

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

Occidental Development, LLC,
Petitioner,

v

MTT Docket No. 390705

Township of Waterford,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith, III

FINAL OPINION AND JUDGMENT

I. INTRODUCTION

Petitioner, Occidental Development, LLC, appeals ad valorem property tax assessments levied by Respondent, Township of Waterford, against Parcel Nos. 13-21-301-013, 13-21-301-014, 13-21-301-015, 13-21-301-016, and 13-21-301-017 for the 2010 and 2011 tax years. Stewart L. Mandell and Daniel L. Stanley, attorneys at Honigman Miller Schwartz & Cohn, LLP, represented Petitioner and Stephanie Simon Morita, attorney at Johnson, Rosati, Schultz & Joppich, PC, represented Respondent. A hearing was held in this matter on November 7, November 8, and November 9, 2012. Petitioner's witnesses were Lawrence G. Allen, MAI and Mark Zrepskey, Director of Facilities, Personnel Management, Inc. Respondent's witnesses were Donald Wood, Assessor, Township of Waterford and Eugene Szkilnyk, review appraiser.

II. SUMMARY OF JUDGMENT

The Tribunal, having considered all of the testimony and documentary evidence provided, and based upon that portion of the evidence it finds material, believable, substantial and credible upon the record before it, concludes that Petitioner has generally met its burden of proof in establishing the subject property's true cash value. The Tribunal further concludes the true cash values ("TCV"), state equalized values ("SEV"), and taxable values ("TV") of the property for the years under appeal are as follows:

Parcel Number: 13-21-301-013

Year	TCV	SEV	TV
2010	\$1,761,270	\$880,635	\$880,635
2011	\$1,887,340	\$943,670	\$895,605

Parcel Number: 13-21-301-014

Year	TCV	SEV	TV
2010	\$2,499,130	\$1,249,565	\$1,249,565
2011	\$2,702,730	\$1,351,365	\$1,270,807

Parcel Number: 13-21-301-015

Year	TCV	SEV	TV
2010	\$2,497,020	\$1,248,510	\$1,248,510
2011	\$2,676,500	\$1,338,250	\$1,269,734

Parcel Number: 13-21-301-016

Year	TCV	SEV	TV
2010	\$2,210,510	\$1,105,255	\$1,105,255
2011	\$2,367,580	\$1,183,790	\$1,124,044

Parcel Number: 13-21-301-017

Year	TCV	SEV	TV
2010	\$1,452,070	\$726,035	\$726,035
2011	\$1,555,850	\$777,925	\$738,377

The total TCV, SEV and TV for the property are as follows:

Year	TCV	SEV	TV
2010	\$10,420,000	\$5,210,000	\$5,210,000
2011	\$11,190,000	\$5,595,000	\$5,298,567

III. SUMMARY OF PETITIONER'S CASE

Petitioner contends that the subject property is assessed in excess of 50% of its true cash value. Petitioner's valuation expert valued all five parcels at issue in this appeal (Parcel Numbers 13-21-301-013, 13-21-301-014, 13-21-301-015, 13-21-301-016 & 13-21-301-017) as a single property. Petitioner's contentions of TCV, SEV and TV for the property are as follows:

Year	TCV	SEV	TV
2010	\$10,420,000	\$5,210,000	\$5,210,000
2011	\$11,190,000	\$5,595,000	\$5,595,000

PETITIONER'S ADMITTED EXHIBITS

P-1: Appraisal Report prepared by Lawrence G. Allen, MAI.

PETITIONER'S WITNESSES

Lawrence G. Allen, MAI

Petitioner presented testimony from its appraiser, Lawrence G. Allen, MAI. Based on his experience and training, the Tribunal accepted Mr. Allen as an expert

in the valuation of real property. Mr. Allen prepared and communicated an appraisal of the subject property. The appraisal sets forth both an income and sales comparison analysis for each of the tax years at issue, with primary reliance placed on the income approach. As will be explored in greater detail below, the cost approach was considered but not developed by Mr. Allen due to the substantial amount of physical depreciation associated with the subject's age, as well as his determination that significant functional and economic obsolescence considerations were necessary.

Mr. Allen testified that (i) the subject property is an apartment complex located in the Detroit Metropolitan Statistical area (MSA) and is part of the submarket identified as Pontiac/Waterford by REIS, (ii) the Pontiac/Waterford submarket is overbuilt with apartments for the demand level, (iii) the subject complex is one of the largest in its market with 779 apartment units spread over 5 parcels and 20 buildings that were originally constructed in the 1970's, (iv) site improvements consist primarily of parking (1,424 spaces) and landscaping in the parking areas, (v) site-related amenities include a clubhouse, swimming pool and pond, (vi) approximately 98.6% of the subject's unit composition consists of one and two-bedroom units, with 72% of that total attributable to one-bedroom units, (vii) the strongest demand in the subject's market area during the tax years at issue

was for two and three-bedroom apartment units, with most similar properties having only about 20% of their total composition attributable to one-bedroom units, (vii) the subject's one and two-bedroom units are the smallest in its market, with the average unit size measuring at only 581 square feet compared to that of similar properties, which ranges between 750 and 850 square feet, (viii) the subject's disproportionate amount of one-bedroom units and unusually small unit size results in functional inutility that adversely impacts its value, (ix) the subject units are not individually metered for gas and with the exception of electricity, all utilities are paid for by the landlord, (x) payment of the utilities by the landlord significantly affects operating costs, (xi) his income approach, which is most applicable, is based on a direct capitalization methodology in which he estimated market rents, ancillary income, stabilized occupancy, normal operating expenses and a market-derived capitalization rate to result in a stabilized value, with a small adjustment to account for the fact that the property was not at stabilized occupancy as of the valuation dates.

Mark Zrepskey

Mr. Zrepskey testified that (i) he has been employed by Personnel Management, Inc. ("PMI") in various capacities since 1992 and currently serves as its Director of Facilities, (ii) PMI is a private, family-owned company responsible

for managing various multi-family rental properties, including the subject property, (iii) he has been involved with the subject property to varying degrees throughout his entire career with PMI, (iv) from PMI's records, he provided Mr. Allen with a range of information relating to the subject property, (v) he personally verified that the information contained in Mr. Allen's appraisal of the subject property, including the number and types of units present, was accurate, (vi) the subject's unit count, which totals 779, was specifically verified by way of personal historical physical inspections of the property and review of blueprints, address listings, and rent rolls.

IV. SUMMARY OF RESPONDENT'S CASE

Respondent contends that the subject property is not assessed in excess of 50% of its true cash value. With the exception of the cost approach, Respondent's valuation expert valued all five parcels at issue in this appeal (Parcel Numbers 13-21-301-013, 13-21-301-014, 13-21-301-015, 13-21-301-016 & 13-21-301-017) as a single property. Respondent's revised contentions of TCV, SEV and TV for the property are as follows:

Year	TCV	SEV	TV
2010	\$15,700,000	\$7,850,000	\$7,850,000
2011	\$15,700,000	\$7,850,000	\$7,850,000

RESPONDENT'S ADMITTED EXHIBITS

R-1: Assessor Analysis Report prepared by Donald Wood.

R-1A: Assessor Analysis Report: Revised Income Calculations.

R-6: Appraisal Review Report prepared by Eugene Szkilnyk.

RESPONDENT'S WITNESSES

Donald Wood

Respondent presented testimony from its assessor, Donald Wood. Based on his experience and training, the Tribunal accepted Mr. Wood as an expert in assessing real property. Mr. Wood developed and communicated a valuation of the subject property. The valuation sets forth a cost, sales comparison, and income analysis for each of the tax years at issue in this appeal.

Mr. Wood testified that (i) the subject property is an apartment complex situated on 51.2 acres of land that was originally intended to be a condominium development, (ii) the condominium concept was abandoned in the mid-1970's after initial construction of 6 model townhouse units was completed due to unfavorable market conditions, (iii) he was employed by Waterford township while the subject property was being built and was involved in the initial assessment and appraising of the subject property, (iv) he has visited the subject property between ten and twenty times over the last thirty years, (v) according to the Township's assessment records, the subject complex has 9 studio units, 560 one-bedroom units, 210 two-

bedroom units, and six townhouse units for a total of 785 units, (vi) he verified the subject's unit composition just a few days prior to commencement of this hearing with a staff member of the property's leasing office during an on-site visit, (vii) his revised income approach reflects the proper unit mix.

Eugene Szkilnyk

Respondent presented testimony from Eugene Szkilnk CCM, a Certified State General Appraiser. Mr. Szkilnk testified in support of an Appraisal Review Report dated October 24, 2012, which he, in conjunction with Anthony Sanna, MAI, had prepared for Respondent. Based on his experience and training, the Tribunal accepted Mr. Szkilnk as a State General Appraiser. Nonetheless, Mr. Szkilnk acknowledged that his experience in appraising apartment complexes like the subject was limited and that he had not inspected the subject site. He expressed no opinion of value, but rather communicated a critique (desk review) of Petitioner's Valuation Disclosure and the methodology employed by Lawrence Allen, Petitioner's valuation expert. Mr. Szkilnk testified that he concluded, based upon his review of Petitioner's sales comparison and income approaches to value, that (i) its market adjustments were somewhat excessive and (ii) its capitalization rate was 300 basis points greater than the prevailing market capitalization rate.

V. FINDINGS OF FACT

1. The subject property is located at 504 Maplebrook, Waterford Township, Oakland County, Michigan.
2. The subject property is situated in the Detroit Metropolitan Statistical area (MSA) and is part of the submarket identified as Pontiac/Waterford by REIS.
3. The Pontiac/Waterford submarket is overbuilt with apartment complexes for the demand level.
4. The strongest demand in the subject's market area during the tax years at issue was for two and three-bedroom apartment units, with most similar properties having only about 20% one-bedroom units.
5. The subject property is comprised of five separate parcels, identified as Parcel Nos. 13-21-301-013, 13-21-301-014, 13-21-301-015, 13-21-301-016, and 13-21-301-017 and is commonly known as Rivers Edge Apartments.
6. All of the subject parcels share common utility and road systems and the community amenities are all located on a single parcel. The maximally productive use of the parcels is as a single property, and it has historically been valued as such. The property was divided into multiple parcels only to facilitate Petitioner's financing of the project, as multiple mortgage companies were involved.
7. The subject property is irregularly shaped and has a total land area of 51.44+/- acres. It has frontage on both Airport and Elizabeth Lake Roads.
8. Site improvements consist of asphalt paving, including 1,424 parking spaces, concrete curbing, and concrete sidewalks. Site-related community amenities include a clubhouse, pool and a pond area. The property is also improved with 779 apartment units located in a total of 20 separate buildings that were originally constructed in the 1970's. The units have a total gross living area of 452,399 square feet.
9. The subject property is an income-producing property with a history of an income stream. The subject property had actual income of \$3,574,395 and

\$3,211,616 and net operating income (excluding real estate tax expenses) of \$1,312,652 and \$1,233,385 in the 2010 and 2011 tax years, respectively.

10. The breakdown of the subject's unit types is as follows: 9 studio units, 560 one-bedroom units, 204 two-bedroom units, and 6 townhouse units made up of 4 two-bedroom, 1½ bath units and 2 three-bedroom, 1½ bath units.

11. The subject's one and two-bedroom units are among the smallest in its market, with the average unit size measuring at only 581 square feet compared to that of similar properties, which ranges between 750 and 850 square feet.

12. The subject's disproportionate amount of one-bedroom units and unusually small unit size results in functional inutility that adversely impacts its value.

13. With the exception of electricity, all utilities are paid for by the landlord. Payment of the utilities by the landlord significantly affects operating costs.

14. The subject property had actual operating expenses (excluding real estate taxes) of \$2,261,743 and \$1,978,231 in the 2010 and 2011 tax years, respectively. \$673,137 and \$618,709 of the total operating expenses in those years were attributable to utilities (lighting and miscellaneous power, water, gas).

15. The subject property is zoned R-M2, Multiple Family Residential District.

16. The highest and best use of the subject property as improved is its current use as multi-family rental apartments.

17. The subject property was assessed for the tax years at issue as follows:

Parcel Number: 13-21-301-013

Year	TCV	SEV	TV
2010	\$3,274,500	\$1,637,250	\$1,394,240
2011	\$2,897,440	\$1,448,720	\$1,417,940

Parcel Number: 13-21-301-014

Year	TCV	SEV	TV
2010	\$4,646,300	\$2,323,150	\$1,461,940
2011	\$4,149,240	\$2,074,620	\$1,486,790

Parcel Number: 13-21-301-015

Year	TCV	SEV	TV
2010	\$4,462,380	\$2,231,190	\$1,980,710
2011	\$4,108,960	\$2,054,480	\$2,014,380

Parcel Number: 13-21-301-016

Year	TCV	SEV	TV
2010	\$4,109,700	\$2,054,850	\$1,751,320
2011	\$3,634,180	\$1,817,090	\$1,781,090

Parcel Number: 13-21-301-017

Year	TCV	SEV	TV
2010	\$2,699,640	\$1,349,820	\$1,165,120
2011	\$2,388,540	\$1,194,270	\$1,184,920

18. The total assessment of the subject property for the tax years at issue is as follows:

Year	TCV	SEV	TV
2010	\$19,372,520	\$9,686,260	7,753,330
2011	\$17,178,900	\$8,589,450	\$7,885,120

19. Petitioner's appraisal sets forth an income and sales comparison analysis for each of the tax years at issue. The cost approach was considered, but not developed.

20. In developing the income approach, Petitioner's appraiser performed an individual market rental rate analysis for each of the subject's unit types.

21. Petitioner's studio market rental rate analysis examined the subject property's current (2012) effective rates (\$378/month for 425 square feet) and those of 2 comparable communities. The comparables range in size

from 400 to 700 square feet and have effective rental rates ranging between \$449 and \$570, with an average rate of \$510/month.

22. Petitioner's one-bedroom market rental rate analysis examined the subject property's current (2012) effective rates (\$424/month for 550 square feet) and those of 21 comparable communities. The comparables range in size from 550 to 900 square feet and have effective rental rates ranging between \$479 and \$750, with an average rate of \$565/month.

23. Petitioner's two-bedroom market rental rate analysis examined the subject property's current (2012) effective rates for its apartment and townhouse units (\$529/month for 660 square feet and \$760/month for 918, 926 or 972 square feet, respectively) and those of 26 comparable communities. The comparables range in size from 660 to 1,256 square feet and have effective rental rates ranging between \$570 and \$930, with an average rate of \$695/month.

24. Petitioner's three-bedroom market rental rate analysis examined the subject property's current (2012) effective rates for its townhouse units (\$830/month for 1,100 square feet) and those of 7 comparable communities. The comparables range in size from 945 to 1,871 square feet and have effective rental rates ranging between \$770 and \$1,039, with an average rate of \$905/month.

25. After completion of the individual unit market rental rate analyses, and consideration of both the comparable rental data and historical data for the subject property, Petitioner's appraiser concluded that the best indicator of market rent for the subject property is represented by actual leasing trends at the subject itself.

26. Petitioner's appraiser concluded to market rental rates of \$383 for the subject property's studio units, \$413 for the one-bedroom units, \$528 for the 660 square foot two-bedroom units, \$760 for the remainder of the two-bedroom units, and \$830 for the three-bedroom townhouse units for the 2010 tax year, which resulted in a Gross Potential Rental Income of \$4,165,668.

27. Petitioner's appraiser concluded to market rental rates of \$378 for the subject property's studio units, \$424 for the one-bedroom units, \$529 for the 660 square foot two-bedroom units, \$760 for the remainder of the two-bedroom units, and \$830 for the three-bedroom townhouse units for the 2011 tax year, which resulted in a Gross Potential Rental Income of \$4,241,496.
28. Petitioner's ancillary income analysis considers income from laundry, parking, utilities, NSF/late fees, legal collection/collection loss, and miscellaneous income.
29. Petitioner's appraiser examined the subject property's historical ancillary income levels per unit (\$175 to \$585) and those of several regional comparables (\$170 to \$316) and concluded to a per unit value of \$245 for both of the tax years at issue, which resulted in a Gross Potential Ancillary Income of \$190,855.
30. Vacancy (15%) and collection loss (2.5%) factors, which were derived from reported regional market occupancy/vacancy trends, were applied to the Gross Potential Income (rental and ancillary) and resulted in Effective Gross Incomes of \$3,627,531 and \$3,690,089 for the 2010 and 2011 tax years, respectively.
31. Petitioner's operating expense analysis considered the subject property's historical expense data, comparable operating expense data, and industry publications including IREM Region 5 (Midwest) as well as expenses from a database of properties maintained by Petitioner's appraiser, which included approximately 67 apartment complexes.
32. Petitioner's appraiser concluded to total operating expenses (excluding real estate taxes) of \$2,329,023 and \$2,330,910 for the 2010 and 2011 tax years, respectively, \$681,625 of which was attributable to utilities (lighting and miscellaneous power, water and gas) in both years.
33. The concluded operating expenses were deducted from the Effective Gross Incomes to equal Net Operating Incomes of \$1,298,508 and \$1,359,179 for the 2010 and 2011 tax years, respectively.

34. Petitioner's appraiser considered capitalization rates from regional market sales, band-of-investment calculations, and investor surveys.
35. In determining his base capitalization rates, Petitioner's appraiser also considered various elements of the subject property that influence its investment profile, including that the property has, in his opinion, a below average location in a relatively stable market. Additionally, though an older community, the property is, in the appraiser's opinion, in average condition for its age. The subject has historically performed below market occupancy levels, which Petitioner's appraiser concluded is the likely result of functional obsolescence attributable to its disproportionate number of one-bedroom units and small unit sizes.
36. After all relevant considerations, Petitioner's appraiser concluded to overall capitalization rates of 9.5% and 9.0% and tax-loaded capitalization rates of 11.99% and 11.522% for the 2010 and 2011 tax years, respectively.
37. After capitalizing the Net Operating Income, stabilization costs (rental concessions and lost rental income) were deducted to arrive at true cash value determinations of \$10,560,000 and \$11,540,000 for the 2010 and 2011 tax years, respectively.
38. In developing his sales comparison analyses, Petitioner's appraiser identified and examined a total of six comparable sales, with dates of sale ranging from June 2010 to December 2011.
39. Petitioner's appraiser adjusted each comparable sale for property rights transferred, financing terms, conditions of sale, market conditions, size, location, age/condition, occupancy rate at time of sale, amenities and community class as necessary.
40. From the adjusted sales prices of the selected comparables, with primary emphasis on price per square foot analysis and secondary emphasis on the price per unit basis, Petitioner's appraiser concluded to true cash value determinations of \$9,950,000 for both the 2010 and 2011 tax years.
41. In his reconciliation, Petitioner's appraiser placed primary reliance on the income approach and the sales comparison approach served primarily as a

check to the opinion of value. Petitioner's appraiser concluded to final true cash value indications of \$10,420,000 and \$11,190,000 for the 2010 and 2011 tax years, respectively.

42. Respondent's assessor analysis report sets forth a cost, income, and sales comparison analysis for each of the tax years at issue.
43. Respondent's cost approach includes market adjustments through the use of an economic condition factor (ECF), but does not consider any functional or economic obsolescence.
44. In developing the income approach for the two years at issue, Respondent's assessor did not perform any market rental rate analyses of comparable properties, but utilized the actual asking rents, as provided by documentation supplied by Petitioner's representatives, for each of the relevant valuation dates in determining potential rental income for the subject property.
45. Respondent's assessor concluded to rental rates of \$350 for the subject property's studio units, \$385 for the one-bedroom units, \$500 for the two-bedroom units, and \$2,130 total for the townhouse units for the 2010 tax year, which resulted in a Gross Potential Income of \$3,910,560.
46. Respondent's assessor concluded to rental rates of \$375 for the subject property's studio units, \$399 for the one-bedroom units, \$525 for the two-bedroom units, and \$2,130 total for the townhouse units for the 2011 tax year, which resulted in a Gross Potential Income of \$4,070,340.
47. A vacancy rate (15%) factor, which was "estimated...from [the assessor's] knowledge of the township" was applied to the Gross Potential Rental Income and resulted in Effective Gross Rental Incomes of \$3,323,976 and \$3,459,789 for the 2010 and 2011 tax years, respectively. Miscellaneous income in the amount of \$60,000 was deducted in each year, and resulted in Effective Gross Income of \$3,383,976 and \$3,519,789 for the 2010 and 2011 tax years, respectively.
48. Respondent's assessor did not perform an operating expense analysis, but utilized actual expenses, as provided by documentation supplied by Petitioner's representatives, and from that, "what [he] thought was relevant

to the project and what was typical [and fair] for [the] Township” based on his own personal knowledge and experience.

49. Respondent’s assessor concluded to total operating expenses (excluding real estate taxes) of \$1,688,635 and \$1,733,563 for the 2010 and 2011 tax years, respectively, with \$179,626 and 187,412 of those respective amounts being attributable to utilities. The concluded operating expenses were deducted to equal Net Operating Income of \$1,695,341 and \$1,786,226 for the 2010 and 2011 tax years, respectively.
50. Respondent’s assessor did not perform a capitalization rate analysis, but utilized a capitalization rate he “felt...was fair” based on his review of various appraisals submitted in other appeals.
51. Respondent’s assessor concluded to an overall capitalization rate of 10% for both of the tax years at issue, and tax-loaded rates of 12.49% and 12.52%, for the 2010 and 2011 tax years, respectively. After capitalizing the Net Operating Income, Respondent’s assessor arrived at true cash value determinations of \$13,600,000 and \$14,267,000 for the 2010 and 2011 tax years, respectively.
52. In developing his sales comparison analyses, Respondent’s identified and examined a total of four comparable sales, with dates of sale ranging from June 2010 to January 2012.
53. Respondent’s assessor did not adjust his comparable sales for differences in market conditions or any other relevant elements of comparison.
54. From the unadjusted sales prices of the selected comparables, Respondent’s assessor concluded to true cash value determinations of \$15,700,000 for both the 2010 and 2011 tax years.
55. Respondent’s assessor did not reconcile the values indicated by the various approaches, but noted that “[t]he indicated values, with the exception of the Cost Approach for 2010, form a tight range and are considered to mutually support each other.”

56. In developing their income analyses, both parties' experts utilized a 15% vacancy rate. Although not identical, both parties' experts also utilized very similar capitalization rates, with Respondent's tax-loaded rates of 12.49% and 12.52% only slightly higher than the 11.99% and 11.522% rates concluded to by Petitioner.

VI. 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 defined "true cash value" as "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 which could be obtained for the property at private sale, and not at 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; 221 NW2d 588 (1974), held that "true cash value" is synonymous with "fair market value."

The Tribunal is charged 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; 314 NW2d 479 (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. Fundamental to the determination of a property's true cash value is the concept of "highest and best use." It recognizes that the use to which a prospective buyer would put the property will influence the price which

the buyer would be willing to pay. *Rose Bldg Co v Independence Twp*, 436 Mich 620, 623; 426 NW2d 325 (1990). In the instant appeal, the parties do not contend that the property's highest and best use is anything other than its current use, and the Tribunal finds that its best use is as a multi-family rental apartment complex.

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735(1). The Tribunal's factual findings must be supported by competent, material, and substantial evidence. *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Department of Treasury*, 185 Mich App 458, 462-463; 452 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).

MCL 205.737 provides that "[t]he petitioner has the burden of proof in establishing the property's true cash value." The Michigan Court of Appeals has held that "[t]his 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 Steel Corp v City of Warren*, 193 Mich App 348, 355-356; 483 NW2d 416 (1992). Nonetheless, the tribunal *must* make an independent

determination of value. *Id* at 355. The Tribunal is also obligated to select the valuation methodology that is accurate and bears a reasonable relation to the property's true cash value. *Safran Printing Co v Detroit*, 88 Mich App 376; 276 NW2d 602 (1979), lv den 411 Mich 880 (1981). The Tribunal is not, however, "bound to accept either of the parties' theories of valuation. It may accept one theory and reject the other, it may reject both theories, or...utilize a combination of both in arriving at its determination." *Jones, supra* at 356. Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject property would sell. *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473; 473 NW2d 636 (1991).

In the instant appeal, the parties' valuation experts were charged with developing and communicating valuations of the subject property to assist the Tribunal in a determination of true cash or fair market value (usual selling price) for the two years under appeal. True cash value (usual selling price) is properly determined using one of three widely accepted appraisal methods: cost less depreciation, sales comparison, and capitalization of income. See *Meadowlanes Limited Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991); *Antisdale v City of Galesburg*, 420 Mich 265, at 276-277, n 1; 362 NW2d 632 (1984). Petitioner's appraiser, Mr. Allen, relies primarily on the

income approach to value, while Mr. Wood considers all three approaches as mutually supporting not only each other, but also the subject assessments, as confirmed by Respondent's March Boards of Review. Ultimately the parties' experts, through their respective methodologies, conclude to widely disparate estimates of value for the subject property.

The Tribunal concludes that the valuation methodology that is most useful in assisting it in determining the true cash value (usual selling price) of the subject property is the income approach. Michigan is a market (usual selling price) state. Based on its experience in hearing cases of this nature, and the specific facts and circumstances presented, the Tribunal believes that the income approach most accurately reflects the actions of buyers and sellers in the market for properties like the subject. For the reasons set forth below, the Tribunal further concludes that Petitioner's income and sales comparison analyses offer fully supportable value indications and provide the best evidence of true cash value (usual selling price) within the meaning of MCL 211.27 for each of the tax years at issue in this appeal.

The Tribunal does not believe Respondent's cost approach assists it in making an independent determination of the subject property's true cash value for the reason that it fails to consider obsolescence factors. In that regard, Petitioner's appraiser successfully established that the subject's market area is overbuilt with

apartment complexes for the demand level. Further, the strongest demand in that area during the tax years at issue was for two and three-bedroom units and the subject's one and two-bedroom units are the smallest in its market. The subject's disproportionate amount of one-bedroom units and unusually small unit size creates a certain degree of functional and economic obsolescence that adversely impacts its value. Moreover, the subject property is nearly forty years old, and the Tribunal believes that it is extremely difficult to determine both depreciation and obsolescence using the cost approach, which generally is most applicable to new or relatively new construction. See, Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p. 382 (Emphasis added). The market itself, however, takes such factors into consideration in both the income and sales comparison approaches to value. As such, the Tribunal will give no weight to Respondent's cost approach in making its determination of value.

Respondent's sales comparison and income approaches likewise do not assist the Tribunal in making its value determinations for the reason that neither is sufficiently supported on the record. Respondent's expert did not adjust any of his comparable sales for market conditions or any other relevant elements of comparison, but instead relies solely on unadjusted sales prices. In discussing the sales comparison approach to value, however, the Appraisal Institute notes as

follows: “In the sales comparison approach, [an opinion of value is developed] by analyzing closed sales, listings, or pending sales of properties that are similar to the subject property. The comparative techniques of analysis applied in the sales comparison approach are fundamental to the valuation process.” Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p. 297.

Moreover, although it is noted that a few of the sales are mutually relied upon by the parties in their respective analyses, the information provided by Respondent is not sufficient, standing alone, to establish that its proffered sales are in fact sufficiently similar to the subject to properly be considered comparable. The information provided is similarly insufficient to allow the Tribunal to make an independent determination as to what, if any, adjustments would be required to make the sales prices of the properties reliable indications of the subject property’s true cash value. This is particularly true with respect to the size and mix of the comparable units, which as noted above, is a significant consideration in valuing the subject property.

The Tribunal notes Respondent’s objection to the use of a quality point methodology by Petitioner’s expert in his sales comparison analyses. Specifically, Respondent’s counsel asserted that such an approach, in addition to being unsupported on the record in the instant appeal, is both subjective and unreliable,

as evidenced by prior Tribunal decisions. Petitioner maintained that the quality point analysis used by its appraiser was only to check the consistency of his adjustments, and the Tribunal is satisfied that Mr. Allen's use of a quality point test did not affect his final value conclusions. Moreover, as noted above, Petitioner's sales comparison analyses serve only as a secondary methodology and as a check to the income approach to value.

As for the income approach, Respondent's counsel argued extensively that Petitioner's capitalization rates were substantially overstated for each of the tax years at issue. More specifically, counsel contended that Mr. Allen's own research establishes maximum base capitalization rates of 8.03% and 7.5% for the 2010 and 2011 tax years, respectively, and that his utilization of larger rates to account for functional and/or economic obsolescence amounts to "double-dipping" because such considerations were already accounted for in his analyses. A similar argument was made regarding the appropriateness of tax-loading the concluded base rates.

The Tribunal notes, however, that the base capitalization rates utilized by Respondent's valuation expert are not only very similar to, but in fact higher than those employed by Petitioner for both of the tax years at issue in this appeal. Further, said rates were tax-loaded in the same manner as Petitioner's base rates.

More importantly, the Tribunal is satisfied that Petitioner's base rates are supported by the testimony and evidence provided, and Petitioner successfully established during the hearing that there are multiple ways in which real estate tax expenses can be accounted for in an income analysis, and while one approach may be more applicable depending on the specific facts and circumstances presented, the answer will mathematically be the same no matter which methodology is utilized, as long as the tax expense itself is projected accurately. Here, Mr. Allen's methodology is appropriate because his valuation is based on the hypothetical condition that the taxes have been reduced based upon an equalized value equal to 50% of his market value determination.

Respondent's counsel also argued that it was improper for Mr. Allen, in calculating his cost to stabilize, to consider only the actual vacancy of the subject property as of the December 31st valuation dates for the tax years at issue, instead of the entire year. Counsel further contended that vacancy rates by unit type should have been analyzed and would have resulted in lower stabilization costs, given that the subject's one-bedrooms had the second lowest rental rate and the highest vacancy rate. Petitioner maintained that its methodology was appropriate, because a purchaser of the property on the relevant valuation dates would also look at the occupancy as of that date. The Tribunal agrees.

Stabilized values represent a future value as if the property were stabilized, based upon an assumption that the property will become stabilized at some point in the future. The subject property was not stabilized, however, on either of the valuation dates relevant to this appeal, so the additional stabilization deductions are needed to develop the value from the future stabilized values to the values *as they existed* on December 31, 2009 and December 31, 2010, not as they existed in the year prior as Respondent contends. Further, there is no evidence to support Respondent's contention that consideration of vacancy rates by unit type is more appropriate or would have resulted in a more reliable indication of value than a singular rate. This finding is supported by the use of an identical singular rate by Respondent's own expert.

With respect to the Appraisal Review Report prepared by Mr. Szkilnk, the Tribunal notes that during the course of cross examination of the witness, many errors in his assumptions were pointed out by Petitioner's counsel including but not limited to his conclusion that there was no market evidence to support Petitioner's size adjustment for the average size per unit. It was established that in arriving at this conclusion, Mr. Szkilnk used an average size of 779 square feet, which was incidentally the number of units rather than the correct average square footage of 581. Further errors were pointed out in his conclusion that rental income per unit

was increasing each year under appeal when actual income per unit in contrast to potential gross income had decreased or remained flat. In addition, Mr. Szkilnk's conclusion that Petitioner's capitalization rates were 350 too high appears to be based on his assumption that that property was an "institutional investment" grade of property, which was successfully refuted by Mr. Allen and also by Respondent's own expert, who as noted above, concluded to essentially the same capitalization rates as Petitioner for each of the tax years at issue. The Tribunal, having considered Respondent's Appraisal Review Report in totality, the errors contained in the report, and the testimony provided by Mr. Szkilnk, finds it totally lacking in creditability and gives it no weight what so ever. The report has more holes in it than a block of well-aged Swiss cheese.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner has proven by a preponderance of the evidence that the subject property is assessed in excess of 50% of market value and that its appraisal report provides the best evidence of the subject property's true cash value within the meaning of MCL 211.27 for each of the tax years at issue. Unlike Respondent's valuation, which relies heavily on Mr. Wood's personal knowledge and opinion as to what is typical and relevant to the subject and the Township, Mr. Allen's appraisal analyzed the subject's historical information in conjunction with

comparable data and various market studies and industry publications. The Tribunal finds Mr. Allen's sources credible and concludes that the data is not only properly reconciled, but also better supported on the record than that relied upon by Respondent. The Tribunal is not persuaded, however, by Petitioner's apportionment methodology, and finds that its value conclusions should instead be apportioned among the several parcels in the same proportion as presently exists on the tax rolls, rounded to the nearest tenth for assessment purposes. Accordingly, the subject property's true cash values (TCV), state equalized values (SEV), and taxable values (TV) are as stated in the Summary of Judgment section above.

JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the tax years at issue are MODIFIED as set forth in Summary of Judgment 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 90 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 Order within 28 days of the entry of this Order. 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 the Tribunal's order. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 2008, at the rate of 3.31% for calendar year 2009, (ii) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (iii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iv) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09% for calendar year 2012, and (v) after June 30, 2012 and prior to January 1, 2013, at the rate of 4.25%.

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

MICHIGAN TAX TRIBUNAL

By: Kimball R. Smith III

Entered: January 14, 2013