petitioners argues that:

The Appraisal Institute supports Mr. Kernen’s statement of highest and best use. It explains that the “concept of highest and best use relates to what is done physically with real estate.” The Appraisal Institute, *The Appraisal of Real Estate* (15th ed., 2020), p 311. The Subject Property’s § 8 status does not alter its highest and best use; rather, that § 8 status is a “value influencer,” and that is how Mr. Kernen treated it. Any suggestion that Mr. Kernen’s statement of highest and best use is inconsistent with accounting for the §8 requirements is unfounded.<sup>73</sup>

Respondent disagrees with Petitioners’ interpretation of *Meadowlanes* and argues in its Brief that several key factors distinguish *Meadowlanes* from this case. For example, Respondent argues that the *Meadowlanes* decision governs federally-subsidized Section 236 mortgages and not Section 8 rent subsidies. Moreover, *Meadowlanes*’ long-term mortgage and other restrictions made it so that “the property [could not] be easily converted to other uses even if the owner decides another use would be more profitable.”<sup>74</sup> Respondent argues that the *Meadowlanes* Court held that the restrictions “narrowed the number of potential investors and limited the property’s potential use.”<sup>75</sup> Respondent compared *Meadowlanes*’ restrictions to those of the subject property and its one-year HUD contracts, citing Mr. Poore’s testimony that the length of the contract provides potential investors with flexibility. “In short, *Meadowlanes* supports that a long-term encumbrance on a property such as a federally-regulated mortgage is a value-

---

<sup>69</sup> Petitioners’ Brief at 6-7, citing *Meadowlanes* at 499.

<sup>70</sup> *Steele v Town of Allenstown*, 471 A2d 1179 (NH, 1984).

<sup>71</sup> Petitioners’ Brief at 7, citing *Steele* at 1182.

<sup>72</sup> *Roscommon Props v Higgins Twp*, (Docket No. 83204), issued February 9, 1995. See also *Amurcon/Ridgewood Vista, LP v Leoni Twp*, (Docket No. 96544), issued December 7, 1995.

<sup>73</sup> Petitioners’ Brief at 10.

<sup>74</sup> *Meadowlanes* at 478, n 5.

<sup>75</sup> Respondent’s Brief at 7.

influencing factor that should be considered during the valuation process.”<sup>76</sup> In other words, because the encumbrance in this case is not long-term, *Meadowlanes* is not applicable to the subject property.

Respondent further argues that Petitioners did not provide any evidence that to support its contention that ending the HUD contracts would be economically disadvantageous. Specifically, “Petitioner did not provide any evidence to support that a motivated market participant would reach the same conclusion given that Petitioner agreed *that expenses would be lower as a market-based complex and that income would be the same.*”<sup>77</sup>

Finally, Respondent cites several other cases, including *Georgetown Place Co-op v City of Taylor*,<sup>78</sup> wherein the Court held that “the restriction on the ability to sell the property at market value until the end of the mortgage period” was a key value-influencing factor that had to be considered.

After considering the parties’ arguments, the Tribunal finds that the highest and best use of the subject property is its existing use as an apartment complex.<sup>79</sup> As for whether the HUD contract should be considered in valuing the subject property, the Tribunal finds the following explanation by the *Meadowlanes* Court instructive: “The ultimate goal of the valuation process is a well-supported conclusion that reflects the study of *all factors that influence the market value* of the subject property.”<sup>80</sup> In arriving at this conclusion, the Court referenced its previous decision in *Antisdale v City of Galesburg*,<sup>81</sup> wherein it discussed MCL 211.27. In *Antisdale*, the Court:

[N]oted that that statute [MCL 211.27] lists a number of value-influencing factors such as zoning and location that should be considered when determining the “usual selling price” of real property. In particular, we recognized that although these factors are intangibles, and not taxable in and of themselves, they can increase or decrease the value of property.<sup>82</sup>

MCL 211.27(1) states, in pertinent part:

In determining the true cash value, the assessor shall also consider the advantages and disadvantages of location; quality of soil; zoning; existing use; present economic income of structures, including farm structures; present economic income of land if the land is being farmed or otherwise put to income producing use; quantity and value of standing timber; water power and privileges; minerals, quarries, or other valuable deposits not

---

<sup>76</sup> Respondent’s Brief at 6.

<sup>77</sup> Respondent’s Brief at 9. (Citations omitted; emphasis in original.)

<sup>78</sup> *Georgetown Place Co-op v City of Taylor*, 226 Mich App 33, 48; 572 NW2d 232 (1997).

<sup>79</sup> While Petitioners’ appraiser indicated that the subject property’s highest and best use was as a garden-style apartment complex, the Tribunal does not find that level of specificity necessary.

<sup>80</sup> *Meadowlanes* at 486. (Emphasis added.)

<sup>81</sup> *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984).

<sup>82</sup> *Meadowlanes* at 495.

otherwise exempt under this act known to be available in the land and their value.

Given the testimony of Mr. Poore and Mr. Kernen, the Tribunal finds that the subject property's HUD contract, in existence as of Tax Day,<sup>83</sup> is a value-influencing factor that must be considered. The Tribunal is not persuaded by Respondent's argument that value-influencing factors are limited to those considered in *Meadowlanes* and other similar decisions. However, Respondent's argument clearly establishes that all value-influencing factors are not equal and that some influence value more than others, i.e., the influence of a long-term mortgage restriction compared to that of a one-year contract.

Respondent also contends that Petitioners' appraisal is unreliable because it made no reference to a HUD contract and then, by using higher expenses that resulted from the contract in the income approach, actually incorporated a value-in-use approach to valuation.<sup>84</sup> According to the Appraisal Institute:

The term value in use is often used by appraisers synonymously with use value, but the former term has specific meaning in other contexts, which can cause confusion. In particular, the International Financial Reporting Standards define value in use as "the discounted present value of estimated future cash flows expected to arise from the continuing use of an asset and from its disposal at the end of its useful life."<sup>85</sup>

On the other hand, "use value" is defined as "the value a specific property has for a specific use . . . ."<sup>86</sup> Given this, the Tribunal believes that Respondent's argument relates to the subject property's use value and not its value-in-use. This inference is supported by Respondent's statement that "Mr. Kernen employed a value-in-use methodology by analyzing the subjects' value to Gene B Glick, not to a motivated market participant."<sup>87</sup>

Having considered this argument, the Tribunal finds that Petitioners' conclusion as to the subject property's highest and best use was not based on "use value" but on "market value," which is predicated on "value-in-exchange."<sup>88</sup> Petitioners' appraiser concluded that the subject property's highest and best use is its existing use as an apartment complex, just as Respondent concluded. The only difference is that Petitioner considered the influence that the HUD contract had on the subject property's TCV.

---

<sup>83</sup> See MCL 211.2(2), which provides that "[t]he taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day . . . ."

<sup>84</sup> Respondent's Brief at 2.

<sup>85</sup> Appraisal Institute: *The Appraisal of Real Estate* (Chicago, Appraisal Institute, 14<sup>th</sup> ed, 2013), at 62-63.

<sup>86</sup> *Id.* at 62.

<sup>87</sup> Respondent's Brief at 18.

<sup>88</sup> Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 7<sup>th</sup> ed, 2022) p. 200.



With that, it must be determined how much a one-year HUD contract influenced the subject property's TCV and whether Petitioners met their burden of proof in this regard.

In cases in which the assessment or valuation of property is at issue, “[t]he petitioner has the burden of proof in establishing the true cash value of the property.”<sup>89</sup> “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.”<sup>90</sup>

However, in reaching this determination, the Tribunal is not bound to accept either of the parties' theories of valuation.<sup>91</sup> Instead, the Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the property's TCV, utilizing a valuation approach that provides the most accurate valuation under the circumstances.<sup>92</sup> In doing so, 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.”<sup>93</sup> Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject property would sell.<sup>94</sup>

The three most common approaches to valuation are the capitalization of income approach, the sales comparison approach, and the cost approach.<sup>95</sup> “These traditional approaches are based on concepts that apply to subsidized housing<sup>96</sup> complexes just as they apply to other types of real property.”<sup>97</sup> “There is no single correct approach to valuing federally subsidized real property.”<sup>98</sup> Given this, the *Meadowlanes* Court held that “the appraiser should use variants of all three traditional approaches, valuing the property both as private apartments and as a federally subsidized housing complex.”<sup>99</sup>

In this case, both appraisers considered the cost approach and ultimately determined that it was not a reliable or credible method of valuing the subject property due to the property's age and the difficulty in determining the amount of depreciation. The Tribunal agrees with the appraisers' conclusions in this regard.

Both appraisers also considered the sales comparison approach and the income approach. As discussed, Respondent's appraiser was not aware that the subject property was encumbered by a HUD contract and, as such, valued the subject property

---

<sup>89</sup> MCL 205.737(3).

<sup>90</sup> *Jones & Laughlin* at 354-355.

<sup>91</sup> *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

<sup>92</sup> *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984).

<sup>93</sup> *Jones & Laughlin* at 356.

<sup>94</sup> *Meadowlanes* at 485.

<sup>95</sup> *Meadowlanes* at 484-485. See also *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff'd* 380 Mich 390 (1968).

<sup>96</sup> As defined by the Appraisal Institute, “subsidized housing” means “[h]ousing developed by private or public sponsors for low-income earners. Subsidies may take the form of below-market financing or direct payment of a portion of the rent.” Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 7<sup>th</sup> ed, (2022).

<sup>97</sup> *Meadowlanes* at 502.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

under each approach solely as if it were a market rent complex. Petitioners' appraiser was not able to find sales of subsidized housing; thus, its sales comparison approach included only sales of market rent complexes. However, to some extent Petitioners' appraiser attempted to account for this by utilizing the lowest per unit value in concluding to TCV under the sales comparison approach. In his income approach, Petitioners' appraiser determined that the contract rents received by Petitioners were equivalent to market rents and accounted for the influence of the HUD contract through the use of the subject property's actual expenses. Thus, to summarize, Petitioners valued the subject property under both the sales approach and the income approach as subsidized housing and not as a market rent complex.

Given that Petitioners valued the subject property solely as subsidized housing and Respondent valued the subject property solely as a market rent complex, it would seem that the comparison mandated by the *Meadowlanes* Court has been accomplished. However, because neither appraiser valued the subject property both as subsidized and as market rent, the comparison lacks consistency and is not reliable. Moreover, the Tribunal finds the differences in the conclusions of TCV (\$7,225,000 compared to \$4,800,000 and \$4,900,000) too great to be explained away by the influence of a one-year HUD contract.

The Tribunal finds that some of the difference in TCV may be reconciled by recognizing that while the subject property had HUD contracts in place as of Tax Day, these contracts only applied to 57, or approximately 46%, of Parcel No. 41-14-21-195-004's 124 apartment units and 62, or 50%, of Parcel No. 41-14-21-195-002's 124 apartment units. Pursuant to Section 4(e) of the HUD contract, "[t]he Renewal Contract applies to the Contract units."<sup>100</sup> In other words, while the operating expenses proposed by Petitioners may be reasonable for those units subject to the HUD contract, there is no evidence that the specific amount of these expenses should be extended to the remainder of the units as they are not covered by the HUD contract. For example, while the 9.3% management fee may be reasonable for the Section 8 units, there is no market evidence that this level of a fee should be applied to the remainder of the units.

Beginning with the parties' sales comparison approach, the Tribunal finds that it is unable to place any weight on this approach. As discussed, neither party was able to find sales of subsidized housing properties. Therefore, both appraisers' sales comparison approach included only sales of market rent properties.

In Petitioners' sales comparison approach, comparable one was given the most consideration. In fact, Petitioners' appraiser concluded to an adjusted sales price per unit based on that sale. For various reasons, Petitioners' appraiser determined that comparable one adequately represented the value of a subsidized housing property. However, this comparable is located in Grant, Michigan, and while the appraiser adjusted the sale price by -5% for location, the Tribunal finds that comparable one's location is not comparable to the subject property and that no amount of adjustment

---

<sup>100</sup> P-2 at 5 and P-4 at 5.

would account for this difference. For example, in addition to comparable one being located in a rural area, the population of Grant, Michigan, was approximately 820 in 2019, compared to Grand Rapids at approximately 202,000. Given this, the Tribunal finds that comparable one should not be given any weight. Because Petitioners' appraiser utilized comparable one to represent the value of subsidized housing, there is no evidence in the record that credibly and reliably represents the subject property as a subsidized housing project under the sales comparison approach.<sup>101</sup> To summarize, while both parties' sales comparison approach presented sufficient evidence of the subject property as if it were a market rent property, there is no reliable evidence regarding the influence of the HUD contract on the subject property's TCV.

Turning to the parties' income approach, the parties agree that the differences between their income approaches does not lie in their determinations of effective gross income.<sup>102</sup> Basically, the conclusion was that the subject property's contract rent equaled market rent. Instead, the dispute involves the appropriate amount of operating expenses. In that regard, Petitioners concluded to a 67.5% rate for operating expenses, while Respondent concluded to a rate of 30%. The Tribunal accepts Petitioners' 67.5% rate for the HUD units as this is the only evidence of expenses for subsidized housing contained in the record.<sup>103</sup>

However, the Tribunal does not accept Respondent's 30% rate for the market rent units because, as discussed, there were issues involving this rate. For example, Respondent's gas expense did not account for the fact that gas is included in the rental rate. As a result, the Tribunal finds that the National Apartment Association's 2019 Survey of Operating Income & Expenses in Rental Apartment Communities<sup>104</sup> provides the most reliable operating expense information for market rate apartments. This survey indicates that between 2009 and 2018, apartment complexes that were at least 20 years old reported expenses in the range of approximately 38% to 44%. For the years 2014 through 2018, this range declined to 35% to 40%. From the note below the chart, it appears that gas expenses were not included in operating expenses as they were "individually metered." Given this, and the fact that the subject property is 50 years old, the Tribunal finds that the higher end of the 35% to 40% range is appropriate. Using a blended rate of 67.5% in operating expenses for the HUD units and a rate of 40% in operating expenses for the market rent units, the revised NOI for Parcel No. 41-14-21-195-004 is \$581,851, and \$568,334 for Parcel No. 41-14-21-195-002.

---

<sup>101</sup> The Tribunal notes that utilizing the next lowest sale price per unit of \$50,450 results in a TCV under the sales comparison approach of \$6,255,800. However, given that Petitioners' appraiser did not testify that this comparable is evidence of the value of subsidized housing, the Tribunal cannot utilize this comparable in this manner.

<sup>102</sup> The difference is \$2,369 (\$1,231,200 compared to \$1,228,831). Given this, the Tribunal will utilize Petitioners' effective gross income in determining the subject property's TCV.

<sup>103</sup> Having said that, the Tribunal recognizes that all of the expense information came from the Glick Company, the same company that owns the subject property. The Tribunal further recognizes that this information is difficult to obtain, and that Petitioners considered this information reliable. However, the Tribunal is concerned that Glick's ownership was not indicated in the appraisal and only became known through cross-examination.

<sup>104</sup> R-1 at 50.

The remaining area in dispute is the capitalization rate. Petitioners maintain that the appropriate overall rate is 8.64% (6% market capitalization rate plus a tax adjustment of 2.64%), while Respondent maintains that the rate is 12.13% (9.5% market capitalization rate plus a tax adjustment of 2.63%). The Tribunal finds the evidence presented by the parties equally credible. The Tribunal also finds the capitalization rates indicated by the Realty Rates Investor Survey<sup>105</sup> for garden/suburban apartments and hi-rise/urban townhouses compelling. Given this, the Tribunal concludes to a tax-adjusted capitalization rate of 10.38%, which is bracketed by the parties' rates. With this, under the income approach, Cambridge I's 2020 TCV is \$5,605,500, while Cambridge II's 2020 TCV is \$5,475,300.

In conclusion, the Tribunal finds that Petitioners met their burden in establishing that the subject property is assessed in excess of 50% of its TCV. The Tribunal further finds that the subject property's TCV must be determined by considering the HUD contract as a value influencer. However, that influence is only applied to that portion of the subject property that is actually encumbered by the HUD contract. The Tribunal further finds that the parties' income approaches provided the only credible and reliable evidence of the subject property's TCV. Using a blended approach, intended to reflect the subject property's proportion of Section 8 units and market rent units, the Tribunal finds that Parcel No. 41-14-21-195-004's 2020 TCV is \$5,605,500, while Parcel No. 41-14-21-195-002's 2020 TCV is \$5,475,300.

## JUDGMENT

IT IS ORDERED that the property's SEV and TV for the tax year at issue are MODIFIED 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 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 20 days of entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any

---

<sup>105</sup> P-5 and P-6 at 47.

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, 2018, through June 30, 2019, at the rate of 5.9%, (ii) after June 30, 2019, through December 31, 2019, at the rate of 6.39%, (iii) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (iv) after June 30, 2020, through December 31, 2020, at the rate of 5.63%, (v) after December 31, 2020, through June 30, 2022, at the rate of 4.25%, (vi) after June 30, 2022, through December 31, 2022, at the rate of 4.27%, and (vii) after December 31, 2022, through June 30, 2023, at the rate of 5.65%.

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

#### APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A motion for reconsideration must be filed with the Tribunal with the required filing fee within 21 days from the date of entry of the final decision. Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee. You are required to serve a copy of the motion on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion. Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

A claim of appeal must be filed with the Michigan Court of Appeals with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave." You are required to file a copy of the claim of appeal with filing fee with the Tribunal in order to certify the record on appeal. The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.

By Patricia L. Haem

Entered: March 28, 2023  
plh

**PROOF OF SERVICE**

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provide by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk