SN Management LLC,
Petitioner,

v

City of Trenton,
Respondent.

MICHIGAN TAX TRIBUNAL

MTT Docket No. 22-001698

Presiding Judge
Victoria L. Enyart

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, SN Management LLC, appeals ad valorem property tax assessments levied by Respondent, City of Trenton, against parcel number 82-54-028-99-0001-000 for the 2022 and 2023 tax years. A hearing was held in this matter on December 11 and 14, 2023. Jackie J. Cook, Attorney, appeared on behalf of Petitioner. Alan Ackerman and Matthew S. Ackerman, Attorneys, appeared on behalf of Respondent. Petitioner's witness was Daniel Schneider, MAI. Respondent's witness was Brian Kirksey, MAI.[1]

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: 82-54-028-99-0001-000

Year	TCV	SEV	TV
2022	$4,604,000	$2,302,000	$2,196,817
2023	$4,997,000	$2,498,000	$2,306,657

PETITIONER'S CONTENTIONS

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

Parcel Number: 82-54-028-99-0001-000

Year	TCV	SEV	TV
2022	$3,010,000	$1,505,000	$1,505,000
2023	$3,300,000	$1,650,000	$1,650,000

Petitioner contends that the subject property is a skilled nursing facility operated by Sana Health Inc., a facility closely related to the owner. The appraiser's experience has been concentrated on valuing health care properties.

[1] Ms. Joan Barnett, the assessor, was in the audience, but did not testify.

The subject property had 198 beds available in 2018. The owner transferred, via license, 78 beds to a facility in Riverview, leaving the subject property with 120 beds. Two of the four wings in 2019 were shut down. The facility is licensed for 120 beds but is only operating with 60 beds.[2]

PETITIONER'S ADMITTED EXHIBITS

P-1 Appraisal
P-14 Rebuttal Notes
P-15 Pages of Petitioner's Appraisal
P-17 IRS Revenue Ruling 59-60
P-25 Westland Villa Center Assessment Record
P-30 Father Murray Assessment Record

PETITIONER'S WITNESS

Daniel Schneider has been an MAI appraiser since 2012. He is licensed as a general appraiser in 13 states. CBRE purchased Valuation and Information Group seven months ago.

Mr. Schneider explained the difference between skilled nursing versus assisted living and memory care facilities. Skilled nursing facilities are funded through Medicare and Medicaid. Assisted living and memory care facilities are private pay. The subject is skilled care requiring medical care with higher expenses.

The subject is "a licensed 120 bed, 51,317 square foot nursing facility built in 1967.[3] . . . It is primarily a one story building. It does have a second story that is closed at the moment."[4] The facility is licensed for 120 patients for both tax years.[5] The average daily census per Medicare is 33.1 in 2021.[6] The subject operates below market levels, and its expenses exceed its income.[7]

Mr. Schneider had 30 pages of a section for Long Term Care Industry Analysis.[8] He wanted the reader to have the history and how it has changed over the years, especially the tax years at issue with the effect of COVID. The subject property has a five-star rating by the Centers for Medicare and Medicaid Services.[9]

The Medicaid reimbursement is dependent on occupancy, above 85% is a full reimbursement.

---

[2] Transcript 1 (Tr1) at 9.
[3] The Tribunal notes Petitioner's appraisal at p. 60 utilizes 60 beds, with a total of 30,031 sq. ft., not the actual 51,317 sq. ft.
[4] Tr1 at 29.
[5] Tr1 at 17.
[6] Tr1 at 31.
[7] Tr1 at 34.
[8] Tr1 at 43.
[9] Tr1 at 12.

> A: So what the non available beds allowed the facility to do is reduce that so their occupancy, you know, in this case could be reduced to 60 beds. So if they're – you know, 85% of that, if they meet that threshold they won't be penalized in terms of reimbursement for Medicaid.
>
> ….
>
> Q. So by taking off – and let's talk about July 2020 they were down to 57 beds, right? They told the state we're taking 63 beds offline, is that accurate?
>
> A. Yeah. Yeah, in 2022, yup. [10]

The beds can be closed for two years, after which they have to put all the beds back into service or decertify them.[11]

Beaumont Hospital is adjacent to the subject. They refer 70-90% of the patients. Henry Ford also refers patients.[12] Aerius Health Center is down the street from the subject, is newer, and approximately the same size was compared to the subject.

Mr. Schneider included the floor plans that show the 21,286 sq. ft. second floor, with patient rooms, and dining/activity room.[13] The basement consists of offices, laundry room, boiler room, and 5,000 sq. ft. therapy area. The main entrance on the first floor, has offices, dining activity area, kitchen, and a day room. The northwest area of the first floor is rectangular with a courtyard in the middle with patient rooms, dining/activity rooms, lounge room, activity room, and storage room.

The key components considered for value are payer mix, occupancy, age, quality, and condition. The data was as of May 23, 2023, the inspection date.[14] Mr. Schneider compared payor source with the six facilities in the area. The subject has the highest percentage of Medicaid at 88%.[15] The subject property has a five-star rating with two of the other comparables.

Petitioner's cost approach utilized three sales with minimal adjustments. It concluded a direct cost value of $225 per sq. ft., which, when multiplied into the 30,031 sq. ft., results in a value conclusion of $6,756,975. Marshall Valuation Service base cost was similar at $224 per sq. ft. After the $300,000 site improvements are added, it is adjusted to equal $6,750,000.

Deductions of $815,689 were made for indirect costs, including financing point ($111,450), taxes during construction ($14,239), and entrepreneurial costs

[10] Tr1 at 60-61.
[11] Tr1 at 62.
[12] Tr1 at 76-77.
[13] Tr1 at 81.
[14] Tr1 at 83.
[15] Tr1 at 85.

($690,000).[16] Depreciation accounted for $4,904,698 in adjustments, including $4,617,834 in depreciation to the physical structure and $286,794 for site improvements.[17] These subtractions result in a depreciated replacement cost of $2,661,061, and when added to the $680,000 land value, results in an estimated TCV of $3,340,000. The subject's unused 51,000 sq. ft. was not considered in the cost approach because of significant obsolescence.[18]

Turning to the sales approach, Mr. Schneider indicates that the subject has historically been considered a distressed asset or underperforming. It represents primarily real estate value.[19] Fifteen sale transactions, with one in Michigan, were utilized that were considered underperforming similar to the subject's performance. Due to the subject operating 60 out of 120 beds, the occupancy is 50% or less since 2019, starting during COVID. Sales with 55% occupancy were considered. This resulted in respective TCV estimates of $3,010,000 and $3,330,000 for the tax years at issue.[20]

Mr. Schneider did not employ the income capitalization method because the subject property does not generate sufficient cash flows. Historical data is presented to provide a test of reasonableness for the sales comparison approach value conclusion.

Petitioner transferred 78 beds out of 198 to Petitioner's new facility, Aerius.[21] The subject 120 licensed beds are all private pay.

On cross, Mr. Schneider indicated mismanagement may be a reason why occupancy is lower than anywhere else.[22] He was questioned about why the 51,317-sq. ft. building was used in various places but only utilized 30,031 sq. ft. for the cost approach.[23] Mr. Schneider explained that it is typical appraisal methodology to subtract unusable gross sq. ft. and that beds could not be put into the unused sq. ft. The subject was described as distressed, explaining that it is underperforming and generally has a break even or negative net operating income (NOI).[24] Mr. Schneider did not offer an opinion on what could be done to make it a positive cash flow. One of the elevators to the second floor does not work as well as the roof needs repair.[25] Mr. Schneider had a $340,000 estimate to repair the two items. In addition, he explained some reasons for underperformance could be occupancy, payer mix, and expenses.[26]

---

[16] P-1 at 108, 110.
[17] P-1 at 110.
[18] Tr1 at p 99.
[19] Tr1 at 105.
[20] Mr. Schneider was only in one of the 15 sales.
[21] Tr1 at 29.
[22] Tr1 at 152.
[23] Tr1 at 101.
[24] Tr1 at 105.
[25] Tr1 at 180-181.
[26] Tr1 at 116.

On July 1, 2022, an offline bed plan request was initiated by management. 63 beds were offline.[27] It went into effect January 1, 2023. All of the beds are certified for Medicare, with 42 beds for Medicaid.

RESPONDENT'S CONTENTIONS

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

Parcel Number: 82-54-028-99-0001-000

Year	TCV	SEV	TV
2022	$5,378,800	$2,689,400	$2,196,817
2023	$4,734,800	$2,367,400	$2,306,657

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

Parcel Number: 82-54-028-99-0001-000

Year	TCV	SEV	TV
2022	$4,604,000	$2,302,000	$2,196,817
2023	$4,997,000	$2,485,000	$2,306,657

Respondent contends that the subject property is currently mismanaged. The occupancy rating is in the 30s, with the market in the 70s.[28] The subject property has over 50,00 sq. ft. The entire second floor is still there but closed. Petitioner's appraiser only valued 31,000 sq. ft. It is questionable how the subject has a five-star rating. The facts will indicate that Petitioner moved the good-paying tenants to a new facility, leaving the lowest-paying tenants. The subject property for the tax years at issue was licensed for 120 beds.

RESPONDENT'S ADMITTED EXHIBITS

R-1 Appraisal

RESPONDENT'S WITNESS

Brian Kirksey is a MAI commercial appraiser and broker. He has been appraising since 1997 and has been a real estate broker since 2005. He has done thousands of appraisals, testified in the entire tribunal six or seven times, and testified to small claims around 15 to 20 times. He holds the MAI designation with the Appraisal Institute and the SRA designation. He is a CCIM member, has an ASA designation, and is a fellow in the Royal Institute of Chartered Surveyors.

Mr. Kirksey worked for Plante Moran as the chief appraiser for eight years. He also reviewed funds that they manage. He has reviewed or authored appraisals for 700 to 800 senior care properties, of which he estimated that 30% were in Michigan.

[27] Tr1 at 35.
[28] Tr1 at 16.

He described the basic building as follows: "The property [is] on five acres of land. It's zoned RM-1, which is a multifamily zoning. It's got gross building area of 52,085 square feet. It's 120 beds. Its rentable area is 21,328 and it was built in 1965."[29] The occupancy ranges from 35-38%.[30] It is currently licensed for 120 beds.[31] There are 393 skilled nursing facilities in the submarket with 19,305 beds, or 93.37% occupied.[32]

There was a very detailed walk-through of the subject property. The location is adjacent to Beaumont, now Corewell Hospital.[33] It is an older building, with lower ceilings, a parking lot in disrepair, and dated décor.[34] The exterior has outbuildings. Hallways are wide and have several nurses' stations. The second floor is not used at all, as well as portions of the first floor. He took an elevator to the second floor and down to the basement. The basement contains a large laundry facility, storage lockers for equipment and food, and offices.[35]

Mr. Kirksey did not perform a cost approach. The subject is older, and he believes most market participants would not use the cost approach.[36] He instead prepared income and sales approaches.

Regarding his sales comparison approach, Mr. Kirksey states that the consideration for sales includes the sale of personal property and intangibles. Michigan is a Certificate of Need state, meaning there are different laws and regulations than other states. It does not equate to comparable within other states.[37]

Mr. Kirksey considered three Michigan sales for the 2022 tax year and discussed those sales on direct examination.

Res Sales	Subject	Sale 1	Sale 2	Sale 3
Address	Trenton	Westland	Hamtramck	Center Line
Sale Price		$11,620,000	$5,100,000	$25,745,554
Sale Date		6/19	6/19	7/18
Units	120	230	169	231
SP / Unit		$50,522	$30,178	$111,453
Adj SP/Unit		$70,575	$41,261	$192,559

Mr. Kirksey's sales comparison approach resulted in a value conclusion of $4,951,000 for 2022.[38]

---

[29] Tr2 at 43-44.
[30] Tr2 at 44.
[31] *Id.*
[32] Tr2 at 45.
[33] Tr2 at 45.
[34] Tr2 at 45.
[35] Tr2 at 46.
[36] Tr2 at 47.
[37] Tr2 at 48.
[38] Appraisal at 67.

He also presented five 2023 comparable sales in Michigan and discussed those sales during his direct examination. They included the three sales used in the 2022 analysis and two additional sales.

Res Sales	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5
Address	Trenton	Warren	Monroe	Westland	Hamtramck	Center Line
Sale Price		$5,967,000	$4,763,513	$11,620,000	$5,100,000	$25,745,554
Sale Date		6/22	5/22	6/19	6/19	7/18
Units	120	134	150	230	169	231
SP / Unit		$44,530	$31,757	$50,522	$30,178	$111,453
Adj SP/Unit		$48,983	$39,696	$72,764	$41,261	$196,881

Mr. Kirksey's sales comparison approach resulted in a value conclusion of $5,328,000 for 2023.[39]

Regarding his income approach, Mr. Kirksey stated with respect to both years' conclusions:

> The subject property an older skilled nursing facility, as well as each comparable sale utilized. The subject property is in need of updating, and minor repair, and currently has only 30 to 40% occupancy compared with the 60 to 70% range. The underutilization of beds, and the need for updating results in an opinion of value on the low end of the range of values.[40]

The income approach was explained in that the subject's trend is a constant number of Medicaid patients. Since 2019, private pay and Medicare has decreased.[41] When asked why the subject has an occupancy of 30-40% when compared to the typical market of 65-85%, Mr. Kirksey identified three reasons: physical, functional, and external depreciation. While these factors are usually discussed in the cost approach, they are applicable to all value approaches.[42]

Mr. Kirksey explained that demand for senior housing is increasing every year as the population ages. There are less skilled nursing facilities, indicating less supply and higher demand.[43] There's not a lot of reasons why the subject shouldn't be at full occupancy. It sits at the base of a hospital and on a major highway. It does not have a surplus of competition. So, he concluded that there's no external reason why the subject shouldn't be doing better.

Mr. Kirksey extensively analyzed the subject's occupancy issue. Functionally, it is a two-story building, but there is no functional reason why they should have a low census.

---

[39] Appraisal at 67.
[40] Tr2 at 64.
[41] Tr2 at 61.
[42] Tr2 at 61-62.
[43] Tr2 at 62.

It is not a super adequacy with regards to the building, as the property is laid out well. One elevator was working. The second floor could be easily utilized. The subject property's physical depreciation is generally curable, with some deferred maintenance. The roof needs to be replaced, the parking lot needs to be resurfaced, and an elevator needs to be repaired. However, there is a second elevator that works. Mr. Kirksey continued to state that the only other appropriate answer for the occupancy deficiency would be management or reputation. There are two things that happen with this property. First, ownership built a new property and removed subject beds from licensing. Both facilities are located nearby and controlled by the same owner, benefitting the newer, more expensive facility at the subject's expense. The second issue was, in 2018, the owner was charged with embezzlement from his hospital partners at the adjacent Beaumont, which placed a reputational strain on the subject property from its biggest referral source.[44] In 2018, the new facility had 78 licensed beds transferred from the subject. The subject occupancy trend started in 2019 and continued for 2020, 2021 and 2022. Mr. Kirksey explained that the units themselves were not in bad condition for the most part and could easily house more patients. Due to this, the market occupancy of 65% was utilized.[45] He opined that occupancy is so low that it may indicate poor management and not market based factors.

Mr. Kirksey states that patient days is the appropriate unit of measurement for a skilled nursing facility.[46] Respondent's income approach utilized the following assumptions with 43,800 patient days:

		2021	2022
Private Pay	15.3%	$261.56	$260.62
Medicaid	83.1%	$208.50	$214.04
Medicare	1.5%	$602.70	$514.72

Mr. Kirksey explained that the major difference in calculating with a different occupancy rate is going to be revenue. The owners supplied Respondent with their revenue for a 35 to 38%-occupied building. He valued the property based on a 65% occupancy; therefore, the numbers were doubled.

Mr. Kirksey doubled the owners' proforma income to match the typical market occupancy of 65 to 85%. Miscellaneous income Includes uniform reimbursement and vending sales. These are considered a Quality Measure Initiative which is paid semi-annually, some income for therapy services is included. PwC indicates an 8.29% capitalization rate. The next step is the overall capitalization rate loaded for 50% of the millage rate. The total loaded capitalization rate for 2022 is 11.3% and for 2023 is 12.8%. The income was capitalized for both years and resulted in respective value conclusions of $3,646,388 and $3,419,444.

[44] Tr2 at 65-66.
[45] Tr2 at 68.
[46] Tr2 at 68-69.

The last portion of the report discussed the reconciliation as utilized in the approaches to value. The cost approach was not developed because the subject property is an older building with depreciation. The income capitalization approach compares rentals of similar properties to the subject property. The derived market rental rates are capitalized at market financing, and investor equity return. The subject property is an income-producing property; however, a substantial amount of the subject property's licensed beds have not been used in four to five years. The income statements reflect an unrealistic expense load for the subject property. The expenses were estimated based on competing developments. The income capitalization approach was developed, but not relied upon and was used as a test of reasonableness. The subject property is a skilled nursing facility. There have been few sales like the subject property and are unique just like the subject. As a result, the sales comparison approach is the best indicator of value for the subject property. Mr. Kirksey testified that after the removal of furniture, fixture, and equipment, the final TCV as of December 31, 2021, is $4,604,000. As of December 31, 2022, the TCV of the fee simple interest is $4,997,000.

Mr. Kirksey read Mr. Schneiders appraisal but did not do a USPAP standard three or four review. "Reviewing is determining the quality of another's work, and reading is just taking a look at it."[47]

Mr. Kirksey was questioned on the Supply Analysis charts in P-1, page 91, stating that they are regarding local competitors' occupancy rates.[48] In 2018, occupancy was 86% for the total weighted average, 2019 was 82.2%, 2020 was 70.8%, 2021 was 71.6%, and 2022 was 77%. COVID began March of 2020 and is considered ongoing.[49]

However, the downward trend for the subject property was more pronounced. In 2018, it was 70%, 2019 was 87.8%, 2020 was 55.2%, 2021 was 55.2%, and 2022 was 63.9%.[50] "Based upon the top table the subject property's licensed bed occupancy is 35% and its operating beds is near 70%. It doesn't appear to reconcile with the bottom table."[51] It shows the occupancy in 2019 was at its highest. The 2020 occupancy dropped to 55% and then remained around 55%.[52] The subject property did not recover from COVID. Mr. Kirksey stated this was a red flag that could be attributable to management or a reflection of the new property that management owned.[53]

When questioned on Mr. Schneider's cost approach, Mr. Kirksey discussed Marshall Valuation Services and states some costs not included would be off site costs, perk and sewer taps, water taps, land planning, architectural, environmental, and a variety of other small costs with a significant total sum.[54] Mr. Kirksey states that Mr. Schneider

[47] Tr2 at 71.
[48] Tr2 at 73.
[49] Tr2 at 73.
[50] Tr2 at 73.
[51] Tr2 at 74.
[52] Tr2 at 75.
[53] Tr2 at 75-76.
[54] Tr2 at 78-79.

should have added the basement cost, plus the total 52,045 sq. ft. versus the 30,031 sq. ft. used by Petitioner.

When Mr. Kirksey reviewed the sales comparison approach by Mr. Schneider, he was concerned. The report contained no explanation of which comparable was utilized and no adjustment table, leaving the question of which properties were given weight.[55] The sales were "distressed" without details explaining what they were.[56]

Mr. Kirksey indicates that Mr. Schneider's effective gross multiplier is generally used as a test of reasonableness. It is very rarely used as a means of determining value. It does not address the distress of the comparable sales that the effective gross income multiplier was extracted from, so it is difficult to figure out how it was reconciled to value. He contends the entire value of this property is based upon this approach with three pages of data and no explanation.

Upon cross examination, Mr. Kirksey was questioned on details of each sale, who he talked to, and what records he looked at to make his determinations. He used vacant land sales increases to determine percentage adjustments for the difference for the two years.

The review of Mr. Schneider's report was questioned in detail. Mr. Kirksey denied multiple times that he was not acting as an advocate. He was asked to read the appraisal and what he thought about it. He read the report, not opining on value, but opined on what he would do differently. He did not do a written report.

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 5500 Fort Street, Trenton, Wayne County, Michigan.
2. The subject property's parcel identification number is 82-54-028-99-0001-000.
3. The subject building is known as Aberdeen Rehabilitation and Skilled Nursing.
4. The subject building contains two stories over a basement.
5. The subject building contains a total of 52,085 sq. ft.
6. The subject building currently utilizes 21,382 rentable sq. ft.
7. The subject has a land area of five acres.
8. The subject property was built in 1965.
9. The subject property is zoned RM-1.
10. The subject property is an income-producing property.

[55] Tr2 at 87-88.
[56] Tr2 at 88.

11. The subject property is adjacent to the former Beaumont (now Corewell) Hospital.
12. Both parties furnished valuation disclosures in the form of appraisal reports.
13. Petitioner's appraisal was prepared by Daniel J. Schneider, MAI.
14. Respondent's appraisal was prepared by Brian Kirksey, MAI.
15. Both parties appraised the subject property as a fee simple interest.
16. Petitioner developed cost, sales, and income approaches and conveys an opinion based on the sales comparison approach.
17. Respondent developed sales and income approaches and conveys an opinion based on the sales comparison approach.

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.[57]

> 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.[58]

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.[59]

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."[60]

"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."[61] The Tribunal is not bound to accept either of the parties' theories of valuation.[62] "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."[63] In that regard, the Tribunal "may accept one theory and reject the other, it may

---

[57] See MCL 211.27a.
[58] Const 1963, art 9, sec 3.
[59] MCL 211.27(1).
[60] *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).
[61] *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).
[62] *Teledyne Continental Motors v Muskegon Twp,* 145 Mich App 749, 754; 378 NW2d 590 (1985).
[63] *Meadowlanes Ltd Dividend Housing Ass'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991).

reject both theories, or it may utilize a combination of both in arriving at its determination."[64]

A proceeding before the Tax Tribunal is original, independent, and de novo.[65] The Tribunal's factual findings must be supported "by competent, material, and substantial evidence."[66] "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[67]

"The petitioner has the burden of proof in establishing the true cash value of the property."[68] "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."[69] 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."[70]

To properly determine the true cash value of the subject property for the tax years at issue, the Tribunal finds that it must first determine the appropriate "highest and best use" of the subject property and then to determine the value of the subject real property. Regarding highest and best use, an appraisal shall consider the property's optimal use to ensure that only truly comparable properties were used in comparison.[71] The subject site is improved, and both appraisals correctly addressed the issue of determining the subject highest and best use as currently improved. Both appraisals found that the subject, as improved, remains financially feasible for highest and best use purposes. Petitioner's appraisal identifies the highest and best use as a skilled nursing facility.[72] Respondent's appraisal likewise found that the highest and best use as is presently developed. The Tribunal finds the parties' highest and best use analysis to be correctly rendered and supported by the respective appraisals.

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.[73] "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading."[74] The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the

---

[64] *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).
[65] MCL 205.735a(2).
[66] *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).
[67] *Jones & Laughlin Steel Corp, supra* at 352-353.
[68] MCL 205.737(3).
[69] *Jones & Laughlin Steel Corp, supra* at 354-355.
[70] MCL 205.737(3).
[71] See The Appraisal of Real Estate, supra at 35, 328.
[72] P-1 at 90.
[73] *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).
[74] *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

appropriate method of arriving at the TCV of the property, utilizing an approach that provides the most accurate valuation under the circumstances.[75] Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.[76]

Cost Approach

The cost approach "is particularly useful in valuing new or nearly new improvements and properties that are not frequently exchanged in the market."[77] Further, it is more useful when "a lack of market activity limits the usefulness of the sales comparison approach" and it is "especially persuasive when land value is well supported and the improvements are new or suffer only minor depreciation . . . ."[78]

Petitioner's expert Mr. Schneider included a cost approach, which described depreciation/obsolescence. The two areas that are closed off total 21,286 sq. ft. and are not utilized. The condition of the improvements is inferior. He did a supply analysis utilizing six properties, each less than six miles from the subject. This resulted in a conclusion that that the market has 124 surplus beds. Land value utilized the sale across the street. The land was $3.00 per sq. ft., or $680,000 total.

A list of 20 skilled nursing facilities, including two in Michigan, was developed from 2014 to 2020 sales, and utilized as a cost basis. Marshall Valuation Services was utilized to adjust for time and location. The actual 51,000 sq. ft. was not utilized. The subject has significant obsolescence due to the overall census and closure of stations two and four. This leaves 30,031 sq. ft. costed for the subject property. The resulting value conclusion is $225 per sq. ft. Marshall Valuation Services was also used to cost out the building separately. The result was $224 per sq. ft. It was explained that Mr. Schneider has a national database for an average and adjusts it to the local area.

The cost approach resulted in value conclusions of $3,340,000 both as of December 31, 2021, and as of December 31, 2022.

Respondent expert Mr. Kirksey stated that he did not develop a cost approach due to the subject being an older building with depreciation.

Sales Comparison Approach

"The sales comparison approach is most useful when a number of similar properties have recently been sold or are currently for sale in the subject property's market."[79]

---

[75] *Antisdale, supra* at 277.
[76] See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).
[77] *Appraisal Institute*: The Appraisal of Real Estate (Chicago, Appraisal Institute, 15th ed, 2020), p. 36.
[78] The Appraisal of Real Estate at 530.
[79] The Appraisal of Real Estate at 36.

Mr. Schneider explained that the subject property is financially distressed due to underperforming. The negative NOI for several years indicates there is an issue. However, there is a market for this type of property, and he indicated some buyers look for these types of discounted properties.

Fifteen sales summarized the transactions for the distressed sales. Mr. Schneider narrowed the range by utilizing sales with less than 55% occupancy. This resulted in value per licensed bed at $35,000 for both years multiplied by 120 beds for $4,200,000 value.

Respondent utilized three Michigan sales for 2022 and added two additional sales for 2023. One of the sales is located in Monroe. It was also the oldest property. The sales were adjusted for market differences, access, land to building ratio, location, and size. They ranged from 10% to 76% adjustments. The value was determined to be $4,951,000 for 2022 and $5,238,000 for 2023.

Income Approach

"In the income capitalization approach, the present value of the anticipated future benefits of property ownership is measured. . . . In direct capitalization, the relationship between one year's income and value is reflected in either a capitalization rate or an income multiplier."[80]

Mr. Schneider explained that the Direct Capitalization Method was not used because the subject does not generate sufficient cash flow. Instead, historical data was presented, "to provide a test of reasonableness for the value conclusions determined via the sales comparison approach."[81] He adjusted the subject's historical data and considered comparable facilities using undisclosed data. The first table was from management, and the second table is adjusted based on history. Expenses for property tax, management fees, and capital reserves are adjusted. The calculations are:

	2022	2023[82]
Fee Simple Value	$3,270,000	$3,010,000
Cap Rate	12.5%	12.5%
Implied NOI	$408,750	$376,250
Prior-year revenue	$3,600,018	$3,045,199
Operating margin	11.4%	13.4%

Mr. Kirksey indicates that due to low census the property fluctuates from 30 to 40% occupancy, whereas the market indicates 65 to 85% occupancy is typical in the area. Low census was the only reason given. He opined poor management and contended that the property could easily handle more patients. He used an occupancy rate for the income approach calculation of 60%. The overall capitalization rate of 8.29% plus 50%

[80] *Id*.
[81] P-1 at 126.
[82] P-1 at 120.

of the millage rate equals 11.33% cap rate for 2022 and 12.08% for 2023. NOI for 2022 was $412,979, resulting in $3,646,000 TCV. NOI for 2023 was $413,168, resulting in $3,419,444 TCV.

Mr. Kirksey's revenue for the income approach was based on 60% occupancy, the lowest percentage of the comparable facilities' occupancy. The subject's current revenue is based on 35 to 38% occupancy.

Reconciliation of Value

Overall, with respect to Petitioner's evidence, the Tribunal finds that Mr. Kirksey's valuation is a more reliable indicator of value for the years at issue. Mr. Schneider's demand analysis utilized local properties, and room rates determined to be reasonable. Mr. Schneider's report also relied on local land value. However, the remainder of the appraisal was based on national standards. Minimal Michigan-based information was demonstrated indicating Michigan property value for the subject property in a valuation approach suggesting a lack of uniformity with other Michigan assessments. Mr. Kirksey's report has an advantage in that regard, as he is a longtime Michigan appraiser and is determined to be more familiar with the area's properties.

Regarding the cost approach, Mr. Kirksey did not find the cost approach meaningful for the 57 to 58-year-old property. Mr. Schneider's approach was not sufficiently reliant on local information, as indicated above. The Tribunal agrees that the age of the subject does not result in a meaningful cost approach.

Neither party provided sufficient information for the Tribunal to rely on the income approach. Mr. Schneider prepared an income approach, but he gave no weight to it. The Tribunal agrees that the subject's income approach was lacking in sufficient timely information. Although Mr. Schneider did consider values, he gave no weight to those values in the reconciliation.

Mr. Kirksey also prepared an income approach. However, due to the substantial number of beds not utilized for four years, Petitioner's financial statements indicate a loss in revenue. Much of the expenses were estimated based on other developments. Mr. Kirksey did not rely on the income approach but utilized it as a test of reasonableness. Petitioner credibly questioned whether Respondent's potential gross income was based on a reasonable assumption regarding licensing issues. Overall, both parties' approaches lack appropriate subject and market data to be a reasonable application of income principles, and the Tribunal agrees with the valuation experts that the respective income approaches are not a suitable basis from which to determine value.

Both parties utilized the sales comparison approach. No weight is given to Petitioner's sales. This approach does not sufficiently comply with the requirements of a valid sales comparison approach, in that it fails to adjust Petitioner's comparable sales using market-based adjustments to account for differences between those sales and the

subject property.[83] Petitioner's utilization of out-of-state information is unacceptable when there are sales within the area. Petitioner fails to credibly account for any necessary market-based adjustments needed for utilizing sales other states. Petitioner appears to develop its value conclusion based on a median or unexplained weighted average of more than 10 properties without properly identifying and selecting the most comparable sales.[84] There is no proper and supported accounting for Michigan being a Certificate of Need state. No weight or credibility is given to Petitioner's out of state comparable information utilized throughout the report.

Respondent utilized five in-market sales located in competitive areas to the subject area. Respondent's approach properly utilizes the sales-comparison principles set forth in *The Appraisal of Real Estate.* The utilized sales are appropriate for the tax years at issue and are located in the same state and metro region as the subject. The potential inclusion of personal property and intangible value has been considered and is found to be a slight-enough factor to lead to the conclusion that Respondent's sales approach is likely the best indication of value regardless of this discrepancy.[85] Respondent's expert offered thorough and convincing testimony with respect to land-to-building ratio. The unrebutted drop in occupancy rate is actual evidence of a decrease in occupancy, and Petitioner failed to rebut the assertion that the drop was in whole, or part caused by the existence of a new, competing facility also owned by Petitioner's owners. The Tribunal's duty is to determine the best indication of value based on the evidence before it. The Tribunal assigns appropriate weight to each of the sales in its determination of value. There are indications that Respondent's comparable sale #3 might be a high-end outlier, even acknowledged by Respondent's expert.[86] Less weight is given to Respondent's comparable sale #3 due to very high sales price per licensed bed, Petitioner's credible rebuttal, and its distance from the subject. Excluding comparable sale #3, Petitioner's cross-examination primarily focused on the semantic choices the expert made and gaps in the expert's memory rather than rebuttal. The lack of the work file, which was available in post-valuation disclosure discovery, is not prima facie evidence of any impropriety, as the expert was able to properly document from where all the report's information was derived, and the sources of the expert's materials are found to be appropriate and reflective of Michigan market participants. Appropriate adjustments were applied that resulted in the subject's market value.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Respondents Sales Comparison results are considered as the best reflection of the subject property's value. The subject property's TCV, SEV, and TV for the tax year at issue are as stated in the Introduction section above.

---

[83] *The Appraisal of Real Estate* at 355.
[84] *Id.*
[85] *Jones & Laughlin Steel Corp, supra*.
[86] Tr2 at 158.

JUDGMENT

IT IS ORDERED that the property's SEV and TV for the tax years 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." A copy of the claim of appeal must be filed with the Tribunal to certify the record on appeal. There is no certification fee.

By Victoria K. Enjart

Entered: June 28, 2024
vle/bw

PROOF OF SERVICE

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

By: Tribunal Clerk