

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

Diane Company,
Petitioner,

v

MTT Docket No. 454703

Mt. Morris Township,
Respondent.

Tribunal Judge Presiding
David B. Marmon

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Diane Company,¹ appeals ad valorem property tax assessments levied by Respondent, Mt. Morris Township, against Parcel No. 14-13-400-001 for the 2013 and 2014 tax years. Michael J. Gildner, Attorney, represented Petitioner, and Peter E. Goodstein, Attorney, represented Respondent.

A hearing on this matter was held on June 19, 2015. Petitioner's sole witness was David Rexroth, MAI. Respondent's sole witness was Linda Sperling, its assessor.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values ("TCV"), state equalized values ("SEV"), and taxable values ("TV") of the subject property for the 2013 and 2014 tax years are as follows:

Parcel No.	Year	TCV	SEV	TV
14-13-400-001	2013	\$415,000	\$207,500	\$207,500
14-13-400-001	2014	\$411,600	\$205,800	\$205,800

SUMMARY OF PARTIES' CONTENTIONS

Year	Petitioner's contention TCV	Petitioner's contention SEV	Petitioner's contention TV
2013	\$415,000	\$207,500	\$207,500
2014	\$375,000	\$187,500	\$187,500

¹ Respondent raised an issue during hearing as to whether Petitioner exists, introducing a Certificate of Dissolution for Petitioner dated December 15, 2014, (R-6), along with new Articles of Organization dated April 2, 2014, but not filed until April 16, 2015, (R-7). The Tribunal holds that Petitioner existed on tax days for both years before it, (December 31, 2012 and December 31, 2013).

Year	TCV on roll	SEV on roll	TV on roll
2013	\$888,800	\$444,400	\$417,944
2014	\$888,800	\$444,400	\$424,631

Year	Respondent's contention of TCV*	Respondent's Contention of SEV*	Respondent's contention of TV*
2013	\$638,800	\$319,400	\$319,400
2014	\$638,800	\$319,400	\$319,400

*Respondent changed its contentions at hearing.

PETITIONER'S CONTENTIONS

Petitioner contends that the subject property, a mobile home park is in a distressed neighborhood, with many boarded up businesses in a distressed school district, (Beecher), and the park itself is old, obsolete with a high vacancy rate, in a declining market for mobile home parks.

PETITIONER'S ADMITTED EXHIBITS

P-1 Retrospective Appraisal of Diane's Mobile Home Park, by David K. Rexroth, MAI, SRA.

PETITIONER'S WITNESS

Petitioner presented appraiser David Rexroth as its only witness. Rexroth testified that he is a licensed appraiser, and has practiced for 30 years, and earned his SRA designation in 1979, and his MAI designation in 1982. He described the subject as having 168 pads, and 8 buildings, all in various stages of disrepair. He described the pad sites as having three styles, 41 of which are 12 foot width, 20 doublewide pads and 107 that are 16 feet in width. He calculated the subject's vacancy rate at 71.4%. Other than the pads, Rexroth testified to a former single family residence converted into an office (Building 2) which is the only non-storage building used and not in disrepair. The rest of the non-storage buildings are vacant, which include a shuttered laundry/bathhouse, (Building #5).² Per his appraisal, there is a 1,975 square foot building at the front of the park (Building 1) that appears to have been utilized at one time in a retail capacity, but has been unused for a significantly long period of time and is below average. Building #3 is

² T. p. 8-9.

a 4,096 square foot warehouse/storage facility in poor condition. Building # 4 is a 5,419 square foot former residence and possible sales office currently utilized for storage, in below average to poor condition. Building # 6 is a 2,560 square foot pole frame structure with metal skin, without insulation, in average to below average condition used to store maintenance equipment. Building #7 is a 558 square foot concrete building in extremely poor condition, unused at present. Building # 8 is a 231 square foot building originally used as a garage in extremely poor condition.³ The subject has, per Township records, 69.84 acres, and an unspecified portion which is vacant, and called surplus land.

The mobile homes present at the park are older. Rexroth testified as follows concerning pad size and the park's ability to attract tenants:

Q. Now, as you were going through and describing the number of pads and their various dimensions just moments ago how does that factor into your valuation, if at all, the pads, the size of the pads, et cetera?

A. Well, obviously mobile homes have changed over the years. And the pads that were built back in the '40s and '60s are smaller size pads than is normally customary in today's marketplace. And so, obviously from that perspective they're not able to attract new mobile homes into the park. And the condition of many of the pads, you know, cracks and deterioration were shown.

Q. Okay. So, with some of those older pads, as you described, and how the mobile homes, themselves, have evolved over time, again, how does that impact the valuation?

A. It certainly does. It's a marketing -- it's a difficult marketing ploy to find mobile homes that will fit those pads, in addition to find potential residents that are willing to move their mobile home to that location, set it on that pad with the difficulty of the water lines, the sewer lines are dated, as well as the pads, themselves. So, it does impact on the marketability of the park.⁴

Rexroth then testified as to his methodology in determining the subject's value. He concluded in his report that despite the park's poor performance, and (in his view) dim future, the subject's highest and best use as improved is to continue as a mobile home park because of its zoning and a lack of alternatives. On cross, he testified that he believed there is a limited

³ Exhibit P-1, p. 33-35.

⁴ T. 9-10

opportunity for improved occupancy due to its location in the Beecher school district, and because the surrounding neighborhood is in decline, and it will likely be “10, 15 20 years” before the neighborhood experiences a turn around.⁵ Additionally, because the pads and infrastructure are aged, he testified that without an infusion of money, expenses for the subject will continue to increase.⁶ He testified to shuttered businesses up and down North Saginaw Street, including a K-mart, and a gas station.⁷ Also on cross, he indicated that he was aware of several mobile home parks in Genesee County that were totally abandoned.⁸

In his appraisal, Rexroth considered all three approaches to value. He ruled out the Cost Approach because of the subject’s age of nearly 75 years, and the amount of obsolescence, and physical depreciation and deterioration of improvements.⁹ On direct examination, he testified that land sales that relate to the construction of a mobile home park are very rare. He concluded by stating, “the cost approach really is not a measure of value in this case.”¹⁰ Rexroth did develop a sales approach as well as an income approach.

For his sales approach, Rexroth used four sales. He used Genesee Forest Estates (“P1”), which sold August 2014; Cranberry Estates, (“P2”), which sold in December 2013, Kirkwood Community, (“P3”) which sold March 2011, and Dutch Village, (“P4”), which sold in April 2010. He also used one listing, Estate of Genesee Valley, (“L1”). Rexroth did not make quantitative adjustments. Rather, he made qualitative adjustments.¹¹ He testified as follows on cross:

[W]hen I start looking at adjustments that are, one, very difficult to quantify whether I should use 10 percent, 15 percent, that is very difficult to quantify. In addition to when you start looking at the possibility of 50 percent, 60 percent or higher adjustments on one category it tells me that it doesn't have a lot of merit in doing quantitative analysis. Qualitative, and particularly in this case where I'm showing sales that I feel are superior to the subject overall and sales that I feel are inferior to the subject overall, it gives me a comfort level that I have bracketed the

⁵ T. p. 39-41. His appraisal discusses significant declines in Flint and Mt. Morris’s significant and continuing decline in population, and the decline in enrollment in Beecher schools. Exhibit P-1, p. 19-22.

⁶ T. 40-41.

⁷ T. p. 39

⁸ T.40.

⁹ P-1, p. 53

¹⁰ T. p. 12.

¹¹ P-1, p. 57

subject, and there are comparables that are better and worse in an effort to bracket the subject as to what I feel, what my opinion is as to the market value.¹²

On redirect, Rexroth indicated that the mobile home park market is not precise, without sufficient paired sales to make a determination to quantify various areas of adjustment.¹³

Later on cross, Rexroth was asked if there was an explanation anywhere in his appraisal as to how he concluded to a value of \$2,500 per pad. Rexroth explained as follows:

Where I came up with that number? It goes back to my adjustment table on Page 57. And here again, we've got Sales 1, 2 and 3 that in my view overall were inferior. Sale Number 4 is superior. And then we have a listing L1, which is superior. So, again, we're trying to bracket, and we're not making this scientific, but in my view subject is better than Sales 1, 2 and 3, needs to be higher. It is inferior to Sale 4 and listing. And obviously, the listing is a listing rather than a sale. Those two are superior. The subject should come someplace in between those two numbers. I thought that in my view that was a realistic number for subject at 2500 a pad.¹⁴

For tax year 2014, Rexroth used the same comparables used to determine 2013's value. He then reduced the price per pad to \$2,250, based upon a decline of 10 percent over the prior year.¹⁵ He testified on cross that the subject had experienced a 20 percent decline in income. He also consulted with four residential appraisers in his office, and determined that 10 percent was an appropriate number.¹⁶

Rexroth also performed an income approach to value. Rexroth testified that mobile home parks would be comparable to apartments or shopping centers where investors are interested in cash flow and return on investment.¹⁷ Rexroth used a variation of the income approach known as Effective Gross Income Multiplier, ("EGIM"). As explained in his appraisal, EGIM analyzes the Gross Potential Income, less vacancy and rent loss, to arrive at an Effective Gross Income ("EGI"). The EGI is then multiplied by a factor derived from sales prices where the EGI is known.¹⁸ He testified that he received several years of income and expenses on the subject to

¹² T. p. 42-43

¹³ T. p. 70-71.

¹⁴ T. p. 53.

¹⁵ P-1, p. 60.

¹⁶ T. p. 53-54.

¹⁷ T. p. 20.

¹⁸ P-1, p. 61-69.

determine effective gross income.¹⁹ Per his appraisal, he derived a three year average EGI of \$162,173, (\$162,000 rounded). As to determining the multiplier, he took seven sales from around the state, as well as a local listing. One sale sold in 2010, 3 sold in 2012 and 3 sold in 2013. The EGIMs ranged from 1.83 to 4.61, with 3.22 being the midpoint, 3.20 being the average and the median being 3.08. He determined based upon the ages, locations and higher occupancy levels compared to the subject, and giving particular weight to the listing, he chose 2.5 as the multiplier. Multiplying \$162,000 by 2.5, he derived a value for 2013 via this approach of \$405,000.

In response to the bench's question as to why he used the EGIM variation rather than a direct income approach, he answered:

Again, it goes back to the inability to adequately address the expenses that are associated with subject and, quite frankly, the difficulty in gathering sufficient information as it relates to an appropriate capitalization rate. I started looking at the expenses and realized that the most appropriate method would be an EGIM because some of their expenses are very hard and fast expenses. Their water bill alone is running \$3,000 a month. There are things that cannot be done. There are things that they may be able to do. But I just did not feel comfortable saying that the expenses would be either -- and as I mentioned earlier, using their expenses, there's no money to capitalize anything. So, you know, you get down to the bottom line within that operating income and they're all negative numbers. So, from that standpoint it didn't seem relevant to me to look at it from a typical operating perspective.²⁰

Rexroth's comments regarding expenses followed questions on cross which pointed out inconsistencies found in Petitioner's expense statements, such as widely varying property tax and office supply expenses.²¹ For 2014, he used the same multiplier, but a lower EGI of \$145,800 to derive a value of \$364,500 by this approach. He dropped the EGI by 10%, even though the park's actual income dropped by 20%. On cross, he acknowledged that the drop of 20% could have been due to management issues.²²

Rexroth reached his final conclusions of value giving slightly more weight to the sales approach, and concluded to a true cash value of \$415,000 for 2013 and \$375,000 for 2014. He

¹⁹ T. p. 22.

²⁰ T. p. 76

²¹ T. p. 55

²² T. p. 35

explained that each approach had its strengths and weaknesses, so concluded to a value in between.²³

Rexroth also testified on rebuttal, pointing out that Respondent's capitalization rate was lower than the rate found in two of his comparables, and does not adequately account for the risky nature of the subject as an investment. He also pointed out that she understated the millage used for loading her cap rate, and noted that she failed to properly add it to her unloaded rate.²⁴ He testified that accepting Respondent's base cap rate of 12.45%, it should be at 15.7-15.8%, when half of the 65.8791 millage is added in. He also criticized Respondent's calculation of expenses at \$65,325, when the water bill alone is over \$36,000, leaving a mere \$30,000 to cover all of the subject's other expenses.²⁵ He also criticized the use of Maple Run in Clio Township which sold for \$14,000 per pad as not really a comparable property to the subject, and Respondent's use of that sale skews her average price per pad. He also criticized Respondent's use of White Oaks as a comparable because the park is much newer, with amenities.

RESPONDENT'S CONTENTIONS

Respondent revised its contentions at hearing to \$638,800 using a Direct Income Approach, and supported by a Sales Comparison Approach. Respondent contends that the subject is nicer than some of the comparables that Petitioner deemed superior; that the subject was affected by managerial problems resulting from the advanced age and death of its owner, and that because Mt. Morris participates in a school of choice program, the fact that the subject is in the Beecher School District is immaterial.

RESPONDENT'S ADMITTED EXHIBITS

R-1 Valuation Disclosure in Support of Property Record Card

R-2 Warranty Deed dated August 1, 2014 for Genesee Forest Estates showing sales price of \$400,000.

R-3 Sheriff's Deed on Mortgage Sale dated October 7, 2009 for Kirkwood Community Park

R-4 Covenant Deed for Tormenta Property Holdings (Kirkwood Estates) dated March 16, 2011.

R-5 Diane Company Limited Liability Annual Report dated November 26, 2013.

²³ T. p. 26

²⁴ T. p. 131-132

²⁵ T. p. 132

R-6 Diane Company Certificate of Dissolution dated December 15, 2014

R-7 Articles of Organization for Diane Company LLC dated April 2, 2014

RESPONDENT'S WITNESS

Linda Sperling, MAAO, and the Township's assessor was Respondent's only witness. She testified that she earned a BA in Accounting from Michigan State University, and achieved the certification of MAAO, (Level 3) assessor in 2010.²⁶ Without objection, she was qualified as an expert in the field of assessing. She presented her Valuation Disclosure, which indicated a value of \$888,800 true cash value for 2013 and 2014. At hearing, she lowered her determination of true cash value to \$638,800. She recalculated the value by removing \$250,000 in surplus land from the value, which at hearing, she determined was excess land.²⁷

At hearing, she testified that the highest and best use for the subject was as a mobile home park. This differed from her report's conclusion that the highest and best use was commercial.²⁸ She explained on cross:

Well, I will say after looking at my report and after going into the figures more the commercial land that's there I don't feel would have implemented or impacted. There's too much in there that's going to residential versus commercial.²⁹

She testified that Mt. Morris' SEV was reduced by less than a percent between 2013 and 2014. She testified that the Mt. Morris School District was open to children in the Beecher School District, as long as an application has been filled out, and the child has never been expelled from another school.³⁰

Sperling testified that she prepared a cost analysis, but did not consider its result as relevant to the subject's value.³¹ She did provide income calculations.³² Rather than look at the number of pads for rent, she counted 83 trailers. She testified that in May of 2015, there were only 51 trailers.³³ She noted in her valuation that there were "46 UNIT IN PARK LIVABLE

²⁶ T. p. 79

²⁷ T. p. 82

²⁸ T. p. 105-106

²⁹ T. p.106

³⁰ T. 81-82

³¹ T. p. 83

³² Exhibit R-1, second to last page

³³ T. p. 84

AND OCCUPIED.”³⁴ She testified that there were 130 available pads, and that the park is licensed for 163.³⁵ She then multiplied the 83 units by \$265 per unit, per month, which was the market rent supplied to her by the owners to reach the potential gross income of \$263,940. She took 45% vacancy, reflecting that only 46 of the units were occupied, giving her the effective gross income of \$145,167. She then assumed 45% as annual operating expenses. When asked why 45%, she testified:

When we had the reappraisal in 2011 Landmark Appraisal did an income approach using 35 percent annual operating expenses, but due to the fact the owners had been ill and not being able to take care of the park for some time I gave it a little bit higher average.³⁶

She concluded that the total annual operating expenses were \$65,325, resulting in a net income of \$79,842. She then derived a capitalization rate from Loopnet of 12.45%, and loaded it with an assumed tax rate of .05%, to calculate a loaded tax rate of 12.5%. Dividing net income by this cap rate yielded a true cash value of \$638,735 which she rounded up to 638,800.

Dividing this number by 163 pads, she concluded that the property was worth 3,919 per pad.

She also provided a list of 9 comparables ranging in size from 53 units to 468 units, and in price per pad from \$1,226.42 to \$14,620.69. She testified that Dutch Village at \$3,196.93 per pad was the best comparable since it was about a mile from the subject. She noted that Dutch Village’s rental rates were significantly higher at \$400-450 per month, but it was her opinion that it was less desirable than the subject. She testified that the 2010 sales price was valid for 2013 and 2014 because White Oak recently sold for \$4 million.³⁷ She testified that White Oak was newer with better lighting, and she would adjust the price by 50%, putting it at \$4,180 per pad.³⁸

³⁴ Exhibit R-1, second to last page

³⁵ T. p. 84

³⁶ T. p. 87-88

³⁷ T. p. 90-91

³⁸ T. p. 92-93

She testified to Kona Point being a stressed sale, and Kirkwood being a bank owned sale.³⁹ As to Maple Run in Clio, she testified that it is a very much newer mobile home park that sells the real estate with the trailers, which have attached garages and attached carports.⁴⁰ She acknowledged that the two parks in Burton, Centennial and Green Briar have better amenities, which she would discount by 30-35%.⁴¹ She concluded that these sales show that her estimate of value at \$3,919 per pad is not unreasonable. She testified that the value of the subject for 2014 is the same, as evidenced by the White Oak sale.⁴²

FINDINGS OF FACT

1. The subject is located at 6261 N. Saginaw in Mt. Morris Township, in the Beecher Public School District, in Genesee County, Michigan.
2. The City of Flint and Township of Mt. Morris have seen major declines in population; Flint declined from 193,317 in 1970 to 102,434 in 2010, while Mt. Morris Township declined from 29,349 in 1970 to 21,501 in 2010.
3. The park was built in the 1940s and is made up of 69.84 acres, eight buildings and 168 pads.
4. Other than for storage, only 1 of the eight buildings is in use.
5. Of the 168 pads, 107 are for 16 foot trailers, 20 are for double-wide trailers, and 41 are for 12 foot trailers.
6. The neighborhood around the subject includes boarded up commercial buildings and plazas, and the boarded up Beecher High School.
7. Rexroth testified without contradiction that there is no demand for 12 foot trailer pads.
8. The subject has a vacancy rate of over 71%.
9. Both experts concluded that the subject's highest and best use as improved is its current use as a mobile home park.
10. Neither party relied upon the cost approach.

³⁹ T. p. 93-94

⁴⁰ T. p. 94

⁴¹ T. p. 94-95

⁴² T. p. 95

11. Petitioner used a sales approach with qualitative adjustments, and an income approach using the Effective Gross Income Multiplier method to conclude to a value of \$415,000 for tax year 2013.
12. Petitioner dropped his values by roughly 10% for tax year 2014 to reflect a 20% drop in effective gross income of the subject, concluding to a value of \$375,000.
13. Petitioner determined Effective Gross Income by using a 3 year average, and used seven sales plus a listing to determine a multiplier.
14. Respondent relied upon a Direct Income Capitalization approach, supported by a sales approach to conclude to a value of \$638,800 for 2013 and 2014.
15. Respondent determined potential gross income by counting trailers, rather than pads.
16. Respondent determined the vacancy rate by counting the occupied trailers.
17. Respondent used 45% of gross income to determine expenses.
18. Respondent used an income capitalization rate of 12.45% found on Loopnet.
19. Respondent loaded her cap rate by only five basis points.
20. State Equalized Values in Mt. Morris decreased by .08% between 2013 and 2014.

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 true cash value.⁴³

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. . . .⁴⁴

The Michigan Legislature has defined “true cash value” to mean:

The usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the

⁴³ See MCL 211.27a.

⁴⁴ Const 1963, art 9, sec 3.

property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.⁴⁵

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”⁴⁶

“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.”⁴⁷ The Tribunal is not bound to accept either of the parties' theories of valuation.⁴⁸ “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.”⁴⁹ 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.”⁵⁰

A proceeding before the Tax Tribunal is original, independent, and de novo.⁵¹ The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”⁵² “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”⁵³

“The petitioner has the burden of proof in establishing the true cash value of the property.”⁵⁴ “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.”⁵⁵ 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.”⁵⁶

⁴⁵ MCL 211.27(1).

⁴⁶ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

⁴⁷ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

⁴⁸ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

⁴⁹ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁵⁰ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

⁵¹ MCL 205.735a(2).

⁵² *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

⁵³ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

⁵⁴ MCL 205.737(3).

⁵⁵ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

⁵⁶ MCL 205.737(3).

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.⁵⁷ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”⁵⁸ 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 true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances.⁵⁹

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁶⁰

Sales Comparison Approach

Rexroth prepared and relied in part on the Sales Comparison Approach to value, using four sales comparables and a listing. Respondent attempted to discredit this approach in several ways. First, the use of qualitative adjustments rather than quantitative adjustments was questioned.⁶¹ Qualitative analysis is recognized by The Appraisal Institute as a method for determining value, and is discussed in *The Appraisal of Real Estate*,⁶² which states:

Qualitative Analysis recognizes the inefficiencies of real estate markets and the difficulty of expressing adjustments with mathematical precision. It is essential, therefore, that the appraiser explain the analytical process and logic applied in reconciling value indications using qualitative analysis techniques such as

- Trend analysis
- Relative comparison analysis
- Ranking analysis⁶³

Here, Rexroth used relative comparison analysis. *The Appraisal of Real Estate* discusses the proper use of relative comparison analysis:

Relative comparison analysis is the study of the relationships indicated by market data without recourse to quantification, i.e., the data reveals an ordinal relationship between elements of a data set. Many appraisers use this technique

⁵⁷ *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).

⁵⁸ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

⁵⁹ *Antisdale*, *supra* at 277.

⁶⁰ See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁶¹ T. p. 42

⁶² Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p 403-404

⁶³ *Id.*, p. 403

because it reflects the imperfect nature of real estate markets. To apply the technique the appraiser analyzes comparable sales and identifies whether the characteristics of the comparable properties are inferior, superior, or similar to those of the subject property.

Reliable results can usually be obtained by bracketing the subject between comparable properties that are superior and inferior to it.⁶⁴

Rexroth was only able to find a smattering of sales in the area; two of which were prior to the usual look-back period for 2013. He testified, stating,

-- when I start looking at adjustments that are, one, very difficult to quantify whether I should use 10 percent, 15 percent, that is very difficult to quantify. In addition to when you start looking at the possibility of 50 percent, 60 percent or higher adjustments on one category it tells me that it doesn't have a lot of merit in doing quantitative analysis.

Qualitative, and particularly in this case where I'm showing sales that I feel are superior to the subject overall and sales that I feel are inferior to the subject overall, it gives me a comfort level that I have bracketed the subject, and there are comparables that are better and worse in an effort to bracket the subject as to what I feel, what my opinion is as to the market value.⁶⁵

Rexroth bracketed the subject with three sales he deemed inferior, and one sale and one listing he deemed superior. As sales of this type of property are not very common, the Tribunal finds that qualitative analysis is an acceptable technique in this case.

Respondent also attempted to discredit Petitioner's valuation by attacking his data and analysis regarding some of the sales comparables. Rexroth's P1 was the sale of Genesee Forest Estates, which he reported sold for \$450,000 (\$1,793 per pad) in August 2014. He determined that among nine adjustment factors, market conditions and density were inferior to the subject, while the other seven factors were equal.⁶⁶ Respondent challenged whether market conditions were worse in August 2014 than the valuation date of December 31, 2012, noting that White Oak sold in May, 2014 for over \$4 million, (\$8,361 per pad). Respondent also challenged the accuracy of the selling price, which per the warranty deed, sold for \$400,000.⁶⁷ The White Oak

⁶⁴ Id., p. 404

⁶⁵ T. p. 42-43

⁶⁶ Exhibit P-1, p. 57. The other 7 adjustment factors used were Property Rights Conveyed, Financing terms, Conditions of Sale, Location, Density, Age-Condition-Quality, Project Size and Extra Features.

⁶⁷ Exhibit R-2

sale may or may not prove that the market was inferior in 2014 than on December 31, 2012, since this property is much larger, (480 units), and newer. The Warranty Deed appears to show that Rexroth overstated the consideration in this sale. However, if one assumes that both of these criticisms are valid, then the subject would likely be closer in value to P1, which sold, (per Exhibit R-2) at only \$1,594 per pad. In other words, Rexroth overstated the value of the subject, at \$2,500 per pad. Respondent might have argued that P1's location in Flint was inferior to the subject, but no such argument was advanced. Petitioner's counsel, through its questioning of Rexroth implied that it was tough to tell where Flint ends and the subject's neighborhood of Mt. Morris begins. Accordingly, the Tribunal finds that Respondent's criticism of P1 does not significantly impact the credibility of Rexroth's appraisal.

Respondent also questioned the use of P3, the March 2011 sale of Kirkwood Community for \$100,000, (\$1,887 per pad). Respondent's argument was that P3 was previously foreclosed in 2009,⁶⁸ and that Rexroth failed to disclose this factor, and therefore violated Uniform Standard of Professional Appraisal Practice, ("USPAP").⁶⁹ The Tribunal declines to opine as to whether or not failing to disclose an *earlier* foreclosure sale of a comparable is a USPAP violation, as it is not relevant in this case to determining the value of the subject. P3 is a 2011 sale between two LLCs, rather than the Sheriff's sale in 2009, which was on the market for 215 days. As Rexroth responded during cross:

It's another indication of value in my opinion. There again, that's why I like to use three, four, or in this case five comparables. They're all going to have their strengths and weaknesses.⁷⁰

Again, Respondent's argument is that the Kirkwood sale's price might have been *overstated*, or perhaps not properly flagged as inferior. Rexroth opined that P3's location is inferior, and "extra features" is inferior to the subject. He also opined that market conditions and project size were superior to the subject, which apparently, was not given as much weight in deciding that P3 was also an inferior comparable.⁷¹

⁶⁸ See Exhibit R-3, Sheriff's Deed

⁶⁹ T. p. 45.

⁷⁰ T. 45-46

⁷¹ The Tribunal does agree with Respondent that R3's 2009 Sheriff's sale is not a reliable paired sale to determine a time or market adjustment.

A more germane criticism of Rexroth's valuation is his determination that P4, the sale of Dutch Village in April, 2010 for \$1,250,000 (\$3,197 per pad) is a superior comparable to the subject. Here, Rexroth concludes that Dutch Village sale was superior in terms of market conditions, location and quality. As to market conditions, Rexroth concludes that the market for this type of property in this area was superior in 2010, which the Tribunal notes occurred during the depth of the worldwide economic downturn, than in 2012, or 2013, the relevant dates of valuation. As noted above, the Tribunal does not put weight on the paired sale involving P3, since the first sale was a Sheriff's deed, the price of which is often the mortgage balance, rather than the market. However, Rexroth also relied on two separate sales dates for P1. Genesee Forest sold for \$240,000 in December, 2007, and sold again in March 2011 for \$100,000. The Tribunal notes that December, 2007 was prior to the economic cataclysm which began in December 2008, from which the nation and state of Michigan have more recently emerged. Accordingly, the Tribunal views Rexroth's market conditions adjustment with a degree of skepticism.

His second adjustment for location was a point of contention at hearing. Both properties are located in Mt. Morris Township, perhaps a mile apart. Rexroth bases his location adjustment on the fact that the subject is in the Beecher school district, while P4 is in the Mt. Morris School District. It was uncontroverted that Beecher is an inferior school district with dropping enrollments and low test scores which recently boarded up its high school. Rather, Respondent argues, and its assessor testified to, Mt. Morris schools having open enrollment and any Beecher School resident not previously expelled is eligible to enroll in Mt. Morris Public Schools.⁷² While an open enrollment policy may somewhat mitigate the problems of living in an area served by a troubled school district, the Tribunal finds that all else being equal, a troubled school district is an inferior location to an area served by adequate public schools. While open enrollment may be guaranteed, transporting one's children to a different school district is an additional burden, especially for persons of lesser means who often populate a mobile home park. Also, areas with inferior schools tend to have other problems, such as poverty and blight. Both parties agreed that the stretch of Saginaw St. where the subject is located is blighted with boarded up businesses, shopping plazas and the boarded up Beecher High School itself.

⁷² T. 82

Additionally, the subject's closer proximity than P4 to the City of Flint, with its well-known urban problems support Rexroth's determination that P4's location is superior.

Respondent's final area of disagreement concerning P4 is Rexroth's determination that Dutch Village is superior in terms of age, condition and quality. Sperling testified that she thought the subject was superior in condition and quality to P4. Her testimony on Direct Examination is as follows:

Q. How would you compare the condition?

A. I would say Dutch Village actually in its current state is less desirable than Diane Mobile Home Park.

Q. How are you familiar with Dutch Village?

A. I have grown up in the area. I have had friends that live there. And the park is kind of run down.

Q. Are you in the park on a regular basis?

A. I used to be, yes.⁷³

Rexroth noted in his appraisal that P4 sold at 1/3 occupancy.⁷⁴ This is comparable to the subject's 70% vacancy. From Rexroth's photographs, it is obvious that the subject is also run down, with nearly all of its buildings below average to poor in condition. The subject however, was built in the 1940's, while P4 was built in 1967. The subject's infrastructure and attendant maintenance costs are likely to be higher because of this age differential. The subject also has 41 pads which are only 12 feet wide, which will not accommodate a modern mobile home. The Tribunal finds that a park built in the 1940's is more likely to be constructed with a larger percentage of 12 foot wide pads, than a park constructed in the late 1960's. A mobile home park's value is in renting pads, rather than mobile home units themselves, (which go to the value of either its personal property, or its business value, rather than the real estate's value). While the subject's lesser density (for which P4 received a positive adjustment) might make it seem to be less "run-down," it may mask the subject's structural inadequacies which affect its ability to draw new mobile homes, and increase its annual expenses. Accordingly, the Tribunal finds that Rexroth's characterization of P4 as superior is more credible than Sperling's opinion. The Tribunal therefore finds that Rexroth's conclusion of value via the Sales Comparison approach is valid, and entitled to weight in determining the subject's value for 2013.

⁷³ T. 90

⁷⁴ P-1 p. 94

In contrast, Respondent reported nine sales, with no quantitative or qualitative adjustments. She took the average of seven of those sales, which per Exhibit R-1 value the subject at \$5,904 per pad, or \$962,352 for 163 licensed pads.⁷⁵ Sperling testified that the sales were only provided for support, and that her value was based on her conclusions from the Income Capitalization approach.⁷⁶ Sperling included Dutch Village, and Kirkwood Community, (which it deemed a bank owned sale). Sperling did not include Genesee Forest Estates, (P1), Cranberry Estates, (P2) or Estates of Genesee Valley (L1) as comparables. Instead, she included Saginaw Villas in Saginaw, Centerville Estates in Centerville, Centennial Farms and Green Briar, (both in Burton), Maple Run in Clio, Kona Point (deemed a distressed sale), and White Oak. With the exception of White Oak, all of these sales occurred a year or more prior to December 31, 2012. No analysis of any kind was provided to determine the comparability of these comparables' age, size condition, location, or market condition. White Oak, which Sperling opined, along with Dutch Village were the two best comparables,⁷⁷ sold for \$4,013,280, (\$8,361 per pad).⁷⁸ She testified that White Oak is located in Mt. Morris, three miles from the subject. She testified as follows:

I mean it's newer, better street lighting, play areas. Other than that it's got, you know, just a newer age.

Q. What amount of adjustment, in your opinion, should be made to the White Oak taking into account the location, age, density, et cetera?

A. I'd say 50 percent.

Q. And if you adjusted it down 50 percent what value would you get?

A. You get about 4180 a pad.

Sperling's answer appears to have been made on the fly, without any data or real analysis. Why adjust 50% and not 35% or 75%? Rexroth testified that White Oak was not comparable because it is a newer park, with significant amenities associated with it to attract residents. He considered it as a comparable, but rejected it out of hand.⁷⁹ Sperling also included Maple Run, which sold

⁷⁵ She removed the distress sale of Kona Pointe, the bank sale of Kirkwood Community, and the 2014 sale of White Oak to reach a reported total price per Unit of \$32,970.08. Dividing that total by six produces an average Price per Unit per sale of \$5,495. She apparently added back White Oak into that total, and divided by 7 to reach her total of \$5,904.44 per pad.

⁷⁶ T. p. 95

⁷⁷ T. p. 90

⁷⁸ See Exhibit R-1.

⁷⁹ T. p. 60-62.

for \$14,620 per pad in her average price per unit. The Tribunal finds the inclusion of Maple Run as a comparable to be inappropriate, based upon Sperling's own testimony:

Maple Run is a very much newer mobile home park that sells the real estate with the trailer. They have attached garages and attached carports. More modular homes than they are manufactured homes.⁸⁰

In other words, without adjustments, Sperling included in her average price, a property that rented modular homes, including garages and car ports. This is akin to comparing the price of a parcel containing a cement foundation to a parcel with a cement foundation along with a residence. No attempt was made to tease out the value of the homes, regardless of whether they are manufactured or modular. Inclusion of such a comparable obviously skews the data, especially where an average is taken, rather than a median price. Further skewing the data was her removal of the two lowest sales from her average because she deemed them "distressed." As written, Sperling did not rely upon her sales approach. The Tribunal also declines to rely upon, or to give it any weight.

Sperling testified at length that Dutch Village, which sold for \$3,196 per pad, (rounded to \$3,200) is located in Mt. Morris a mile away, and which has a high vacancy rate was the comparable sale closest to the subject. Assuming that Dutch Village has 391 units which would accommodate a modern mobile home, (i.e., no 12 foot wide pads), that unit price applied to the subject's 127 pads that are larger than 12 feet in width, indicates a value of \$406,400. That value supports Petitioner's 2013 value conclusion.

Income Approach

Both parties submitted, and relied in part (or completely) on an Income Approach to determine true cash value. Rexroth used a variant of this approach known as the Effective Gross Income Multiplier method, ("EGIM"). The *Appraisal of Real Estate*⁸¹ cautions that the properties used to derive the multiplier must be similar in terms of physical, locational and investment characteristics and even those properties with identical multipliers may have very different operating expense ratios. The treatise also cautions that the gross income may come from sources other than rent. Such a multiplier applies to rental income only. Finally, the appraiser

⁸⁰ T. p. 94

⁸¹ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p 507-508

must use similar income data, i.e., full-service compared to full service rather than net, potential income compared to effective gross income.

Rexroth used seven sales from around the state. The only local property was the current listing used in his Sales Approach, which had an EGIM of 2.54. The seven comparables and one listing ranged from 1.83 to 4.61 with the midpoint being 3.22, and the median being 3.08. Six of the seven sales occurred in 2012 and 2013, with Sale #7 occurring in January 2010. Rexroth deemed each of the sales superior in terms of location, age and occupancy. Accordingly, he decided upon 2.5 as the appropriate multiplier, which was below the mid-point and mean, close to L1 the local current listing but not below the range of values. He derived effective gross income from the subject's rent roll, over a three year average. He only included rental income, which per *The Appraisal of Real Estate*, is appropriate. Using this approach, he determined a value of \$405,000 for 2013 and \$364,500 for 2014.

Rexroth explained that he used this method because his expense data was not reliable and because of the difficulty in gathering sufficient information to derive a capitalization rate. Because of the data available, he ruled out the use of a Direct Income Approach, which uses expense data to derive a net operating income and a capitalization rate to make that valuation. As he stated on Redirect:

Simply as brought out on Page 68, [of his appraisal] the three years of expenses I had some questions with as to the consistency and the dollar amounts. And also, if we're to take this [sic] expenses at its face value, and these are all needed to run the park, it is not operating -- cash flow is not coming in. So, from an investor's perspective he's saying, you know, the expenses exceed the income, why would I buy this at a positive dollar amount?⁸²

Given the limitations of the data, the Tribunal finds Rexroth's use of the EGIM method in valuing the subject for 2013 is appropriate.

Respondent prepared and relied upon a Direct Income Capitalization approach. While Sperling's report is cryptic in this regard, taking up far less than a quarter page, she nonetheless set it forth for the Tribunal's scrutiny. Sperling testified that she first determined potential gross income based upon her count of 83 trailers. This is puzzling, considering that the realty is the subject of this appeal, not the trailers, which are personal property. Presumably, some are owned

⁸² T. 74-75

by the park, and are rented. However, what is relevant for valuing this parcel is the potential rent of the real property. Using 83 trailers as a starting point is also questionable, when she notes in her report, and when she testified that the subject was licensed for 163 pads,⁸³ and that only “46 units [are] livable and occupied.” She then relies upon 46 units to calculate her effective gross income, based upon rents of \$265 per month, per unit. She then reduced this figure by 45% to derive her net operating income, (“NOI”). It is unclear how that figure was derived. She testified to the effect that a valuation performed by someone other than herself had pegged expenses at 35%, but that she increased it to 45% because the owners had been ill.⁸⁴ While Petitioner’s expenses appeared to be inconsistent, some of their expenses were likely structural such as the \$36,000 per year water bill, leaving only \$30,000 to cover all other expenses including security, utilities, supplies, office expense and salaries. Not a single dime would be left for reserves for capital improvements; improvements which would be crucial for a buyer hoping to increase the subject’s dismal occupancy rate. While market data for rents and expenses are required to help determine if the subject property would be worth more if better managed, actual expenses are crucial to any investor, as this data helps to determine the inherent nature of the property. Picking a percentage out of the air based upon what another appraisal company suggested to Respondent at an earlier date is totally inappropriate, and in the present case, unreliable.

To calculate her value, Sperling picked a fairly precise capitalization rate of 12.45% from LoopNet. It is certainly questionable whether that cap rate would be appropriate for a 70 year old park that is 70% vacant. Most egregiously, Sperling completely erred when she attempted to load the cap rate to include property taxes. While she was correct to attempt to load the cap rate to take into account property taxes, she only loaded the cap rate by 5 basis points. As the millage rate for the subject is approximately 66 mills, and Michigan property taxes are based upon 50% of true cash value, she should have loaded the cap rate with roughly 330 basis points, rather than 5. Even with improperly derived income, and understated expenses, and a speculative cap rate, Respondent would have come up with a more reasonable value for the subject had she properly

⁸³ T. p. 84-85

⁸⁴ T. p. 87-88

loaded the cap rate.⁸⁵ In any case, the Tribunal finds Respondent's income approach as presented to be completely unreliable.

The Tribunal also notes that Respondent revised its contention downward by \$250,000, from its Valuation Disclosure, removing value originally added for surplus land. Sperling's report failed to explain where \$250,000 for "additional lump sum or Land Value" was derived. Nowhere in her report is surplus land even discussed. Considering that her cost approach valued all of the land of the subject at \$228,952, it would have been interesting to hear her explain how she added a value as surplus land that exceeded the value she assigned to the subject's entire 69.84 acres.

Reconciliation of Value and 2014

Rexroth used two approaches to value which were fairly close. In 2013, he determined that the Sales Comparison Approach indicated a value of \$420,000, while the Income Approach indicated a value of \$405,000. He picked a number in between, determining the value to be \$415,000. As he explained at hearing, appraisal is somewhat of an art, and that value determinations cannot be made with scientific certainty. The use of multiple approaches helps to balance out the weaknesses of each approach. In this appeal, the Tribunal accepts Rexroth's judgment as to 2013, and agrees that his determination of value of \$415,000 is the true cash value.

As to 2014, the Tribunal is not convinced that the market for this type of property dropped significantly from 2013, and the Tribunal was not convinced that his market condition adjustments were appropriate. The Tribunal also notes that Rexroth extrapolated a 10% drop in value via the Sales Approach, rather than relying upon any data. Further, from Sperling's testimony regarding the final illness of the park's long time owners, along with Respondent's exhibits R-5, R-6 and R-7, it is hard not to conclude that the park's operation was negatively affected in 2014 by managerial problems, rather than problems inherent to the subject itself. Accordingly, the Tribunal is not willing to accept Rexroth's 2014 valuations. Sperling testified that the market in Mt. Morris for all types of properties declined by .08%.⁸⁶ She also testified that the \$4 Million sale of White Oak convinced her that there was still a market for mobile home

⁸⁵ Dividing Sperling's NOI of \$79,842 by a cap rate reflecting 66 mills (15.75%) results in a value of \$507,000 rounded, as opposed to Respondent's conclusion of \$638,735.

⁸⁶ T. p. 81

parks in Mt. Morris. Lacking any better evidence, the Tribunal finds that the 2014 value is roughly .08% lower than the 2013 value, and finds the true cash value to be \$411,600. The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject property's TCV, SEV, and TV for the tax year(s) at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax year(s) 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, 2009, at the rate of 1.23% for calendar year 2010; (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011; (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09%; and (iv) after June 30, 2012, through December 31, 2015, at the rate of 4.25%.

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

APPEAL RIGHTS

If you disagree with the Tribunal's final decision in this case, you may either file a motion for reconsideration with the Tribunal or a claim of appeal directly to the Michigan Court of Appeals ("MCOA").

A motion for reconsideration with the Tribunal must be filed, by mail or personal service, with the \$50.00 filing fee, within 21 days from the date of entry of this final decision.⁸⁷ A copy of a party's motion for reconsideration must be sent by mail or electronic service, if agreed upon by the parties, to the opposing party and proof must be submitted to the Tribunal that the motion for reconsideration was served on the opposing party.⁸⁸ However, unless otherwise provided by the Tribunal, no response to the motion may be filed, and there is no oral argument.⁸⁹

A claim of appeal to the MCOA must be filed, with the appropriate entry fee, unless waived, within 21 days from the date of entry of this final decision.⁹⁰ If a claim of appeal is filed with the MCOA, the party filing such claim must also file a copy of that claim, or application for leave to appeal, with the Tribunal, along with the \$100.00 fee for the certification of the record on appeal.⁹¹

By: David B. Marmon

Entered: August 26, 2015

⁸⁷ See TTR 257 and TTR 217.

⁸⁸ See TTR 225.

⁸⁹ See TTR 257.

⁹⁰ See MCR 7.204.

⁹¹ See TTR 213 and TTR 217.