STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

FAW, LLC & GBM Apartments, LLC,
Petitioner,

v

Township of Grand Blanc,
Respondent.

MTT Docket Nos. 327974
357752, 352509, and 359178

Tribunal Judge Presiding
Victoria L. Enyart

ERRATA ORDER CORRECTING OPINION AND JUDGMENT

The Tribunal entered an Opinion and Judgment in this case on July 17, 2009; parcel identification number 25-12-35-680-047 was excluded from the Opinion and Judgment. Therefore,
The Tribunal CORRECTS the Opinion and Judgment to reflect the following:

Based upon its examination of the evidence received at the hearing conducted in this matter, the Tribunal concludes the true cash value, state equalized value, assessed value[1] of the subject properties for the 2006, 2007 and 2008 tax years are as follows:

Parcel No. 25-12-35-400-020

Year	TCV	AV/SEV
2006	$10,600,000	$5,300,000
2007	$10,941,200	$5,470,600
2008	$ 9,807,000	$4,903,500

The Tribunal finds that the correct taxable value for MTT Docket No. 327974 based on the consumer price index for the parcels below are:

Parcel No. 12-35-400-400-020

Year	TV on Roll	Number of Apartment Units	CPI	TV Calc/Unit
2004	$5,158,000	316	NA	**$16,323**
2004	$4,506,000[2]	276	NA	**$16,323**
2005	$4,608,648	276	1.023	$16,698
2005	$4,207,949[3]	252	1.033	$16,698
2006	$4,346,811	252	1.033	$17,249
2007	$4,507,643	252	1.037	$17,887

[1] The taxable value was a separate issue.
[2] The 2004 winter taxes were reduced because 40 apartments were split into condominiums.
[3] The 2005 winter taxes were reduced because 24 apartments were split into condominiums.

2008	$4,611,319	252	1.023	$18,298

The Tribunal's calculations include the value of the apartments to assist the reader in the conversion of apartment units to condominium units. The Tribunal finds the taxable value[4] for the condominiums, MTT Docket 357752, are as follows:

No. Apartments	316	276	276	252	252	252	252	252
Taxable Value Only	Apts	After Split						
CPI			1.023	1.023	1.033	1.037	1.023	1.044
Parcel ID	**2004**	**2004 Winter Split**	**2005 Summer**	**2005 Winter Split**	**2006**	**2007**	**2008**	**2009**
25-12-35-400-020	$5,158,000	$4,506,000	$4,608,648		$4,346,811	$4,507,643	$4,611,319	$4,814,217
25-12-35-680-003		$16,323	$16,698		$17,249	$17,887	$18,298	$19,103
25-12-35-680-007		$16,323	$16,698		$17,249	$17,887	$18,298	$19,103
25-12-35-680-008		$16,323	$16,698		$17,249	$17,887	$18,298	$19,103
25-12-35-680-014		$16,323	$16,698		$17,249	$17,887	$18,298	$19,103
25-12-35-680-015		$16,323	$16,698		$17,249	$17,887	$18,298	$19,103
25-12-35-680-019		$16,323	$16,698		$17,249	$17,887	$18,298	$19,103
25-12-35-680-023		$16,323	$16,698		$17,249	$17,887	$18,298	$19,103
25-12-35-380-025		$16,323	$16,698		$17,249	$17,887	$18,298	$19,103
25-12-35-680-033		$16,323	$16,698		$17,249	$17,887	$18,298	$19,103
25-12-35-680-039		$16,323	$16,698		$17,249	$17,887	$18,298	$19,103
2005 Units Split								
25-12-35-680-042				$16,698	$17,249	$17,887	$18,298	$19,103
25-12-35-680-045				$16,698	$17,249	$17,887	$18,298	$19,103
25-12-35-680-047				$16,698	$17,249	$17,887	$18,298	$19,103
25-12-35-680-048				$16,698	$17,249	$17,887	$18,298	$19,103
25-12-35-680-049				$16,698	$17,249	$17,887	$18,298	$19,103
25-12-35-680-050				$16,698	$17,249	$17,887	$18,298	$19,103
25-12-35-680-051				$16,698	$17,249	$17,887	$18,298	$19,103
25-12-35-680-055				$16,698	$17,249	$17,887	$18,298	$19,103
25-12-35-680-056				$16,698	$17,249	$17,887	$18,298	$19,103
25-12-35-680-057				$16,698	$17,249	$17,887	$18,298	$19,103
25-12-35-680-058				$16,698	$17,249	$17,887	$18,298	$19,103
25-12-35-680-063				$16,698	$17,249	$17,887	$18,298	$19,103
25-12-35-680-064				$16,698	$17,249	$17,887	$18,298	$19,103
TV/unit calculated				$16,698	$17,249	$17,887	$18,298	$19,103

JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the tax years at issue shall be as set forth in the Findings of Fact 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 this 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

[4] The taxable value of the apartments does not exactly equal the same unit value as the individual condominium units due to rounding of the larger calculation.

refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of 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, 2005, at the rate of 3.66% for calendar year 2006, (ii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (iii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and (iv) after December 31, 2008, at the rate of 3.31% for calendar year 2009.

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: July 27, 2009 By: Victoria L. Enyart

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STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

FAW, LLC & GBM Apartments, LLC,
Petitioner,

MTT Docket Nos. 327974
357752, 352509, and 359178

V
Township of Grand Blanc,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Petitioner, FAW, LLC & GBM Apartments, LLC (also “FAW”) known as Fairways at Woodfield Apartments, appeals ad valorem property tax assessments levied by Respondent Township of Grand Blanc (also “Township”), against the real property owned by Petitioner for the 2006, 2007, and 2008 tax years. Petitioner also appeals a mutual mistake of fact; the 2005 taxable value contained an increase that exceeded the Consumer Price Index (also "CPI") for an increase in the occupancy rate. The taxable value appeal begins in 2005 and continues through the 2008 tax year. Timothy W. Denney, attorney, appeared on behalf of Petitioner. Lyndon J. Lattie, attorney, appeared on behalf of Respondent. Witnesses appeared on behalf of both parties. They include: Petitioner's valuation expert, Douglas K. Hodge, MAI appraiser, and Mike H. Coulter, part owner. Respondent's valuation expert, Brenda D. Makarov, MAI appraiser, and Township assessor, Peggy Nolde.

The proceedings were brought to this Tribunal on April 15, 2008, to resolve the real property assessment dispute.

At issue before the Tribunal is the determination of true cash value of Petitioner's personal property for the 2006, 2007 and 2008 tax years. The values on the rolls for the contested assessments and the parties' contentions of value are as follows:

Parcel No. 25-12-35-400-020

Year	AV/SEV	TV	PET'S TCV	RESP'S TCV[5]
2006	$4,576,400	$4,576,400	$2,600,000	$10,600,000
2007	$4,576,400	$4,576,400	$6,000,000	$10,941,200
2008	$4,724,400	$4,724,400	$8,000,000	$ 9,807,000

In addition to the valuation appeal, subject property has split some apartment buildings into condominiums; those condominium units appealed the additional taxable value mistakenly added by Respondent. Respondent testified that the taxable value for subject property before the property split included an inappropriate increase in taxable value above the consumer price

[5] True cash value is based upon Respondent's appraisal.

index. The Tribunal has jurisdiction under MCL 211.53a to correct the taxable value for the current year and the three prior years. Therefore, the taxable value appeal is decided after the true cash value has been determined for the apartments. The initial year of the taxable value appeal is 2005. Respondent improperly increased the taxable value based upon an increased occupancy rate. Respondent testified that it was a mutual mistake and that, as a result, Petitioner has paid taxes in excess of the correct and lawful amount. The refund of excess taxes paid as a result of the increase in taxable value for 2005 only is paid without interest for 12-35-400-020.

The pertinent information on the contested taxable value increases is as follows:

Parcel No. 12-35-400-020

Year	**TV on Roll**	**Apts/Condos Information**	**TV/Unit**
2003	$4,175,554	316 Apt units	$13,213
2004	$5,158,000	Summer 316 Apt units 100% complete	**$16,323**
2004	$4,506,000	Winter 276 Apts 40 Condos Split	$16,326
2005	$5,110,600	Summer 276 Apts	$18,517
2005	$4,666,600	Winter 252 Apts 24 Condos Split	$18,518
2006	$4,576,400	252 Apt	$18,160
2007	$4,576,400	252 Apt	$18,160
2008	$4,681,657	252 Apts	$18,578

Taxable Value for Condominiums [MTT Docket No. 357752]

Parcel ID	2004	2005	2006	2007	2008
25-12-35-680-003	$16,300	$35,674	$36,851	$38,214	$39,092
25-12-35-680-007	$16,300	$35,674	$36,851	$38,214	$39,092
25-12-35-680-008	$16,300	$35,674	$36,851	$38,214	$39,092
25-12-35-680-014	$16,300	$31,674	$32,719	$33,929	$34,709
25-12-35-680-015	$16,300	$41,674	$43,049	$44,641	$45,667
25-12-35-680-019	$16,300	$32,674	$33,752	$35,000	$35,805
25-12-35-680-023	$16,300	$35,674	$36,851	$38,214	$39,092
25-12-35-380-025	$16,300	$35,674	$36,851	$38,214	$39,092
25-12-35-680-033	$16,300	$35,674	$36,851	$38,214	$39,092
25-12-35-680-039	$16,300	$35,674	$36,851	$38,214	$39,092

25-12-35-680-042	$16,322	$18,500	$53,410	$55,386	$53,800
25-12-35-680-045	$16,322	$18,500	$45,300	$46,000	$43,700
25-12-35-680-048	$16,322	$18,500	$53,410	$55,386	$53,800
25-12-35-680-049	$16,322	$18,500	$53,410	$55,386	$53,700
25-12-35-680-050	$16,322	$18,500	$53,410	$55,386	$53,700

25-12-35-680-051	$16,322	$18,500	$43,900	$44,600	$42,400
25-12-35-680-055	$16,322	$18,500	$53,410	$55,386	$53,700
25-12-35-680-056	$16,322	$18,500	$53,410	$55,386	$53,700
25-12-35-680-057	$16,322	$18,500	$53,410	$55,386	$53,800
25-12-35-680-058	$16,322	$18,500	$53,410	$55,386	$53,800
25-12-35-680-063	$16,322	$18,500	$53,410	$55,386	$53,800
25-12-35-680-064	$16,322	$18,500	$53,410	$55,386	$53,800

MTT Docket 357752 is a taxable value only appeal for the condominiums that are split from the apartments. The original apartment's valuation appeal is MTT Docket 327974.

Background and Introduction

The subject property is located at 1001 Parkhurst Lane, Grand Blanc Township, Flint County, Michigan. The property is improved with 12 multi-family apartment buildings. The project also includes a pool and clubhouse with a maintenance building.

Unit Mix/Square Footage

# Units	Unit Type	Sq. Ft.	Total SF
48	1BR/1BA	895	42,960
12	2BR/2BA	1,110	13,320
84	2BR/2BA	1,135	95,340
36	2BR/2BA	1,084	39,024
36	2BR/2BA	1,366	49,176
36	3BR/3BA	1,499	53,964

The property was constructed in 2002-2003 and contains 33.10 acres. The construction began with 316 apartment units. In April 2004, 40 condominium units were split from the apartments. The total apartment units decreased to 276 units. In June 2005, an additional 24 condominium units were split, leaving the current 252 apartment units under appeal. A total of three buildings have been converted from apartments to condominiums.

The gross square footage for the apartments (under appeal) is 292,429, with 3,634 square feet within the club house and 707 square feet within the maintenance building. The zoning is Planned Unit Development.

Subject property is located on the east side of Saginaw Street (a major commercial corridor) at the southern edge of the community. Saginaw Road splits into a divided Dixie Highway in the subject's immediate vicinity with access to I-75 just south of subject property.

Petitioner's Arguments

Petitioner believes that the best approach for subject property is an income approach using actual vacancy rates, not ones made up from other apartments.

Petitioner offered the following proposed exhibits:

P-1 Petitioner's 2006 and 2007Appraisal.
P-2 Petitioner's 2008 appraisal update.
P-3 Income and expense statements for 2003, 2004, 2005, 2006 and 2007.
P-4 Rent roll for 2003, 2004, 2005, 2006 and 2007.
P-5 2007 occupancy, asking rents and rent specials.
P-6 Summary of taxable value for 2003, 2004, 2005, 2006, 2007 and 2008.
P-10 2002 and 2003 occupancy summary chart for apartments.
P-11 July 2, 2008 letter from assessor re: July Board of Review.
P-12 July 22, 2008 letter from Petitioner to July Board of Review.
P-15 Petitioner correspondence to Respondent dated: December 16, 2004; January 11, 2005; and January 13, 2006.
P-18 FAW condo unadjusted taxable values.
P-19 FAW condo adjusted taxable values per Petitioner.
P-20 FAW condos sold to 3rd parties.
P-24 Board of Review affidavits.
P-26 Assessor income approach calculation.
P-27 Original photographs from Hodge's report.
P-28 Rent information provided to assessor.
P-32 Yearly absorption rate spreadsheet.
P-33 Sample unit parcel taxable value as billed (building 14000).
P-34 Sample unit parcel taxable value increase (building 11000).

All of the proposed exhibits were admitted.

Petitioner's only valuation witness, Douglas K. Hodge, MAI, has in excess of 20 years in fee appraisal work experience. He did an appraisal of subject property for tax years 2006, 2007 and 2008. He considered the cost, income and market approaches to value and determined that the sales comparison approach was the least reliable because the appropriate adjustment for external obsolescence was unable to be determined. Subject property is a 252-unit apartment complex. Hodges believes that a typical investor would consider the income and expenses. He used the cost approach to confirm the income approach.

Hodge began with three vacant properties that have sold. The sales were located in Howell, Lapeer and Fowlerville. The sales were adjusted for differences in date sold and location. The sales were similar in size to subject and required no adjustment for size. He discussed each sale and the amenities and adjustments for differences between the sales and subject property.

Land Sale 1 is located in Howell, Livingston County, in a residential area. The sale was adjusted for differences in time of sale and valuation date and a superior location, for a gross adjustment of 20%.

Land Sale 2 is located in Lapeer, Lapeer County. This sale was zoned multi-family and was purchased by investors for multi-family use; however, it was resold and rezoned for commercial use. It was adjusted for differences in time of sale and an inferior location.

Land Sale 3 is also located in Howell, Livingston County, in an area of residential and commercial property on M-59. It was the most current sale with a sale date of May 2006. The property did have an apartment and condominium complex constructed on it. This property is 47.7 acres compared to subject's 31.1 acres and was adjusted by Hodges 10% for a superior location and 10% because the lot was smaller[6].

The adjusted sale price per acre determined by Hodge was $35,000 per acre for the 31.1 acres for a true cash value indication of $1,088,500 for all three years at issue.

The replacement cost new approach for the improvements was taken from Marshall Valuation Service, a review of actual cost new and the current contributory value results from his estimate of depreciation, which includes (1) physical deterioration, (2) functional obsolescence, and (3) external obsolescence.

Physical depreciation was estimated by Hodge using Marshall Valuation Service for a life expectancy of the building and site improvements. The effective age was calculated in years and matched with the typical life expectancy for the appropriate depreciation percentage.

Total physical depreciation was determined as follows:

Improvements	Total Physical Depreciation Percentages		
	2006	2007	2008
Apartment Bldgs	3%	4%	7%
Clubhouse	3%	4%	7%
Maintenance Gar	5%	7%	7%
Garages	5%	7%	7%
Site Improvements	14%	19%	7%
Pool/Hot Tub	10%	14%	7%
Tennis Court	10%	14%	7%

[6] The Tribunal notes that Land Sale No. 3 on the Sales Analysis Grid indicates 22.50 acres, not the 47.70 acres as reported twice on Petitioner's Exhibit 1 page 39.

Hodge explains that functional obsolescence results from changes in building and equipment usage that recognizes that new technologies may need to be incorporated into existing structures, layout and other deficiencies in construction, and is estimated by the cost to cure the item of functional obsolescence.

Hodge goes on to explain external obsolescence as changes in cost structures, weakened demand, competition, loss of market, etc. Changes in neighborhood land uses surrounding the subject property sometimes result in public resentment and environmental challenges that have the potential to diminish the overall value of a property. In subject property Hodge found that the subject's location in a newly established multi-family planned unit development results in a low occupancy rate over the past few years. Therefore, he calculated the external obsolescence for 2006 in the following manner:

Indicated contributory Value before ext. obs.	$25,460,307
Cap rate of 10.45%	
Indicates a NOI requirement of	$ 2,660,602
Plus amortization	$ 38,277
Plus expenses	$ 762,666
Gross income required	$ 3,461,535
Actual gross income	$ 1,015,512
Difference	$ 2,446,023
Capitalized at 10.45%	$23,406,919
Capitalize rent difference divided into Indicated contributory value before External obsolescence	92%
Indicated external obsolescence	90%

Hodge calculated the 2007 and 2008 external obsolescence in the same manner. The results are 75% external obsolescence for 2007 and 63% for 2008.

Hodge then does a cost analysis of all of the components for each building type, which results in a total replacement cost new of $25,460,307, from which he deducts $775,017 for physical depreciation of improvements, $70,000 for site improvements; $8,500 for pool, hot tub, and tennis courts; and $21,708,261 for external obsolescence. Total depreciation is $22,541,778 for a contributory value of building at $2,918,529 for tax year 2006. The total true cash value for land and building is $4,000,000.

Hodge follows the same methodology for the 2007 and 2008 tax years.
The total true cash value for land and building for 2007 is $7,000,000 and for 2008 is $9,900,000.

The income capitalization approach was used by Hodge. He reviewed the market rental rates for apartment properties within the area. His conclusion was that the current rents appear to be within and slightly below market indications; therefore, he determines that subject properties' rents are market oriented.

Hodge uses seven apartment complexes located within Grand Blanc and one complex in Burton. Based on a survey of area apartment buildings the occupancy rates are from 90% to 95%. Subject property for the same time period has an occupancy rate of 42% to 65%. Hodge in his reconstructed pro forma income and expense statement used the actual income and expenses including subject's actual occupancy.[7] The result is a net operating income of 7.9% of gross income or $232,524. The breakdown of income and expenses is as follows for the 2006 tax year:

Gross Income rental and other		$2,927,000
Vacancy/Credit 66%		$1,931,820
Effective Gross Income		$ 995,180
Expenses:		
Advertising	4.0%	
Auto & Travel	0.3%	
Cleaning & Maintenance	1.1%	
Commissions	1.5%	
Insurance	1.3%	
Legal	0.3%	
Repairs	0.7%	
Utilities	5.2%	
Leased Employees	3.8%	
Office Supplies	0.3%	
Networking Expenses	0.1%	
Building Maintenance	2.5%	
Grounds Maintenance	1.6%	
Contract Leasing Agents	1.6%	
Telephone	0.3%	
Rent/Storage Expenses	0.25%	
Leased Furniture	1.2%	
Total Expenses	26.1%	$ 762,656
Net Operating Income	7.9%	$ 232,524

The 2007 tax year had a vacancy/credit of 48.5% total expenses were 29.8% for a net operating income of 21.7% or $586,480.

The 2008 tax year had a vacancy/credit of 45%, total expenses were 27.2% for a net operating income of 27.8% or $948,207.

Hodge (again, for all three years under appeal) uses a direct capitalization method defined as:

> A method used to convert an estimate of a single year's income expectancy into an indication of value in one direct step-either by dividing the income estimate by an appropriate income rate or by multiplying the income estimate by an

[7] Hodge uses the same methodology for tax years 2007 and 2008.

> appropriate factor. Appraisal Institute, *The Appraisal of Real Estate*, (Chicago; 13th ed, 2008), p. 529.

Hodge states in P-1, p 63:

> Income producing properties such as the subject are normally purchased with some combination of equity and financing capital. The opportunities for leverage and increased profits lead investors to deliberately incur debt and seek maximum returns on minimum investments.

Hodge then explains using information from various sources, that the capitalization rate is 8.0% the effective tax rate of 2.45% is added for a total capitalization rate of 10.45% for 2006, 10.57% for 2007 and 12.56% for 2008. The next step is to divide the net operating income by the appropriate capitalization rate for an indication of value. The values based on the income approach as determined by Hodge are:

Net operating income $232,524 / .1045 =	$2,225,110 2006 value
Net operating income $586,480 / .1057 =	$5,550,000 2007 value
Net operating income $948,207 / .1256 =	$7,550,000 2008 value

Hodge's final reconciliation of value for the tax years at issue are:

2006 $2,600,000 2007 $6,000,000 2008 $8,000,000

Mike Coulter was Petitioner's last witness. He is a builder and part-owner of six apartment complexes, as well as of subject property. He also owns New Horizon Properties, LLC, which provides the management of the completed properties. Coulter testified that he became involved with subject property in 2001. Another developer had already completed the architectural and engineering plans so it was "shovel ready." The certificate of occupancy for the last twelve buildings was issued July, 2003.

Coulter testified that there are sixty garages on the property. There was no new construction on the subject property for 2004.

Coulter stated when questioned about the lease-up history of the complex: "Well, it initially started out slow. Had some periods where it ramped up a little bit and then it would fall back subsequently, go back up again. Quite inconsistent." He continued "During the last four months of 2007 we experienced considerable negative absorption. I believe we lost about 16 units in the last four months in occupancy." [8]

Coulter continues his testimony on the rent concessions stating that "over the years we've offered pretty much anything that we could come up with and that's in the marketplace. But in general it changed from one to two months. Initially one month we would give away with a 12-month or a 13-month lease, and then it went to two months with a 14-month lease. Then it went to two months, plus they got the proration of the current month." [9]

Coulter initially believed that the property's problems began with the interest rates being lowered and many renters could purchase a home. The second issue was the economy was on the decline. The absorption rate was not what they needed so they lowered the rents 10% for the different units. And then in 2007, when that wasn't successful, the rents were lowered an additional 10%.

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[8] Transcript, May 5, 2009, page 124, Volume I.
[9] Transcript, May 5, 2009, page 125, Volume I.

Coulter explained that an adjacent apartment complex, Gateway Apartments, is in direct competition to subject property and he is familiar with the techniques and concessions that Gateway Apartments offers because a leasing specialist works for them. "Gateway has pretty much taken the attitude that whatever we quote and whatever we do they're going to beat it, which includes a common, elimination of a common entry fee that's charged. It includes elimination of the security deposit. It includes up to three months free rent for a twelve-month lease. They've been extremely aggressive."[10] Coulter went on to explain the difference between economic vacancy and net income. When Gateway Apartments states that they are renting for 90-95% occupancy it is not a clear picture of the economic vacancy. If the three-months free rent is considered, the economic occupancy could be 60%. Coulter does not believe that physical occupancy has any meaning without the additional information. You could have 95% occupancy and lose money because of the economic vacancy. The expenses increase and the net operating income is negatively affected when the economic occupancy is substantially less than the vacancy.

Coulter testified on cross that maximizing profits is what every investor tries to do. ". . . physical occupancy can often camouflage what's really going on. If they're giving away everything but the kitchen sink when they rent the units then their gross income is going to be reduced dramatically and as a result their net operating income is going to be reduced."[11] He stated that economic occupancy was more important.

[10] Transcript, May 5, 2009, page 131, Volume I.
[11] Transcript, May 5, 2009, page 140 Volume I.

Coulter stated that an appraisal exists to support a June 26, 2007 mortgage between GBM Apartments and Cullen Financial, Inc. for $11,000,000. There is also a mortgage for construction obtained in 2001 for $22,000,000. He explained that the $11,000,000 mortgage was required to have a letter of credit because it did not support that amount. The loan was also cross-collateralized with three properties with higher occupancies and stabilized.

Respondent's Arguments

Respondent presented two witnesses: Brenda Makarov, MAI appraiser, and Peggy Nolde Assessor for Grand Blanc Township.

Makarov prepared appraisals for the three years in contention. She used the cost, market and income approaches to value. The three approaches were reconciled and Makarov determined that the income approach is the most reliable indicator of value based on the quantity and quality of data.

Makarov discusses in the supply analysis that three conventional apartment complexes have been brought on line since 2000 for an addition of 1,068 apartment units. She discusses the absorption rate[12] of the three apartment complexes. The combined absorption is 3.1 to 7.7 units per month for the new apartment complexes. She did discuss the competitive position of subject property. Heatherwood Apartments captured the higher absorption as it was the lower price per unit. Subject is very similar to Gateways in its location, unit layouts, and pricing. Makarov stated

[12] Absorption period; the actual or expected period required from the time a property is initially offered for lease, purchase, or use by its eventual users until all portions have been sold or stabilized occupancy has been achieved. Although marketing may begin before the completion of construction, most forecasters consider the absorption period to begin after the completion of construction. Absorption rate; the rate at which properties for sale or lease have been or are expected to be successfully marketed in a given area; usually used in forecasting sales or leasing activity. Appraisal Institute, *The Dictionary of Real Estate Appraisal*, (Chicago; 4th ed, 2000), p 2.

that, based on the average occupancy, it should achieve a stabilized physical occupancy of 92% by June, 2008. R-1, p 58.

The highest and best use of subject property as if vacant was determined by Respondent to remain vacant until such time a multiple family development is feasible. The analysis indicates that absorption and market-supported rental rates are inadequate to support new construction. Respondent states that

> The subject property is currently improved in a manner that does not conform to the highest and best use as if it were vacant. However, the use is physically possible and legally permissible. Moreover, the improvements add considerable value to the underlying land. It does not make sense, therefore, to demolish the improvements only to leave the site vacant and unproductive. The highest and best use of the property as improved is therefore recognized to be for a continuance of the present apartment use as developed. R-1, p 62.

Makarov in the cost approach used four sales of multi-family housing, one of which was the 2000 purchase of subject's vacant land. The other three vacant land sales are in other counties, not necessarily adjacent to subject. The sales took place from 2000 to 2004. The adjustments made to the sales were 5% per year for time of sale, until the end of 2002, a 15% deduction to Land Sale 1 because of its superior location and the ability to command higher rents than subject, and a 35% deduction also to Land Sale 1 because it sold with site plan approvals in place. The result was a land value of $6,500 per unit or $52,733 per acre for a total land value of $1,640,000.

The subject was then costed out using Marshall Valuation Service. The replacement cost new, which includes 5% for indirect costs and 5% for entrepreneurial incentive, is $15,345,800. Depreciation is taken from the straight-line age method with an effective physical age of three years and an estimated 50-year economic life for the buildings and an economic life of 20 years for the site improvements. Makarov determined that subject property had no functional obsolescence based on the current design.

The replacement cost new for the site improvements is $766,800, depreciated at 25% to $575,100.

Makarov determined that while a neighborhood in decline may have an adverse effect on a property and cause external obsolescence, the subject's neighborhood was in a period of growth and stable as of December 31, 2003. Yet despite that, external obsolescence is present since the market is not achieving cost-feasible rents. Makarov states "An analysis of lost income due to external obsolescence indicates that an additional five years of effective age is warranted for the building improvements, and an additional two years of effective age is warranted for the site improvements." (R-1, p 72). Depreciation for the improvement is 16% for a depreciated building cost of $12,890,500. The total estimated replacement cost new for 2006 is $15,100,000.

Makarov's income analysis states:

> Apartment projects have short-term leases usually running a year or less. Value, as seen by the typical buyer in the marketplace, is therefore based not necessarily on the existing rent roll, but on the market rent potential of the property, since it is perceived that rents can be quickly converted to those levels. This is conceptually based on the principle that, in healthy markets, at any one time street rents should represent the potential of the property over the coming year. Thus, the valuation is based on the fee simple position. R-1, p 74.

Makarov found four rent comparables and made per square foot adjustments to the rent for heat $.05; water and sewer $.015; microwave $5.00 per month; carport $15.00 per month, and garage

$50 per month. The differences between subject's rent and the economic or market rent was discussed. Some of subject's apartment styles were above market rent. The one bedroom (Manhattan) and two-bedroom (Amherst) were determined to be at market. The other two-bedroom floor plans, Hampton and Cambridge, had rents that were above-market. One of the three-bedroom units, Kensington, was only 11% occupied and lease-up of this floor plan was slow with only 19% occupied as compared to the remainder of the property at 66% occupancy. Kensington's street rent exceeded market. Makarov reduced the economic rent for the Kensington model. Georgetown is a bi-level unit that has three bedrooms with an upper level loft. Its occupancy was 56%, which is higher than the 40.5% average. In addition, the Georgetown units were rented at street rent.

Makarov estimated annual economic rents at $2,567,376. The vacancy and credit was discussed. The norms determined by investors vary depending on the investment mood and desirability of apartments. Vacancy allowance includes allowances for physical vacancies as well as the economic cost of periodic promotions and losses from uncollectable rent. Makarov estimated that the market was in transition in 2005 and improving, according to most owners. The projection was 8% for turnover, 6% for concessions, 1% for collection losses for a stabilized vacancy, and credit loss of 15%.

Comparable (but undisclosed properties) were used by Makarov to determine the appropriate expenses for subject property. She found that administrative expenses were high because subject was not stabilized and had extraordinary advertising expenses. Subject's management, maintenance, payroll, and insurance were considered reasonable. Makarov did add a reserve for replacement because the subject will at some point require some capital improvement.

Makarov also used a stabilized pro forma operating statement for subject property. The resulting net operating income is capitalized by an overall rate for the value by direct capitalization.

Gross Income rental and other		$2,567,376
Vacancy/Credit 15% Deduction		$ 385,106
Effective Gross Income		$ 2,232,670
Expenses:		
Administrative	3.7%	
Management	4.0%	
Maintenance	7.6%	
Payroll	9.4%	
Utilities	6.3%	
Telephone	0.3%	
Insurance	1.9%	
Reserves	2.3%	
Total Expenses	35.2%	$ 785,079
Net Operating Income	64.8%	$1,447,591

Based on sales of apartments, Makarov extracted a market overall rate of 7.75%. She added the 2.59% effective tax rate to equal a total overall capitalization rate of 10.34%. The net operating income is divided by the overall capitalization rate for a value by the income approach of $14,000,000 for 2006.

The 2007 tax year had a vacancy/credit of 15%, total expenses were 35.8%, for a net operating income of 64.2% or $1,434,487. A 10.43% overall capitalization rate was used for a $13,800,000 value via the income approach.

The 2008 tax year had a vacancy/credit of 20%, total expenses were 36.5%, for a net operating income of 27.8% or $1,341,054. A 10.34% overall capitalization was used for a $13,000,000 value via the income approach.

Makarov, in her value conclusion for December 31, 2005, discusses the fact that the initial analysis presumes that subject property was fully stabilized as of the valuation date(s). The actual occupancy was 40.5%. She went a step further and, based on the previously projected absorption, she anticipated full occupancy mid-year 2008. She used a Discounted Cash Flow ("DCF") analysis to determine a stabilized income stream. The following information was used in the 2006 DCF analysis.

The physical vacancies as shown on R-1, p 114 are:

2006	48.8% physical+ 7% collections/concessions =	55.8%
2007	27.4% physical + 7% collections/concessions =	34.4%
2008	10.1% physical + 7% collections/concessions =	17.1%

Assumptions include the following:

- Growth in income and expenses at 2% per year.
- Other income projected at 70% of stabilized income in year one, 80% year two and 90% in year three.
- Utilities are variable and projected at 90% in year 1, 93% in year 2, 96% in year 3.
- Management is self adjusting.
- Administrative is 125% in year 1, 115% in year 2, and 110% in year 3. This is affected by increased advertising costs during lease-up.
- Exit cap rate is 50 basis points above the entry cap rate.
- Sales expense/ closing costs of 2.6% of reversionary value.
- Yield rate is 14.59%.

In addition, Makarov states that an investor would apply a yield rate at the upper end of an investor expectations plus additional penalty given the risks to lease-up to stabilization.

Makarov does a ten-year DCF analysis as of December 31, 2006 for a new present value for tax year 2006 of $10,648,001.

Makarov also did a ten-year DCF for tax years 2007 and 2008. The net present values were $11,000,000 and $9,860,000 respectively.

Makarov testified that the DCF was to recreate the way an investor would consider a property with an unstablilized income stream. She used the same assumptions in her analysis that are similar to what she does for a typical investor.

Makarov's final value conclusions (after deducting personal property) are:

2006	$10,600,000	2007	$10,941,200	2008	$ 9,807,000

<u>Petitioner's Taxable Value Arguments</u>

Petitioner's taxable value increased above the CPI in 2005, for the apartments, which carried forward to the condominiums when they were split, and then every subsequent year. Petitioner states that no new construction was added to subject property and initially believed that the apartments were increased for an uncapping. The property began with 316 apartments in 2004; the taxable value was $4,506,000 or $16,222.78 per unit. In 2004 forty of the apartment units were converted to condominiums. The 2005 taxable value increased to $5,110,600 or $18,516.67 per unit. This increase was 13.41% over the prior year's taxable value. In July, 2005, an additional 24 apartment units were converted to condominium units. No new construction was added in either 2004 or 2005. Petitioner notes that the increase in taxable value occurred when the apartments were converted to a condominium ownership in 2005.

Petitioner appealed the taxable value increase to the July Board of Review in 2008. The July Board of Review did make some corrections to the taxable value of both the apartments and the two condominium projects for 2008 and 2007. Petitioner requests the Tribunal to correct the taxable value only for the prior years for the apartment complex and then the condominiums that split from the apartments.

Peggy Nolde, Assessor for Grand Blanc Township, testified that because the occupancy increased for subject property, she increased the taxable value. She stated that the actual project was completed at the end of 2003. She split 40 units for tax purposes because the owner condominiumized the units. Nolde testified that she should not have increased the taxable value for increased occupancy and offered a recalculation of the taxable value. R-16.
Nolde stated that the July 2008 Board of Review did consider the 2005 taxable value because it contained a taxable value increase for occupancy for both the apartments and the condominiums that were split from the apartments. The same errors exist in the condominiums that were split in 2006, because they were split from the apartments that received an increase in taxable value. She testified that she was not aware that the statute changed and that she could not increase taxable value due to increased occupancy. Nolde believes that it was a mutual mistake that she improperly increased the taxable value above the CPI without an addition.

Nolde stated that "In 2005 there was no uncapping of taxable value for a transfer of ownership. There was Headley additions added as partial new construction, which earlier today we conceded would fall under WPW."[13] The apartments were new with a low occupancy rate so Nolde based the assessment and the taxable value calculation at 45% occupancy a 55% vacancy. Nolde increased the taxable value for the increased occupancy in 2005 or as a leased-up property. She testified that no new construction took place that would have justified an increase in the taxable value.

> The 40 condominium units were valued in 2004 using the income approach as apartments under construction for 2004. Therefore, Headlee additions were deemed appropriate for the balance of the completed construction on the units for the 2005 year.
>
> The dilemma for calculating the additions was the issue. Four units sold in 2004 and price per square foot ranged from $92.84 and $97.17. Land value allocations ranged from $20,000 to $25,000, depending upon the floor level of the building the building true cash values changed from $56,097 to $91,268, depending on size and amenities. R-4 p3.[14]

R-11 is the letter from Nolde indicating that the taxable values for the condominiums were incorrect and that she would be taking them to the 2008 July Board of Review for corrections to the 2007 and 2008 taxable value. Petitioner argues that the taxable value for both the apartments and condominiums should be corrected back to 2005 and carried forward.

Nolde testified (MTT Docket No. 357752) that the increase in taxable value was not due to an uncapping but to correct a clerical error. She believed that the error was an erroneous percentage

[13] Transcript, May 6, 2009, page 292 Volume II.
[14] Transcript, May 6, 2009, page 307 Volume II.

as there was no new construction to the condominiums. She used parcel 251235680003 to explain how the $19,000 Headlee addition was calculated. She testified:

> That would have been for the difference I calculated between that $16,300 that previously was what the assessment carried for that apartment, pulling it over to the condominium project, allocating the land value, and in this case it had $25,000. So $12,500 of that $16,300 would have been land value. The balance would have been allocated to the building value and taking that difference. Again, it was not new construction under that year, but that's how it was calculated. That, again, with that premise was the July Board changed in July of '08. [15]

Nolde testified that an error was made on R-17, because building 14, 14000 did not exist for tax year 2004; it was part of the apartment complex. The units were converted into condominiums for tax year 2006. The units should have a beginning taxable value of $18,500.

<u>Tribunal's Finding's of Fact</u>

Petitioner's appraiser Hodge calculated the cost and income approach and relied on the income approach. Hodge did a "proof of external obsolescence." This uses the cost new and the amount of gross income required to service the cost of the new construction, including amortization and expenses. The difference between the gross income required and the actual income is capitalized and divided into the cost new for a percentage of external obsolescence. This calculation with the physical depreciation results in a 90%+ reduction in the cost approach for 2006, 75% reduction for 2007, and 63% reduction for 2008.

Petitioner's income approach uses actual income and vacancy rates (66%) resulting in a net income of 7.9% of the potential gross income for 2006 tax year. The 2006 actual income and 48.5% vacancy rate is used to result in 21.7% of net income for capitalization for the 2007 tax

[15] Transcript, May 6, 2009, pages 318-319 Volume II.

year. The 2007 income deducts $225,000 for rent concessions and discounts before the potential gross income is calculated with a 45% vacancy rate for the 2008 tax year.

Hodge, in his appraisal, states that the cost approach was used, and depreciation calculated, but due to the low occupancy rate, external obsolescence was deducted. The weakness of the cost approach is the estimation of the various forms of depreciation. Hodge states, "The cost approach provides a reliable indication of value, particularly in the case of a newly constructed building or a special purpose structure." P-1 p 66.

Hodge's reconciliation discusses the income approach typically applied to a property by a prospective investor. Income properties are typically valued on their ability to generate income and on anticipated changes in value. The Tribunal agrees that subject property, although newer construction, would be considered by a typical investor on its ability to produce income. Hodge's final reconciliation closely follows the income approach.

Hodge stated he did not do a sales comparison approach because

(1) The sales comparison approach was considered but was not deemed appropriate for inclusion in the appraisal. Investors in the apartment market typically apply an income analysis to a market transaction and are less concerned about the use of comparable data. The subject property is of relatively new construction and there are few, if any, sales of similar complexes in the Southeastern Michigan market that would be considered applicable to the subject. P-1 p 31

(2) The sales comparison has been considered but not developed in this appraisal. Although several sales of similar properties in the Genesee County Area have been compared an appropriate adjustment for external obsolescence was unable to be determined. Therefore, the sales comparison approach was not deemed applicable. P-1 p 67.

The Tribunal finds Hodge's statements referencing the sales comparison approach confusing, either there were sales or there were not. But the statement that an appropriate adjustment for external obsolescence was not able to be determined for the sales comparison approach makes less sense. Hodge did find sufficient data to determine external obsolescence for the cost approach.

The Tribunal finds that Hodge's appraisal is not reliable. It is difficult to comprehend how newly constructed apartment complexes with "fantastic staff," competent management, although slightly overbuilt for the area, is only worth 10% of its original cost new. It is a difficult concept for the Tribunal to accept. It is even more inconceivable that Hodge's net operating income is only 7.9% of potential gross income for the 2006 tax year. P-1 p 61.

Hodge used the calculation in the cost approach to determine the gross income necessary for a project to be constructed. Had Petitioner applied the same formula, the apartment may not have been constructed.

Hodge explained that due to oversupply the subject property had a low lease-up period, which affected the income produced. Hodge capitalized the loss in rent for external obsolescence. He then used a direct capitalization method to result in his opinion of value for subject property. He testified that in his report he looked at the property from an owner's perspective.

The direct capitalization is a method used to convert a single year's income into a value. The income is divided by the capitalization rate. Appraisal Institute, *The Appraisal of Real Estate*, (Chicago, 13th ed, 2008), p 491

> Direct capitalization is widely used when properties are already operating on a stabilized basis and there is an ample supple of comparable sales with similar risk levels, incomes, expenses, physical and locational characteristics, and future expectations. This methodology may be less useful for properties going through an initial lease-up or when income or expenses are expected to change in an irregular pattern over time Appraisal Institute, *The Appraisal of Real Estate*, (Chicago, 13th ed, 2008), p 499.
>
> Discounted cash flow (DCF) analysis is appropriate for any pattern of regular or irregular income. In many markets and for many property types, DCF analysis is the technique investors prefer. The proper application of DCF analysis identifies the market conditions investors are anticipating as of the date of value. DCF analysis is not a prediction by the appraiser. Basic computer technology makes DCF analysis a practical tool for everyday appraisal work. Appraisal Institute, *The Appraisal of Real Estate*, (Chicago, 13th ed, 2008), p 539.

Hodge testified that the use of the DCF is dependent upon many factors and changing just one factor drastically changes the value. He testified to the value differences with four changes: (1) if income is flat the net present value changes to $8,500,000, (2) change the terminal capitalization rate to 12.5% for the higher risk and the value decreases approximately $500,000, (3) level rent for four years, then increases 2% annually, increase expenses 3.5% annually and net preset value decreases to $6,300,000, and (4) level income for the first four years and using actual vacancy rates is $6,700,000.

The Tribunal finds that while Petitioner's point is well taken, without actually preparing a discounted cash flow analysis and presenting it to the Tribunal, the rebuttal was considered but given no weight.

Hodge's appraisal was also considered but given little weight. The appraisal was from an owner's perspective, not what the market value of subject property is, but rather, what the value is to the current owner for a reduction in property taxes. Value in use has been discussed in other tribunal cases and was found not to be determinative of market value. The value a property has to a specific owner is not to be taken into consideration when determining value-in-exchange. It would have been appropriate for Hodge to consider the value to a potential user.

Hodge testified several times that he used actual income, expenses and vacancy as provided by Petitioner. His cost approach resulted in a 90% deduction for external obsolescence. This was accomplished by using the amount of income needed to generate the value via the cost approach. The use of actual income, expenses and vacancy and not tying either into the market makes the report less valuable to the Tribunal. Hodge's testimony never directly admitted that the appraisal was done on the owner's basis and not what a potential purchaser would consider. Hodge believes that a potential purchaser would only consider historical information on the income and vacancy of the property. He did a direct capitalization approach, which takes a snapshot of the property at a specific time. He did not consider market value from an investor's point of view.

Market Value and Investment Value are described as:

> An important distinction is made between market value and investment value. Investment value is the value of a certain property to a particular investor. Investment value may coincide with market value, which was defined in Chapter 2, if the client's investment criteria are typical of successful buyers in the market. In this case the two opinions of value may be the same number, but the two types of value and their concepts are not interchangeable.
>
> Market value is objective, impersonal, and detached. Investment value is based on subjective personal parameters. To develop an opinion of market value with

> the income capitalization approach, the appraiser must be certain that all the data and forecasts used are market-orientated and reflect the motivations of a typical investor who would be willing to purchase the property as of the effective date of the appraisal. A particular investor may be willing to pay a price different from market value, if necessary, to acquire a property that satisfies other investment objectives unique to that investor. Appraisal Institute, *The Appraisal of Real Estate* (Chicago; 13th ed, 2008), p 450.

The Tribunal finds that Hodge's appraisal using Petitioner's actual income, expenses and vacancy and ignoring market data was fatal to the appraisal. It appears as if the value considered was actually more of an investment value, not market value.

Petitioner Coulter did testify that the Tribunal should consider more than just physical occupancy, because it does not tell the entire story. He stated that in the fourth quarter of 2007 they had a negative absorption because they lost 16 units that did not re-lease. The property has tried rent concessions such as advertising 1-2 months free rent, rents for some units were reduced 10%, and in 2007 they reduced some units another 10%. The rent reductions temporarily helped them ramp up occupancy for 2007. Coulter stated that in 2008 there were 136 units occupied. He gave an example of 95% occupancy, but unless the rents are sufficient to cover net operating expenses, the result would be a loss in value based on reduced net operating costs. Coulter was not willing to aggressively market and agree to concessions similar to Gateway, the adjacent competitor. He believes that physical occupancy can camouflage net operating income, which will be affected negatively.

Respondent used all three approaches to value, including the sales comparison approach. Makarov in the income approach extracted rents and vacancies and did a direct capitalization of the income, but in addition, she recognized the subject property never leased up to 100% due to a variety of reasons. She did a discounted cash flow to show the unlevel income stream.

The Tribunal recognizes that the DCF can vary when used with incorrect assumptions. Makarov testified what her assumptions were and supported the information with testimony and built up the information used to determine the value of subject property with a problematic issue of never having leased-up subject property.

Three apartment complexes were constructed within a short time frame. Two out of the three have concessions in place and have maintained a stable occupancy level. Subject property is in direct competition with an adjacent complex, Gateway Apartments. Makarov appraised Gateway Apartments in December 2008, and therefore, was knowledgeable on both subject property and the adjacent Gateway Apartments.

The Tribunal finds that Respondent's appraisal was well thought out and it was apparent that apartment appraisals were Makarov's specialty. The use of all three approaches to value, where the information came from, and why the end result she relied upon was the DCF because of the unstabilized income was supported within the appraisal and throughout the report. Respondent's use of the DCF was supported and follows the Appraisal Institutes guidance on the proper use of discounted cash flow.[16] This is explained as:

> Yield capitalization is used to convert future benefits, typically a periodic income stream and reversion, into present value by discounting each future benefit at an appropriate yield rate or by applying an overall rate (extracted using of the yield methods) that explicitly reflects the investment's income pattern, change in value, and yield rate. Appraisal Institute, *The Appraisal of Real Estate*, (Chicago; 13th ed, 2008), p 519.

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[16] Appraisal Institute, *The Appraisal of Real Estate*, (Chicago; 13th ed, 2008), Chapter 23.

The Tribunal finds for Respondent for the true cash value portion of the appeal. Petitioner did not carry its burden of proving that the market value of subject property should decrease to $2,000,000 for tax year 2006. Petitioner's appraiser lost credibility and was not able to regain it for the remaining years at issue. Petitioner's appraisal was based on an owner's perspective instead of a potential purchaser's point of view. The Tribunal is charged with determining the market value of subject property as of the tax dates at issue.

Petitioner, however, is correct with regard to the taxable value exceeding the consumer price index for the years at issue. The Tribunal finds that the taxable value shall be reduced for the subject properties as of tax day 2005 and carried forward.

The Tribunal finds that Respondent's testimony and explanation that the taxable value was improperly increased for occupancy that was greater than the year before was credible.

The Tribunal finds that Petitioner carried the burden of proving that the taxable value exceeded the consumer price index for the apartment complex, from which the condominiums were split. Therefore the taxable values of the condominiums are dependent upon the taxable value of the apartments at the time of the split. The taxable values of the condominiums are reduced to reflect the increase in consumer price index. The Tribunal further finds that there was no physical addition to the properties that would cause the taxable value to increase above the consumer price index for the years at issue.

The true cash value of the apartments is based upon Respondent's valuation disclosure.

Based upon its examination of the evidence received at the hearing conducted in this matter, the Tribunal concludes the true cash value, state equalized value, assessed value[17] of the subject properties for the 2006, 2007 and 2008 tax years are as follows:

Parcel No. 25-12-35-400-020

Year	TCV	AV/SEV
2006	$10,600,000	$5,300,000
2007	$10,941,200	$5,470,600
2008	$ 9,807,000	$4,903,500

The Tribunal finds that the correct taxable value for MTT Docket No. 327974 based on the consumer price index for the parcels below are:

Parcel No. 12-35-400-400-020

Year	TV on Roll	Number of Apartment Units	CPI	TV Calc/Unit
2004	$5,158,000	316	NA	**$16,323**
2004	$4,506,000[18]	276	NA	**$16,323**
2005	$4,608,648	276	1.023	$16,698
2005	$4,207,949[19]	252	1.033	$16,698
2006	$4,346,811	252	1.033	$17,249
2007	$4,507,643	252	1.037	$17,887
2008	$4,611,319	252	1.023	$18,298

The Tribunal's calculations include the value of the apartments to assist the reader in the conversion of apartment units to condominium units. The Tribunal finds the taxable value[20] for the condominiums, MTT Docket 357752, are as follows:

[17] The taxable value was a separate issue.
[18] The 2004 winter taxes were reduced because 40 apartments were split into condominiums.
[19] The 2005 winter taxes were reduced because 24 apartments were split into condominiums.
[20] The taxable value of the apartments does not exactly equal the same unit value as the individual condominium units due to rounding of the larger calculation.

No. Apartments	316	276	276	252	252	252	252
Taxable Value Only	Apts	After Split					
CPI			1.023	1.023	1.033	1.037	1.023
Parcel ID	**2004**	**2004 Winter Split**	**2005 Summer**	**2005 Winter Split**	**2006**	**2007**	**2008**
25-12-35-400-020	$5,158,000	$4,506,000	$4,608,648		$4,346,811	$4,507,643	$4,611,319
25-12-35-680-003		$16,323	$16,698		$17,249	$17,887	$18,298
25-12-35-680-007		$16,323	$16,698		$17,249	$17,887	$18,298
25-12-35-680-008		$16,323	$16,698		$17,249	$17,887	$18,298
25-12-35-680-014		$16,323	$16,698		$17,249	$17,887	$18,298
25-12-35-680-015		$16,323	$16,698		$17,249	$17,887	$18,298
25-12-35-680-019		$16,323	$16,698		$17,249	$17,887	$18,298
25-12-35-680-023		$16,323	$16,698		$17,249	$17,887	$18,298
25-12-35-380-025		$16,323	$16,698		$17,249	$17,887	$18,298
25-12-35-680-033		$16,323	$16,698		$17,249	$17,887	$18,298
25-12-35-680-039		$16,323	$16,698		$17,249	$17,887	$18,298
2005 Units Split							
25-12-35-680-042				$16,698	$17,249	$17,887	$18,298
25-12-35-680-045				$16,698	$17,249	$17,887	$18,298
25-12-35-680-048				$16,698	$17,249	$17,887	$18,298
25-12-35-680-049				$16,698	$17,249	$17,887	$18,298
25-12-35-680-050				$16,698	$17,249	$17,887	$18,298
25-12-35-680-051				$16,698	$17,249	$17,887	$18,298
25-12-35-680-055				$16,698	$17,249	$17,887	$18,298
25-12-35-680-056				$16,698	$17,249	$17,887	$18,298
25-12-35-680-057				$16,698	$17,249	$17,887	$18,298
25-12-35-680-058				$16,698	$17,249	$17,887	$18,298
25-12-35-680-063				$16,698	$17,249	$17,887	$18,298
25-12-35-680-064				$16,698	$17,249	$17,887	$18,298
TV/unit calculated				$16,698	$17,249	$17,887	$18,298

Conclusions of Law

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value. 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 the assessment, being the price which could be obtained for the property at private sale and not forced or auction sale. See MCL 211.27(1). The Michigan Supreme Court in *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450 (1974), has also held that true cash value is synonymous with fair market value.

In that regard, the Tribunal is charged in such cases with finding a property's true cash value to determine the property's lawful assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767 (1981). The determination of the lawful assessment will, in turn, facilitate the calculation of the property's taxable value as provided by MCL 211.27a. A petitioner does, however, have the burden of establishing the property's true cash value. See MCL 205.737(3) *and Kern v Pontiac Twp*, 93 Mich App 612 (1974).

Under MCL 205.737(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2nd 479 (1981). The Tribunal may not automatically adopt a respondent's assessment but must make its own findings of fact and arrive at a legally supportable true cash value. *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208,220; 406 NW2nd 832 (1987); *Consolidated Aluminum Corp v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979). 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. *Meadowlanes*, at 485-486; *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980). A similar position is stated in *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982): The Tax Tribunal is not required to accept the valuation figure advanced by the taxpayer, the valuation figure advanced by the assessing unit, or some figure in between these two. It may reject both the taxpayer's and assessing unit's approaches.

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. *Meadowlanes Limited Dividend Housing Assn v City of Holland*, 437, 484-485; 473 NW2d 636 (1991); *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (1966); 380 Mich 390; 157 NW2d 293 (1968); *Antisdale v City of Galesburg*, 420 Mich 265, 276; 362 NW2d 632 (1984). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in the marketplace trading. *Antisdale* at 276, n 1. 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. *Antisdale*, at 277.

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law. 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%....; and for a system of equalization of assessments. For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value. Const 1963, Art IX, Sec 3.

Taxable value is a mathematical calculation. It cannot be compromised, agreed to or increased or decreased without paying close attention to the specific statutes[21] that explain that taxable value can only be increased above the CPI if there is new construction or the property ownership transferred in the prior year. Taxable value cannot be increased for an improved occupancy rate. Taxable value can only decrease when the assessed value falls below the taxable value, or if there is a physical razing of the property.

[21] MCL 211.27a and MCL 211.34d specifically explain taxable value increases and decreases.

The Tribunal finds that Petitioner has failed to prove its assessment exceeds 50% of market value based on the improper foundation for the appraisal. Market value is not determined by who owns the property; it is based upon what a prospective investor would pay for subject property based on income and expenses. Respondent clearly outlined the market value of subject property taking into consideration all of the approaches to value and weighing heavily upon the discounted cash flow, which makes allowances for the income stream to stabilize.

The Tribunal finds that Petitioner did meet its burden of proving that the taxable value increases for tax year 2005 and forward exceed the consumer price index and the Tribunal corrects the taxable values based on MCL 211.53a which states:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, *without interest*, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest. Emphasis added.

Petitioner believed that Respondent increased the taxable value based on increased occupancy/construction. Respondent made an error in increasing the taxable value for additional occupancy/construction for tax year 2005 when the subject property was 100% completed as of December 31, 2003. The taxable value increase for 2005 and for each subsequent year is adjusted not to exceed the consumer price index for the properties at issue.

JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the tax years at issue shall be as set forth in the Findings of Fact 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 this 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 of 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, 2005, at the rate of 3.66% for calendar year 2006, (ii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (iii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and (iv) after December 31, 2008, at the rate of 3.31% for calendar year 2009.

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: July 17, 2009

By: Victoria L. Enyart