

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

Knollwood Western Rentals LLC,  
Petitioner,

v

MTT Docket No. 439043

City of Kalamazoo,  
Respondent.

Tribunal Member Presiding  
Steven H. Lasher

FINAL OPINION AND JUDGMENT

James M. Marquardt (P71338) for Petitioner.  
Clyde J. Robinson for Respondent.

I. INTRODUCTION

This property tax assessment dispute comes before the Tribunal for decision after a hearing in the Entire Tribunal Division on May 1 and May 8, 2014, in Lansing, Michigan. Petitioner, Knollwood Western Rentals, LLC, appeals ad valorem property tax assessments levied by Respondent, City of Kalamazoo, against Parcel No. 06-20-383-003. Respondent's assessment, produced by means of mass-appraisal, indicated that the true cash value ("TCV") of the Subject was \$1,956,800 for the 2012 tax year. Petitioner, based on its appraisal, alleges the true cash value of the Subject is \$900,000. Although Petitioner timely filed a Motion to Amend to add the 2013 tax year, Petitioner has indicated it is not pursuing an appeal for 2013. Accordingly, this Tribunal must decide the true cash, state equalized, and taxable values of the Subject for the 2012 tax year.

The hearing in this case was conducted by Tribunal Member Paul V. McCord. Judge McCord is no longer a Tribunal Member at the Tax Tribunal; as a result, this opinion is being rendered by Tribunal Chair Steven H. Lasher.

II. JUDGMENT

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 for the 2012 tax year are as follows:

Parcel No.	Year	TCV	SEV	TV
06-20-383-003	2012	\$1,200,000	\$600,000	\$600,000

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

### IV. FINDINGS OF FACT

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

#### *1. Assessment*

The Subject is identified on Respondent’s assessment roll by Parcel No. 06-20-383-003. The TCV, SEV, and TV of the Subject as appearing on Respondent’s assessment roll for the tax year at issue are as follows:

Parcel No.	Year	TCV	SEV	TV
06-20-383-003	2012	\$1,956,800	\$978,400	\$978,400

The Subject is zoned RM-15C, Residential, Multi-Dwelling, Campus, and is classified as commercial real property. During the tax year at issue, the level of assessment for commercial class real property within Respondent’s jurisdiction equaled 50% of true cash value as determined by method of mass appraisal.

#### *2. The Subject Property*

The Subject is a multi-family apartment complex, operated primarily as rentals to students of Western Michigan University (“Western”). The Subject is located on 1.4 acres and has a total of three buildings: two eight-unit buildings (64 total bedrooms) and one house (6 bedrooms). The Subject also has carports and paved parking. The two eight-unit buildings were built in 2003 and 2004; the house was originally constructed in 1961.

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<sup>1</sup> To the extent that a finding of fact is more properly a conclusion of law, and to the extent that a conclusion of law is more properly a finding of fact, it should be so construed.

The Subject is located at 1415 Sutherland and 1502 - 1506 Knollwood, Kalamazoo, Michigan, and is less than 0.5 miles from the Western campus. The highest and best use of the Subject is continued use as a multi-family apartment facility operated primarily as a student rental.

### *3. Purchase and Subsequent Sale of the Subject*

Owen Ramey is the sole member of Knollwood Western Rentals, LLC. He testified that he is an attorney, that he has represented landlords in the area, and that he has owned and continues to own student rental properties. Mr. Ramey was told by Corey Talcott, the owner of the Subject at the time, that the Subject was for sale. Mr. Ramey explained that he and Mr. Talcott were not business partners or associates but that he had represented Mr. Talcott since 2003 as his attorney and is listed as the registered agent for Mr. Talcott's businesses, which is a typical business practice with any of his clients. Mr. Ramey has purchased five or six properties from Mr. Talcott over the years. He stated that the Subject had been marketed for approximately four months prior to Petitioner's purchase and that it was listed for \$800,000, with the final purchase price being \$750,000 on November 10, 2011. His decision to purchase the Subject at that purchase price was based on a June 2010 appraisal at \$800,000 that had been prepared by First National Bank, the existing lender for the seller of the Subject.

Mr. Ramey indicated that the decision was made to sell the Subject in the summer of 2012, due to the number of violations received from the city associated with renting to students, lower cash flow than expected, difficulty in collecting rents, reduced enrollment at Western, and increased competition by more rental units being built in the area. The Subject was sold to JJAM Properties, LLC ("JJAM"), an unrelated entity, for \$740,000. The Subject was not listed for sale, but Mr. Ramey told Mr. Talcott that he was interested in selling and was approached with an offer.

### *4. Petitioner's Valuation Evidence*

Joel Francis, SRA, GAA, GRI, was admitted as Petitioner's real estate appraisal expert. He prepared a cost approach for the two eight-unit buildings and the corresponding site size of 1.2 acres, or 61,000 square feet. This site was then valued based on four comparables, with a conclusion of \$3.75 per square foot, rounded to a total of \$229,000. He indicated that the calculated cost new for the end units was \$994,360, and the middle units were \$1,006,864. To that he applied physical and external depreciation, and then added in the depreciated value of the site improvements and 1.2 acres, for a total value of the two eight-unit buildings and corresponding site of \$1,049,490. He did not apply the cost approach to the converted house due to the age of the structure and the depreciation levels being high and almost impossible to estimate. A value of \$97,000 (based on his sales comparison approach) for the house was then added, for a total true cash value under the cost approach rounded to \$1,146,000.

Mr. Francis also prepared a sales comparison approach, using seven sales located in the student rental area, with adjusted sale prices ranging from \$19.36 to 80.99 per square foot. He concluded that the Subject fell between comparables 5 and 7, based on total square footage, and

selected a value of \$28 per square foot, for a true cash value of the two eight-unit buildings of \$872,000. For the converted house, Mr. Francis selected four comparables located in the student rental area, with adjusted sale prices ranging from 454.39 to \$111.79 per square foot.<sup>2</sup> He determined that comparables 2, 3, and 4 should be given the most weight and applied a value of \$68 per square foot, for a true cash value of the converted house of \$97,000, for a total value under his sales comparison approach of \$969,000.

In addition, Mr. Francis prepared an income approach, using both the Gross Rent Multiplier (“GRM”) method and the direct capitalization method. Based on the GRM, he concluded to a true cash value for the Subject of \$954,000. For his direct capitalization method, he stated that the Subject was renting for \$275 per bedroom monthly for the converted house and \$325 per bedroom for the other buildings and that based on the available rental data he could find, the Subject rents appeared to be reasonable. He stated that the effective revenue stream at the Subject is less than 12 months, since there are three weeks of downtime between lease periods, based on information he received from Petitioner. He applied a 30% reduction for vacancy and loss and indicated that the non-payment of rent is an issue that drives the vacancy and loss up a little bit. He testified that he was not able to perform a market-derived capitalization rate because of inconsistent and poorly reported data so he instead used the band of investment and built up the rate using the mortgage and equity components. The adjusted overall capitalization rate used was 0.1312. His conclusion of true cash value based on the direct capitalization method was \$802,000.

Mr. Francis summarized that he included the cost approach “more as a demonstrative exhibit” to reflect the loss in value from physical and external forces. [Transcript Vol I at 81.] He stated that he gave considerable weight to the sales comparison approach, some weight to the GRM method, and most weight to the direct capitalization method. Based on this analysis, his final conclusion of market value was \$900,000.

Based on its appraisal, Petitioner’s contentions of TCV, SEV, and TV are as follows:

Parcel No.	Year	TCV	SEV	TV
06-20-383-003	2012	\$900,000	\$450,000	\$450,000

##### *5. Respondent’s Valuation Evidence*

Aaron Powers, MMAO and City of Kalamazoo assessor, was admitted as Respondent’s assessing and real estate valuation expert. Mr. Powers did not prepare a cost approach, but did prepare a sales comparison approach and income approach, using the price per bedroom as the unit of comparison. For his sales comparison approach, Mr. Powers stated that he identified sales from 2010 to 2012 in close proximity to Western and that were providing student housing.

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<sup>2</sup> Petitioner’s appraisal showed an adjusted price of \$102.28 per square foot for comparable 1. However, Mr. Francis testified that the – 4% adjustment for the basement should be a + 4%, changing the value to \$111.79. [Transcript Vol I at 73.]

Respondent's expert selected three sales comparables selling in 2011 and 2012, all student rentals like the Subject. The adjusted sale prices per bedroom ranged from \$15,909<sup>3</sup> to \$22,917. Comparable 1 located at 1315 Fraternity Village Drive was indicated to be most like the Subject, having been constructed in the same year and by the same developer as the Subject. Based on his sales comparison analysis, he determined that \$23,000 per bedroom should be used, and when multiplied by the 70 bedrooms available at the Subject, the true cash value would be \$1,610,000.

Mr. Powers further prepared an income approach using the direct capitalization method. He selected a rate of \$440 per bedroom to apply to the Subject as of December 31, 2011. The price per bedroom was selected from a review of 2013 market rents for three comparables, as well as the Subject's current rental rates. He utilized a vacancy rate of 10% and expenses of 28%, based on his knowledge of income properties from the 2014 assessment study. For his capitalization rate, he used three local market-derived sources and consulted national rates as a check. He applied an adjusted overall capitalization rate of 0.1354. The indicated value under the direct capitalization approach was \$1,691,292. Respondent's expert reconciled the sales comparison approach, giving more weight to the income approach as the Subject is an income producing property, and concluding to a true cash value for 2012 of \$1,700,000.

Based on its appraisal, Respondent's contentions of TCV, SEV, and TV are as follows:

Parcel No.	Year	TCV	SEV	TV
06-20-383-003	2012	\$1,700,000	\$850,000	\$850,000

## V. 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. See MCL 211.27a.

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 . . . .  
Const 1963, art 9, sec 3.

The Michigan Legislature has defined "true cash value" to mean:

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<sup>3</sup> Respondent's appraisal reflects an adjusted price of \$15,113 per bedroom for comparable 2. However, Mr. Powers testified that the -5% adjustment for location should be a + 5%, changing the value to \$15,909. [Transcript Vol II at 27.]

. . . 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. MCL 211.27(1).

The Michigan Supreme Court has determined that “true cash value” is synonymous with “fair market value.” See *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

Under MCL 205.737(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. See *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal is not bound to accept either of the parties' theories of valuation. See *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985). 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. See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485-486; 473 NW2d 636 (1991).

A proceeding before the Tax Tribunal is original, independent, and de novo. See MCL 205.735a(2). The Tribunal's factual findings must be supported by competent, material, and substantial evidence. See *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990). “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.” *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

“The petitioner has the burden of proof in establishing the true cash value of the property.” MCL 205.737(3). “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.” *Jones & Laughlin, supra* at 354-355. 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.” 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. See *Meadowlanes, supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966), *aff'd* 380 Mich 390 (1968). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. See *Antisdale*. 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. See *Antisdale, supra* at 277.

### *1. Cost Approach*

Respondent's expert did not prepare a cost approach for purposes of this appeal, indicating that the Subject was an income-producing property and the cost approach would not be a primary indicator of value. [Transcript Vol I at 161.] Petitioner's expert prepared a cost approach with respect to the two eight-unit buildings only using Marshall & Swift data. The cost approach was not relied on by Petitioner's expert but was merely used to demonstrate the loss in value attributable to depreciation and needed repairs. The Tribunal does not find the cost approach to be a reliable method of value in this case, as the cost approach is not the most accurate, given the difficulty in determining accrued depreciation, as well as calculating any additional obsolescence. In addition, the Appraisal Institute cautions appraisers that the cost approach is less likely to yield a reliable value conclusion from an investment perspective and is subject to difficulty in estimating physical depreciation, functional obsolescence and external obsolescence, and in determining land values. *The Appraisal of Real Estate* (Chicago, Appraisal Institute, 14<sup>th</sup> ed, 2013) at 566 - 568.

### *2. Sales Comparison Approach*

With regard to the sales comparison approach, the value of a property is derived by comparing the subject property with similar properties, called comparable sales. See *The Appraisal of Real Estate* at 388. That comparison is based on many factors, and adjustments are made for any differences between the comparable sales and the subject property so that the appraiser can derive a value for the subject property. *Id.* 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. See, e.g., *State Assessor's Manual*, Volume III, Chapter 9, p 9-1 (instructing that the reliability of the sales comparison approach is directly related to the availability of recent sales).

The Subject is rented primarily by students of Western and is located within a half mile of the Western campus. Both experts prepared a sales comparison analysis to value the Subject based on this highest and best use, and both placed at least some reliance on the sales comparison approach in their final conclusion of value.

Petitioner's expert indicated that during the relevant time period, the student rental market was being affected by general adverse economic conditions, declining enrollment, oversupply of housing, and competition from on-campus housing. [Transcript Vol I at 50; P-1 at 21.] He further indicated that 75% to 80% of the properties in the area were REO sales, which he did not use as comparables. [Transcript Vol I at 69; P-1 at 93.] Respondent's expert, on the other hand, indicated that the multi-family component of the commercial market in the jurisdictions he assesses "is probably the strongest rebounding marketing segment that we have." [Transcript Vol I at 206.] He further indicated that market conditions had begun to increase since 2010.

Two Eight-Unit Buildings

For the two eight-unit buildings, Petitioner’s expert selected seven comparable sales, with adjustments for date of sale, location, land-to-building ratio, quality, and age/condition. Based on the admitted exhibits and testimony, Petitioner’s sale comparables can be summarized as follows:

Comp#	1	2	3	4	5	6	7
Address	1107 Euclid	1211-1215 Euclid	3301 W. Michigan	1212 Greenwood	1323 Greenwood	1275-1277 Red Pine Way	210 N. Kendall
Sale Price	\$251,250	\$307,500	\$650,000	\$192,975	\$719,000	\$138,500	\$725,000
Gross Bldg Area	4,357	3,455	41,972	2,583	35,826	3,186	20,230
# of Bedrooms	9	11	45	6	60	8	56
Net Adjustments	+2%	-9%	+25%	-1%	+31%	+13%	+19%
Gross Adjustments	4%	13%	35%	3%	31%	23%	21%
Adjusted Price per GBA	\$58.82	\$80.99	\$19.36	\$73.96	\$26.29	\$49.12	\$42.65
Adjusted Price per Bedroom	\$28,475	\$25,439	\$18,056	\$31,841	\$15,698	\$19,563	\$15,406

Petitioner’s expert testified that all of the comparables were rented by the bedroom, but further, that he did not make any adjustment for the number of bedrooms; he also did not adjust for differences in square footage “because they would be very large for some of the properties” and instead elected to do an array of the properties from largest to smallest, “[s]o you could see before any size adjustments made where the subject would fit in there, and it eliminates the need for size adjustments.” [Transcript Vol I at 67.] Under this method, he determined that the Subject, based on gross building area, fell between comparables 5 and 7, and he applied a rate of \$28 per square foot to arrive at a value for the Subject of \$872,256. Petitioner’s contention of value under the sales comparison approach is based almost entirely on the adjusted price per gross building area of comparable 7 at \$28.43. Petitioner’s expert testified that comparable 7 is 30,345 square feet, inclusive of the lower daylight level, and he was not aware that the listing agent indicated this property was 20,230 square feet, which may not include the lower level. Based on his review of the assessment records at the hearing, he stated that comparable 7 is assessed at a total of 20,228 square feet and that he would have reviewed the assessing records when preparing his appraisal. He testified that if the lower square footage was used in his appraisal, the unadjusted price per square foot for comparable 7 would be \$35.84, plus an additional 19% for adjustments. [Transcript Vol I at 114.] The Tribunal finds that the testimony of both experts and Respondent’s Exhibit 6 establish that comparable 7 is 20,228 square feet and not the 30,345 square feet used by Petitioner’s expert. Accordingly, the adjusted price per gross living area is actually \$42.65. Given that the Subject is indicated by Petitioner as 31,152 square feet, it will still fall between comparable 5 at 35,826 square feet and comparable 7 at 20,228



square feet, suggesting that, based on the approach of Petitioner's expert, the value of the Subject (for the two eight-unit buildings) would be between \$26.29 and \$42.65 per square foot, or between \$818,986 and \$1,422,089.

If all comparables are considered, the range in true cash value, based on the price per gross building area, is \$603,103 to \$2,523,000. This wide range in values based on the in terms of unadjusted square footage demonstrates the flaw in the approach taken by Petitioner's expert. Utilization of an unadjusted price per square foot does not sufficiently account for the similarity or dissimilarity between the Subject and the comparables. As comparables 1, 2, 4, and 6 are substantially smaller than the Subject, the inclusion of them as a basis for comparison, absent any adjustment, renders them completely irrelevant for purposes of reflecting a true cash value for the Subject. The better approach, given the nature of the Subject as student housing rented by the bedroom, would be to evaluate the comparables on a price per bedroom. As stated by Respondent's expert, the number of bedrooms, regardless of the square footage, "would still be the indication of the rent that would be generated . . . ." [Transcript Vol I at 189.] Further, these properties are leased in the marketplace on a per bedroom basis, not a square foot basis.

Utilizing an adjusted price per bedroom, Petitioner's comparables range in value from \$15,406 to \$31,841 per bedroom, which when multiplied by the 64 bedrooms available in the two eight-unit buildings, results in a range in true cash value from \$985,984 to \$2,037,824. The Tribunal has further reviewed the comparables selected by Petitioner's expert and finds that comparables 1, 2, 4, and 6 are not sufficiently similar to the two eight-unit buildings present at the Subject, as these comparables are significantly smaller in square footage and in number of bedrooms. Further, the photos of the comparables included in the valuation disclosure reflect that these sales are much more similar in style and appearance to a house or duplex as opposed to the Subject's buildings, and would have been better served as comparables selected for a separate valuation of the converted single-family house present on the Subject. Accordingly, the Tribunal determines that the comparables most similar to the two eight-unit buildings are comparables 3 (45 bedrooms, 41,972 square feet), 5 (60 bedrooms, 35,826 square feet), and 7 (56 bedrooms, 20,230 square feet). The price per bedroom for these three comparables ranged from comparable 7 at \$15,406 to comparable 3 at \$18,056, for a true cash value range of \$985,984 to \$1,115,584 for the two eight-unit buildings.

Turning to Respondent's comparables, the Tribunal finds that in its submitted sales comparison analysis, Respondent provided three comparables as applied to all three buildings present at the Subject, with adjustments for location and condition. Based on the admitted exhibits and testimony, Respondent's sale comparables can be summarized as follows:

Comp#	1	2	3
Address	1315 Fraternity Village Drive	4101 W. Michigan Ave	1030+ Lafayette
Sale Price	1,100,000	\$1,750,000	\$340,000
# of Bedrooms	48	110	14
Net Adjustments	0%	+5%	-10%
Gross Adjustments	0%	5%	10%
Adjusted Price per Bedroom	\$22,917	\$15,909	\$21,857

Based on the adjusted sales, Respondent’s sales comparison approach reflects a true cash value of the Subject from \$1,113,630 to \$1,604,190. However, comparable 3 is actually four separate rental houses and was used as an attempt to reflect the residential component of the Subject. [Transcript Vol I at 171.] This comparable was also used by Petitioner’s expert to determine a value for the converted house. Accordingly, Respondent’s comparables 1 and 2 would be used to reflect a true cash value of the two eight-unit buildings and comparable 3 would be used for the converted house.

Given the above determinations as to the two eight-unit buildings, the Tribunal finds the following sales comparables from both parties would apply:

Comp#	P-3	P-5	P-7	R-1	R-2
Address	3301 W. Michigan	1323 Greenwood	210 N. Kendall	1315 Fraternity Village Drive	4101 W. Michigan Ave
Sale Price	\$650,000	\$719,000	\$725,000	1,100,000	\$1,750,000
# of Bedrooms	3	60	56	48	110
Net Adjustments	+25%	+31%	+19%	0%	+5%
Gross Adjustments	35%	31%	21%	0%	5%
Adjusted Price per Bedroom	\$18,056	\$15,698	\$15,406	\$22,917	\$15,909

In further evaluation of the sale comparables to determine the final adjusted price per bedroom that should be applied, the Tribunal finds that Petitioner’s comparable 3 was a land contract and Petitioner’s expert could not recall the land contract terms or interest rate, but stated that it was selected because there is a lack of sales. [Transcript Vol I at 102.] Given the lack of information with respect to the land contract, the Tribunal finds this comparable would be less reliable for use as an indicator of true cash value. The Tribunal further finds that there was some debate between the parties as to the correct square footage of Petitioner’s comparable 7, with respect to whether or not there was a finished basement area that could be included as livable space. This debate, however, has little relevance once the determination is made to examine the valuation on a per bedroom basis as opposed to a per square foot basis. There was also an issue raised with

respect to the transfer of comparable 7 as being arm's length. Respondent's expert indicated that he examined the covenant deed (Respondent's Exhibit 5), and he tends to find that properties transacted as part of a court case or bank takeover has an effect on the sale price, as "oftentimes financial institutions do not have the same level of interest . . . [as] private owners in regards to obtaining [the] highest value of the property." [Transcript Vol I at 198.] Respondent's expert further indicated that comparable 7 being in receivership indicates from his experience that the owner was not able to make the mortgage payments and "the property at some point needed to go at what oftentimes is an undermarket value." [*Id.*] The Tribunal finds that, although comparable 7 may have sold under a court order, the adjusted price per bedroom of this comparable is in line with Petitioner's comparable 5 and Respondent's comparable 2 and lends support to a value per bedroom in the \$15,000 to \$16,000 range.

Respondent's comparable 1 at 1315 Fraternity Village Drive was also a topic of some dispute between the parties. Respondent's expert indicated this sale as the strongest comparable, as it sold September 15, 2011, was on the market for 145 days, and was constructed the same year as the Subject and by the same developer, and is of similar condition and unit layout. [Transcript Vol I at 163 – 164.] Petitioner's expert stated that he looked into the sale at 1315 Fraternity Village Drive but it was a "private sale" on the MLS for information purposes and it is indicated in the assessment record comments to be a forced sale. [Transcript Vol I at 116 – 118.] He further stated that when he spoke to the listing agent, he was told there were \$36,000 in concessions and that it was a high quality and condition student rental and that he would have made an adjustment for this if he had selected this sale as a comparable. [Transcript Vol II at 45 – 46.] When questioned about the terms of the sale, Respondent's expert testified that he researched the deed, property transfer affidavit, and listing history through CoStar and did not find any indication that this comparable was anything other than an arm's-length transaction, but he did not speak with the real estate agent involved with the sale. [Transcript Vol I at 165 – 166, Vol II at 23 – 24.] The Tribunal finds that although Petitioner's expert indicated he was told there was \$36,000 in concessions, there is nothing in the admitted exhibits that could substantiate this claim. Respondent's Exhibit 12 includes the Property Transfer Affidavit, Warranty Deed, and a CoStar summary, which reflect a sale price of \$1,100,000 on September 15, 2011, with no concessions indicated. With respect to whether this is a forced sale, the Property Transfer Affidavit reflects the seller as GN Holdings, LLC, and the buyer as 1315 CaliMazoo Property, LLC. The CoStar summary further reflects the true seller as Gregory Watts and the true buyer as Dave Molnar, with no indication that the transfer was between related parties, and further reflects that the property was marketed for 147 days. The property information obtain from BS&A and submitted as Petitioner's Exhibit 3 does show a prior sale on June 10, 2011, for \$790,000, but this does not establish that the sale of the property on September 15, 2011 was anything other than an arm's-length transaction. Accordingly, the Tribunal finds no indication of any distressed circumstances with respect to this sale that would either exclude it as a comparable or require further adjustment. Further, the comments that may have been made by the listing agent to Petitioner's expert regarding any superior quality of this comparable were neither substantiated by any documentary evidence nor quantified as to what, if any, adjustment would need to be made. Accordingly, the Tribunal does not find that any additional adjustment for the alleged superior condition is warranted.

Given the above considerations, the Tribunal finds that three of the comparables support a value between \$15,400 to \$15,900 per bedroom, with the comparable at 1315 Fraternity Village Drive supporting a value of \$22,900 per bedroom. Petitioner’s comparable 5 was an older building which accounted for the 30% adjustment applied, but was very similar in building size and number of bedrooms. Petitioner’s comparable 7 was also very similar in size and similar in number of bedrooms, and was also of a similar age. Respondent’s comparable 2 had more bedrooms available than the subject and was slightly older and also had a location farther from the Western campus, requiring an adjustment. Respondent’s comparable 1 was built in the same year and by the same developer, but had fewer bedrooms than the subject. The Tribunal, in analyzing the weight to be given to the comparables, finds that 3 of the 4 comparables that can be used to value the two eight-unit buildings reflect very similar adjusted sale prices. As such, these comparables provide the strongest indicator of the price per bedroom reflected by the marketplace. The Tribunal finds that the price per bedroom of the Subject should be \$16,000, with primary consideration to Petitioner’s comparables 5 and 7 and Respondent’s comparable 2, and some consideration to Respondent’s comparable 1, given its similarity to the Subject.

When a price per bedroom of \$16,000 is applied to the 64 bedrooms present at the two eight-unit buildings located on the Subject, the resulting true cash value, as of December 31, 2011, is \$1,024,000.

Converted House

Petitioner’s expert also provided four comparables for the separate single-family house present at the Subject, which has 1,431 square feet and 6 bedrooms. Based on the admitted exhibits and testimony, the sale comparables for the converted house can be summarized as follows:

Comp#	1	2	3	4
Address	1127 California	1312 Lafayette	1331 Sutherland	1030+ Lafayette
Sale Price	\$104,900	\$56,000	\$79,443	\$340,000
Gross Bldg Area	882	1,040	1,196	3,186
# of Bedrooms	2	3	2	9
Net Adjustments	-6%	+1%	+3%	-33%
Gross Adjustments	26%	25%	19%	33%
Adjusted Price per GBA	\$111.79	\$54.39	\$68.41	\$71.50
Adjusted Price per Bedroom	\$49,303	\$18,853	\$40,913	\$25,311

The flaws pointed out by the Tribunal above with respect to an unadjusted price per gross building area equally apply to an analysis of the valuation of the converted house. Petitioner’s expert selected a value of \$68 per square foot, based on comparable 3, for a true cash value for the converted house of \$97,308. The range in value suggested by the price per gross building

area is \$77,832 to \$159,971. Alternatively, if viewed on an adjusted value per bedroom, the range in true cash value is \$113,118 to \$295,818.

Petitioner's comparable 2 at 1312 Lafayette was indicated by Respondent's expert and reflected in Respondent's Exhibit 8 as having been purchased with a demolition permit issued within 30 days and demolition completed within 60 days of purchase. The Tribunal finds that Petitioner's comparable 2 was not purchased for its current use as the structure stood, but rather, was purchased with the intent of demolishing the structure and holding for future development or constructing a new building. Accordingly, this comparable will not be given any weight in the determination of value.

Petitioner's comparable 4 is the same property as Respondent's comparable 3. Respondent's expert made an adjustment of -10% for the condition, although both the Subject and comparable are indicated to be average. Petitioner's expert made adjustments for time of sale, zoning, land to building ratio, condition, gross living area, and garages. The Tribunal does find the adjustments made by Petitioner to be more accurate. This comparable, however, was a sale of four separate houses located on four separate parcel numbers. Additionally, there is a discrepancy between the total number of bedrooms present in the comparable. Petitioner's expert utilized 9 total bedrooms while Respondent's expert utilized 14. Neither party presented documentary evidence, other than their summaries included in the respective valuation disclosures that would reflect the correct information. The total adjusted sale price, based on adjustments applied by Petitioner's expert, would be \$227,800. If 9 bedrooms are used, the price per bedroom is \$25,311; if 14 bedrooms are used, the price per bedroom is \$16,271. The Tribunal finds that the dissimilarity of this comparable, being four houses on four separate parcels, combined with the fact that the correct number of bedrooms cannot be established, results in this comparable being unreliable as an indicator of value for the Subject.

The remaining comparables 1 and 3 reflect adjusted values per bedroom in the \$41,000 to \$49,300 range. Similar to the Subject, both comparables were older homes and both had walk-out basements. These comparables are the best presented to reflect a separate value for the converted house. When given equal consideration, these comparables support a value of \$45,000 per bedroom, which when applied to the Subject's 6 bedrooms results in a true cash value, as of December 31, 2011, of \$270,000.

In summary, the sales comparison approach, as analyzed by the Tribunal, supports a value of \$1,024,000 for the two eight-unit buildings and \$270,000 for the converted house. When combined, the resulting true cash value as of December 31, 2011, for the Subject is \$1,294,000.

### *3. Income Approach*

In comparing and contrasting the income and market approaches to value, The Appraisal Institute states:

Typically, the sales comparison approach provides the most credible indication of value for owner-occupied commercial and industrial properties, i.e., properties that are not purchased primarily for their income-producing characteristics. These types of properties are amenable to sales comparison because similar properties are commonly bought and sold in the same market. Buyers of income-producing properties usually concentrate on a property’s economic characteristics and put more emphasis on the conclusions of the income capitalization approach. *The Appraisal of Real Estate*, p. 300. [Emphasis added.]

Consistent with *The Appraisal of Real Estate*, and because the subject property is the type of property that is bought and sold in the marketplace, the Tribunal finds that the income approach should be given the most reliance in determining a value for the Subject.

Both experts prepared an income approach to value. Petitioner’s expert included the Gross Rent Multiplier method, utilizing the total potential gross monthly rental income for all 70 bedrooms present at the Subject and a GRM of 45. The GRM method was not developed by Respondent’s expert and was given only “some weight” from Petitioner’s expert. The Tribunal finds that a market based gross rent multiplier (“GRM”) is often considered for valuing income producing residential property of fewer units than present at the Subject. Further, the sales used to develop a GRM should be income-producing properties from the same market. The properties should also be similar in terms of square footage and amenities, among other things (i.e., expense-to-income ratios, lease terms, etc.). Petitioner’s appraisal does not contain information as to the comparability of the sales used for the GRM. Accordingly, the Tribunal finds that the use of the GRM method is not supported, based on the fact that insufficient data was supplied and, more importantly, because the direct capitalization method is more appropriate for the Subject.

Both experts prepared a direct capitalization approach and indicated that it was given the most reliance in their determination of true cash value. The respective approaches can be summarized as follows:

<b>2012</b>	<b>Petitioner</b>	<b>Respondent</b>
Income		
Rents	\$252,563 <sup>4</sup>	\$369,600 <sup>5</sup>
Carport Rental	\$1,800	--
Potential Gross Income	\$254,363	\$369,600
Less: Vacancy and Income Loss	(\$76,309) <sup>6</sup>	(\$36,960) <sup>7</sup>
Effective Gross Income	\$178,054	\$332,640
Less: Expenses (Total)	(\$72,806) <sup>8</sup>	(\$103,639) <sup>9</sup>

<sup>4</sup> \$275/month X 6 bedrooms and \$325/month X 64 bedrooms, both multiplied by 11.25 months

<sup>5</sup> \$440/month X 70 bedrooms at 12 months

<sup>6</sup> Vacancy and Income Loss of 30%

<sup>7</sup> Vacancy of 10%

<sup>8</sup> Petitioner broke down into categories. Expense total was \$72,806 including 3% of EGI for reserves

<sup>9</sup> Respondent did not break down into categories. Expense total was 28% plus \$10,500 for reserves

Net Operating Income	\$105,248	\$229,001
Capitalization Rate	0.1312	0.1354
<b>True Cash Value</b>	<b>\$802,195</b>	<b>\$1,691,292</b>
<b>True Cash Value per Bedroom</b>	<b>\$11,460</b>	<b>\$24,161</b>

As can be seen from this comparison, while the parties reached a similar conclusion as to the capitalization rate, the parties differed greatly on the applicable income, vacancy/loss, and expenses.

### Rents

Petitioner's expert utilized separate monthly rental rates for the two buildings and the converted house. The list of comparable rental rates included in the appraisal (P-1 at 113) was broken down as to the converted house and two eight-unit buildings. The market rent per bedroom listed in Petitioner's appraisal for the converted house ranged from \$260 to \$438; the market rent per bedroom for the two buildings ranged from \$299 to \$425. Petitioner's expert stated that he attempted to find rents within the vicinity of the effective date of the appraisal and further indicated that the actual rents received by the Subject as of December 31, 2011 were within the indicated range reflected by the market rents; he utilized the actual rents reported by Petitioner of \$275 per month per bedroom for the converted house and \$325 for the two buildings. He stated that the effective revenue stream at the Subject is less than 12 months, since there are three weeks of downtime between lease periods, based on information he received from Petitioner and confirmation from the property manager, and he applied 11.25 total months. [Transcript Vol I at 78, Vol II at 139 – 140.] Petitioner's expert included a total of 6 rental comparables for the converted house and 12 rental comparables for the two buildings.

Petitioner's expert also included an amount for carport rental of \$1,800, based on \$20 a month for eight units. He stated that the Subject did not rent the carports but that is what the market would normally charge and that is why it was included. [Transcript Vol II at 140.]

Respondent's expert applied a market rent of \$440 per month to all 70 bedrooms, based on a total of 12 months of rental, stating that the current leases by JJAM reflect a lease period of 360 days [Transcript Vol I at 180.] He testified that he did not have the rents for the Subject or comparable 1 at 1315 Fraternity Village Drive as of the December 31, 2011 valuation date, but did have the current rents as of year-end 2013. He indicated, however, that it is his experience that there would not be a significant increase in rents over a two-year period, maybe 5% to 10% at most, and that per year, the change is 2% to 4% at most. [Transcript Vol I at 173, Vol II at 35]. He further stated that the Subject, as of December 16, 2013, was renting at a rate of \$445 per bedroom, with the converted house renting for \$460 per bedroom, based on information from JJAM. [Transcript Vol I at 174 – 176.] His appraisal included 1315 Fraternity Village Drive which was renting for \$435 per bedroom which he stated seemed very similar to the Subject and was a good indicator of market rent. [Transcript Vol I at 173.] The other two rent comparables in his appraisal reflected rents per bedroom of \$375 and \$431, with the property renting at \$431 per bedroom being located on the Western campus.

The Tribunal finds that Respondent's expert did not utilize market rates as of the December 31, 2011 valuation date for this appeal. He admittedly used rates obtained during 2013 and the actual rental rates of the Subject in December of 2013. The 2013 rental rates included in his appraisal ranged from \$375 to \$445 per bedroom. While his testimony was that the \$440 per bedroom applied was reflective of the typical rent as of December 31, 2011, this rate does not coincide with his testimony during the hearing that the increase per year is 2% - 4%. Applying the minimum 2% per year (4% discount total), if the 2013 rents were discounted back to 2011, the range in his comparables per bedroom would be \$360 to \$427. Applying the 4% per year (8% discount total) testified to results in a range of \$345 to \$409. The rate of \$440 per bedroom applied to all 70 bedrooms present at the Subject exceeds both the minimum and maximum annual increases in rent testified to by Respondent's expert as being reflected by the Subject's market.

On the other hand, Petitioner's expert looked at multiple rent comparables both for the two buildings and converted house that were stated to have been in the vicinity of December 31, 2011. The actual rents received by the Subject and used in Petitioner's income approach fall at the low-end of the rental ranges indicated by Petitioner's comparables. There is no indication that the Subject is a lower-quality rental or that lower market rents should be applied. The Tribunal finds a reasonable rate for all 70 bedrooms, based on the comparables presented (with the discount applied to Respondent's comparable as of December 31, 2011) is \$425 per bedroom.

The Tribunal further finds credible the use of \$20 per month as the market rate for the eight carports available on the Subject. Accordingly, the potential gross income of the Subject is found by the Tribunal to be \$336,488.

#### Vacancy and Income Loss

Petitioner's expert used a vacancy and collection loss rate of 30%. He indicated that the non-payment of rent is an issue that drives the vacancy and loss up a little bit, and the rate applied was based on properties he has examined and people he has talked to. [Transcript Vol I at 79.] The appraisal states that the management company provided a vacancy rate of 30% and that Petitioner's expert has researched student rentals with most having rates of 20% - 30%, with some being as high as 50% and the 30% used in the appraisal being "based on the assumption that the subject property is well managed." [P-1 at 114.]

Respondent's expert testified that he "took into account what [he] felt were the appropriate economic occupancies of the comparables . . ." when establishing the potential gross income. [Transcript Vol I at 174.] Further, he indicated that he "took a market vacancy of 10 percent, which as of the dates of valuation [he] felt was appropriate for the subject property . . . ." [Transcript Vol I at 180.]

The Tribunal finds the use of 30% for vacancy and income loss to be more supportable than the 10% used by Respondent's expert. Respondent's expert did not utilize a rental study as of



December 31, 2011, but used a study prepared in 2013 for establishing the 2014 assessments in the City. Further, Respondent's expert based his 10% vacancy on what he felt was appropriate, while Petitioner's expert relied on the actual vacancy reported for the Subject by the management company as well as his research on other student rentals.

### Expenses

Petitioner's expert broke the expenses down into separate categories for management, water/sewer, electric/gas, cable, garbage, snow removal/lawn care, repairs/maintenance, insurance, and replacement reserves. Further, he testified that whenever possible, he tracks expenses from other projects that he has done or information that he has access to. [Transcript Vol I at 79.] The total operating expenses indicated in Petitioner's appraisal added up to \$72,806.

Respondent's expert did not break the expenses down into separate categories but applied a expense rate of 28% of effective gross income based on his knowledge gained from the multi-family housing study prepared for the City of Kalamazoo for the 2014 assessments. [Transcript Vol I at 180.] The appraisal reflects that the expenses include insurance, utilities, unit turnover, snow removal/landscaping care, repairs, professional/office/advertising fees, and management fees at 5%. [R-1 at 18]. Respondent's expert also included \$10,500 for reserves, which is approximately 3% of the effective gross income under Respondent's direct capitalization approach. The Tribunal finds the expenses utilized by Petitioner's expert to be more supported and therefore more reliable for inclusion in the calculation under the direct capitalization approach. As the estimated gross income has been revised by the Tribunal, Petitioner's replacement reserves at 3% would now be \$7,066. Further, Petitioner's management expense at 7% would now be \$16,488. The total expenses resulting from these calculations is \$78,554.<sup>10</sup>

### Capitalization Rate

Petitioner's expert did not utilize a market-derived capitalization rate, stating that there was inconsistent and poorly reported data. [Transcript Vol I at 80] Instead, he relied on the band of investment, arriving at a rate of 0.0962 to which he then added the component for real estate taxes at 0.0350, which was "determined by the percentage that taxes are in relationship to the assessor's estimate of market value of the sale time period of a property" [P-1 at 115], for an adjusted overall cap rate of 0.1312. Respondent's expert, on the other hand, did apply a market-derived cap rate, based on three other student housing complexes in Kalamazoo, which showed a rate of 0.0976. He also consulted national cap rates published by Korpacz Real Estate Investor Survey. The 2011 national rate for apartments was 0.0651 and for 2012 it was 0.0828. [R-1 at 19]. Respondent's expert arrived at a cap rate of 0.100 to which he added the component for real estate taxes of 0.0345 (based on the millage rate). This would result in an overall cap rate of

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<sup>10</sup> The conclusion of expenses at \$78,554 is in line with the total for expenses and reserves by Respondent's expert at 31%, which when applied to the Tribunal's determination of EGI of \$235,542 results in total expenses of \$73,018

0.1345; however, Respondent's expert appears to have transposed the numbers and applied an overall cap rate of 0.1354.

The Tribunal finds that Respondent's appraiser has provided better support and analysis in developing an appropriate capitalization rate to be applied to the net income generated by the Subject for 2012. While the national rates in the appraisal have little reflection on the student housing market in this area, the market-based cap rates used data more proximate to December 31, 2011, and established an average rate of 0.0976. This rate is in line with the band of investment method used by Petitioner's expert at 0.0962.

The correct tax loaded factor is determined by half the applicable millage rate. The indicated millage rate for 2011 was 69.1594, with half the millage being the 0.0345 utilized by Respondent's expert. When this is added to the cap rate of 0.0976, the resulting overall cap rate to be applied for 2012 is 0.1321.

Given the above analysis, the Tribunal finds the following calculation of value under the direct capitalization of income approach:

<b>2012</b>	
Income	
Rents	\$334,688
Carport Rental	\$1,800
Potential Gross Income	\$336,488
Less: Vacancy and Income Loss	(\$100,946)
Effective Gross Income	\$235,542
Less: Expenses (Total)	(\$78,554)
Net Operating Income	\$156,988
Capitalization Rate	0.1321
<b>True Cash Value</b>	<b>\$1,188,400</b>
<b>True Cash Value per Bedroom</b>	<b>\$16,977</b>

## VI. CONCLUSION

After a careful review and weighing of the testimony and exhibits presented, this Tribunal finds that Petitioner has met its burden of proof and that a reduction in the assessment is warranted. The Tribunal further finds that primary reliance should be placed on the income approach, as the Subject is income-producing and this was the method primarily relied upon by both parties. The Tribunal's value conclusion under the income approach was \$1,188,400. Further, the Tribunal finds that some reliance should be placed on the sales comparison approach, with the Tribunal's conclusion under this approach being \$1,294,000. When the two approaches are reconciled, again with primary reliance on the income approach, the resulting true cash value for the 2012 tax year is \$1,200,000. For the reasons discussed above, the conclusion of this Tribunal is that the true cash, state equalized, and taxable values of the Subject are as follows:

Parcel No.	Year	TCV	SEV	TV
06-20-383-003	2012	\$1,200,000	\$600,000	\$600,000

In reaching the holdings in this opinion, we have considered all arguments for contrary holdings, and have rejected all arguments not discussed as without merit or irrelevant. To reflect the foregoing,

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of 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 as required by this Final Opinion and Judgment within 28 days of the 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 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 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 the Tribunal's 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% for calendar year 2012, (iv) after June 30, 2012, through December 31, 2013, at the rate of 4.25%, and (v) after December 31, 2013, and through June 30, 2014, at the rate of 4.25%.

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

Steven H. Lasher

Entered: July 9, 2014  
klm