

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

Larden Properties, LLC,
Petitioner,

v

MTT Docket No. 395097

City of Gibraltar,
Respondent.

Tribunal Judge Presiding
B. D. Copping

FINAL OPINION AND JUDGMENT

INTRODUCTION

A hearing was held in the above-captioned case on January 17 and 18, 2013. Petitioner was represented by Paul A. DePorre, Attorney. Respondent was represented by Nevin and Claudia Rose, Attorneys. Petitioner called as witnesses Denise Achram, owner of subject property, and Gregory Coulter, managing member and associate broker of Income Property Organization, a multi-family brokerage company located in Bloomfield Hills, Michigan. Mr. Coulter was scheduled to testify as Petitioner's expert valuation witness. Respondent's only witness was Jere Neill, a certified general appraiser and president of Accurate Appraisals and Realty, Inc.

Following the two-day hearing in this matter, the Tribunal, having considered the testimony and evidence properly submitted and the file in the above-captioned

case, finds that the property's (Parcel No. 82-36-011-04-0006-000) true cash value, state equalized value, and taxable value for the three tax years at issue are:

Tax Year	TCV	SEV	TV
2010	\$384,000	\$192,000	\$192,000
2011	\$368,000	\$184,000	\$184,000
2012	\$352,000	\$176,000	\$176,000

BACKGROUND

Petitioner appeals Respondent's ad valorem property tax assessments for the 2010, 2011, and 2012 tax years levied upon commercial real property, a two building, two-story, 16-unit apartment complex, owned by Petitioner. The assessment at issue was appealed to Respondent's March 2010 Board of Review. Petitioner filed its petition in this matter with the Tribunal on May 26, 2010.

Respondent's contentions of true cash value, state equalized value, and taxable value, as confirmed by the Board of Review, are, with the exception that the Board reduced the state equalized value from \$310,600 to \$292,600 in 2010, denied the relief requested by Petitioner, and affirmed the taxable value, which, as noted on the second chart below, was subsequently reduced to reflect the amount reported in Respondent's Valuation Disclosure:

Parcel No. 82-36-011-04-0006-000, as initially determined by the

Board of Review:

Year	TCV	SEV	TV
2010	\$585,200	\$292,600	\$289,130
2011	\$577,800	\$288,900	\$288,900
2012	\$531,200	\$265,600	\$265,600

Parcel No. 82-36-011-04-0006-000, as revised to reflect Respondent's contentions per Respondent's appraisal:

Year	TCV	SEV	TV *
2010	\$520,000	\$260,000	\$260,000
2011	\$540,000	\$270,000	\$264,420
2012	\$565,000	\$282,500	\$271,560

* Taxable Value amount per Respondent's Appraisal, as limited by annual increase in the Consumer Price Index ("CPI"). (Taxable values after applying applicable annual CPI limitations of 1.7% from 2010 to 2011 and 2.7% from 2011 to 2012.)

Petitioner's contentions of the property's true cash values, state equalized values, and taxable values are:

Parcel No. 82-36-011-04-0006-000

Year	TCV	SEV	TV *
2010	\$228,720	\$114,360	\$114,360
2011	\$256,080	\$128,040	\$116,304
2012	\$305,200	\$152,600	\$119,444

* Taxable values after applying applicable annual CPI limitations. (See above for annual percentage limitations.)

PETITIONER'S CONTENTIONS

Petitioner offered the following proposed exhibits:

- P-1 Valuation Report of Property (*Broker's Opinion of Value* ("BOV")) for 12/31/2009, prepared by Greg Coulter, Petitioner's valuation expert.
- P-2 Valuation Report of Property (BOV) for 12/31/2010, prepared by Greg Coulter, Petitioner's valuation expert.
- P-3 Valuation Report of Property (BOV) for 12/31/2011, prepared by Greg Coulter, Petitioner's valuation expert.
- P-4 Income/Expense Statement for calendar year 2009.
- P-5 Income/Expense Statement for calendar year 2010.
- P-6 Income/Expense Statement for calendar year 2011.

Petitioner's exhibits 1 through 6 were admitted.

Petitioner asserts that the assessments for the 2010, 2011, and 2012 tax years exceed the amounts permitted by the Michigan Constitution and applicable statutes. Petitioner further contends that "the property's taxable value exceeds the value required by MCL 211.27a." (Petition, Paragraph 8(b)). In addition,

Petitioner asserts:

The property is assessed in a discriminatory manner in that the assessment is significantly higher than the average level of assessment of comparable properties within the assessment district; [t]he assessed values of the property do not reflect similar sales of commercial properties in the area; [and t]he assessment is unlawful, and is based upon the application of wrong principals and thereby operates as a fraud on the taxpayer. (Petition, Paragraphs 8(c) through 8(e))

After being sworn in, Petitioner's attorney asked the subject property's owner, Denise Achram, to describe the property and its location. Her testimony was as follows:

The Parkside Apartments consist of two brick buildings, two stories each. They're separated by a parking lot. There are eight units per building; four upper units, four lower units. There -- each unit is identical in a sense, unless it's a mirror image of the other, in the sense they're two-bedroom, one-bath, an eat-in kitchen. They're small units. One bathroom. Laundry facilities in the basement with coin-operated machines, and extra storage lockers in the basements. (Tr, Vol I, p 12)

While under direct examination, Ms. Achram went on to testify that both she and the inspector she hired to inspect the property, were only allowed to view two, "representative" apartments in the 16-unit complex. She testified that the asking price for the property was \$565,000, and she ended up purchasing the property for \$560,000 on June 6, 2008.

In the months following the purchase of the property, she discovered numerous deferred maintenance and other significant deficiencies with respect to the state of repair of the subject property. Ms. Achram testified that she discovered significant water damage in several apartments; the crawl space also had water and

mold damage, and an encapsulation of the basement was required in August of 2008, which cost over \$30,000 to repair; and one the balconies collapsed in September of 2008 and had to be replaced at a cost of \$60,000.

Petitioner then offered the testimony of Greg Coulter, Real Estate Broker. Mr. Coulter has over 20 years of experience in brokering the sale and purchase of commercial real estate and has “sold over a half billion dollars in transactions throughout my tenure; just under 200 transactions.” (Tr, Vol I, p 49) Mr. Coulter specializes in assisting buyers and sellers with transactions involving multi-family apartment buildings. Mr. Coulter further stated that “I am an associate broker of my broker's license. I am the managing member and owner of Income Property Organization.” (Tr, Vol I, p 48)

When Petitioner asked to have Mr. Coulter accepted by the Tribunal as an expert valuation witness, so he could testify on his BOV, with respect to Petitioner’s contentions of value for the subject property for the 2010, 2011, and 2012 tax years, as presented in Petitioner’s Exhibits 1 through 3, Respondent asked for, and was granted, *voir dire*, in order to question Mr. Coulter about his qualifications to be admitted as an expert valuation witness.

Respondent asked Mr. Coulter if he was licensed by the State of Michigan as an appraiser or an assessor of real property and whether any court had ever designated him as an expert in appraising real estate. Mr. Coulter answered no to all these

questions. When asked about the training he received in order to obtain his broker's license, Mr. Coulter testified that he had about 90 hours of training, but he could not recall how much, if any, of the training was related to appraising real property.

Respondent then asked Mr. Coulter if he was familiar with MCL 211.27, which is the statute that defines "true cash value". Mr. Coulter said he was not familiar with that law.

Respondent then stated:

I would object to any designation of this witness as an expert in the field of -- well, obviously, of appraising, but also of real estate valuation. . . . He doesn't know the meaning of true cash value in terms of what -- how the state defines it for purposes of the Michigan Tax Tribunal. He doesn't know what that is. . . . He's obviously a licensed real estate broker, but I don't know that that authorizes him -- allows him to be considered an expert to testify as to the value of the subject property. (Tr, Vol I, pp 53-54)

In response to Respondent's objection to Petitioner's witness being admitted as an expert valuation witness, Petitioner referred the Court to *Consumers Power Co v Covert Twp*, 13 MTTR 218 (docket No. 190459, February 6, 1996), and read the following quote:

The Tribunal is given wide discretion to admit and give probative value or probative effect to evidence. An individual may qualify as an expert appraisal witness by reason of skill, experience, training, or education without being licensed as a real estate appraiser under the code. The fact that they are not so licensed will not preclude them as expert witnesses from giving an opinion, conclusion, or analysis of relating or -- of or relating to the value of the subject property in testimony or an appraisal report. (Tr, Vol I, p 54)

Following a lengthy discussion of Respondent's objection and Mr. Coulter's qualifications, the Tribunal ruled that Mr. Coulter could testify, but only with respect to the documents he prepared. Although the Tribunal further ruled that it was not going to designate Mr. Coulter as an expert witness, it erred in making that ruling. Rather, the Tribunal should have, and will now, designate Mr. Coulter as an expert witness for purposes of his BOV and give his testimony the weight it deserves, based on his skill, knowledge, education, experience, and training.

Mr. Coulter's BOV stated:

Of the three approaches to value, IPO [Income Property Organization, the firm Mr. Coulter worked for,] has employed both the Income Approach and the Market Approach; the Cost Approach is inapplicable of the subject property. Specifically, under the Income Approach, a projected Net Operating Income (NOI) must be calculated, which is then capitalized by the appropriate market rate. With the Market Approach, sales of comparable properties within the Wayne County area of Southeastern Michigan that have occurred within the trailing 24-month period were utilized to arrive at the prevailing price per unit, which is then ascribed to the asset in questions. (Petitioner's Exhibit 1, p 2)

Mr. Coulter's BOV was confirmed in his testimony below:

There are three approaches to value. There's the cost approach, the income approach, and the comparable sales approach. The cost approach in Michigan, for apartment buildings, anyway, is inapplicable. It would cost nearly 80 to \$100,000 to build a unit, nothing in Michigan would render building a property, at least unless it was a low-income housing transaction. So we would use both the income approach and the sales comparable approach. (Tr, Vol I, p 50)

For his sales comparison analysis, Mr. Coulter selected four properties sold in 2009 (for the 2010 tax year), five properties sold in 2010 (for the 2011 tax year), and four properties sold in 2011 (for the 2012 tax year), all located in the greater Southeast Michigan area. The following sales were used in his determination of market value:

Petitioner's Unadjusted Sales Comparables

Tax Year	Sales #	City	County	Sale price	# Units	Average SF/Unit *	Distressed (Y)**
	Subject	Gibraltar	Wayne		16	732	
2010	1	Inkster	Wayne	\$450,000	30	367	Y
	2	Dundee	Monroe	\$625,000	54	736	Y
	3	Lincoln Pk	Wayne	\$366,000	32	867	Y
	4	Brighton	Livingston	\$2,300,000	120	628	
2011	1	Trenton	Wayne	\$443,000	18	711	
	2	Westland	Wayne	\$850,000	69	766	Y
	3	Riverview	Wayne	\$355,000	32	761	Y
	4	Hazel Park	Macomb	\$120,000	10	673	Y
	5	Livonia	Wayne	\$400,000	20	1022	
2012	1	Wyandotte	Wayne	\$275,000	18	754	Y
	2	Farmington Hills	Oakland	\$3,400,000	126	653	Y
	3	Westland	Wayne	\$1,200,000	60	989	
	4	Garden City	Wayne	\$912,500	65	741	Y
		Total/Averages		\$11,696,500	56	743	

* Average Sq. Ft. equals total gross building area ("GBA")/# of units.

Mr. Coulter's BOV stated the Gibraltar apartments had 620 sq. ft. each, but $GBA/16 = 720$ sq. ft.

** Based on Mr. Coulter's testimony.

Note A: No detail as to the size, age, type of construction, or other potentially relevant details were provided in the BOV. No Adjustment Grid Analysis was provided as a part of the BOV.

Note B: All the 2010 tax year sales comparables were all sold in 2009, the 2011 tax year sales were all sold in 2010, and the 2012 tax year sales were all sold in 2011.

Tax Year	Sales #	City	# Units	SP/Unit w/o Adjs	SP/Unit with Adjs	Avg SP Non-Dist'd	Avg SP DR Props ***
	Subject	Gibraltar	16				
2010	1	Inkster	30	\$15,000	N/A		\$15,000
	2	Dundee	54	\$11,574	N/A		
	3	Lincoln Pk	32	\$11,438	N/A		\$11,438
	4	Brighton	120	\$19,167	N/A	\$19,167	
2011	1	Trenton	18	\$24,611	N/A	\$24,611	\$24,611
	2	Westland	69	\$12,319	N/A		\$12,319
	3	Riverview	32	\$11,094	N/A		\$11,094
	4	Hazel Park	10	\$12,000	N/A		
	5	Livonia	20	\$20,000	N/A	\$20,000	
2012	1	Wyandotte	18	\$15,278	N/A		\$15,278
	2	Farmington Hills	126	\$26,984	N/A		
	3	Westland	60	\$20,000	N/A	\$20,000	\$20,000
	4	Garden City	65	\$14,038	N/A		\$14,038
		Averages	56	\$16,423		\$ 20,944	\$15,472

*** Downriver or similar communities in the western part of SE Michigan.

Average of only two properties, which were non-distressed and located Downriver (2011 #1 and 2012 #3).

\$22,306

If this average had been used for the 2011/2012 tax years, the true cash value would have been \$356,900 (\$22,306 x 16 units).

For his income approach, Mr. Coulter used rent comparables to determine the market rent for the various types of units. He used the same seven rent comparables for each of the three years to determine a market monthly rent:

Petitioner's Examples of Market Rents in Gibraltar Area

Name of Apartment	# of Units	SF/Unit	Monthly Rent
Gibraltar Meadows Apartments	48	900	\$645
Gibraltar Shores Apartments	16	900	\$575
Preston Pointe at Brownstown	144	1005	\$789
Nottingham Knolls	82	900	\$665
Marsh Creek Village	144	1050	\$699
Island Woods Senior Apartments	50	925	\$837
Williamsburg Square Apartments	195	750	\$595
Averages		919	\$686 (rounded)

Subject Apartments	16	620	\$565
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After considering rents for similar properties, Mr. Coulter determined that the subject's actual rental rates (\$550 and \$575) were reasonable, but used \$565 per month per unit for purposes of his estimate of Gross Annual Income (\$108,480) for each of the three years. The BOV analysis indicates that the subject property's rental rates are on the high-end of the market on a per square foot basis.

The Tribunal does note that no deduction from Gross Rental Income was made based on Denise Achram's testimony that beginning in August of 2010, she hired an on-site manager, who received a free, thus, non-income producing apartment as at least partial compensation for his managerial duties. (Tr, Vol I, pp 21-22)

Although the Tribunal did, as indicated previously, qualify Mr. Coulter as an expert witness for purposes of testifying with respect to the BOV he prepared, the

Tribunal also admitted Mr. Coulter as an expert in multi-family real estate market conditions in Southeast Michigan for the tax years at issue. (Tr, Vol I, pp 61-62)

Mr. Coulter was asked to opine on the economic climate for multi-family real estate in Southeast Michigan, and he said that like everything else in the economy at the time, real estate values were down and it was very difficult to obtain financing for apartment buildings from late 2008 through the early part of 2011. He also stated that occupancy levels went down during that period of time.

Mr. Coulter determined that a reasonable, stabilized vacancy rate would be 20% for the 2010 tax year; 29% for the 2011 tax year; and 20% for the 2012 tax year. When asked to explain the use of a 20 percent vacancy rate for the first year of his BOV, he testified:

The Downriver market at that time was -- they were -- there were significant vacancies Downriver. It was not unusual to be at 80 percent or 70 percent for many projects. That's what we would find for a typical property. That's not to say that somebody wouldn't be 85 percent occupied, but there may be another 5 percent in bad debt or outstanding rents. (Tr, Vol I, p 75)

With respect to the vacancy rates used in his BOV, Mr. Coulter said that he did not have any studies in his proposed exhibits showing what market vacancy was for these times.

When asked about Ms. Achram's testimony that she felt that the building had stabilized occupancy in May of 2011, when it was 100 percent occupied,

Respondent asked Mr. Coulter to explain why a 20% vacancy rate was used in that year. Mr. Coulter testified that the 20% vacancy rate was based on how he saw the Downriver marketplace at that time. When asked if he checked to see what the vacancy rates were for Co-Star or Realty Rates at that time, Mr. Coulter testified that he did not recall.

As to the use of a 29 percent vacancy rate for the 2011 tax year, Mr. Coulter stated:

Because the expenses were lowered. I wanted the 2010 to mirror closer to what the actual collections were. So we brought it down to try and get closer to the -- what actual collections. I mean, still way off. It's still off by \$26,000, but we tried to mirror it closer to the actual collections. (Tr, Vol I, p 129)

When asked why he used a 20% vacancy rate for the 2010 year, Mr. Coulter stated that his estimate was based on the Downriver market. Mr. Coulter was asked to explain where he got his information about the Downriver market, and he stated that he and his associates talk to people on a daily-basis and thereby gain an understanding of the market through word-of-mouth.

Denise Achram testified earlier in the hearing as to the impact that hiring an on-site apartment manager, who received his apartment rent-free, in August of 2010, had on vacancy rates and what the manager's responsibilities were. She also testified that the manager was responsible for handling lock-outs and minor repairs around the property, showing apartments, and taking applications. Ms. Achram

further testified that hiring an on-site manager had a very positive impact on occupancy rates, and she continues to utilize an on-site manager.

Further, when asked to characterize the Gibraltar rental market, Ms. Achram stated:

It's highly competitive. It's difficult to find good tenants. The people that are looking in that market typically do not have stable income, and a lot of them have very poor credit or even criminal backgrounds. (Tr, Vol I, p 23)

When asked what the reason for month-to-month versus longer-term leases was, Ms. Achram stated:

My mentor advised me that; that -- and also the attorney that helps with the apartments -- is that if I have a bad tenant I'm not stuck with them and it's easier to get them out. The downside is that they can leave at any time. (Tr, Vol I, pp 23-24)

In his BOV, Mr. Coulter deducted \$62,043 for 2010; \$51,674 for 2011; and \$57,744 for 2012, for operating expenses that included insurance; utilities; maintenance and repair; administration and advertising; legal/professional fees; office expenses; supplies; replacement reserves; and property taxes.

After these deductions from the gross operating income, Mr. Coulter concluded net operating income of \$25,991 for 2010; \$26,597 for 2011, and \$30,525 for 2012. Mr. Coulter did not apply a capitalization rate that he had estimated through an independent analysis for any of the three years. Instead, he backed into a cap rate for each of the three years and tested it against a cap rate

range for each year to determine if the backed-into cap rate was within the range of what he believed to be reasonable for each year. The backed-into cap rate was calculated by dividing net operating income, which included a deduction for property taxes actually paid, for each of the three years by True Cash Value, as determined in his BOV sales comparison analysis. This calculation resulted in backed-into cap rates of 11.36% for 2010; 10.39% for 2011; and 10.00% for 2012. These cap rates all reflect the fact that property taxes were deducted as operating expenses for purposes of calculating net operating income.

RESPONDENT'S CONTENTIONS

Respondent offered the following proposed exhibits:

- R-1 Respondent's appraisal prepared by Mr. Jere D. Neill.
 - R-2 Resume of Douglas Shaw.
 - R-3 Property record cards for subject property for tax years 2010, 2011, and 2012.
 - R-4 OnStar Property Sales Reports for Petitioner's 2009 Sales Comparables.
 - R-5 OnStar Property Sales Reports for Petitioner's 2010 Sales Comparables.
 - R-6 OnStar Property Sales Reports for Petitioner's 2011 Sales Comparables.
- Respondent's exhibits 1, 3, 4, 5, and 6 were admitted.

Respondent contends that the revised taxable values, as reported in its appraisal, reflect the proper assessments for the subject property for the tax years at issue. Respondent asserts that Petitioner's estimate of true cash value appears to

be based upon erroneous estimates of the cost, income, and market value approaches.

Respondent offered the testimony of Mr. Jere Neill, a certified general appraiser in the State of Michigan at Accurate Appraisals & Realty, Inc. in Pontiac, Michigan. After describing his education, experience, and training, Mr. Neill was admitted without objection by the Tribunal as an expert in the field of real estate appraisal pursuant to MRE 702. Mr. Neill testified that his estimate of the subject property's true cash value for 2010 was \$520,000, for 2011 was \$540,000, and for 2012 was \$565,000.

When Respondent asked Mr. Neill, "how do you define fair market value," Mr. Neill responded:

Well, fair market value is when a buyer and a seller come together and they're typically motivated, and they're both equally well-informed or advised if they need to -- advisement. A fair market sale assumes a cash or a cash equivalent exchange as a purchase price; that there are no special financing conditions or special concessions that would influence what the price was paid; and that the property had an adequate exposure to the market in order to bring a fair market value. (Tr, Vol I, pp 170-171)

Mr. Neill testified that he prepared Respondent's valuation disclosure for all three tax years at issue. (Tr, Vol I, p 177) Mr. Neill was asked to describe the three approaches to value by first describing the income approach.

The income approach is from an investor's perspective based on the potential money stream of the income property and what would the

property be worth as an investment. And it's arrived at through a capitalization process, either by dividing with a rate or multiplying times -- a multiplying factor. Based on an income property, it's the right to receive future benefits, and that's why they're purchased. (Tr, Vol I, p 174)

Mr. Neill was then asked to describe the cost approach.

The cost approach would be valuing the subject property based on the cost to replace it less various forms of depreciation, but also adding back in the possibility for entrepreneurial profit if it was a development project and adding the value of the land that it sits on as if it was vacant. So take the look at it in comparison to a new project to replicate it; the reproduction cost less depreciation and subtract the depreciation and add the land value. And buyers may sometimes compare in their minds what the value of an existing property would be to the cost of building a similar property with optimal utility. (Tr, Vol I, p 174)

Mr. Neill was then asked to explain the sales comparison or market approach to valuation.

The sales comparison approach is probably the most widely known by those that are not in the appraisal industry. Certainly buyers and sellers look at what other like-kind properties have sold for in the market; that being an adequately informed buyer is not going to pay more for an existing property than what they would be able to purchase a similar property for. So the process involves finding similar properties and comparing them to the subject, and especially in commercial properties, less so in homes. But in commercial properties you rarely find properties that are exactly alike. So it involves an adjustment process to various elements of comparison that can affect the prices paid for real estate. So you would compare the comparable to the subject and make adjustments to the sales price of the comparable based on each of these elements of comparison to bring it to an adjusted value. And then from the field of all of the comparables that you've found and qualified deriving a value based on what other properties like it have sold for, and also looking at listings

of property at times to whatever properties on the market are. (Tr, Vol I, pp 174-175)

Respondent then asked Mr. Neill a series of questions with respect to the procedures he followed in preparing his appraisal.

Q When you do a real property appraisal for purposes of determining the true cash value of the property, do you always consider all three approaches to valuation?

A Yes, in the beginning we certainly would.

Q In preparing your appraisal of the subject property, did you consider all three approaches to valuation?

A Yes, I did.

Q What did you determine regarding the applicability of the cost approach?

A I -- as I underwent defining what the appraisal problem was and what the scope of work would be, I determined that the sales approach and the income approach were going to be the most relevant, and for several reasons I decided that the cost approach would be the least reliable for several reasons. One is we have -- we do have an older property built in the '60s and it's gone through probably several layers of rehabilitation. So estimating physical depreciation could become a little subjective in that case. But there's two other reasons, and that is that during the time covered by the appraisal for the three tax years I didn't really see any significant land sales that would lend themselves to coming up with what would be the value of the underlying land at the apartment. And thirdly, in a -- there isn't any demand for new construction of apartments right now. So it's not likely a project that would be undertaken. So I omitted the cost approach.

Q What did you determine regarding the applicability of the sales comparison approach?

A The sales comparison approach posed some challenges in that I needed to find arm's length market sales that were not unduly affected by duress, and oftentimes there aren't as many sales to choose from.

And during the recession of '08 and '09, there weren't as many market sales, arm's length, or non-duress sales that there are in other years. So it was a challenge, but I found that I could develop the sales approach and lend credibility to it in the end.

Q What did you determine regarding the applicability of the income approach?

A Well, the income approach, since this is an income property, certainly was going to be necessary and a reliable approach to value, and it would be misleading to leave it out. So that was -- certainly gave us reliable results for valuation. (Tr, Vol I, pp 175-177)

Mr. Neill described the subject property, as follows:

It's basically two rectangular-shaped buildings with eight apartments in each building, with four up, four lower, and a parking lot in the center. It was built in 1968, and it has eight units, as I said, and it should be noted that they're all two-bedroom, one-bath units. And they all -- at least on the date of inspection and during the time of the appraisal effective dates, the property went through some updating. (Tr, Vol I, p 173)

When asked to describe Gibraltar, Michigan, specifically its location and the type of community it is, Mr. Neill responded as follows:

Gibraltar is a small, Downriver community. It's part of Wayne County. It is located at the southern end of Wayne County, part of it fronting on the Detroit River. That puts it directly south of Trenton to locate it. It's a small city, as I said. The population both for 2010, according to the U.S. Census and an update with SEMCOG, or the Southeast Michigan Council of Governments, but the population has remained stable at 4,631 persons, containing 1,946 households, and it's projected by the SEMCOG for a small increase of population between now and 2035. So I view it as a stable community. The median household income is above the state average. It's a little over \$60,000 for median household income. For home occupancy and rental, the home owners' percentage is 67 percent, so it has a fairly high percentage of renters. The median home value in Gibraltar, according to the 2010 census, was 159,700. So just

shy of \$160,000. Median rent based on SEMCOG data is \$781. And that's the community of Gibraltar. (Tr, Vol I, pp 183-184)

In his sales comparison approach to value for the subject property, Mr. Neill used the following sales as comparables (all data obtained from CoStar) for tax years 2010, 2011, and 2012:

Respondent's Unadjusted and Adjusted Sales Comparables

Tax Year	Sales #	City	County	Sale price	# Units	Average SF/Unit	Distressed Sale (Y)
	Subject	Gibraltar	Wayne		16	732	
2010	1	Lincoln Park	Wayne	\$235,000	11	574	N
	2	Howell	Livingston	\$394,000	8	936	N
	3	Warren	Macomb	\$622,500	16	900	N
	4	Fraser	Macomb	\$450,000	18	840	N
2011	1	Whitmore Lk	Washtenaw	\$334,750	7	1099	N
	2	Temperance	Monroe	\$844,900	24	999	N
	3	Warren	Macomb	\$385,000	10	924	N
	4	Trenton	Wayne	\$443,000	18	846	N
2012	1	Waterford	Oakland	\$300,000	7	923	N
	2	Saline	Washtenaw	\$800,000	20	850	N
	3	Wyandotte	Wayne	\$270,000	12	700	N
Total/Averages				\$5,079,150	14	799	

Note: All the 2010 tax year sales comparables were sold in 2009 or late 2008, the 2011 tax year sales were all sold in 2010; and the 2012 tax year sales were all sold in 2011.

Tax Year	Sales #	City	# Units	SP/Unit w/o Adjs	SP/Unit with Adjs	Avg SP/Unit UnAdj Non-DR Props	Avg SP/Unit UnAdj DR Props
	Subject	Gibraltar	16				
2010	1	Lincoln Park	11	\$21,364	\$25,956		\$21,364
	2	Howell	8	\$49,250	\$39,892	\$49,250	
	3	Warren	16	\$38,906	\$35,015	\$38,906	
	4	Fraser	18	\$25,000	\$29,700	\$25,000	
2011	1	Whitmore Lk	7	\$47,821	\$43,038	\$47,821	
	2	Temperance*	24	\$35,204	\$33,443		\$35,204
	3	Warren	10	\$38,500	\$38,500	\$38,500	
	4	Trenton	18	\$24,611	\$29,533		\$24,611
2012	1	Waterford	7	\$42,852	\$38,566	\$42,857	
	2	Saline	20	\$40,000	\$44,000	\$40,000	

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	3	Wyandotte	12	\$22,500	\$29,250		\$22,500
		Averages	14	\$35,092	\$35,172	\$40,334	\$25,920

* Temperance is located just north of Toledo and it is unclear whether or not it should be included in the Downriver area.

Mr. Neill adjusted the sales comparables as follows:

Sale #	2010 Percent & Type of Adj	2011 Percent & Type of Adj	2012 Percent & Type of Adj
Sale #1	-10% for Financing, +15% for Age and Condition and +20% for Unit Mix (number of 1 vs. 2 bedroom units) [net +25% adjustment for the only Downriver property in the 2010 sample]	-10% for Size	-10% for Size
Sale #2	-10% for Size (of complex)	-5% for Age and Condition [Minimal adjustment for Downriver 3 building complex with 2 buildings 10 years newer and 1 building almost 30 years newer than subject property]	+10% for Unit Mix
Sale #3	No adjustments	No adjustments	+10% for Age and Condition and +20% for Unit Mix. [+30% adjustment for the only Downriver property in the 2012 sample]
Sale #4	-10% for Financing, and +20% for Unit Mix	+10% for Age and Condition and +10% for Unit Mix. [+20% adjustment for the one of two Downriver properties in the 2011 sample]	

Note: No adjustments were made for any of the Sales Comparables in any of the three years at issue for Geographic Location or Amount of Rental Income.

The range of post-adjustment, per unit indicated value for the 2010 sales comparables was from a low of \$25,956, which was the one Downriver comparable that had been adjusted upward by 35%, to the high per unit estimate of value of \$39,892, which had been adjusted downward by 10%. The mean adjusted

unit price for the four sales comparables was \$32,640. Mr. Neill chose to set the indicated value per unit at \$32,500, just slightly below the mean.

The range of post-adjustment, per unit indicated value for the 2011 sales comparables was from a low of \$29,533, which was one of the two Downriver comparables that had been adjusted upward by 20%, to the high per unit estimate of value of \$43,038, which had been adjusted downward by 10%. The mean adjusted unit price for the four sales comparables was \$36,128. Mr. Neill chose to set the indicated value per unit at \$36,000, just slightly below the mean.

The range of post-adjustment, per unit indicated value for the 2012 sales comparables was from a low of \$29,250, which was the one Downriver comparable that had been adjusted upward by 30%, to the high per unit estimate of value of \$44,000, which had been adjusted upward by 10%. The mean adjusted unit price for the three sales comparables was \$37,272. Mr. Neill chose to set the indicated value per unit at \$37,000, just slightly below the mean.

Mr. Neill testified above that the Southeast Michigan/Detroit MSA apartment market was, with a few exceptions, at the high end of the market, e.g., Birmingham and Royal Oak, essentially one big market. No explanation was provided to account for the fact, as supported by the evidence, that all the comparables located outside the Downriver area had a considerably higher unit price, even after adjustments, than the ones in the Downriver area. Mr. Neill also

testified that it was difficult to find comparable sales in the Downriver area because so many of the sales were distressed sales and for that reason, only a few Downriver comparables could be included as sales comparables in his appraisal. This meant that the search area for comparables also had to be expanded.

As a part of his income approach to value for the subject property, Mr. Neill, on page 86 of his appraisal, used three properties in the Downriver area as rent comparables to determine the market rent for the subject property. The rent comparables are:

Respondent's Examples of Market Rents in Gibraltar Area

Name of Apartment	# of Units	SF/Unit	Monthly Rent
Gibraltar Meadows Apartments	48	900	\$600 - \$630
Gibraltar Shores Apartments	16	900	\$575 - \$595
Williamsburg Square Apartments	195	875	\$550 - \$595
Averages	86	892	\$575 - \$607

In all cases, apartments are 2 BR/1 BA with heat and water included.

Subject Apartments	16	732	\$550-\$575
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Based on the market rents for the subject property, and the rent comparables and for the reasons stated in his report, Mr. Neill concluded that stabilized rents of \$575 per month for all three years were appropriate. Mr. Neill did not account for the fact that actual rents for the subject property had increased over the three-year period, which was also demonstrated by his own chart on page 85 of his appraisal

that showed no increase over three years, nor did he take into account that the actual rents charged in the 2011 calendar year were \$575 for a ground floor unit and \$550 for a second floor unit.

For his income approach, Mr. Neill used a vacancy rates of 8% for calendar year 2009, 7% for 2010, and 5.5% for 2011, which were based on market studies by Hendrick's & Partners, apartment brokerage specialists (based on National averages), and Marcus & Millichap, investment real estate specialists (based on Metro (presumably Detroit) and National averages). Mr. Neill did not provide any allowance for bad debt loss for any of the years at issue. He also provided a chart on page 90 of the report of Local Expense Data, which included information on seven comparably sized apartment complexes located in seven different areas of Metro Detroit, none of which were located in the Downriver area, with effective gross income, vacancy rates, who paid the heat, operating expenses, expense ratios, and expenses per unit information. The source for this data was shown as "appraiser's files", with no further explanation and no dates as to which year(s) the data provided related to.

He determined that the effective gross income for all three years to be \$110,400 ($\$575 \times 12 \text{ months} \times 16 \text{ units}$). However, as stated above, these amounts did not take into account the actual \$25 per month differential between ground and second floor rents, nor did he exclude one of apartments from the gross income

calculation because, beginning in August of 2010, one apartment was being used, rent-free by the on-site manager.

Mr. Neill used a combination of information from RealtyRates.com, a national data base, and “local comparables” to determine the overall capitalization rate. The RealtyRates.com cap rates for apartments for calendar years 2009 through 2012 were 8.85% in 2009, 8.89% for 2010, and 8.60% for 2011. So-called cap rates for “local comparables” for the same three years were 8.82% for 2009, 8.28% for 2010, and 8.23% for 2011. Mr. Neill concluded that the market cap rate for the subject property should be 8.8% for 2009, 8.3% for 2010, and 8.2% for 2011. These rates had to be adjusted upward for property taxes (3% for each year based on 50% of a millage rate of between 61.9878 and 63.1217 for the three-year period), resulting in overall cap rates for the three years of 11.8% in 2009, 11.3% in 2010, and 11.2% in 2011.

Mr. Neill did not utilize the cost approach in his appraisal. Respondent did, however, enter into evidence Respondent’s Exhibit R-3, the City of Gibraltar’s Property Record Cards for tax years 2010 through 2012, which do utilize the cost approach to value. While these exhibits were introduced into evidence, no testimony with respect to them was given. Taxable Value reflected on the Property Record Cards for the three tax years at issue were, as follows:

2010	\$289,130
2011	\$288,900
2012	\$265,600

With respect to Respondent's appraisal, Petitioner questioned Mr. Neill about the subjectivity of his comparable sales price adjustments and his conclusion that an apartment that was similar to the subject in size, age, and rents alone does not require a location adjustment. Mr. Neill confirmed that statement, as long as the comparable apartment was located in a community that was similar and the apartment complex was similar; then, a location adjustment wouldn't be required.

When questioned about whether Uniform Standards of Professional Appraisal Practice ("USPAP") offered any guidance or authority that an appraiser could rely on for drawing a conclusion or making a market analysis, regarding sales comparables, Mr. Neill testified that USPAP does not address the selection of sales comparables or provide any guidelines. He then stated that he focused on making his selection of sales comparables based on identifying apartments similar in age, size, and unit mix that were located in communities similar to Gibraltar.

Petitioner asked, since USPAP provides no sales comparable selection guidelines, whether selection of the comparables was up to the appraiser's discretion. Mr. Neill agreed that it was in his discretion to select the sales comparables, which he did based on his training, knowledge, and experience.

Petitioner also questioned Mr. Neill about why he excluded some areas, like Detroit, and why he included some areas, like Saline, in his appraisal. Mr. Neill indicated that he had done his research and believed that Detroit was not appropriate to include in the appraisal, but Saline was, because he believed that Saline was similar demographically to Gibraltar.

FINDINGS OF FACT

The Tribunal finds that both Petitioner's BOV and Respondent's appraisal were for tax years 2010 through 2012.

The Tribunal also finds that the evidence submitted by both parties in support of their income and sales comparable approaches to value were flawed, as illustrated in the following Findings of Fact:

1. The subject property is a 16-unit apartment building located at 13927 Middle Gibraltar Road, Gibraltar, Michigan.
2. The subject parcel contains 0.74 acres of land.
3. The subject property is further identified by Parcel No. 82-36-011-04-0006-000.
4. Respondent submitted a valuation disclosure in the form of a summary appraisal report.
5. Respondent's appraiser is licensed as a Certified General Real Estate Appraiser.
6. Petitioner submitted a valuation disclosure in the form of a BOV.
7. Petitioner's expert witness is licensed as a Real Estate Broker.
8. Respondent relies on national surveys for operating expenses and vacancy rates. This national data does not provide adequate support for a 16-unit apartment development in the local Gibraltar market.
9. Respondent has not articulated the market impact between month-to-month leases versus longer-term leases.

10. Respondent's capitalization rate analysis includes 35 capitalization comparable sales located in the Detroit Metropolitan area. Only four of those capitalization comparables were located in the Downriver market.
11. Respondent's analysis of deferred maintenance and capital improvements is not consistent with the understated reserve for replacement adjustment.
12. Respondent has developed a geographically diverse set of comparable sales for analysis.
13. Respondent's Appraisal provided details as to the size, age, amenities, and such, however, the Appraisal does not provide any rent per unit information or make any location or market rent adjustments to its comparable sales data. Respondent's appraiser testified that he believed the sales comparables he used were all comparable with minimal adjustments because they were all of a similar size and were all located in the Greater Southeast Michigan area. When asked what the basis for the adjustments were and whether there was guidance in USPAP as to the what the size of an adjustment should be, Mr. Neill testified that "[a]partments similar to the subject in size, age, and rents do not require location adjustments in the appraiser's opinion", however, Mr. Neill chose to provide no information on the actual rents being charged by the apartments he used as sales comparables, thus failing to provide the information necessary, e.g., actual rents, to determine whether or not a locational or a rental income adjustment was warranted. (Tr, Vol II, pp 237-239)
14. Respondent's average, unadjusted sales price per unit for the seven non-Downriver properties included in the three-year sample was \$40,334, compared to the average, unadjusted sales price per unit for the four Downriver properties of \$24,920, which makes the average sales price of the non-Downriver properties 55.6% greater than the average sales price for Downriver properties.
15. Petitioner has developed the subject's actual operating expenses without a proper application to the market.
16. Petitioner's approach to quantifying operating expenses was very inconsistent and for different years sometimes he used actual expenses and for other years for the same expenses he used estimated expenses. The basis for Petitioner's use of actual versus estimated expenses and how much he determined estimated expenses should be appeared to have no rational basis.
17. Petitioner renders vacancy rate conclusions based on anecdotal experience.

18. Petitioner's capitalization rate conclusions are not based on market supported sources. Instead, Petitioner divides net operating income by the true cash value (which was taken from the sales comparison approach) and backed into a capitalization rate.
19. Petitioner analyzes thirteen comparable sales and admits in his testimony that nine of the sales are distressed. (Tr, Vol I, pp 86-87, 147)
20. Petitioner's sales comparison is devoid of any adjustments. In other words, the comparable sales data has not been applied to the subject market.

CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value. See MCL 211.27a.

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law. 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% Const 1963, art 9, sec 3.

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

. . . the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. MCL 211.27(1).

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

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

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

"The petitioner has the burden of establishing the true cash value of the property." MCL 205.737(3). "This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing; and

(2) the burden of going forward with the evidence, which may shift to the opposing party.” *Jones & Laughlin* at 354-355. However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessment in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.” MCL 205.737(3).

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. See *Meadowlanes* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966), aff’d 380 Mich 390 (1968). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. See *Antisdale*. The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. See *Antisdale* at 277.

It is Petitioner’s burden of proof to present sufficient reliable and credible evidence to establish the true cash value of the subject property. Due to the failure of Petitioner’s BOV making any adjustments referred to above and the minimal number of non-distressed sales used as a basis for valuation, the Tribunal finds

Petitioner's evidence is not a reliable indicator of value. Thus, the Tribunal finds that Petitioner's conclusions of market value for the 2010, 2011, and 2012 tax years were based on errors, omissions, and inconsistencies found in the BOV and were not sufficiently credible to rely on.

With respect to the Respondent's appraisal, the Tribunal finds that among other flaws in Respondent's appraisal, the appraisal, without an adequate explanation, ignored the depressed nature of the Downriver market, made what appeared in the Tribunal's opinion to be excessive upward adjustments to the three Downriver properties in the appraisal, and made no geographic location or rental income adjustments to the sales comparables that were located outside the Downriver market for any of the three tax years at issue. Although the Tribunal finds Petitioner's BOV to be unreliable, as indicated above, and further finds flaws identified herein with respect to Respondent's appraisal, the Tribunal is still required to make its findings based on the most credible evidence available. Thus, the Tribunal concludes that using the unadjusted value of Respondent's four Downriver, Temperance being the one of the four sales comparables that may not be considered to be in the Downriver area, sales comparables for the three tax years at issue, as detailed below, provides the basis for the best credible estimate of value:

Comparable Sale	Sale Date	# of Units	Sales Price	Price/Unit
Lincoln Park	7-31-2009	11	\$235,000	\$21,364
Trenton	9-30-2010	18	\$443,000	\$24,611
Wyandotte	6-17-2011	12	\$270,000	\$22,500
Temperance	11-10-2010	24	\$844,900	\$35,204

The Tribunal analyzed the combined comparable sales data using a qualitative methodology. A ranking analysis is “a qualitative technique for analyzing comparable sales; a variant of relative comparison analysis in which comparable sales are ranked in descending or ascending order of desirability and each is analyzed to determine its position relative to the subject.” Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p 313.

The four comparable sales present two bracketing opportunities. The sales data brackets the subject’s 16-unit complex in the range of 11 to 24 units, as well as the subject’s building area of 11,718 square feet compared to a range of 6,312 to 23,974 square feet. In general, the Temperance sale represents an upper range for the price per unit. All four sales provide a basis of comparison relative to location, e.g., the Downriver area. Again, this qualitative analysis gives the Tribunal a basis for the value conclusions.

For the 2010 tax year valuation, the Lincoln Park sale is the closest to the relevant tax date. However, the Trenton sale is most similar to the subject in

number of units. The Temperance sale is the most similar to the subject in unit mix (all 2-bedroom units). Therefore, a reasoned and reconciled price per unit for the 2010 valuation is \$24,000, or calculated as a true cash value of \$384,000.

For the 2011 tax year valuation, the Temperance and Trenton sales are the closest to the relevant tax date. However, the Temperance sale is a relatively newer development with a superior number of units. The Lincoln Park sale is inferior in square footage, age, and unit mix (all 1-bedroom units). Therefore, a reasoned and reconciled price per unit for the 2011 valuation is \$23,000, or calculated as a true cash value of \$368,000.

For the 2012 tax year valuation, the Wyandotte sale is the closest to the relevant tax date. However, this sale is inferior to the subject in number of units, gross building area, and unit mix (all 1-bedroom units). Deference and consideration is given to the other sales in this comparison analysis. The aforementioned attributes of the other sales are relevant for this particular year. Therefore, a reasoned and reconciled price per unit for the 2012 valuation is \$22,000, or calculated at a true cash value of \$352,000.

Therefore, based upon the file, the applicable statutory and case law, and the testimony and evidence presented, the Tribunal concludes that Petitioner failed to meet its burden of proof to establish that the true cash values, state equalized values, and taxable values of the subject property for the three tax years before the

Tribunal. However, the Tribunal also concludes that the true cash values, state equalized values, and taxable values, as presented in the Respondent's appraisal, overstates these values. Therefore, based on the discussion above with respect to use of only the Respondent's Downriver sales comparables to determine the appropriate true cash values, state equalized values, and taxable values, the Tribunal finds the values for each of the three tax years should be as follows:

Parcel No. 82-36-011-04-0006-000

Year	TCV	SEV	TV
2010	\$384,000	\$192,000	\$192,000
2011	\$368,000	\$184,000	\$184,000
2012	\$352,000	\$176,000	\$176,000

Per Respondent's statement below, a request that costs and attorney's fees be awarded by the Tribunal has been made:

[U]nder these circumstances, Respondent's seeks an award of costs and attorney's fees. In *Target versus City of Novi*, 18 MTT 153, Judge Smith states that "costs may be awarded by the Tribunal if a party is not proceeding in good faith." Clearly, the Tribunal has the authority to impose costs. Under the circumstances outlined above, we believe that they are warranted. Had the Petitioner actually procured an appraisal of the subject property, we believe that none of us would be here today. And it was because Petitioner chose not to treat this matter seriously by bringing an actual appraiser and an actual appraisal to this Court, it's caused the Court to expend its time, it's caused Gibraltar to expend its resources that it sorely needs in order to -- in order to take this matter forward. (Tr, Vol II, p 300)

The Tribunal finds that awarding costs and attorney's fees is not appropriate in this case, even though it is true that under MCL 205.752 "[c]osts may be awarded in the discretion of the tribunal." The Tribunal adopted this statute in its procedural rule TTR 145. This rule allows the Tribunal to order costs be remunerated to a prevailing party of a decision or order. See TTR 145(1). The rule itself, however, provides no guidelines or criteria by which the Tribunal is to measure whether costs should be awarded. In *Aberdeen of Brighton, LLC v Brighton*, unpublished opinion per curiam of the Court of Appeals, issued October 16, 2012 (Docket No. 301826), the respondent contended that the Tribunal "may only award costs under TTR 145 if the requesting party shows good cause or the action or defense was frivolous." *Id.* at 4. The Court held that the language of TTR 145 is unambiguous and its plain language indicates that a prevailing party may request costs and does not indicate that a showing of good cause or a frivolous defense is necessary.

TTR 111 states that "[i]f an applicable entire tribunal rule does not exist, the . . . Michigan Rules of Court . . . and the provisions of chapter 4 of Act No. 306 of the Public Acts of 1969, as amended, being §§24.271 to 24.287 of the Michigan Compiled Laws, shall govern." Because TTR 145 does not define "prevailing party," the Tribunal looks to MCR 2.625 and MCL 24.322 of the Administrative Procedures Act.

MCR 2.625(B)(2) states that:

In an action involving several issues or counts that state different causes of action or different defenses, the party prevailing on each issue or count may be allowed costs for that issue or count. If there is a single cause of action alleged, the party who prevails on the entire record is deemed the prevailing party.

MCL 24.322(5) states that “prevailing party” means:

(a) In an action involving several remedies, or issues or counts that state different cause of actions or defenses, the party prevailing as to each remedy, issue, or count.

(b) In an action involving only 1 issue or count stating only 1 cause of action or defense, the party prevailing on the entire record.

So, in order for a party to request the award of costs or attorney’s fees, or both, that party must be the prevailing party and the other party must have not proceeded in good faith, the requesting party shows good cause, or the action or defense was frivolous.

As to the prevailing party being able to be awarded costs or attorney’s fees, or both, the Tribunal finds that neither party was the prevailing party, as the assessment was reduced, but not down to the level requested by Petitioner, and Respondent was not the prevailing party since its assessment was not affirmed. Further, regardless of whether either party was the prevailing party, the Tribunal finds that both parties acted in good faith and neither party acted in a frivolous or egregious manner, thus, rendering this issue of costs for either party moot. Therefore, the Tribunal orders that no costs or attorney’s fees will be granted in this case.

With respect to objections that were raised during the hearing where the Tribunal had taken an objection under consideration, the following rulings with respect to the objections are as follows:

When Petitioner's counsel asked for the Tribunal to admit Petitioner's Exhibits 1 through 3, Petitioner's Valuation Disclosures for the three tax years at issue, Respondent's counsel, Mr. Rose, asked for *voir dire*, in order to question the witness, Mr. Coulter, who had prepared the exhibits. (Tr, Vol I, p 64)

As to the basis of his request for *voir dire*, Mr. Rose stated:

The basis for the *voir dire* is that they want to offer this document as a valuation statement for the property, that they have no definitions of anything in here, that they have no market studies, that the document is not signed. (Tr, Vol I, p 66)

Right after Mr. DePorre began his opening statement, Mr. Rose asked if Petitioner's Exhibits 1 through 3 had been admitted into evidence or not, and if so, as what. The Tribunal confirmed that the exhibits were being admitted into evidence as Petitioner's Valuation Disclosures. (Tr, Vol II, p 291)

When Ms. Achram, owner of the subject property, was testifying that she believed that her apartments were the only ones in the city that were in compliance with the City of Gibraltar's new property maintenance requirements, e.g., 2003 International Property Maintenance Code, Mr. Rose objected that her statements were hearsay. The Tribunal ruled that it would take the objection under

consideration. With respect to Mr. Rose's objection, the Tribunal rules that as an administrative proceeding, hearsay is generally admissible. However, Ms. Achram contradicted herself by testifying that other apartment owners in the city had not brought their properties up to code, which would mean they would be unable to obtain an occupancy license, but also stated Gibraltar was a competitive market. Thus, the Tribunal finds Mr. Achram's testimony in this regard to be contradictory and therefore, not credible and gives it the weight it deserves.

Petitioner's counsel, in support of his contention that Mr. Coulter should be permitted to testify as an expert witness with respect to the three BOV's he prepared on behalf of Petitioner for tax years 2010, 2011, and 2012, quoted from the *Consumers Power Co, supra*, as follows:

The Tribunal is given wide discretion to admit and give probative value or probative effect to evidence. An individual may qualify as an expert appraisal witness by reason of skill, experience, training, or education without being licensed as a real estate appraiser under the code. [**] The fact that they are not so licensed will not preclude them as expert witnesses from giving an opinion, conclusion, analysis of or relating to the value of the subject property in testimony or an appraisal report. (Tr, Vol I, p 54)

The Tribunal notes that Petitioner's counsel omitted a critical portion of the quote he cited in this case, that being, the part of the quote indicated by the ** above. In particular, Petitioner failed to include the phrase, "Assuming that Petitioner's appraisal witnesses possess the requisite expertise" *Consumers*

Power Co, supra at 219. (See paragraph 5 of the excerpts from this case that are reproduced in full below.)

It is unknown whether or not Petitioner's counsel intentionally misquoted this section of the cited opinion by omitting the phrase cited above, but it is clear from Mr. Coulter's testimony and stated qualifications that he does not possess the requisite expertise, e.g., the skill, knowledge, education, experience, and training commensurate with that of an appraiser, to qualify as an expert appraisal witnesses.

To put the quote read into the record by Petitioner's counsel in context, the Tribunal has included additional cites from the above case, as follows:

1. In summary, we conclude that, in view of the explicit provisions requiring a license to engage in a profession as opposed to those which provide for a license and prohibit its use by those not licensed but still able to engage in the profession, Article 26 clearly does not preempt the real estate appraisal occupation by mandatory state licensure. *Consumers Power Co, supra* at 222. [Note: Paragraph numbers were added to facilitate referencing only.]

While this finding may or may not be accurate (see MCL 339.2607(1) and (2) below) with respect to the public at large, it is incorrect with respect to the ability of a real estate broker or associate broker licensed under Article 25 of the Occupational Code to provide an appraisal, as said brokers and associate brokers are specifically prohibited from providing an appraisal and are also limited with respect to providing a market analysis for a fee, as specified by MCL 339.2601(a)(ii) (discussed in more detail below).

Article 26 of the Occupational Code for Appraisers:

MCL 339.2607 Prohibited representations; definitions; authorized appraisals.

(1) A person shall not act as or offer to act as an appraiser unless licensed under this article or exempt from licensure under this article.

(2) An individual shall not represent himself or herself to be a state licensed real estate appraiser, a certified general real estate appraiser, a certified residential real estate appraiser, or a limited real estate appraiser unless that individual is licensed under this article in the appropriate capacity.

Continuing the citation from the *Consumers Power Co, supra*:

2. Assuming arguendo, however, that an unlicensed individual may not lawfully perform a real estate appraisal in Michigan, no provision of the Code or other law bars an unlicensed appraiser from testifying in a Tax Tribunal proceeding or requires the exclusion from evidence of an appraisal report prepared by an unlicensed appraiser. Were the Code interpreted as claimed by Respondent, it would directly conflict with Section 46 of the Tax Tribunal Act, MCL 205.746(1), which provides in relevant part:
3. In a proceeding before the Tribunal all parties may submit evidence. The Tribunal may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.
4. Section 46 of the Tax Tribunal Act, not the Occupational Code, governs the admissibility of evidence in a Tax Tribunal proceeding. Nothing in the Code suggests otherwise.

The statements made in paragraphs 2 through 4 above appear to be in conflict with MCL 339.2607(1) cited above. Would a “reasonably prudent man” consider commonly relying upon, as evidence, an appraisal prepared

by an unlicensed appraiser or one that was prepared by a real estate broker whose preparation of an appraisal appears to be in violation of state law?

This issue may now have been rendered moot, as under TTR 101(1)(m), a “valuation disclosure” is defined as:

. . . documentary evidence or other tangible evidence in a property tax appeal which a party relies upon in support of the party's contention as to the true cash value of the subject property or any portion thereof and which contains the party's value conclusions and data, valuation methodology, analysis, or reasoning. See also R 205.1252 and R 205.1283.

This very broad definition permits the Tribunal to admit a wide range of evidence to support an assertion of true cash value. However, while virtually all appraisals will qualify as valuation disclosures, by definition not all valuation disclosures may be characterized as an appraisal, nor will a valuation disclosure that does not qualify as an “appraisal” under MCL 339.2601(a) necessarily be given the same credibility or weight when the Tribunal makes a determination of true cash value in a property valuation case. Thus, while a non-appraiser may certainly prepare and testify before the Tribunal with respect to a valuation disclosure he or she prepared, the valuation disclosure itself may not be characterized as an appraisal, unless it was actually prepared by a licensed appraiser. See MCL 339.2607(1).

Completing the continuation of the citation from *Consumers Power Co, supra*:

5. The Tribunal is given wide discretion to admit and give probative effect to evidence. An individual may qualify as an expert appraisal witness by reason of skill, experience, training or education without being licensed as a real estate appraiser under the Code. Assuming that Petitioner's appraisal witnesses possess the requisite expertise, the fact that they are not so licensed will not preclude them, as expert witnesses, from giving an opinion, conclusion or analysis of or relating to the value of the subject property in testimony or an appraisal report. [Emphasis added.]

The Tribunal finds that in order for any “appraisal witness”, as opposed to a witness who is testifying with respect to a valuation disclosure prepared by that individual, which has not been characterized as an “appraisal”, to possess the “requisite expertise” cited above, they must meet the requirements found in Article 26 of in the Michigan Occupational Code and must be a licensed appraiser or be a licensed appraiser from another state, who has been granted a temporary permit to practice in Michigan under MCL 339.2625(2).

Further, a real estate broker or an associate broker, which Mr. Coulter testified that he is, is governed by Article 25 of the Michigan Occupational Code, and by reason of the statutory prohibition found under MCL 339.2601(a)(ii), are precluded from testifying before the Tribunal as an “appraisal witness”, unless the individual is also a licensed appraiser under Article 26.

This prohibition is not intended to restrict the ability of a real estate broker or associate broker from testifying before the Tribunal with respect to a non-appraisal, valuation disclosure, which was prepared by, or the preparation of said

valuation disclosure was supervised by that individual, assuming the preparation and presentation of the valuation disclosure conforms to the requirements of MCL 339.2601(a)(i) or (ii).

MCL 339.2601(a), cited below, defines “appraisal”, and the exceptions and prohibitions to characterizing a “market analysis” as an appraisal, as follows:

(a) "Appraisal" means an opinion, conclusion, or analysis relating to the value of real property but does not include any of the following:

(i) A market analysis performed by a person licensed under article 25 [MCL Section 339.2501 through 339.2518, regulates the licensure and practice of real estate brokers, associate real estate brokers, and real estate salespersons] solely for the purpose of assisting a customer or potential customer in determining the potential sale, purchase, or listing price of real property or the rental rate of real property as long as a fee or any other valuable consideration is not charged for that analysis.

(ii) A market analysis of real property for a fee performed by a broker or associate broker licensed under article 25 which does not involve a federally related transaction if the market analysis is put in writing and it states in boldface print "This is a market analysis, not an appraisal and was prepared by a licensed real estate broker or associate broker, not a licensed appraiser." Failure to do so results in the individual being subject to the penalties set forth in article 6 [provides for penalties under MCL 339.602 for violations of the Occupational Code, Act 299 of 1980].

(iii) An assessment of the value of real property performed on behalf of a local unit of government authorized to impose property taxes when performed by an assessor certified under section 10d of the general property tax act, 1893 PA 206, MCL 211.10d, or an individual employed in an assessing capacity.

Note: Brokers and associate brokers who violate MCL 339.2601(a)(ii), as Mr. Coulter appears to have done by not including the following mandatory language in his BOV, e.g., “This is a market analysis, not an appraisal and was prepared by a licensed real estate broker or associate broker, not a licensed appraiser,” may be subject to a penalty under Article 6, MCL 339.602, which provides, in part, that individuals who violate a provision of the Occupational Code, 1980 PA 299, “shall be assessed 1 or more of the following penalties”, which include suspension or revocation of a license, an administrative fine not to exceed \$10,000, censure and/or probation.

JUDGMENT

IT IS ORDERED that the property’s assessed and taxable values for the tax years at issue shall be as set forth in the *Conclusions of Law* section of this Final Opinion and Judgment.

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

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Final Opinion and Judgment within 28 days of the entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on

delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Interest shall be accrued pursuant to MCL 205.737(4).

IT IS FURTHER ORDERED that no costs or attorney's fees will be granted in this case.

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

MICHIGAN TAX TRIBUNAL

By: B.D. Copping

Entered: March 12, 2013