



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

Alden GV Owner LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 18-000844

Allendale Township,
Respondent.

Presiding Judge
Preeti P. Gadola

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Alden GV Owner LLC, appeals ad valorem property tax assessments levied by Respondent, Allendale Township, against parcel number 70-09-25-200-073 for the 2018 tax year. Michelle Silvey, Attorney, represented Petitioner, and Bradley Fisher, Attorney, represented Respondent. A hearing on this matter was held on November 5, 2019. Petitioner’s sole witness was Marc Nassif, MAI (Member, Appraisal Institute). Respondent’s sole witness was Douglas Adams, MAI.

The subject property consists of twenty-eight, purpose-built student housing apartment buildings, retail areas and recreational facilities, among other site improvements, about a half-mile west of Grand Valley State University.¹

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash value (TCV), state equalized value (SEV), and taxable value (TV) of the subject property for the 2018 tax year are as follows:

Parcel Number: 70-09-25-200-073

Year	TCV	SEV	TV
2018	\$41,200,000	\$20,600,000	\$20,600,000

¹See P-1 at 7, R-1 at 2.

PETITIONER'S CONTENTIONS

Petitioner contends that the subject property's true cash value was \$30,600,000 as of December 31, 2017.

PETITIONER'S ADMITTED EXHIBITS

P-1: Appraisal Report by Marc Nassif, MAI

PETITIONER'S WITNESS

Marc Nassif

Mr. Nassif is a Client Manager, MAI, LEED AP, and MRICS for BBG Inc. He was recognized as an expert appraiser by the Tribunal and the parties. Mr. Nassif prepared a retrospective appraisal of the subject property's value as of December 31, 2017² utilizing both the sales and income approaches to value.

Mr. Nassif contends that his office inspected the property three times since 2016. He personally inspected it on October 30, 2019, including one of each apartment unit type, as well as common areas, recreational facilities, and retail areas. Mr. Nassif contends that he determined the subject property to have 920 beds based upon a December 2017 rent roll.

The subject property sold in the fall of 2016 for \$52,000,000 and Mr. Nassif prepared an appraisal relative to that sale. He testified, however, that several other parcels and personal property were included in the sale price and as such, among other reasons, his contention of value is lower here.³ He testified, the previous appraisal was

² MCL 211.2(2) states: "The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, any provisions in the charter of any city or village to the contrary notwithstanding."

³ Transcript (Tr) at 38-40.

for a different client, was confidential, and here, he utilized the information provided to him by Petitioner.⁴

Mr. Nassif contends that the subject's location next to Grand Valley State University ("GVSU") is its primary economic driver. Its competition includes other student housing and retail locations near the GVSU campus. The subject is adjacent to the campus golf course and, as a result, is slightly removed from the main educational portion of the campus. The subject's location is Mr. Nassif's basis for his determination that its highest and best use is its continuing use for the purposes for which it was built. He contends that its maximally productive use is as improved.

Mr. Nassif prepared a sales approach to value and explained that his consideration of potential comparable sales was based upon two general categories: physical features related to a property's current usage as student housing, and economic features influencing the property such as close proximity to universities similar to GVSU. He contends that the physical features of the property limit the scope of potential buyers by necessitating a purchaser to have experience in student housing, not simply multi-family housing. Mr. Nassif further contends that the most significant economic factors affecting the subject are the enrollment trends at GVSU and the amenity packages offered by the subject compared to its direct competitors. He contends that four of his five comparable sales are economically comparable due to locations near similarly sized universities. Adjustments were made for bed count, occupancy, pre-leases for the future academic year, amenities, and for market conditions based upon macroeconomic factors. After applying these adjustments to

⁴ Tr. at 42.

account for differences from the subject property, he contends that the resulting per-bed value conclusion of the subject property was \$34,000. His contention of value pursuant to the sales approach is \$31,300,000.

In preparing his income approach, Mr. Nassif contends that he derived the potential market rent from historical records of the subject along with an analysis of competing properties. His vacancy and collection loss rate was based upon the subject historical information as well as market rates for similar properties near GVSU. Mr. Nassif contends that economic conditions have worsened because the influx of new competitors has over-saturated the subject student housing market when contrasted against the stagnant-to-declining enrollment rates at GVSU. He claims that declining demand leads to the rising concessions rate in the market. He alleges that operating expenses are well supported by subject 2017 records as well as market data. However, the exception was the insurance cost which was reconciled heavily toward the subject due to being lower than market. Mr. Nassif then utilized the direct capitalization method to derive a pre-tax load capitalization rate of 7.5% based upon market data and with extra consideration taken for the subject's declining market demand. He contends that the resulting tax-loaded capitalization rate is therefore about 9.99%, with a resulting indicated value of \$30,600,000.

Mr. Nassif contends that he placed greater weight upon the income approach in his reconciliation of the indicated values but still would reconcile the value at \$30,600,000 upon giving some weight to the sales comparison approach.

Mr. Nassif contends that the underlying data supporting his historical contentions of operating data in the pro forma, is properly supported by the market data contained in

the appraisal. In using the word “historical” in the report, he contends that it relates to the pro forma operating analysis as presented in the appraisal and not any other data.

RESPONDENT’S CONTENTIONS

Respondent contends that the subject property’s true cash value was \$44,500,000 as of December 31, 2017.

RESPONDENT’S ADMITTED EXHIBITS

R-1: Appraisal Report by Douglas Adams

R-7: Rebuttal Evidence – Triad Real Estate Partners report re: Michigan State University student housing market

R-8: Rebuttal Evidence – Respondent’s summary of Petitioner’s amenity descriptions

R-9: Rebuttal Evidence - Property Transfer Affidavit for Subject Parcel dated September 15, 2016

RESPONDENT’S WITNESS

Douglas Adams

Mr. Adams is a real estate appraiser licensed with a MAI designation through the Appraisal Institute, as well as a GAA designation through the National Association of Realtors. He was recognized as an expert appraiser by the Tribunal and the parties. He prepared a retrospective appraisal of the subject property’s value as December 31, 2017 utilizing both the sales and income approaches to value.

Mr. Adams contends that he inspected the subject in February 2019. He also determined from Township records that the 2016 sales price was about \$52 million and that the transaction appears to be arm’s-length. However, he contends that the sale price on the property transfer affidavit for the subject parcel is \$51,252,000 and that the

value upon such an affidavit typically represents only real property, while the 2016 sale price likely included both real and personal property.⁵

Mr. Adams contends that the subject neighborhood, across the GVSU golf course from the main campus, consists entirely of privately owned student housing complexes. He contends that GVSU is experiencing an increase in both in-state and out-of-state enrollment, which drives demand for this type of housing. Mr. Adams conclusion of the highest and best use of the property as improved, is “continued multi-family residential use catering towards student housing.”⁶

Regarding his income approach, Mr. Adams developed the property’s potential gross income by examining the rates of eight complexes in the subject neighborhood and by making low, net adjustments for the physical differences between those properties and the subject. Mr. Adams contends that six of the eight had vacancy rates at 8 percent or lower and that overall market rates are steady. He also contends that the eight showed a rising concession rate and concluded in a rate of 3%. Further, he conducted a market vacancy study in student housing areas around GVSU, and concluded that a 9.7% vacancy rate is appropriate.

Mr. Adams claims that expense rates were developed from data provided by Petitioner, as well as his survey of market rates at comparable student-housing complexes. He contends that he derived an estimated capitalization rate of 6% from a number of surveys, specifically those with focuses on student housing or numbers directly applicable to the Midwest. He contends the tax-loaded capitalization rate is

⁵ See Tr. at 87-89. See R-9.

⁶ See R-1 at 37.

8.48% and that the resulting value conclusion of his income approach is rounded to \$45,500,000.

In his sales comparison approach, Mr. Adams considered seven sales including the subject property. He analyzed the sales using both number of units and number of beds as units of comparison. Further, he contends that the appropriate elements of comparison for student housing sales are property location, age, density, quality/condition, and size, as well as differences between types of units at multiple complexes. He alleges the only adjustment needed for the subject sale is to reflect that it is one year older. The values derived from this analysis indicate the subject property has a value of \$155,000 per unit or \$45,000 per bed. These conclusions resulted in respective value conclusions of \$40,600,000 or \$41,400,000, which he reconciled at \$41,000,000. Further, he contends that the subject has superior amenities to the comparable sales used in Petitioner's sales comparison analysis.

Mr. Adams contends that the nature of the property led him to rely upon the income approach in his reconciliation and that he therefore concluded a value of \$45,500,000.

FINDINGS OF FACT

1. The subject property is located at 10897 48th Avenue in Allendale Township, Ottawa County, Michigan.
2. The parcel under appeal has a parcel identification number of 70-09-25-200-073 and consists of 34.79 acres of land.
3. The subject property is a purpose-built student housing development located adjacent to the campus of GVSU.

4. The subject land is improved by 28 buildings, built in 2008 and totaling 434,330 square feet, as well as land improvements including an outdoor pool, recreational amenities, carports, and other various improvements.
5. The subject buildings include 409,336 square feet of net rental area for student housing.
6. The subject buildings include 2,572 square feet of net rental area for retail.
7. The parties agree that the subject property's highest and best use is the continued utilization of the existing improvements.
8. Petitioner purchased the subject property via covenant deed in September 2016 for about \$52,000,000, including personal property.
9. Mr. Nassif appraised the property in 2016, prior to its sale, and his appraisal was a basis for its \$52,000,000 purchase price.
10. Both parties contend that they neither possessed nor relied upon Mr. Nassif's 2016 appraisal of the subject property in preparing this appeal.⁷
11. Both parties submitted valuation disclosures, valuing the property pursuant to the sales comparison and income approaches.
12. The subject market anticipated a forthcoming 5.3% increase in the number of student housing beds as of tax day.
13. GVSU enrollment increased at an annualized rate of about 0.7% from fall 2007 to fall 2017.

⁷ See Tr. at 44.

CONCLUSIONS OF LAW

The assessment of real property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its TCV.⁸

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not exceed 50 percent.⁹

The Michigan Legislature has defined TCV to mean:

The usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.¹⁰

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”¹¹

“By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment.”¹² The Tribunal is not bound to accept either of the parties' theories of valuation.¹³ “It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case.”¹⁴ In that regard, the Tribunal “may accept one theory and reject the other, it may

⁸ See MCL 211.27a.

⁹ Const 1963, art 9, sec 3.

¹⁰ MCL 211.27(1).

¹¹ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

¹² *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

¹³ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

¹⁴ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

reject both theories, or it may utilize a combination of both in arriving at its determination.”¹⁵

A proceeding before the Tax Tribunal is original, independent, and de novo.¹⁶ The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”¹⁷ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”¹⁸

“The petitioner has the burden of proof in establishing the true cash value of the property.”¹⁹ “This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party.”²⁰ However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.”²¹

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.²² “The market approach is the only valuation method that directly reflects the

¹⁵ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

¹⁶ MCL 205.735a(2).

¹⁷ *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

¹⁸ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

¹⁹ MCL 205.737(3).

²⁰ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

²¹ MCL 205.737(3).

²² *Meadowlanes*, *supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff'd* 380 Mich 390 (1968).

balance of supply and demand for property in marketplace trading.”²³ 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 TCV of the property, utilizing an approach that provides the most accurate valuation under the circumstances.²⁴ Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.²⁵

Market Changes

Petitioner demonstrated that new privately owned student housing units entered the GVSU housing market just before tax day.²⁶ Enrollment at GVSU, driving demand for housing in this student rental market, continues to increase slightly over time, as demonstrated by the parties’ evidence.²⁷ Demand for housing at the subject property is driven primarily by GVSU students, reducing the relevancy of evidence presented about statewide college attendance rates or changes in the greater Grant Rapids market where better evidence here exists. As a result of the introduction of new housing units outpacing a moderate rate of increase in enrollment, the Tribunal finds that the projected demand for units at the subject property appears to be in decline as of tax day. This conclusion is further supported by the parties’ contentions that the subject property’s value was significantly less than its 2017 purchase price.

²³ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

²⁴ *Antisdale*, *supra* at 277.

²⁵ See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

²⁶ P-1 at 10.

²⁷ P-1 at 9; R-1 at 15.

Highest and Best Use

Highest and best use is the crux to determining the market value of a property. As noted in the *Appraisal of Real Estate*,²⁸ “[t]he essential components of the analysis of highest and best use are contained in the following definition of the term: The reasonably probable use of the property that results in the highest value.”²⁹ In other words, in determining the true cash or fair market value of a property, it is the use that results in maximum productivity that is aimed for. Highest and best use “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.”³⁰ In determining highest and best use, the appraiser must consider whether the use is legally permissible, physically possible, financially feasible and the maximally productive use of the property.

In this matter, Petitioner’s appraiser determined the maximally productive use of the property to be continued use of the existing improvements.³¹ Respondent’s appraiser determined the maximally productive use of the property to be continued use of the existing improvements for multi-family residential student housing.³² As such, the Tribunal finds there is no dispute regarding the highest and best use of the property and

²⁸ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p 332.

The Appraisal of Real Estate is the appraisal profession’s “flagship text, reflects this recommitment to the essential principles of appraisal and the sound applications of recognized valuation methodology.” Further, “both appraisers and users of their services can be assured that this volume builds on time-tested foundational knowledge and contains the most up-to-date information and learning on valuation available anywhere.” *Appraisal of Real Estate*, Forward, written by Richard L. Borges II, MAI, SRA, 2013 President, Appraisal Institute.

²⁹ *The Appraisal of Real Estate* at 332.

³⁰ *Edward Rose Building Co v Independence Twp*, 436 Mich 620, 633; 462 NW2d 325 (1990).

³¹ See P-1 at 28.

³² See R-1 at 37.

accepts the appraisers' conclusions. Although demand for this type of student housing unit is declining, no feasible alternative uses were presented.

Valuation Discussion

Cost Approach

Both valuation experts considered but rejected the cost approach to value. Mr. Nassif's appraisal contends:

The subject's age makes it difficult to accurately form an opinion of depreciation and tends to make the Cost Approach unreliable. Investors do not typically rely on the Cost Approach when purchasing a property such as the subject of this report. Therefore, we have not employed the Cost Approach to develop an opinion of market value.³³

Likewise, Mr. Adams' appraisal states:

The Cost Approach is most applicable when the improvements are relatively new, or there is a lack of comparable sales and rental data. Due to the age of the subject improvements, and the difficulty in estimating its accrued depreciation, as well as the availability of sale and rental data, the Cost Approach will not be developed in this report.³⁴

The Tribunal agrees with both valuation experts that the cost approach is not the best approach to utilize in determining the true cash value of the subject property because accrued depreciation is difficult to measure in a property such as the subject.

Sales Approach

Proper application of the sales comparison approach involves "comparing similar properties that have recently sold . . . identifying appropriate units of comparison and making adjustments to the sales price . . . of the comparable properties based on relevant, market-derived elements of comparison."³⁵

³³ See P-1 at 30.

³⁴ See R-1 at 39.

³⁵ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p 377.

The Tribunal must determine the property's true cash value which is defined 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 that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.³⁶

Here, both valuation experts put forth a sales approach to value, but the Tribunal does not find this approach to provide the most persuasive determination of the true cash value of the subject property. The Tribunal finds that the parties' singular location adjustments fail to properly consider the dynamic factors of enrollment, supply, physical location, proximity to campus central areas, or other factors differentiating the subject neighborhood from the comparable neighborhoods.

Mr. Nassif presented the Tribunal with five comparable sales that were adjusted to be consistent with the characteristics of the subject property. Comparable sale one is located at 1701 Knollwood Avenue in Kalamazoo. This comparable sale is much older than the subject.³⁷ Its distance from campus was not clearly identified in the report, lessening the likelihood of Petitioner's proposition that this property is used entirely or almost entirely for student housing.³⁸ Regarding his location adjustment, it is unclear from the information in the appraisal whether the dynamic market factors requiring a location adjustment between these two properties are sufficient to support this adjustment. Likewise, Mr. Nassif's comparable sale four, located at 3201 Michigamme Woods Drive, also in the Kalamazoo market, presents the same concerns as comparable sale one in terms of market-based adjustments. Mr. Nassif over-

³⁶ MCL 211.27(1).

³⁷ P-1 at 36.

³⁸ Tr. at 57, 59.

emphasizes the importance of location in his attempts to connect the higher price per bed at the Kalamazoo properties, admitting that they are only a component of the price factor, but nevertheless confidently relying upon them as a valid indicator of market superiority.³⁹ For the reasons state above, the Tribunal applies no weight to the Kalamazoo sales.

Mr. Nassif's comparable sale two, located at 15345 Venlo Drive in Big Rapids, has many fewer beds than the subject.⁴⁰ Further, regarding the location adjustment, it is unclear from the information in the appraisal whether the dynamic market factors requiring a location adjustment between these two properties are sufficiently explained to support the adjustment. As such, no weight is given to the Big Rapids sale.

Mr. Nassif's comparable sale three, located at 16970 Chandler Road in East Lansing, has significantly fewer beds than the subject.⁴¹ Regarding the location adjustment, again, it is unclear from the information in the appraisal whether the dynamic market factors requiring a location adjustment between these two properties are sufficiently explained to support the adjustment. Further, the Tribunal finds that evidence in the record suggests a substantial difference between the East Lansing student housing market and the subject market.⁴² As a result, the Tribunal applies no weight to the East Lansing sale.

Mr. Nassif's comparable sale five, located at 4310 Sterling Way in Mount Pleasant, is significantly remote in time from tax day.⁴³ Further, regarding the location

³⁹ See Transcript at 54-55.

⁴⁰ P-1 at 39.

⁴¹ P-1 at 36.

⁴² R-1 at 75.

⁴³ P-1 at 36.

adjustment, it is like the other comparables, unclear from the information in the appraisal whether the dynamic market factors requiring a location adjustment between these two properties are sufficiently explained to support the adjustment. As such, no weight is given to the Mount Pleasant sale.

Further, the Tribunal is discouraged that Mr. Nassif failed to consider the subject property's 2016 sale in his sales comparison approach. He contends that his choice to exclude it was a professional preference and, further, that the sale was disclosed in his report.⁴⁴ Regardless, the Tribunal finds that, for the reasons stated above, the sales comparison approach was not appropriately completed by Mr. Nassif due to his selectivity of properties not in the subject market at the expense of at least one known sale from the subject market.

Mr. Adams also presented the Tribunal with a sales comparison approach to value in which he put forth seven sales, adjusted to be consistent with the characteristics of the subject property. Mr. Adams' comparable sale five is the same sale as Petitioner's comparable sale four (3201 Michigamme Woods Drive, Kalamazoo). Like Mr. Nassif's analysis, the Tribunal is not convinced that there is sufficient information in the record to rely upon Mr. Adams' location adjustments between these markets. Regarding his location adjustment, it is unclear from the information in the appraisal whether the dynamic market factors requiring a location adjustment between these two properties is sufficient to support this adjustment. Likewise, Mr. Adams' comparable sale seven, which is the 58 West Apartments in Kalamazoo, is also subject to the same fault. Further, comparable sale seven is sufficiently remote in time from tax

⁴⁴ Tr. at 39-40.

day to make the comparison unreliable. As a result, the Tribunal gives these sales no weight. No weight is given to the Kalamazoo sales presented by either party.

To the parties' credit, they relied upon many of the same sales in trying to prepare the best possible sales comparison analyses. Specifically, Mr. Adams' comparable sale two is also Mr. Nassif's comparable sale three (16970 Chandler Road in East Lansing). Mr. Adams' comparable sale three is also Mr. Nassif's comparable sale two (15345 Venlo Drive, Big Rapids), and Mr. Adams' comparable sale six is also Mr. Nassif's comparable sale five (4310 Sterling Way, Mount Pleasant). As noted above, these properties are respectively located in East Lansing, Big Rapids, and Mount Pleasant. As previously discussed regarding location adjustments, it is unclear from the information in the appraisal whether the dynamic market factors requiring a location adjustment between these properties and the subject, are sufficient to support an adjustment. Additionally, the differences in beds at the units, and therefore sales price, at the Big Rapids and East Lansing properties make them not particularly comparable. Further, the Tribunal finds that evidence in the record suggests a substantial difference between the East Lansing student housing market and the subject market rendering their comparability suspect. Finally, the Mount Pleasant sale is significantly remote in time from tax day, making it unpersuasive. Mr. Adams' report additionally introduces comparable sale one, Block 36 Apartments in East Lansing. The Tribunal has the same concerns about the differences in the markets, differences in the sizes of the properties, and relying upon the location adjustment. As a result, the Tribunal gives the sales in East Lansing, Big Rapids, and Mount Pleasant no weight.

Mr. Adams' final remaining comparable sale is comparable sale four, which is the sale of subject property, approximately fifteen months prior to tax day. Mr. Adams contends that the only necessary adjustment was a 1% age adjustment due to the subject property's slightly older age than at the time of sale,⁴⁵ however, the report indicates that no market adjustment was necessary. The Tribunal is compelled to consider the sale of the subject property, just over a year removed from tax day, as evidence of its value, but because properties like the subject are typically held for investment purposes, the weighing of any such evidence must also be considered through the lens of the income approach during the reconciliation phase.⁴⁶

Income Approach

The Tribunal finds that the subject property was purchased in 2016 to be used as income-producing property, it has always been used as income-producing property, and the respective appraisers agree that its ongoing current use as income-producing student housing is its highest and best use. As previously established, market conditions do appear to be weakening for private GVSU student housing providers such as Petitioner. The appraisers' income approaches correctly attempt to project income and expense based upon subject and market historical information, as well.

Regarding the calculation of the subject property's gross potential income, Mr. Nassif presented the Tribunal with seven comparable rentals. All are located in the subject GVSU market and were adjusted to account for market changes since tax day.

⁴⁵ See R-1 at 96.

⁴⁶ There is also evidence that another student-housing complex near the subject property of a similar age and number of beds sold in a market transaction within two years of tax day. See R-1 at 75. It is unclear why the parties would not offer this sale for comparison's sake.

Mr. Nassif utilized a bed-by-bed analysis to develop the market rental rates.⁴⁷ First, the subject and comparable rental numbers one (Campus West Apartments), two (Copper Beech Townhomes), and four (Campus View Apartments) were analyzed to develop market rates for one-bed, one-bath units. Mr. Nassif concluded that the rate should be reconciled to the subject's actual per-bed rate. Second, the subject and comparable rental numbers one, two, three (Evolve), five (The Lodge at Allendale), and seven (Meadows Crossing) were analyzed to develop market rates for two-bed, two-bath units. Mr. Nassif concluded that the subject's per-bed data represents market rates at contract rent. Third, the subject and comparable rental numbers one, two, four, five, six (Trio North) and seven were analyzed to develop market rates for four-bed, four-bath units. Mr. Nassif concluded that the subject's four-bedroom units represent market rates at contract rent.

The Tribunal agrees that Mr. Nassif's data supports his conclusions of gross potential income. However, the Tribunal also finds that Mr. Nassif failed to utilize the ideal technique of adjusting comparable rentals for differences between those units and the subject property.⁴⁸ Mr. Nassif determined market rates by analyzing the subject property's revenue, as well as the rates of competing student-housing facilities, and then drawing a conclusion based upon that data.⁴⁹ He offered no explanation for his decision not to apply market-based adjustments to account for differences between the comparable rentals and the subject, which the Tribunal finds fails to accurately account for differences between those properties and the subject in determining market rent.

⁴⁷ See P-1 at 43.

⁴⁸ *The Appraisal of Real Estate*, *supra* at p 466.

⁴⁹ Tr. at 24.

Mr. Adams presented the Tribunal with eight comparable rentals, also within the GVSU market. Mr. Adams' analysis also sought to establish rates based upon monthly per-bed values. Market rates for one-bed, one-bathroom units were developed using the subject and comparable rental numbers two (West Wind Place), three (Copper Beach), four (The Enclave Apartments), and seven (Conifer Creek West Apartments), including adjustments to bring the specific features of those rentals in line with the subject property. Market rates for two-bedroom "barrier free" units of 417 square feet per bed were developed using the subject and comparable rental numbers one (The Lodge Apartments), two, three, four, and eight (Evolve), including adjustments. Market rates for two-bedroom "townhome" units of 571 square feet per bed were developed using the subject and comparable rental numbers one, two, three, four, and eight, including adjustments. Market rates for two-bedroom "village center" units of 576 square feet per bed were developed using the subject and comparable rental numbers one, two, three, four, and eight, including adjustments. Market rates for four-bedroom "standard" units of 418 square feet per bed were developed using the subject and comparable rental numbers one, three, four, five (Mystic Woods), six (Meadows Crossing), and seven, including adjustments. Market rates for four-bedroom "townhome" units of 429 square feet per bed were developed using the subject and comparable rental numbers one, three, four, five, six, and seven, including adjustments. Market rates for four-bedroom "premium" units of 441 square feet per bed were developed using the subject and comparable rental numbers one, three, four, five, six, and seven, including adjustments.

Unlike Mr. Nassif, Mr. Adams determined that applying appropriate market-based adjustments to the comparable rentals is the best indication of actual potential gross

rent. The Tribunal finds that adjustments to comparable rental data, as demonstrated in Mr. Adams' appraisal, is preferred when considering the comparability of other rental units.⁵⁰ Mr. Adams determined that inferior location adjustments were appropriate for complexes further from campus, that square footage adjustments were appropriate where units were differently sized, adjustments for flat-rate utilities versus tenant-pay utilities, in-unit patios and decks, and overall complex amenities.⁵¹ The location adjustment accounted for visibility and location compared to campus.⁵² The resulting adjustments are more detailed, are reasonable, and appear to reflect the tendencies of the market as demonstrated by Mr. Adams' data. The Tribunal finds that this data is superior for purposes of developing the subject property's potential gross rental income.

The Tribunal finds that Mr. Adams' opinion of the subject one-bedroom units, with market rents more in line with comparable rental numbers three (\$878) and seven (\$897), is over-stated in his appraisal.⁵³ The Tribunal finds that \$935 per bed better extrapolates Petitioner's market rent based upon the provided data range of \$878-\$1,083 per bed.⁵⁴

The Tribunal agrees with Mr. Adams that his estimated monthly rent of the subject "barrier free" units based upon the comparable rentals is appropriate based upon his analysis, and determines that \$615 per bed accurately reflects the data provided.⁵⁵

⁵⁰ *The Appraisal of Real Estate, supra* at 466.

⁵¹ Tr. at 97.

⁵² Tr. at 135.

⁵³ R-1 at 52.

⁵⁴ *Id.*

⁵⁵ R-1 at 53.

The Tribunal agrees with Mr. Adams that his estimated monthly rent of the subject two-bedroom townhome units based upon the comparable rentals is appropriate based upon his analysis, and determines that \$695 per bed accurately reflects the data provided.⁵⁶

The Tribunal agrees with Mr. Adams that his estimated monthly rent of the subject two-bedroom village center units based upon the comparable rentals is appropriate based upon his analysis, and determines that \$725 per bed accurately reflects the data provided.⁵⁷

The Tribunal finds that the four-bedroom “standard” units’ value is over-stated by Mr. Adams’ opinion and is most similar with a clustered set of adjusted values including comparable rental numbers three (\$554), four (\$542), five (\$563), and six (\$538).⁵⁸ The Tribunal therefore determines that \$545 per bed better extrapolates Petitioner’s market rent per bed based upon the provided data.

The Tribunal finds that the four-bedroom “townhome” units’ value is over-stated by Mr. Adams’ opinion. Its value is supported by the clustered conclusions of comparable rental numbers three (\$565), four (\$552), five (\$573), and six (\$549).⁵⁹ The Tribunal therefore determines that \$555 per bed better extrapolates Petitioner’s market rent per bed based upon the provided data.

The Tribunal finds that the four-bedroom “premium” units’ value is over-stated by Mr. Adams’ opinion. Its value is supported by the clustered conclusions of comparable

⁵⁶ R-1 at 54

⁵⁷ R-1 at 55.

⁵⁸ R-1 at 56.

⁵⁹ R-1 at 57.

rental numbers three (\$566), four (\$553), five (\$574), and six (\$550).⁶⁰ The Tribunal therefore determines that \$560 per bed better extrapolates Petitioner's market rent based upon the provided data.

Petitioner, for its part, did demonstrate that the data used in Mr. Adams' report was not perfect. His report relied upon quoted rents rather than contract rents as typically sought for an active investment property.⁶¹ The Tribunal finds that the effect of this error is minimized by the extremely high annual turnover associated with student-housing complexes,⁶² and it shall be treated as *de minimis*. As a result, the Tribunal finds that the technique employed by Mr. Adams offers superior insight in the market's potential gross rents.

The adjusted potential monthly income resulting from the Tribunal's above-stated calculations is \$6,312,480, and after application of Mr. Adams' 3% deduction for rental discounts, the resulting potential gross income derived for the subject property is \$6,120,000 (rounded).

With respect to vacancy and collection loss rate, Mr. Nassif's appraisal applied an 11.5% vacancy and collection loss rate, including his bad-debt collection loss rate, based upon one year of the subject's rent roll and market-level CoStar data. Mr. Adams looked at national student-housing data, market-level Colliers data, and an AxioMetrics report analyzing the GVSU student-housing market.⁶³ Further, based upon the anticipation of new units entering the market, he concluded a 12% vacancy rate, plus an additional 0.5% discount for collection loss. The greater specificity of local market data

⁶⁰ R-1 at 58.

⁶¹ Tr. at 134.

⁶² Tr. at 19.

⁶³ R-1 at 62-65.

in Mr. Adams' report is preferred for estimating this reduction to potential income.⁶⁴

Further, Mr. Nassif's report does not contain the market data supporting his concluded rate.⁶⁵ As a result, the Tribunal adopts Mr. Adams' contention that the subject property's vacancy and collection loss rate was 12.5% as of tax day.

With respect to miscellaneous income, the Tribunal finds that the specific data from the subject property at issue is best utilized to determine the subject's miscellaneous income.⁶⁶ Mr. Nassif utilized this approach in his report.⁶⁷ Mr. Adams, instead, based most of his rate upon one market survey, alone.⁶⁸ As a result, the Tribunal finds that Mr. Nassif's contentions of projected ancillary income at \$320,160 as indicated in his pro forma to be the best evidence of ancillary income, and the Tribunal adopts the value conclusions therein.

As a result of the foregoing, the Tribunal arrives at an effective gross income of \$5,675,100 (rounded),⁶⁹ which is supported by the bracketed values of the parties' effective gross income conclusions.

Mr. Nassif estimated total annual expenses for the subject property of \$2,357,764, whereas Mr. Adams projected total expenses of \$1,870,332. Mr. Nassif relied upon the subject's year-end 2017 operating statement and market projections to develop his expense estimates.⁷⁰ Mr. Adams relied upon the operating expenses of seven comparable rentals as well as the subject's 2017 operating statement.

⁶⁴ *The Appraisal of Real Estate* at 478.

⁶⁵ Tr. at 52.

⁶⁶ *The Appraisal of Real Estate* at 478.

⁶⁷ P-1 at 46.

⁶⁸ R-1 at 65-66.

⁶⁹ $\$6,120,000 - (\$6,120,000 \times 0.125) + \$320,160 = \$5,675,160$.

⁷⁰ P-1 at 48.

The Tribunal finds that Mr. Adams' conclusion of management expenses at 3.5% of effective gross income is supported by market data.⁷¹ Mr. Nassif's appraisal over-relies upon the market forecast when determining the proper expense allowance, and while his data is supported by his comparable expenses, none of the comparable properties are in the subject market, rendering the data inferior.⁷²

With respect to general and administrative expenses, Mr. Nassif's appraisal determined a projected expense of \$165,600 based upon 2017 historic subject data and his comparable expenses. Mr. Adams' appraisal determined a general and administrative expense projection of \$110,400 based upon market data. The Tribunal relies upon Mr. Nassif's report, as it determines a tighter bracket and, although not focused particularly upon the subject market, does incorporate subject market data through its consideration of the subject's 2017 historical expenses. Further, Mr. Adams' subject market-only data does not demonstrate any meaningful patterns.

With respect to repairs and maintenance expenses, the Tribunal concurs with Mr. Adams' conclusion that a projected expense of \$250 per bed for repairs and maintenance is appropriate given market expenses and the one-year historic information for the subject, and therefore, adopts his contention of this expense projection.

For utilities, Mr. Nassif projected \$170,200 for electric, \$37,720 for gas, \$128,800 for water and sewer, \$27,600 for trash removal, and \$197,800 for cable/internet, for a total projected utility cost of \$562,120.⁷³ The Tribunal agrees with Mr. Nassif in this case

⁷¹ R-1 at 68-69.

⁷² P-1 at 48.

⁷³ P-1 at 47.

that the subject utility history is the most appropriate basis for projecting the future utility costs, and Mr. Nassif's decision to forecast a 1% increase to the 2017 historical costs was reasonable. Respondent correctly identified in testimony that errors in Mr. Nassif's appraisal cause discrepancies in the information he presents with respect to utilities, but as Mr. Nassif's testimony also demonstrates, those errors are solely with respect to his comparable expenses.⁷⁴ Mr. Adams' narrative concludes a per-bed utilities cost of \$450 per bed, which does not comport with his pro forma conclusion of \$414,000 total. Further, his pro forma deducts utilities net of reimbursement, but support for the purported reimbursement deduction is not found in the report. Although Mr. Nassif contended as a rebuttal witness that Mr. Adams' appraisal contained discrepancies with respect to its expense treatment of cable and internet,⁷⁵ the Tribunal finds that the error, while apparent, more likely impeaches the narrative and not the mathematical calculation therein, which the Tribunal finds is otherwise supported except as described above.

Mr. Nassif projects a payroll expense of \$598,000 based upon market comparisons, while Mr. Adams projects a payroll expense of \$483,000, also based upon market comparisons. The Tribunal finds that both appraisers correctly look to market conditions; however, Mr. Nassif fails to consider any comparable expenses in the subject market, and consideration of only the subject market data in Mr. Adams' report does not create a bracket of value. Further, Mr. Nassif correctly testified as a rebuttal witness that Mr. Adams' conclusion is not supported by his data if controlled for both

⁷⁴ Tr. at 69-73.

⁷⁵ Tr. at 159-160.

market and property size.⁷⁶ The Tribunal therefore relies upon the data presented by both parties and concludes that a projected payroll expense of \$575,000 for the subject property is supported as of tax day.

Mr. Nassif determined that the advertising expense projects at \$243,800, while Mr. Adams projected the advertising and promotion expense to be \$119,600. Mr. Nassif's provided comparable expense data does not appear to support his conclusion, although the Tribunal agrees with his narrative comment that advertising expenses in the area could project higher due to the recent introduction of many new beds into the subject market. Mr. Adams' appraisal also determined that the subject market exhibits higher-than-typical advertising expenses for this type of property, and apparently based his projection roughly upon the median for these properties in this market. However, the Tribunal finds that the addition of so many new units into the market is likely to continue to impact expenses for the subject property and its direct competitors, and as a result, gives some weight to Petitioner's contentions and increases Respondent's projected expenses by 5%.

Mr. Adams' appraisal contests an expense of \$82,800 for grounds maintenance, which the Tribunal finds reasonable and supported.

The parties agree that \$138,000 reserve for replacement is an appropriate expense estimate based upon market data, and the Tribunal adopts that figure.

The Tribunal finds that Mr. Adams' reliance upon market-based expense projections as well as the subject's historical data, overall, is a more effective method to determine the expense costs for these property types in the subject market than market

⁷⁶ Tr. at 158-159.

projections applied to one year of historical data, except as otherwise specifically indicated above. Although Petitioner correctly contends that Respondent's market-based evidence was not as strong as it could be based upon exclusion of multi-year market data for comparable rentals where such information might have been available,⁷⁷ such a finding does not detract from the Tribunal's conclusion that Mr. Adams' data is the best overall expense information on the record, except as specifically designated otherwise above.

As a result of the foregoing, the Tribunal finds that the subject property's projected operating expenses as of tax day were \$2,077,100 (rounded). As a result, it finds that the subject property's projected net operating income as of tax day was \$3,598,000. This conclusion is supported by the bracketed net operating incomes presented in the parties' appraisals.⁷⁸

Turning to development of a capitalization rate, Mr. Nassif's appraisal concludes that the appropriate capitalization rate is 9.9922962% based upon a concluded overall capitalization rate of 7.5% plus a tax load of 2.4922962%. By contrast, Mr. Adams' appraisal concludes that the appropriate capitalization rate is 8.48% based upon a concluded overall capitalization rate of 6% plus a tax load of 2.48%. When determining an appropriate capitalization rate, the Tribunal finds that deriving "capitalization rates from comparable sales is the preferred technique when sufficient information about sales of similar, competitive properties is available."⁷⁹

⁷⁷ Tr. at 143.

⁷⁸ Mr. Nassif's projected NOI was \$3,053,613 and Mr. Adam's, \$3,859,158. See P-1 at 47, R-1 at 74.

⁷⁹ *The Appraisal of Real Estate*, *supra* at p 493.

Mr. Nassif derives his capitalization rate from five Michigan student-housing sales, a mortgage-and-equity band of investment approach, and market surveys. His sales demonstrate a median rate of 7.35% and an average rate of 6.99%.⁸⁰ He admits that his determination of the rate aligns with the top of the range established by his market sales, but correctly points out that his reliance upon this sale is in conformity with his sales comparison approach.⁸¹ However, his band of investment method, which he contends is “a check for reasonableness,” instead supports the market average rate of 7%. The market survey is based upon the national market for student-housing properties, which the Tribunal finds is not preferred evidence when superior local data is available.

Mr. Adams derives his capitalization rate from 14 Michigan apartment sales, including eight student-housing sales, as well as market surveys. His overall sales demonstrate a median rate of 6.51% and an average rate of 6.48%. Further, the student-housing sales demonstrate a median rate of 6.3% and an average rate of 6.49%.⁸² He relies upon national market surveys and attempts to account for a more localized version of those indicators, but the Tribunal finds that the local market data is a better indication of the subject’s rate. The only two sales presented from the subject neighborhood – his comparable thirteen, which is the subject property, as well as his comparable five – have respective rates of 5.96% and 6%, on the lower end of the scale.

⁸⁰ P-1 at p 51.

⁸¹ Tr. at 77.

⁸² R-1 at 75.

When determining the best evidence of the capitalization rate, the Tribunal must also account for “. . . differences between a comparable property and the subject property that could affect the overall capitalization rate concluded. . . .”⁸³ A unique feature of this data set is the presence of the subject property, albeit with a derived rate of the low end of all evidence presented by the parties. This data, albeit only a single data point, requires no adjustment except for the subject being one year older on tax day. It is also supported by Respondent’s other Allendale sale, comparable number five, which is of roughly the same size and age and occurred within two years of tax day. The greatest weight is given to these two comparable rates, with some weight also given to Petitioner’s comparable rates one, two, and four and Respondent’s comparable rates six and twelve, thereby excluding those comparable rates too far removed in time from tax day, that are not student housing, or that are located in the demonstrably distinguishable East Lansing market. Giving appropriate weight to each of these comparable rates, the Tribunal finds that an expected capitalization rate of 6.25% is supported by the data supplied in the parties’ appraisals. Further, the Tribunal adopts Mr. Nassif’s tax load capitalization rate of 2.49% (rounded) to conclude an overall capitalization rate of 8.74%.

The Tribunal’s concluded value pursuant to the income capitalization approach, is the net operating income (\$3,598,000) divided by the capitalization rate (8.74%), equaling \$41,200,000 (rounded).

⁸³ *The Appraisal of Real Estate*, *supra* at p 494.

Reconciliation

As properties such as the subject are typically owned for investment purposes, estimating the rate of return is a key component in determining what a prospective buyer would pay. As a result, the Tribunal finds that the income approach is the preferred valuation method for a 920-bed student-housing apartment complex.

However, the Tribunal is required to reconcile the conclusion of each approach to value in rendering its final determination of value. Further, in this case, the subject property sold in a market-based transaction about 15 months prior to tax day. Despite the preceding information and the resulting low gross adjustment, Mr. Adams chose to conclude a sales comparison value much lower than indicated by this sale. Mr. Nassif, likewise, determined through a sales comparison analysis that the resulting value conclusion was far below the value indicated by Mr. Adams' comparable sales. Further, the parties' income approaches indicate a value much below the value indicated by the comparable sale, as does the Tribunal's reconciliation of the evidence presented in those income approaches. As a result, there is sufficient evidence to determine that the subject sales price was an outlier, included items other than real property, or, at the least, is not a supportable contention of value as of tax day. As such, the sales comparison approach is given no weight in the Tribunal's conclusion.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the income approach is the best indication of the subject property's value. The subject property's TCV, SEV, and TV for the tax year at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's SEV and TV for the tax year at issue is MODIFIED as set forth in the Introduction section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of

1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (xi) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, and (xii) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, and (xiii) after June 30 2020, through December 31, 2020, at the rate of 5.63%.

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

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.⁸⁴ Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small

⁸⁴ See TTR 261 and 257.

Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.⁸⁵ A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.⁸⁶ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.⁸⁷

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an “appeal by right.” If the claim is filed more than 21 days after the entry of the final decision, it is an “appeal by leave.”⁸⁸ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.⁸⁹ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.⁹⁰

By 

Entered: June 15, 2020
bw/pg

⁸⁵ See TTR 217 and 267.

⁸⁶ See TTR 261 and 225.

⁸⁷ See TTR 261 and 257.

⁸⁸ See MCL 205.753 and MCR 7.204.

⁸⁹ See TTR 213.

⁹⁰ See TTR 217 and 267.