



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MARLON I. BROWN, DPA
DIRECTOR

DRSN Real Estate GP LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MTT Docket Nos. 18-000573,
19-001412, 20-001648, and
21-001499 (consolidated)

City of Grosse Pointe Woods,
Respondent.

Presiding Judge
Marcus L. Abood

ORDER DENYING RESPONDENT'S MOTION IN LIMINE

FINAL OPINION AND JUDGMENT

PROCEDURAL HISTORY

On June 10, 2022, the parties filed a Joint Motion for Withdrawal of the Pre-2021 Tax Years Only. In pertinent part, the parties agreed that the appeals for 2018 (MTT Docket No. 18-000573), 2019 (MTT Docket No. 19-001412), and 2020 (MTT Docket No. 20-001648) shall be withdrawn and/or dismissed with prejudice. Further, that the 2021 appeal (MTT Docket No. 21-001599) shall be not affected by the Tribunal's granting of this Motion.

On June 30, 2022, the Tribunal issued an Order of Partial Dismissal given the joint nature of the motion. Therefore, tax years 2018, 2019, and 2020 were dismissed. The appeal proceeded for the tax year 2021 with the above-captioned docket number.

INTRODUCTION

Petitioner, DRSN Real Estate GP LLC, appeals ad valorem property tax assessments levied by Respondent, City of Grosse Pointe Woods, against parcel number 82-40-014-99-0004-001 for the 2021 tax year. An in-person hearing was held in this matter on December 6, 8, 11, 12, 13, 14, 15, and 18, 2023. Steven Scheider and Daniel Stanley, Attorneys, appeared on behalf of Petitioner. Seth A. O'Loughlin and Laura Hallahan, Attorneys, appeared on behalf of Respondent. Petitioner's witnesses were Timothy Kamego, Mary O'Connor, Laurence Allen, Richard Levin, and Atonio Simbeni. Respondent's witness was John Widmer.

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: 82-40-014-99-0004-001

Year	TCV	SEV	TV
2021	\$29,550,000	\$14,775,000	\$14,081,355

PETITIONER'S CONTENTIONS

Petitioner's contentions¹ of TCV, SEV, and TV are as follows:

Parcel Number: 82-40-014-99-0004-001

Year	TCV	SEV	TV
2021	\$22,510,000	\$11,255,000	\$11,255,000

Petitioner asserts that the subject's level of care (independent living, assisted living, and skilled nursing) involves different forms of payment from Medicaid, Medicare, and private pay. Petitioner chooses to offer four levels of care and believes that the market utilizes such services.² Now with a history of revenue and expense information, Petitioner contends that an income analysis is a reasonable approach to value the subject property.

Petitioner's appraiser contends that there is no difference between leased fee and fee simple interests for the valuation of the subject property. As of the effective date of value (December 31, 2020), the property had tenant leases in place for independent living units.³

Petitioner contends the Covid pandemic impacted the market which resulted in significant external obsolescence. There was great uncertainty as of December 31, 2020, for investors, consumers and property owners alike contending with the concern of returning to business as usual.

Petitioner's real property appraiser relied on Marshall Valuation Service (MVS), National Investment Center for Senior Housing and Care (NIC) reports, Marcus & Millichap reports, Institute of Real Estate Management surveys, Environmental Systems Research Institute (ESRI) data, BS&A property information, and CoStar as data sources for his analysis.

Petitioner's appraiser considered all three approaches to value. The sales comparison approach to value was not developed because the sales of Continuing Care Retirement

¹ Petitioner's contentions were taken from the prehearing statement, filed on March 6, 2023, and the valuation disclosure, filed on June 22, 2023.

² Vol 1, 111.

³ Vol 1, 143.

Centers (CCRC) properties are difficult to apply. These sales are typically portfolio sales involving multiple properties which include build-to-suit leases. The various levels of care and the type of units vary making a comparative analysis difficult.

Petitioner's appraiser is familiar with utilizing the going concern value to then derive a real property TCV. Examples of going concern properties include hotels, golf courses, racetracks, marinas, and senior care facilities that have intangibles which are deducted to derive a TCV.⁴

Petitioner's appraiser engaged a business valuation appraiser to determine intangible assets for the subject property. The intangible assets in the form of the assembled workforce of \$1,275,000 was then deducted from Petitioner's going concern valuation.

Petitioner's appraiser calculated the income shortfall method for quantifying economic (external) obsolescence to the subject property. This method is recognized by the Appraisal Institute.⁵

The cost approach was developed due to the relatively newer age of the building. The subject's inherent functional obsolescence due to an inefficient layout and excess area of 39,514 square feet is noteworthy.⁶ The subject's two-story atrium is a further indication of incurable functional obsolescence. Likewise, the COVID pandemic impacted all types of commercial businesses including the subject in the form of external obsolescence. This cost analysis amply showed these forms of obsolescence; the cost approach was developed as an indication of market value for the subject property.

Petitioner's business valuation expert relied on a cost approach to derive the intangible value from the assembled workforce.⁷ Regardless of hypotheticals, the subject's assembled workforce was viewed and analyzed as an asset to the going concern value of the subject property.⁸

Petitioner's real property appraiser developed an income approach to value. Income components included restabilizing the occupancy and valuing the going concern as if stabilized. Further, stabilized costs were necessary due to the external obsolescence as of the relevant tax day. The capitalized income was adjusted for stabilized costs then the going concern value was allocated between tangible personal property, intangible personal property, and real property.⁹ The income approach was given primary weight in the conclusion of market value for the subject property.

⁴ Vol 2, 139-141.

⁵ Vol 3, 24.

⁶ Vol 3, 20-21.

⁷ Vol 2, 47.

⁸ Vol 2, 48-49.

⁹ Vol 2, 88-89.

Petitioner's real property appraiser asserts that the Land Use Restriction Agreement (LURA) and construction financing bonds are not tied together.¹⁰

PETITIONER'S ADMITTED EXHIBITS

- P-1: Real Property Appraisal Report (pages 1-124, 151-162) prepared by Laurence Allen.
- P-1: Business Valuation Report (pages 125-150) prepared by Mary O'Connor.
- P-1b: Revised Page 98, Income Analysis for Allen Real Property Appraisal Report.
- P-1c: Replacement Errata Pages for Allen's appraisal report.
- P-2: LURA – The Rivers Grosse Pointe Woods.
- P-3: CBRE Senior Housing market insight 2019 Year End.
- P-8: CBRE U.S. Senior Housing & Care Investor Survey 2022.
- P-10: COVID Preparedness Checklist – Assisted Living.
- P-11: COVID Preparedness Checklist – Skilled Nursing Facilities.
- P-13: Petitioner's appraiser's workfile – excel spreadsheet pages 65-66.
- P-16: Skilled Nursing Facility Rooms – Photographs.
- P-19: First Amendment to LURA.
- P-23: Independent Living Residency Agreement.
- P-24: Assisted Living Residency Agreement.
- P-25: Skilled Nursing Facilities Admit-Medicare.
- P-26: Skilled Nursing Facilities Patient Rights and Responsibilities.
- P-28: Corrected Excel Spreadsheet (page 146) to Widmer's Report.
- P-29: MVS Space Planning Guide.

PETITIONER'S 1ST WITNESS

Petitioner's first witness, Timothy Kamego, is the Chief Operating Officer (COO) for Petitioner. He is also the COO for approximately 40 other entities owned by Petitioner. His background was originally in construction, but he fell into the management of senior care facilities, known as CCRCs, which include independent living, assisted living, and skilled nursing. The levels of care are operated by different companies which have different liabilities, licenses, and purchasing power.¹¹ Mr. Kamego described the floorplan and layout of the subject building.

PETITIONER'S 2ND WITNESS

Petitioner's second witness, Laurence Allen, prepared an appraisal report of the subject property. He is primarily a commercial appraiser with almost 50 years of valuation experience and specializes in commercial properties. He is licensed in the state of Michigan as a Certified General Real Estate Appraiser and has a designation through the Appraisal Institute. Based on his background, education, and experience, the Tribunal accepted Mr. Allen as an expert real estate appraiser.

¹⁰ Vol 3, 43.

¹¹ Vol 1, 38-40.

PETITIONER'S 3rd WITNESS

Petitioner's third witness, Mary O'Connor, prepared a business valuation report for the subject property. She is primarily a business valuation appraiser with 45 years of valuation experience and specializes in business and intangible asset valuation. She is designated through the American Society of Appraisers. Based on her background, education, and experience, the Tribunal accepted Ms. O'Connor as an expert in business valuation.

PETITIONER'S 4th WITNESS

Petitioner's fourth witness, Richard Levin is the owner and chief executive officer (CEO) of DRSN Real Estate GP, LLC and associated entities. He testified to the factual points of the LURA, the occupancy requirements for low-income tenants, and the exempt bonds.

PETITIONER'S 5TH WITNESS

Petitioner's fifth witness, Atonio Simbeni, is the chief financial officer (CFO) for DRSN Associates. He is a certified public accountant and was presented as a rebuttal witness. Mr. Simbeni testified to the subject's financial records.

RESPONDENT'S CONTENTIONS

The property's TCV, SEV and TV, as confirmed by the Board of Review (BOR), are as follows:

Parcel Number: 82-40-014-99-0004-001

Year	TCV	SEV	TV
2021	\$30,534,600	\$15,267,300	\$14,081,355

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

Parcel Number: 82-40-014-99-0004-001

Year	TCV	SEV	TV
2021	\$31,850,000	\$15,925,000	\$14,081,355

Respondent contends that the construction and design of the subject building function for the purpose of independent living, assisted living, and skilled nursing residents.

Respondent's appraiser relied on sources including the NIC reports, ESRI data, MVS cost manual, Coldwell Banker Real Estate Senior Housing and Care Market Insight Study (CBRE), Cushman Wakefield Capitalization Rate Study, National Apartment Association (NAA) Survey of Operating Common Expenses in Rental Apartment Communities.

In addition, Respondent's appraiser has a database of competitive properties' operating statements for further consideration and analysis. However, this information is held confidentially by Respondent's appraiser.

Respondent's appraiser determined that the highest and best use of the subject as improved is as a senior care facility. The subject's market area in terms of population, population age, and income were reviewed and analyzed. From 2021 to 2026, there is an expected growth in age categories for population (except for age category 80-84) in the radius miles.

There has been a lack of development of competitive senior living facilities in the subject's immediate market area. However, southeast Michigan shows significant activity in the development of such facilities. Respondent's appraiser analyzed NIC population data for age demographics in the Wayne, Oakland, and Macomb counties. There is a demand for an increase in senior care facilities based on the growing age population.¹²

Respondent's appraiser considered all three approaches to value. The cost approach to value was developed due to the age of the subject property. The subject was originally constructed as a senior care facility. The cost analysis was developed with costs from MVS with consideration to the subject's actual construction costs. Respondent's appraiser asserted that the subject does not suffer from functional obsolescence. Further, the pandemic, as of December 31, 2020, did not represent a form of external obsolescence. A cost approach does not change based on any going concern value. Said differently, a cost approach does not include any going concern value.¹³ Overall, the cost approach presents a reasonable indication of market value for the subject real property.

Respondent's appraiser developed a sales comparison approach to value the subject property. This approach was used as a test of reasonableness to the income approach to value. Respondent's appraiser selected six sales for comparison to the subject property. From those six sales, Respondent's appraiser appraised four of the sales (sale 1 – The Fountains on Franklin, sale 3 – Brighton Manor, sale 4 - Independence Village in Brighton, and sale 5 – University Living in Ann Arbor). This approach to value was considered but was not applied as a separate indication of value. Petitioner's appraiser reasoned that there is a lack of reliable comparable sale properties.

Respondent's appraiser developed an income approach of the subject property. The subject is an income producing property which justifies the development of this approach to value. Market investors and participants will rely on this approach for their decision-making investment decisions. The direct income capitalization methodology takes into account a property's historical and future income on a 12-month basis. The subject's independent living units (IL), assisted living units (AL), and skilled nursing units

¹² Vol 7, 42-43.

¹³ Vol 6, 161.

(SN) generate income. While acknowledged, Respondent's appraiser did not perform a going concern valuation of the subject property. The financial information that the appraiser received was sufficient to properly develop an income analysis. Within this analysis, Respondent contends that relying just on the number of rooms in a CCRC is not appropriate. The number of beds per room as well as the rooms themselves are important units of comparison in the income analysis. The income analysis was predicated on economic units. Meaning, assisted living and skilled nursing were analyzed per bed. Independent living was based on the actual room. This is how income is earned and expenses are applied consistently.

Respondent asserts that the income approach is based on the subject's real estate only and not the going-concern value of the property. The subject's revenue and expense information was reviewed and applied to the market. Capitalization rates were reviewed and considered for IL, AL, and SN but the capitalization rate was again based on the real estate.¹⁴ Respondent received rent rolls for the subject's independent and assisted living units; however, the skilled nursing rents were difficult to reconcile. Respondent's appraiser reviewed the subject's profit and loss (P & L) statements to gain an understanding for the skilled nursing revenues.

Next, Respondent's appraiser compared allocated rents to the real estate. Comparisons included Cedarbrook of Northville, Notting Hill, and West Bloomfield Rehab. Again, Respondent's appraiser analyzed NIC Map Vision as a source for senior housing properties. Further, Respondent relied on CBRE information for senior housing surveyed information. Discussions were also conducted with Balfour, a senior housing developer and from Fox Run (Erickson).

Respondent contends that the determination of functional obsolescence has to be market driven. The subject does not suffer from functional obsolescence. Likewise, the subject is not impacted by external obsolescence. Respondent does not consider the impact of the pandemic to be external obsolescence.

Respondent's appraiser disregarded the subject's debt instruments (i.e., tax exemption bonds) in the valuation of the subject property.¹⁵

RESPONDENT'S ADMITTED EXHIBITS

- R-1: Appraisal Report prepared by John Widmer Jr.
- R-7: AIA Certificate of Payment – Sworn Statements.
- R-8: MVS cost pages.
- R-13: (Rebuttal) Senior Housing 2021.
- R-14: (Rebuttal) Expenses – Skilled Nursing.
- R-15: (Rebuttal) Senior Survey from Exhibit R-10.
- R-16: (Rebuttal) Excel Spreadsheet from Allen Workfile.

¹⁴ Vol 7, 154-156.

¹⁵ Vol 6, 106.

- R-17: (Rebuttal) 2017 Cushman and Wakefield Appraisal Report of the Subject Property.
- R-18: (Rebuttal) Allen workfile for Loss Net Income (with excel rows and columns revealed).
- R-19: (Rebuttal) MVS Cost Page dated August 2020.
- R-20: (Rebuttal) First Amendment to Mortgage.
- R-21: Affidavit of Assignment of Mortgage.
- R-22: Petitioner's appraiser's lost revenue analysis and calculations.

RESPONDENT'S WITNESS

Petitioner's witness, John Widmer, MAI, prepared an appraisal report for the subject property. He is primarily a commercial appraiser with 36 years of valuation experience, specializing in all types of commercial producing properties. He is licensed in the state of Michigan and is designated through the Appraisal Institute. Based on his background, education, and experience, the Tribunal accepted Mr. Widmer as an expert real estate appraiser.

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.

1. The subject property is located at 900 Cook Road, in the City of Grosse Pointe Woods, and within Wayne County.
2. The subject property is commonly referred to as The Rivers of Grosse Pointe Woods.
3. The subject property's TV remained capped for 2021. The subject property did not have any additions, losses, or omitted property to otherwise change the TV.
4. The subject's 2021 TV only changed at the statutorily prescribed rate of inflation.
5. The subject property is located in an affluent market area.¹⁶
6. The subject property is comprised of 8.84 acres and is improved with a multi-sectional 3-story building constructed in 2013, interconnected by walkways and a 3-story atrium. The subject construction was completed in 2015.
7. Jordan London was the architect for the subject construction.¹⁷
8. Jordan London was the architect for the Windemere Park CCRC.
9. The subject has 77 independent living units, 80 assisted living units, and 80 skilled nursing units for a total of 237 units.
10. The subject's atrium and swimming pool are accessible to residents as well as the neighboring condominium owners.

¹⁶ Vol 1, 144; Vol 6, 107, 109.

¹⁷ Vol 1, 121.

11. The subject has gross building area (GBA) of 211,065 square feet.
12. The subject property is zoned CF, Community Facilities District.
13. The 40 condominium units that are contiguous to and surround the subject were developed by CCLA Building Development which is affiliated with DRSN and Richard Levin.¹⁸
14. The condominium owners pay an annual fee to the Rivers Residents Club to use the subject's pool, dining room and other common areas.¹⁹
15. The subject property's property record card denotes the subject's economic condition factor Neighborhood as the "Rivers Residence Club Condominiums."
16. Petitioner's low-income housing component (142(d)) is tied to the bond issuance of the loans for the subject's financing.²⁰
17. DRSN Associates, LLC is the umbrella organization which controls 40 subordinate LLC entities.²¹
18. Petitioner submitted valuation evidence in the form of an appraisal report which included the cost approach and income approach to value.
19. Petitioner's appraiser developed a subject market analysis and description based on 1-, 2-, and 3-mile radius.²²
20. Petitioner's appraiser did not analyze the subject market in terms of the city of Grosse Pointe Woods.
21. Petitioner's appraiser denoted the market area for senior housing in a 10-mile radius.²³
22. Petitioner's real property appraisal report included the business valuation report prepared by Mary O'Connor.
23. Petitioner's business valuation report only included the subject's payroll registries. The report did not include any industry benchmarks for comparison to the subject's payroll.²⁴
24. Mary O'Connor did not quantify any other asset for the business valuation of the subject property.²⁵
25. Petitioner's business valuation appraiser analyzed the operating costs of the subject and took out a percentage of the operating costs as an intangible value.²⁶
26. Petitioner's business value appraiser's weighted average cost of capital was based on a discount rate. Likewise, the discount rate is embedded in both the return on and the return of capital.²⁷

¹⁸ Vol 1, 127.

¹⁹ Vol 1, 105-107.

²⁰ Vol 1, 83.

²¹ Vol 1, 101.

²² Vol 3, 85.

²³ Vol 3, 86.

²⁴ Vol 2, 52, 74-75.

²⁵ Vol 2, 69-70.

²⁶ Vol 3, 99.

²⁷ Vol 2, 81.

27. Petitioner's real property appraiser, Laurence Allen, instructed Mary O'Connor to value the assembled workforce as the only business intangible to the subject property.²⁸
28. Petitioner's appraiser concluded that the subject's independent living occupancy was 94% for 2019 and December 31, 2020.²⁹
29. The subject's assisted living wing is identical to the skilled nursing wing with the exception of sinks.³⁰
30. The subject's assisted living wing and skilled nursing wing each have four levels of care with different rental rates. Petitioner's appraiser did not have any market data or survey data to support his conclusions of income for each level of care. Petitioner's appraiser relied on the subject's income for those different levels of care.³¹
31. Petitioner's appraiser's income analysis between P-1, P-1b, and P-1c is different. The data (lease-up costs) resulted in different conclusions which effected Petitioner's appraisal reports.³²
32. Petitioner's appraiser did not show the separate expenses for skilled nursing, assisted living and independent living within his appraisal report.³³
33. Petitioner's appraiser developed a discounted cash flow (DCF) analysis for the LURA which included discounted losses for 2021 and 2022. The appraiser did not discount losses for 2021 and 2022 in his lost net income analysis.³⁴
34. Petitioner's appraisal report (P-1, page 116) denoted functional obsolescence of \$6,077,287 due to the subject's alleged excess common area of 39,514 square feet. Petitioner's appraisal report (P-1, page 38) denoted functional obsolescence of \$6,168,741.³⁵
35. Petitioner's appraiser used the same cap rate of 12.54% for the income pro forma and the DCF.³⁶
36. Respondent submitted valuation evidence in the form of an appraisal report which included a cost approach, sales comparison approach, and an income approach.
37. Senior care facilities in southeast Michigan that have large atriums are located at Blossom Ridge (Oakland Township), the Balfour property in Ann Arbor, and Windemere Park in Warren. Respondent's appraiser referenced Fox Run in Novi, Provision properties in Livonia and West Bloomfield, properties located in Livonia and Bloomfield.³⁷

²⁸ Vol 2, 82.

²⁹ Vol 3, 150-151.

³⁰ Vol 3, 110.

³¹ Vol 3, 144.

³² Vol 4, 97-103. Petitioner's appraiser admitted that the new analysis and conclusions on page 98 of P-1a were not run through an excel spreadsheet and were not properly reviewed before publication of a new appraisal report.

³³ Vol 4, 124.

³⁴ Vol 4, 135.

³⁵ Vol 5, 10-11.

³⁶ Vol 5, 43.

³⁷ Vol 6, 154-155.

38. Respondent's appraiser identified senior housing properties located at Sunrise on Vernier, Sunrise of Grosse Pointe Woods, and American House Grosse Pointe Cottage as part of his market analysis.³⁸ Respondent's appraiser inspected and has intimate knowledge for all three properties.
39. Respondent's appraiser placed his sales comparison approach within the Scope of Work section of his appraisal report.
40. Respondent's comparative sales data included Fountains on Franklin, Hampton Manor, Brighton Manor, Independence Village (3-story), University Living (3-story), Randall Residences, Stonecrest of Northville (3-story), and Stonecrest Troy.
41. Respondent's appraiser analyzed the subject's 2018-2020 rent rolls as well as profit and loss statements for his income analysis.
42. Respondent's appraiser inspected and appraised 28301 Franklin Road (The Fountains on Franklin) for a previous valuation assignment.
43. Respondent's appraiser inspected and appraised The Windemere Park senior care facility for a previous valuation assignment.
44. Respondent's appraiser inspected and appraised The Fox Run Village senior care facility for a previous valuation assignment.
45. Respondent's appraiser analyzed The Fox Run Village senior care facility for the purpose of a revenue allocation and a ratio.
46. The parties' appraisers utilized and analyzed the common data source NIC.

CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its TCV.³⁹

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.⁴⁰

The Michigan Legislature has 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.⁴¹

³⁸ Vol 7, 44-46, and Resp's Exh. R-1, p 85.

³⁹ See MCL 211.27a.

⁴⁰ Const 1963, art 9, sec 3.

⁴¹ MCL 211.27(1).

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”⁴²

“By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment.”⁴³ The Tribunal is not bound to accept either of the parties’ theories of valuation.⁴⁴ “It is the Tax Tribunal’s duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case.”⁴⁵ In that regard, 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.”⁴⁶

A proceeding before the Tax Tribunal is original, independent, and de novo.⁴⁷ The Tribunal’s factual findings must be supported “by competent, material, and substantial evidence.”⁴⁸ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”⁴⁹

“The petitioner has the burden of proof in establishing the true cash value of the property.”⁵⁰ “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.”⁵¹ However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.”⁵²

The three most common approaches to valuation are the capitalization of income approach, the sales comparison, or market, approach, and the cost-less-depreciation approach.⁵³ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”⁵⁴ 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 TCV of the property, utilizing an approach that

⁴² *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

⁴³ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

⁴⁴ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

⁴⁵ *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁴⁶ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

⁴⁷ MCL 205.735a(2).

⁴⁸ *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

⁴⁹ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

⁵⁰ MCL 205.737(3).

⁵¹ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

⁵² MCL 205.737(3).

⁵³ *Meadowlanes*, *supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff’d* 380 Mich 390 (1968).

⁵⁴ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

provides the most accurate valuation under the circumstances.⁵⁵ Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁵⁶

SALES COMPARISON APPROACH

As noted, Petitioner's appraiser did not develop a sales comparison approach to value. On the other hand, Respondent's appraiser developed a comparative analysis housed within his Scope of Work section of his appraisal report.⁵⁷

Respondent's sales comparison adjustment grid is a conventional framework for a comparative analysis. Respondent's appraiser analyzed six sales for comparison to the subject. All of the sales are located in southeast Michigan. The six sales bracket the subject in GBA. In other words, sale 1 has greater GBA and sales 2, 3, 4, 5, and 6 have smaller GBA than the subject. Likewise, the comparable sales bracket the subject in number of units. Sale 1 occurred in 2018; sales 2, 3, 4, and 5 occurred in 2019; and sale 6 occurred in 2020.⁵⁸ Respondent's sales share a common denominator with the subject. The levels of care may vary, but all of the properties are senior care facilities.

As challenged by Petitioner, Respondent's actual grid comparable sales do not coincide with Respondent's comparable sale write-ups. This typographical error does not negate or undermine the strength of Respondent's market data. Six gridded comparable sales and seven write-up comparable sales illustrated the existence of senior care facilities in southeast Michigan. Further, Respondent's appraiser cited three additional senior housing properties within a 3-mile radius of the subject. By contrast, Petitioner's appraiser only identified 14 elderly housing developments with summary information. As noted by Petitioner's appraiser, "[a]ccording to Costar, the defined 10-mile Primary Area included 65 facilities that are either CCRC, skilled nursing, assisted living, or independent living."⁵⁹ The extent of Respondent's market data included application and elaboration beyond Petitioner's summary information. Both parties' presentation of

⁵⁵ *Antisdale*, *supra* at 277.

⁵⁶ See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁵⁷ Respondent's appraiser's rationale for placing a sales comparison approach within the Scope of Work section of the appraisal report is nonsensical. Respectfully, a developed comparative analysis is noteworthy to be placed as a standalone section within an appraisal report. An attempt to hide or minimize the relevance of such an approach by placing it within the Scope of Work section is misleading and not meaningful. Respondent's appraiser's intimate working knowledge of his comparable sales further warrants the placement of the sales comparison approach outside of his Scope of Work section of the report. Such comparable sales illustrate activity within a subject market and may be appropriately placed in the market description and analysis of an appraisal report.

⁵⁸ As a format issue, Respondent's presentation and illustration for its sales comparison adjustment grid is not understandable or readable. First, the adjustment grid does not include the subject property's line-item entries. The purpose of the comparative grid is to show the subject and comparable sales side by side. Second, the comparable sales are only identified by number; the comparable sales are not identified by their address or location. The purpose of the comparative adjustment grid analysis is to illustrate and allow the reader to easily understand side by side comparisons for the identified subject and comparable properties.

⁵⁹ Pet's Exh P-1, 63.

existing senior care facilities included variations of independent living, assisted living, and skilled nursing units. The fact that certain of Respondent's appraiser's sales data did not include skilled nursing is not determinative. Again, a key consideration and acknowledgement are that the parties' market data provided the common denominator of senior care. Petitioner's appraiser did not provide a comparative analysis of sales data. Respondent's sales data can no more be faulted for typographical errors than Petitioner's lack of an actual comparative sales analysis.

As will be further discussed in this decision, Respondent's comparable data is relevant to the income and cost approaches to value.

BUSINESS VALUATION REPORT

Petitioner's efforts to separate a real property value from a going concern value are noted in professional practice and theory.⁶⁰ More specifically, Petitioner's real property appraiser engaged the services of a business valuation appraiser for the going concern components of the subject enterprise.⁶¹ The inclusion of a business valuation report as an attached addenda to Petitioner's real property appraisal report are also customary. While given consideration, the business valuation report did not provide a complete picture for the valuation of the subject's going concern enterprise.⁶² The business valuation appraiser relied on the subject's actual payroll numbers instead of industry benchmarks (market support) for the analysis. Such "benchmarks" were not included in the business valuation report.⁶³ Further, Ms. O'Connor relied on payroll totals for the subject without knowledge or detail of the entities, leases, specific salaries, etc. Next, reliance was placed on a benchmark of 8 weeks for staff training because that is "used in countless cases and ratified by courts across the country."⁶⁴ Market support and not vague references to other cases and courts around the country is the focus in this appeal. Respondent questioned Ms. O'Connor on the subject's payroll potentially being 20-30% greater than a benchmark figure. This called into question the market support for Ms. O'Connor's payroll determination for the subject property.⁶⁵

⁶⁰ Appraisal Institute, *The Appraisal of Senior Housing, Nursing Home, and Hospital Properties* (Chicago, 2023 ed), p 381.

⁶¹ Standards Rule 2-3, Certification (C)(i)(ii), "When a signing appraiser has relied on work done by appraisers and others who do not sign the certification, the signing appraiser is responsible for the decision to rely on their work." The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (Washington DC, 2020-2021 Edition), p 24.

⁶² Petitioner's attempt to have its real property appraiser testify about the business valuation report was vexing. Respondent's counsel justifiably objected to Petitioner's efforts to elicit such testimony. As noted, Mr. Allen's real property appraisal report included an addendum housing Ms. O'Connor's business valuation report. Mr. Allen relied on Ms. O'Connor's conclusions. Nonetheless, Petitioner's counsel had the ability to have Ms. O'Connor testify at length in direct examination. It is nonsensical to have Mr. Allen cover anything but factual elements from Ms. O'Connor's business valuation report. Petitioner could have brought Ms. O'Connor back for rebuttal testimony. (Vol 3, 58-59)

⁶³ Vol 2, 51.

⁶⁴ Vol 2, 55-57.

⁶⁵ Vol 2, 76.

Further, Petitioner's business valuation appraiser did not qualify any other assets other than the assembled workforce for the business valuation of the subject property.⁶⁶ Ms. O'Connor claimed that it was a collective decision by all of the professionals to render the business valuation from just the assembled workforce without inclusion of the other intangible assets. A group decision for the application of business intangibles undermines the alleged independence for the appraisers' value determinations especially when Ms. O'Connor stated that Mr. Allen "took a very conservative view" for the business intangibles to the subject property. Mr. Allen admitted that if he had accounted for more intangibles, the real property value of the subject property would have only decreased further.⁶⁷ Equally unconvincing was Ms. O'Connor's recollection of draft reports and a workfile in support of her actual business valuation report.⁶⁸

A client/intended user may set forth assignment conditions, but Ms. O'Connor's explanation for the decision to rely on just one intangible asset while admitting to other intangible assets belies the importance of credible results. Said differently, the decision to rely on a conservative intangible asset is disingenuous to credible valuation results for the subject property. Determining a "conservative" intangible asset infers a subjective result to favor or appease the opposing party in this appeal. The Tribunal is not persuaded that the only business intangible (assembled work force) results in the remainder value attributable to the subject's real property. The focus on a singular business intangible (with minimal market support) is not reasonable or logical. Intangible personal property includes "assembled workforces, licensed, certifications, accreditations, approvals such as certifications of need (COD), employment contracts, medical records, goodwill, and management."⁶⁹

More specifically, the prevalent list of intangible assets for a senior housing (licenses, certifications, approvals – certificates of need from governmental agencies and regulators; assembled workforces – licensed, certified, trained employees; patient records; goodwill; management; vendor contracts; and trade names) illustrates the arduous task of separating the value of real property from the going concern. Petitioner's real property appraiser decided that based on the market conditions, goodwill was not present within the subject's going concern value.⁷⁰ The business valuation report is either inconsistent or incomplete.

For the reasons stated above, Petitioner's business valuation report is given no weight or credibility in the independent determination of market value for the subject property.

⁶⁶ Vol 2, 69-70.

⁶⁷ Vol 6, 42.

⁶⁸ Vol 2, 71-73.

⁶⁹ Appraisal Institute, *The Appraisal of Senior Housing, Nursing Home, and Hospital Properties* (Chicago: 2023), pp 28, 31.

⁷⁰ Vol 3, 100.

PETITIONER'S INCOME APPROACH

The parties' respective analyses considered the subject's viability as an income producing property. Again, the subject property is a going-concern senior care facility which includes independent living units, assisted living units, and skilled nursing units. As noted, Petitioner developed this approach based on a going concern value for the subject to then deduct business tangibles and intangibles to arrive at a value for the subject's real property. On the other hand, Respondent's appraiser developed an income analysis by excluding going concern elements to focus solely on the subject's real property value. Respondent's reasoning for not developing a going concern value for the subject property makes sense. Going concern valuation includes many variables and factors. It is easier to establish a real property value without a myriad of business intangible variables and corresponding uncertainties.⁷¹

A general income analysis is based on revenue, expenses, capitalization rates, and value. Petitioner's income analysis included the mathematical development of income components for functional and external obsolescence within its cost approach to value. The Tribunal does not accept Petitioner's determinations in its valuation decisions given its alleged errata to create new income analysis with different indicators. Petitioner's actions belie the very concerns noted by Respondent's appraiser in the endeavor to derive a real property value from the going concern value. As repeated, the numerous variables within the going concern value to derive the value for the real property created uncertainty and a lack of clarity.

Petitioner's appraiser's basis for developing a going concern income analysis is unconvincing. The Tribunal fails to see what prevented Petitioner from reviewing other senior care facilities to derive general revenue for senior care dues (as posted on public websites). Arriving at stated conclusions was quite telling as Petitioner's workfile included the financial statements for an income analysis. Obtaining market income data from owners is difficult (as is most commercial property owners) who are reluctant to share such information. Yet, Respondent identified several senior care facilities that he had previously appraised. Petitioner's appraiser admitted to having extensive experience in the valuation of such facilities but did not disclose those specific properties. Extolling an appraiser's experience and knowledge does not give credence to the indication of value when the report does not display commensurate support other than the appraiser's knowledge, judgment, and experience. A report must carry support and persuasion beyond conclusory statements. An expert's testimony and documentary evidence must be weighed to determine credibility and reliability.

Like juggling balls in the air, analyzing tangibles and intangibles for the subject's AL, IL, and SN for December 31, 2020, is not an easy task.

Valuing individual intangible assets, such as an assembled workforce or patient medical records, is a complex and challenging task. The assets are

⁷¹ Vol 7, 9-10.

interdependent, difficult to separate and isolate, lack comparable sale data, and require considerable subjectivity and assumptions that are open to challenge.⁷²

Respondent's cross examination of Petitioner's real property appraiser opened a multitude of issues from the analysis.⁷³ The Tribunal is unpersuaded that Petitioner's appraiser gave clarity to this approach to value.

Petitioner's appraisers had access to the subject's financial records and statements for 2018 to 2020. The confidentiality of Petitioner's internal financial line-item entries was taken into consideration; certain income and expense entries within Petitioner's appraisal report were appropriately redacted. Nonetheless, Petitioner's attempts to offer iterations of an appraisal report under the guise of an errata is disingenuous.⁷⁴ The point of having a subject's financial information implies that an appraiser's due diligence will follow through from the research and analysis. Applying the subject's income data in a consistent and commensurate fashion to the market is commonplace in valuation practice.

Petitioner's appraiser's income opinions, analysis, and conclusions changed beyond alleged errata or typos. The appraiser's replacement page 98 for a correction of "income loss" is not construed simply as an errata page. As argued by Respondent, the page signified a whole new income analysis based on new income components.⁷⁵ The alleged erratum was not standalone typos or corrections. The revisions impacted the

⁷² Appraisal Institute, *The Appraisal of Senior Housing, Nursing Home, and Hospital Properties*, (Chicago: 2023), p 382.

⁷³ An expert witness's credibility is based on the documentary and testimonial evidence. A valuation expert's appraisal report must be supported by opinions, analysis, and conclusions. An appraisal report does not presumably result in the same value regardless of the client/intended user. In other words, an appraiser's scope of work and assignment conditions relative to the client/intended user (taxing authority, attorney, or lending institution) may differ greatly. More specifically, an appraiser's appraisal report is predicated on his/her scope of work and the assignment conditions set forth by the client/intended user. Respondent's misunderstanding of a licensed appraiser's professional obligations was misapplied in this line of questioning. (Vol 3, 71)

⁷⁴ Petitioner's appraiser admitted that his corrections to include rent loss calculations resulted in a new income analysis. Petitioner's appraiser admitted that the appraisal report changes constituted new assignment results. Thus, a new appraisal report discredited Petitioner's valuation evidence. "***In developing a real property appraisal, an appraiser must: (b) not commit a substantial error of omission or commission that significantly affects an appraisal; and (c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.***" [emphasis added.] The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (Washington D.C.: 2020-2021 edition), p. 16. Attempts to offer such revised analysis after the fact (in the midst of the hearing) is equally inappropriate.

⁷⁵ While not formally offered or admitted into evidence, Petitioner's exhibits P-1a (Allen's revamped appraisal report for the subject) was also portrayed merely as corrected documents. In legalese, the term "credible" (defined as *worthy of belief* by Black's Law Dictionary) is parallel to the application found within valuation standards and ethics. Here, Petitioner's counsel and valuation expert have attempted to pass off a substantial change within its income analysis as an errata or typo. This endeavor is not meaningful and is misleading. (Vol 1, 161, 163, 165, 181; Vol 2, 118-120, 146-161; Vol 4, 106-107)

entire income analysis.⁷⁶ Moreover, the revisions, modifications, and recalculations extended beyond the appraisal report to the appraiser's workfile excel spreadsheets.⁷⁷ On the other hand, Petitioner's appraiser pointed out actual errors within his report which amounted to typographical errors.⁷⁸ The effort to revise page 98 overlooked Respondent's references to other actual typos (without correction) by Petitioner's real property appraiser. Determined efforts to change certain "errata" while only testifying to other actual typographical errors is not logical. In totality, Petitioner's modifications for a revised income approach go beyond the level of simple typographical errors. The rental loss income modifications impacted and changed Petitioner's total income analysis. As purposely repeated, these actions amount to a new appraisal report. The framework of *assignment results*⁷⁹ for the first report (Pet's Exh. P-1) were markedly different than the subsequent iterations. New income analytics outside of an engagement letter, scope of work, or report narrative are contrary to valuation practice, theory and standards/ethics. Specifically, the analysis, application, and calculation of rent loss to the income approach went beyond the thought of typographical errors. Petitioner's appraiser did not invoke the "*incorporated by reference*" option⁸⁰ for his changes and revisions. In other words, the replacement appraisal reports or pages did not reference the initial appraisal report. Therefore, Petitioner's revised indication for rent loss is given no weight or credibility in the independent determination for an income analysis.

Next, Petitioner's market rents were based on asking rents from management and included both CCRC and non CCRC facilities from 2020 and 2022.⁸¹ Petitioner did not adjust its rental data for these nuances. Moreover, the rental data was not identified as CCRC or non CCRC properties. So, each facility has levels of care which equated to different options and costs for tenants. The depth and complexity of levels of care within a CCRC make an income analysis challenging. Nonetheless, Petitioner's appraiser failed to denote characteristics and levels of care for the rental data for an average rental rate.

The Tribunal is not persuaded that there were no intangibles associated with the independent living units as suggested by Petitioner's real property appraiser.⁸² The Rivers was conceived, constructed, and is maintained as a CCRC. Moreover, the umbrella DRSN entity and the underlying LLCs for the different care facets of the total facility are the essence of going concern intangibles. The very nature and mission of the subject CCRC represents and conveys a passion and quality of care to all of its

⁷⁶ Vol 4, 93-95.

⁷⁷ Vol 3, 62.

⁷⁸ Vol 3, 73-74 (Pet's Exh. P-1, 36 and 81)

⁷⁹ The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (Washington DC, 2020-2021 Edition), p 3. Assignment results are not limited to just the conclusion of value. Again, an appraiser's opinions, analysis, and conclusions are logical components within an appraisal report. The composition of Petitioner's appraisal report and income approach changed due to the inclusion of rent loss to the subject property.

⁸⁰ *Id.*, pp 73, 252.

⁸¹ Vol 3, 117.

⁸² Vol 3, 102-103. Yet, Petitioner's appraiser acknowledged that the independent living rents included business operations within the going concern value of the subject property. (Vol 3, 107-109)

residents. The discretionary thought that the independent living units do not have intangible revenue and expenses is not reasonable. These units are not divorced from Petitioner's care mission for its residents. The skilled nursing units and licenses (intangibles) are integral to the going concern operation and value of the property. As pointed out by Petitioner's real property appraiser, you can't be a CCRC without having skilled nursing.⁸³ Mr. Allen was questioned about the subject's IL and AL outperforming the market while SN was only performing at market rental rates. Left unanswered were whether these are market differences or unit differences.⁸⁴ Petitioner's appraiser's lack of direct answers was unconvincing.

While Petitioner's real property appraiser stated that he only presented statistics for December 31, 2020, for the subject's income levels of care, the statement lacks clarity.⁸⁵ Petitioner's appraiser devised a DCF to calculate lost revenue for the subject's remaining 8 years for the LURA. The DCF carried assumptions and inputs taken from Petitioner's referenced statistics. The treatment of different levels of care with associated income was not cogent. Likewise, the calculated amount of lost income attributable to the real property was not the recalculated \$4,030,324 as denoted on Petitioner's valuation disclosure.⁸⁶ All the more, inconsistencies between testimony and the appraisal report (with various iterations) does not bolster Petitioner's appraiser's credibility.

Similarly, Petitioner's appraiser's discretion in dealing with the subject's expenses was not clear. Distinguishing Petitioner's controlling entity from the subordinate entities was less than persuasive for various expenses.⁸⁷ Parsing maintenance expenses between different entities to the subject property was not understandable. The appraiser's recall for related expenses between entities as being just a "small portion" was not meaningful.⁸⁸ As an example, Petitioner's expense entries for plant operations, maintenance, and repairs were allocated differently between the operating entity and the property services company.⁸⁹ Expenses attributable to each level of care appeared to be varied but fixed expenses incurred at each facility (regardless of the number of occupied beds or rooms) still needed to be accounted for. Petitioner's appraiser failed to answer such questions on cross examination.⁹⁰ Again, the appraiser's recall for his unit of comparisons for \$/bed and \$/unit were not coherent.⁹¹ Petitioner's expense entries, allocations, and explanations are not credible to the overall income analysis.

Further, Petitioner's survey data for capitalization rates included entries for CCRC and Community Care Real Estate facilities. The Jones Lang LaSalle survey information was

⁸³ Vol 3, 112-113.

⁸⁴ Vol 3, 134-136.

⁸⁵ Vol 3, 148-149.

⁸⁶ Vol 5, 35-36, and Pet's Exh P-1c, page 117. Allen was unable to justify his calculations and conclusions on page 117 of his appraisal report.

⁸⁷ Vol 3, 170-173, 176.

⁸⁸ Vol 3, 179-181.

⁸⁹ Vol 4, 34-39, 44-45.

⁹⁰ Vol 4, 47.

⁹¹ Vol 4, 58-62.

highly questioned by Respondent's counsel on cross examination.⁹² Petitioner's real property appraiser had the ability to analyze a capitalization rate for just the subject's real estate. However, Petitioner's capitalization rate was applied to the going concern value of the subject property.⁹³ The difference between a going concern capitalization rate and a real property capitalization rate further complicated Petitioner's income analysis. Petitioner's real property appraiser used the same capitalization rate of 12.54% for the income pro forma and the DCF.

Repeatedly, an appraisal report is based on the opinions, analyses, and conclusions of the appraiser. In this instance, the Tribunal cannot place reliance on conclusory statements based on an appraiser's testified "experience and expertise" which nebulously refers to data not included in an appraisal report or workfile. "Perfection is impossible to attain, and competence does not require perfection. However, an appraiser must not render appraisal services in a careless or negligent manner. This Standards Rule requires an appraiser to use due diligence and due care."⁹⁴ Petitioner's actions belie the importance of rendering a meaningful appraisal report.⁹⁵ An appraiser's conclusions do not necessarily come before the application of the market data.

The independent determination of market value for the subject property is as a tenant-occupied commercial property with fee simple property rights. The subject is not owner-occupied. The parties' valuation disclosures acknowledge the subject in terms of fee simple property rights. A fee simple estate is defined as "[a]bsolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power and escheat."⁹⁶ The full bundle of rights (in fee simple) for the subject as an economic unit is done so without encumbrances. As of December 31, 2020, the subject was occupied with senior tenants. The subject had rental income as of the tax day. A real property value can be determined from the going-concern subject property. There is no contradiction with the subject's occupancy while contemplating the availability of the property for a potential buyer and the TCV. However, the actions and determinations undertaken by Petitioner's real property appraiser and business valuation appraiser do not bolster a meaningful income analysis for the real property valuation of the subject property. Again, the rationale for Petitioner's going concern analysis is not persuasive. Leased fee interest is defined as "[t]he ownership interest held by the lessor, which includes the right to receive the contract rent specified in the lease plus the reversionary right when

⁹² Vol 4, 78-79.

⁹³ Vol 4, 70.

⁹⁴ The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (Washington DC: 2020-2021 Edition), p 11.

⁹⁵ "In developing a real property appraisal, an appraiser must: (c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the ***aggregate affects the credibility of those results.*** [bold and italics added.] The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (2020-2021 Edition), p 16.

⁹⁶ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020), p 60-61.

the lease expires.”⁹⁷ The subject’s property rights as fee simple are not a deterrence to an income analysis.

Respondent’s numerous hypotheticals for revisions to Allen’s income approach amplified the very revisions performed by Petitioner’s replacement page 98 to the original appraisal report.⁹⁸ Petitioner’s income approach has diminished credibility due to the lack of consistency within the income analysis. Likewise, comingled accounting principles and valuation principles did not bolster Petitioner’s income analysis. Said differently, the going concern aspects of the subject CCRC were not properly addressed or applied. Respondent’s cross examination of Petitioner’s real property appraisal expert witness bore out many of these inconsistencies.

Overall, Petitioner’s experts’ testimony, excel spreadsheets, as well as exhibits P-1, P-1b, and P-1c do not present clear and convincing valuation evidence. Petitioner’s real property appraiser failed to implement a rent loss analysis in a timely fashion. Petitioner’s valuation iterations conveyed different conclusions resulting in different appraisal reports.⁹⁹ Granted, the complexities of a CCRC facility present many different income and expense entries; but the variations elicited from Petitioner’s valuation evidence are not credible.

RESPONDENT’S INCOME APPROACH

Respondent developed the direct capitalization income approach for the subject real property. Rooms and beds were analyzed in an appropriate manner to develop income. Respondent’s appraiser developed potential gross income (PGI) on the basis of membership revenue. The subject property’s income was based on market rents.

Respondent reviewed and analyzed the subject’s senior units for an overall revenue. Respondent’s ability to apply the subject’s 2016-2020 financial information is meaningful and persuasive. Further, Respondent applied the subject’s financial information to the NIC market data. More specifically, the NIC data source focused on senior care facilities rates. In essence, Respondent was able to develop PGI without hesitation. Respondent’s analysis of the subject’s revenues was supported by credible market evidence.

Respondent’s method to devise PGI is akin to an income analysis for a golf course. Rounds of golf are calculated to determine a market supported revenue. Here, Respondent applied the subject’s senior units’ square feet as income through senior facility market data through NIC surveys and reports. As noted, both parties’ appraisers acknowledged NIC Reports as a source of data and information. Therefore, Respondent’s application of NIC surveys and reports as a market data source is credible.

⁹⁷ *Id.*, 61-63.

⁹⁸ Pet’s Exh P-1c, Vol 4, 68-69.

⁹⁹ Vol 1, 162-163, 180-181.

Respondent's appraiser appraised Fox Run Village senior facility.¹⁰⁰ From that appraisal assignment, he had allocated revenue at 52% for independent living, 37.5% for assisted living, and 30% for skilled nursing. Respondent's appraiser analyzed those revenue ratios (as a methodology) and not as a direct sales comparison to the subject. He did not compare Fox Run Village to the subject on a physical basis. Fox Run Village was analyzed for the purpose of an allocation and a ratio.¹⁰¹ Notably, Widmer's direct comparable sales (and admitted intimate knowledge of certain sales) further lends credibility to his revenue allocation for the segments of the subject facility (independent, assisted, skilled nursing). Overall, Widmer's unit analysis was clearly explained given the difference in revenue between a unit room (independent, assisted) and a unit bed (skilled nursing).

Similarly, Respondent analyzed vacancy and credit loss in a methodical fashion. Focus was given to occupancy and vacancy rates with finer emphasis on *frictional vacancy*.¹⁰² The application of the housing market segment versus traditional apartments was meaningful and straightforward.

Next, Respondent's analysis and presentation of operating expenses for the subject property from the NAA reports (as well as comparable property operating statements) is equally compelling. Again, the historical analysis from 2018-2020 was proximate to the subject's first year under appeal which was before the noted pandemic. Relevant expenses (insurance, repairs/maintenance, utilities, general/administrative, management, payroll, advertising, and replacement reserves) were explained and supported resulting in a net operating income for the subject. The subject's financial information was applied to this market data for reasonable support and logic.

Respondent's next step was the development of the capitalization rate analysis. Respondent's appraiser considered the band of investment method and market extracted capitalization comparable sales for a capitalization rate. Respondent reasoned that the extraction method for a capitalization rate is the easiest, simplest method to understand from the subject market. However, Respondent's appraiser developed a capitalization rate from a CBRE Senior Housing & Care Investor Survey for independent living, assisted living, skilled nursing, and CCRC facilities. Respondent cannot be faulted for considering and applying specific methods for a capitalization rate analysis. Petitioner's arguments are not convincing in this regard. In the absence of local income data, Respondent utilized NAA and NIC data. Petitioner's general refutation does not discredit Respondent's analysis. In fact, both appraisers relied on NIC data. Acknowledging NIC data while only performing cursory income elements did not bolster Petitioner's analysis or conclusions of value.

Respondent's direct income capitalization approach to derive a real property value for the subject property is reasonable. Moreover, this income approach is less circuitous

¹⁰⁰ Vol 7, 120.

¹⁰¹ Vol 7, 34-37.

¹⁰² Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 2022, 7th ed), p 79.

than Petitioner's income approach. However, Respondent's indication of value from the income approach was \$31,850,000 which was the highest indication from its three approaches to value. In theory, the cost approach would have the highest value indication (with reference to the concept of substitution). The Tribunal is not persuaded that Respondent's direct income capitalization approach is completely devoid of business intangibles. As refuted by Petitioner, not all going concern intangible elements were necessarily discounted from Respondent's income analysis. Petitioner's cross examination of Widmer's workfile was equally important in this regard. Akin to Petitioner's real property appraiser, Respondent's appraiser was not readily able to locate excel entries, calculations, and support for conclusions within his appraisal report. Respondent's reconciled value rested entirely on the income approach.

The appraisers' gaps in income analysis were exposed through lines of cross examination. The difficulties in capturing income components were illustrated through each appraisal report.¹⁰³ The complexities of a large CCRC were compounded by multiple operating entities, elaborate financial records, and the endeavor in separating the real property value from the going concern value. Voluminous work files from each appraiser were cumbersome and less fruitful in obtaining certain pieces of information. Likewise, while attempted in earnest, projecting excel spreadsheets on the hearing room wall was not entirely beneficial.

The parties' respective income approaches were considered. Again, the various income components illustrated the arduous task of separating the subject's real property value from the going concern value.¹⁰⁴ For the reasons previously discussed, the Tribunal is unable to place any weight or credibility on their income approaches for the independent determination of market value for the subject real property.

COST APPROACH

Generally, a cost approach is most applicable for new or newer properties. As reasoned, a newly constructed property would have minimal depreciation. On the other hand, a cost analysis is more problematic for older properties in quantifying all forms of depreciation. The elements for a cost analysis include the determination of land value, the replacement cost new (RCN) for building improvements, a calculation of depreciation (physical, functional, and external), and site improvements. The appraisers' cost approaches are a conventional framework for the cost analysis of the subject property. In fact, the resulting conclusions are relatively close. Petitioner's cost approach conclusion is \$25,600,000 and Respondent's cost approach conclusion is

¹⁰³ Respondent's cross examination of Petitioner's appraiser involved specific excel spreadsheet entries from Allen's workfile. On the other hand, Petitioner's counsel attempted to call a rebuttal witness for the forensic review (Vol 8, 89-96) of Widmer's excel spreadsheet document which he was unable to identify as part of his own workfile.

¹⁰⁴ Fee simple, leased fee, leasehold, and partial interests present many challenges in pinpointing the value of the real property for a senior care facility. Appraisal Institute, *Valuation of the Leased Fee and Leasehold Interests of Senior Housing and Health Care Enterprises* (Chicago: The Appraisal Journal, Volume 9, Issue 4, 2023), pp 216-233.

\$27,850,000. However, the appraisers' divergent paths to their respective conclusions were telling. As repeated, Petitioner's appraiser initially valued the subject property as a going concern enterprise. Respondent's appraiser valued the subject's real property devoid of business intangibles. As articulated below, the Tribunal considered each cost element to arrive at an independent determination of market value from the cost approach.

First, the parties' respective land analyses were reasonably presented and illustrated. Each appraiser utilized units of comparison (\$/acre and \$/unit). Petitioner's appraiser's land analysis conclusion was based on price per living unit. Petitioner presented four land sales which were purchased for proposed senior care facilities. The sales occurred in 2017, 2020, and 2021. Petitioner's land sale write-ups were detailed and descriptive. Items such as existing residential structures were accounted for as adjustments from demolition costs. On the other hand, Respondent's appraiser analyzed five land sales in southeast Michigan. Respondent's presentation of land sales data also included descriptive details to derive an indication of value based on price per acre. However, Respondent's land data were proposed development for single family residential units (attached and detached dwellings). There is no equivalency between proposed senior living units and single-family residential units. Rightly, Respondent's \$/acre is relevant for the value of residential land development. Equally so, Petitioner's \$/unit land analysis for proposed senior care units is relevant. The difference is that a single-family dwelling on a lot is not the same as a multi-unit senior care facility on one parcel of land.

Petitioner's land sales are the most credible and reliable data for an indication of market value.¹⁰⁵ In general, all four sales are located in southeast Michigan. Sale 1 occurred in January 2021 and is the closest to the December 31, 2020 tax day. In addition, sale 1 is the most similar to the subject in proposed unit density. The sales bracket the subject in acreage. Sales 2 and 3 have larger acreage and sales 1 and 4 have smaller acreage than the subject. Sale 3 has the lowest proposed unit density and the largest demographics adjustment. However, sale 3 has larger proposed units than sales 1 and 4. The Tribunal is not convinced that sale 3 should be treated as an outlier as surmised by Petitioner's appraiser. Sale 3's unadjusted sale price is greater than sales 1 and 4. Sale 3 has the smallest overall adjustments. Sale 3 appears to have characteristics or components not included in Petitioner's analysis. Therefore, a reasoned and reconciled determination of land value is attainable from all four land sales at \$18,000/unit (237 units multiplied by \$18,000/unit equals \$4,266,000).

Second, the parties' detailed breakdown of MVS RCN costs for the subject's improvements are relatively close. Petitioner's RCN costs are \$33,001,930 and Respondent's RCN costs are \$34,378,045. The common cost source and base costs utilized by each appraiser are given consideration in the Tribunal's independent

¹⁰⁵ However, Petitioner's appraiser miscalculated his land value of \$5,920,000 based on 237 units. In other words, the appraiser's concluded \$/unit of \$20,000 multiplied by 237 units equals \$4,740,000. This typographical error is further discrediting evidence.

determination from the cost elements. The parties' RCN costs bracket a reasoned indication at \$33,500,000.

In addition, the parties' reviewed the actual construction costs for the subject from sworn statements. Petitioner's appraiser denoted the original total construction costs of \$22,281,548 without further explanation or analysis. On the other hand, Respondent's appraiser denoted the subject's actual construction costs of \$26,539,667; the appraiser trended the actual construction costs from 2013 (initial construction cost date) to January 2021. Respondent's extended analysis for the subject's actual construction costs is an indication of due diligence beyond Petitioner's single entry for original construction costs. Greater weight is given to Respondent's overall actual construction costs for the subject at \$26,000,000.

As a matter of reconciliation, the MVS construction costs of \$33,500,000 and the subject's actual construction costs at \$26,000,000 were considered. Greater weight is given to the subject's actual construction costs which were trended forward by Respondent's appraiser.¹⁰⁶ Therefore, a reasoned and reconciled indication of the subject's RCN is \$26,000,000.

Third, the parties' detailed breakdown of site improvement costs for the subject are relatively close. Petitioner's site costs are \$508,374 and Respondent's site costs are \$763,907. However, Petitioner's appraiser did not separate landscaping and asphalt costs but instead lumped them together.¹⁰⁷ Respondent's MVS page references are more detailed highlighting dates and multipliers to the December 31 tax day. Therefore, Respondent's site improvement costs are given more weight and credibility in the overall cost approach at \$650,000.

Fourth, the parties' detailed breakdown of soft costs for the subject are also relatively close. Petitioner's soft costs are \$1,675,515 and Respondent's soft costs are \$1,736,240. Petitioner's appraisal report did not include an explanation for this cost element. On the other hand, Respondent's appraiser illustrated the detailed soft costs for the subject trended cost of construction. The parties' respective soft (indirect) costs bracket the Tribunal's independent determination at \$1,700,000.

Fifth, entrepreneurial profit was considered by the parties in their respective cost analyses. Distinguishing between entrepreneurial incentive¹⁰⁸ and entrepreneurial profit¹⁰⁹ is relevant to the cost analysis for the subject. While the terms have separate meanings, both are reflective of Petitioner's actions in the development and operation of the subject property. Petitioner's incentive for future economic rewards is demonstrated by the expertise and acumen of Petitioner's various professionals. The anticipated going-concern profits from a stabilized occupancy is at the heart of an entrepreneurial incentive. While going-concern value is separate from TCV, the going-concern is an

¹⁰⁶ Vol 6, 139.

¹⁰⁷ Vol 4, 160.

¹⁰⁸ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 7th ed, 2022), p 62.

¹⁰⁹ *Id.*, pp 62-63.

indication of the subject's viability in the market, especially given the higher risk (for a special use property), and thus, an expected greater return from the development. In this regard, TCV represents the value of the real estate, whereas the going-concern value is represented by market value. For this reason, TCV is not synonymous with market value in the analysis of entrepreneurial profit in the context of an ad valorem tax appeal of the subject property.

Petitioner's potential profit is "[a] market-derived figure that represents the amount an entrepreneur receives for his or her contribution to a project and risk . . ." This is calculated from the difference between total cost of the property and the market value of the property after completion. "In short, incentive is anticipated while profit is earned."¹¹⁰ Incentive takes place in the midst of the development whereas profit is realized at the point the property is sold. Petitioner created value through a new development and reasonably would expect to be rewarded.

Petitioner determined entrepreneurial profit of 7.5% within its cost analysis. Aside from an outdated source definition and an overview statement for the cost approach, Petitioner's appraiser did not explain his market support for the 7.5% entrepreneurial profit. The conclusion of 7.5% was made without any other underlying support. On the other hand, Respondent analyzed and reasoned that entrepreneurial profit was not quantified within his cost analysis. The difference between the two appraisers' analyses is that Petitioner's real property appraisal report derived a going-concern value. Respondent's appraisal report analyzed the subject property for just a real property valuation.

Respondent's contention that entrepreneurial profit should not be applied to the cost calculations has merit. As purposefully repeated, the subject was developed as a for-profit, going concern with multi-care senior facilities. Petitioner's bond issuance 1) precluded a contractor's profit, 2) required units for low-income residents, and 3) precluded the sale of the property until it has reached stabilized occupancy. Petitioner's admission that the subject is a going-concern validates its actions and intent to make money in this type of business. In fact, the subject property has yet to sell and determining entrepreneurial profit through a hypothetical going concern value is not logical to the TCV for the subject property. The equation for the determination of entrepreneurial incentive is *market value less total cost of development*. The market value of the subject real estate is not the market value of the going concern. As noted, separating the real estate value from the going concern for a multi-care senior facility is very difficult. A going-concern value is not the equivalent of TCV for the subject property. Therefore, entrepreneurial incentive and profit shall be omitted from the cost calculations because going-concern value is not germane to the TCV of the subject property.

Sixth, physical depreciation was calculated by each appraiser. Physical depreciation was broken down for improvements as well as site improvements. Each appraiser

¹¹⁰ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020), pp 536-539.

determined physical life in years and effective age in years for the subject's building improvements and site improvements. Likewise, each appraiser applied an *age-life* methodology¹¹¹ for a calculated percentage for straight-line physical depreciation. The percentage differences between the appraisers were varied though. Petitioner's appraiser calculated building depreciation at 12.7% and site improvement depreciation at 46.6%. Respondent's building depreciation is 8.6% and site improvement depreciation is 22.5%.¹¹² However, Respondent's appraiser went a step further and calculated curvilinear depreciation at 4.5% and 17.5% respectively. As explained by Respondent's appraiser, the curvilinear depreciation takes into account "the fact that buildings depreciate at a lesser pace during their initial years of a physical life, and more so towards the end of their expected physical life."¹¹³ Respondent's premise for a curvilinear methodology appears plausible but, without further data support and elaboration, the Tribunal is unable to apply *curvilinear depreciation* to the subject's physical depreciation.

Calculating total economic life from an estimate of the average annual rate of depreciation is common, but it is considered overly simplistic by critics who point the technique's reliance on straight-line depreciation. Accounting for curvilinear patterns of depreciation (e.g., compound rather than simple accrual) requires additional data to support a more detailed, and possibly more realistic, model of the market behavior of a building over its total economic life.¹¹⁴

The Tribunal has considered the parties' respective age-life calculations along with the photographic evidence contained within each real property appraisal report. Moreover, the subject photographs found within Respondent's rebuttal exhibit R-17, the 2017 appraisal report (prepared by Rasmussen) were reviewed. From the array of subject photographs, there is no discernible difference in the subject's condition between denoted dates. Therefore, greater weight and credibility is placed on Respondent's straight-line age-life percentages at 10% for the building improvements and 35% for the site improvements physical depreciation.

FUNCTIONAL AND EXTERNAL OBSOLESCENCE

Petitioner's application and reasoning for alleged functional and external obsolescence is unpersuasive. Petitioner's reasoning for the subject's highest and best use conclusion (as improved) is for the continued use as a senior care facility. The cost of the subject's improvements is greater than the determination of land value. In addition, Petitioner's discredited income elements do not lend support for external and functional obsolescence through various mathematical assumptions. As discussed below, certain

¹¹¹ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 7th ed, 2022), p 56.

¹¹² Respondent's effective age is not 6-8 years; the correct effective age is 4.5 years. (Vol 8, 81 and R-1, 39).

¹¹³ Resp's Exh R-1, 117.

¹¹⁴ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020), p 564.

cost elements also do not support Petitioner's claims of functional and external obsolescence to the subject property.

Regarding Petitioner's determination of functional obsolescence, the calculations were light on support and rationale. First, Petitioner's appraiser carved out 39,514 square feet of surplus area in the subject building. The 39,514 square feet is referenced in certain sections of the appraisal report.¹¹⁵ However, this square footage was neither illustrated nor defined. In other words, the building sketches and blueprints did not specifically show the area of surplus/excess.¹¹⁶ The allocation of 39,514 square feet for excess common area included the subject's atrium and swimming pool but without any specificity. The general mention of the subject building's atrium and swimming pool area is insufficient for the understanding of surplus area. Further, the allocation of expenses was applied equally with the excess common area.¹¹⁷ Second, Petitioner's appraiser compared this surplus area to "market norms." The appraiser applied MVS cost components but did not reference or cite specific market norms related to the subject building. Calculating a second cost analysis using a modified GBA of 171,551 square feet was a mathematical process without supporting evidence from the subject's market area. This second RCN for the alleged excess common area was not illustrated in the appraisal report, but rather denoted as just a total number. Likewise, excel spreadsheet calculations found in Allen's workfile were not meaningful.¹¹⁸ Third, the interplay and overlap of the three approaches to value cannot be overstated in the context of obsolescence. The principle of *substitution*¹¹⁹ is at the heart of valuation practice and theory. Said differently, Petitioner's going concern valuation of the subject property through the income approach was given no credibility. Here, the connection between Petitioner's income and cost approaches do not align. As challenged by Respondent, Petitioner's rationale for surplus square feet is unreasonable. Petitioner's devised surplus square feet is not meaningful to the analysis of obsolescence. Fourth, Petitioner's appraiser calculated common area of 117,248 square feet as non-rentable living area. This common area calculation included office spaces, kitchen spaces, maintenance closets, etc.¹²⁰ Carving out areas that appear to overlap only added uncertainty as well as the thought of double counting. Fifth, on cross examination, Petitioner's appraisal report (P-1, page 116) denoted functional obsolescence of \$6,077,287 due to the subject's alleged excess common area of 39,514 square feet. Petitioner's appraisal report (P-1, page 38) denoted functional obsolescence of \$6,168,741. Petitioner's appraiser was unable to explain the difference on cross examination. However, on re-direct examination (a day later), he was then able to explain the difference.¹²¹ Sixth, Petitioner's appraiser did not account for all of the alleged functional obsolescence in terms of excess assisted living units for the subject

¹¹⁵ Pet's Exh. P-1, 37, 38, and 116.

¹¹⁶ Vol 4, 170-171.

¹¹⁷ Vol 5, 11-12.

¹¹⁸ Vol 5, 6-8.

¹¹⁹ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020), p 25, 528.

¹²⁰ Vol 4, 178.

¹²¹ Vol 6, 15-16.

property.¹²² This begs the question whether alleged excess units were part of external obsolescence or specific to market conditions within the period of the pandemic. Lastly, competition from other senior care facilities demonstrated market demand and not necessarily obsolescence. Existing senior care facilities in southeast Michigan illustrate structures with similar amenities including large atrium entry ways and swimming pools. Such market evidence rebuts and counters the claim of functional obsolescence within the subject property. Respondent's appraiser's knowledge of Windemere Park senior care facility also undermines the claim of functional obsolescence for the subject. Similar to the subject, Windemere Park facility has a 2-story atrium entry way. In fact, Petitioner's appraiser's position on obsolescence was contradicted by Petitioner's chief operating officer (and construction manager) who stated:

My intent behind the grand entry and the atrium was, one, it's in the Grosse Pointes. We wanted to keep people from going to Florida. We wanted to keep them here in Michigan so we can get long-term leased from them. So, we put an indoor pool in and this beautiful atrium in. That was my intent.¹²³

Petitioner's COO further asserted that the subject offers better common area amenities.¹²⁴ The subject has continuously run as a senior care facility since 2015. The development and construction of the subject CCRC (and neighboring condominiums) does not suggest functional obsolescence when compared to Windemere Park and the Fountains on Franklin facilities which have similar 2-story atrium/entry ways. Again, Petitioner's conclusion of highest and best use as a continued senior care facility does not square with the asserted obsolescence to the subject property.¹²⁵

Petitioner's professionals (CEO, COO, CFO, architect, etc.) are knowledgeable and savvy in construction of senior care facilities due to efficiencies, economies of scale, level of expertise, and construction expertise.¹²⁶

For these reasons, Petitioner's contrived surplus area, lack of market support, and assumed inputs for a functional obsolescence are given no weight or credibility in the independent determination of market value for the subject property.

Lastly, in similar fashion, Petitioner's inputs and calculations for external obsolescence are not meaningful. The sole focus on an assembled workforce and skilled nursing licenses without the admitted analysis of other business intangibles did not bolster Petitioner's alleged external obsolescence from the income or cost approaches. Changes in Petitioner's recalculations for external and functional obsolescence were more than typographical errors. The complexity of going concern intangible assets was

¹²² Vol 3, 154.

¹²³ Vol 1, 63.

¹²⁴ Vol 1, 69.

¹²⁵ Petitioner's appraiser concluded that the subject's highest and best use is as its continued use as a senior care facility. This infers that the alleged functional and external obsolescence is not as significant as described by Allen in testimony.

¹²⁶ Vol 6, 144-145.

compounded and illustrated through Petitioner's appraiser's various iterations.¹²⁷ Simply, market conditions following the pandemic are not viewed strictly as external obsolescence.

With the consideration and reconciliation of the appraisers' cost components, the Tribunal's independent determination via the cost approach is illustrated below.

Building Reconstructed Cost New	\$26,000,000
Site Improvements	\$ 650,000
Soft Costs	\$ 1,700,000
Entrepreneurial Profit	\$0
Total RCN	\$28,350,000
Less Depreciation: Building (10%)	<\$ 2,835,000>
Site Improvements (35%)	<\$ 227,500>
Depreciated RCN:	\$25,287,500
Plus Land Value:	\$ 4,266,000
Indicated Value via Cost Approach	\$29,553,500
(Rounded)	\$29,550,000

LAND USE RESTRICTION AGREEMENT (LURA)

Both appraisers acknowledged the LURA. Said differently, both appraisers considered the LURA. Respondent's appraiser is not to be mischaracterized because he deemed that such deed restrictions were not relevant to the development of a cost approach to value.

Respondent considered the LURA but gave it no weight in the final conclusion of value. Respondent's appraiser's consideration for the LURA was contained in his workfile in the form of an excel spreadsheet. Moreover, the appraiser's testimony was consistent with his general understanding and treatment of the document. The appraiser asserted that the LURA amounts to a form of financing tied to the bond exemptions.¹²⁸ The appraiser's review of the LURA is consistent with valuation practice.¹²⁹ The LURA arguably is applicable and impactful to an income approach to a going concern value. Nonetheless, the LURA was bogged down by the countless income/expense entries for a going concern value. However, a cost approach specifically accounts for the physical property.

Neither party quantified the relationship between the tax-free bonds and the LURA. While Petitioner argues that the subject's bond financing has nothing to do with the LURA, the fact remains that Petitioner benefits from tax free bonds while losing rent for a specified number of independent living units under the LURA. There is no evidence on the record showing that the lost rental income is greater than tax free bonds to the subject property. If Petitioner had redeemed the bonds, the LURA would still continue

¹²⁷ Vol 3, 24-29. (Pet's exhibits P-1, P-1b, and P-1c).

¹²⁸ Vol 7, 83 and 89.

¹²⁹ The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (Washington DC, 2020-2021 Edition), p 16-17.

as of tax day. The Tribunal is not persuaded that the LURA impacts the going concern value or the real property value of the subject property (via the cost approach).

FINAL RECONCILIATION

The oblique route to determine a going concern value to then deduct business intangibles is not more persuasive than applying a direct approach to value which focuses just on the real property. Again, identifying the extensive variables for a CCRC is a monumental undertaking.

Petitioner's endeavor to capture a total going concern value for the subject property to then deduct certain business intangibles failed to demonstrate a clear and convincing analysis. Once again, Petitioner's alleged errata as well as business valuation report (predicated solely on an assembled workforce) only complicated Petitioner's income and cost conclusions of TCV for the subject's real property.¹³⁰

Both appraisers had to work through voluminous excel spreadsheet entries within their respective work files. Respondent's appraiser was unable to readily recall certain excel calculations. On the other hand, Petitioner's appraiser had to create new income components based on lost rent income.

Respondent's appraiser was unable to sort out and make sense of the going concern elements between Petitioner's controlling entity and the operating entities. The nature of the related entities for the financial entries in the going concern created a "significant level of uncertainty" on the part of Respondent's appraiser.¹³¹ Likewise, Respondent's appraiser was unable to make sense of Petitioner's P & L statements in order to reconcile entries between the various DRSN entities.¹³² Complexities through operating entities, an owning entity, and outside contracting entities increases the chances of errors, missteps, and miscalculations. Petitioner's income approach (and business valuation report) failed to support a real property value or the existence of functional and external obsolescence.

The parties did not place any real weight on the sales comparison approach to value due to all of the variables within senior care facilities and CCRC properties. Logically, the immense variables for a going concern value within an income approach are cumbersome. Said differently, parsing going concern elements from the sales and income approaches is equally problematic. Nonetheless, the parties' sales data proved the existence of senior care facilities in the subject market area. This market data disproves Petitioner's claim of functional and external obsolescence.

Therefore, the cost approach, as analyzed and reconciled above, is the most reliable and credible method for the valuation of the subject real property.

¹³⁰ Vol 7, 11.

¹³¹ Vol 7, 12-13.

¹³² Vol 7, 52-57.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner's revised income analysis did not amount to a simple erratum. Petitioner failed to prove that the subject suffered from functional and external obsolescence. The existence of similarly constructed senior care facilities (Windemere Park and The Fountains on Franklin) disprove Petitioner's claims. Respondent thoroughly and persuasively presented market data for its cost, income, and sales comparison approaches to value. The subject property's TCV, SEV, and TV for the tax year at issue are as stated in the Introduction section above.

MOTION IN LIMINE

On November 28, 2023, Respondent filed a Motion in Limine regarding Petitioner's LURA. In pertinent part, Respondent asserts that the timing of this motion, eight days before the scheduled hearing, was dilatory. The confluence of deadlines precipitated this motion. The parties were directed to file and exchange exhibits/exhibit lists on November 22, 2023 (14 days before the scheduled hearing). Respondent reviewed Petitioner's exhibits which included Petitioner's exhibit P-1 (Allen appraisal report) as well as P-1a (an amended Allen appraisal report). On November 28, 2023, Petitioner sent Respondent another revision of P-1a.

Respondent argues that the doctrines of res judicata and collateral estoppel are applicable to this case regarding the 2013 and 2019 LURA documents. More specifically, the LURA document was previously litigated through the 2017 appeal (MTT Docket No. 17-001117). There is no material change between the 2013 and 2019 LURA documents which would necessitate further litigation.

On December 5, 2023, Petitioner filed a response to the motion. Petitioner contends that Respondent's motion should be summarily denied due to the timing of the motion close to the scheduled hearing date. Petitioner further contends that neither collateral estoppel nor res judicata applies. The prior case (MTT Docket No. 17-001117) dealt with the TCV, as of December 31, 2016. The Tribunal did not hold that the LURA could never impact the value of the subject property. The issue in the current case involves the TCV of the subject property as of December 31, 2020.

At hearing, Respondent further raised the objection to Petitioner's offered LURA document. As noted, Petitioner's offered Exhibit P-2 was admitted into evidence. The Tribunal took this evidence into consideration and provided it the appropriate weight and credibility in the Final Opinion and Judgment. Therefore, Respondent's motion is denied.

JUDGMENT

IT IS ORDERED that Respondent's Motion in Limine is DENIED.

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

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund 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 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, 2013, through June 30, 2016, at the rate of 4.25%, (ii) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (iii) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (iv) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (v) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (vi) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (vii) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (viii) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (ix) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (x) after June 30 2020, through December 31, 2020, at the rate of 5.63%, (xi) after December 31, 2020, through June 30, 2022, at the rate of 4.25%, (xii) after June 30, 2022, through December 31, 2022, at the rate of 4.27%, (xiii) after December 31, 2022, through June 30, 2023, at the rate of 5.65%, (xiv) after June 30, 2023, through December 31, 2023, at the rate of 8.25%, (xv) after December 31, 2023, through June 30, 2024, at the rate of 9.30%, and (xvi) after June 30, 2024, through December 31, 2024, at the rate of 9.50%.

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 or disabled veterans 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.

Alternatively, you may file a claim of appeal with the Michigan Court of Appeals. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal of 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 the Tribunal in order to certify the record on appeal.

Entered: July 5, 2024

By  _____

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.