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

David Clarkson, d/b/a
Summerwood Estates,
Petitioner,

v

MTT Docket No. 441255

Colfax Township,
Respondent.

Tribunal Judge Presiding
David B. Marmon

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, DAVID CLARKSON, d/b/a SUMMERWOOD ESTATES, appeals ad valorem property tax assessments levied by Respondent, COLFAX TOWNSHIP, against Parcel No. 3206-0136-027-50 for the 2102 and 2013 tax years. The subject property is a mobile home park with 71 pads and extra land backing up to a drain. David Clarkson, Petitioner, appeared in *propria persona* and Peter Goodstein, Attorney, represented Respondent.

A hearing on this matter was held on July 23, 2014. Petitioner's sole witness was Dan J. Brown. Respondent's sole witness was Mark MacDermaid.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values ("TCV"), state equalized values ("SEV"), and taxable values ("TV") of the subject property for the 2012 and 2013 tax years are as follows:

Parcel No.	Year	TCV	SEV	TV
3206-0136-027-50	2012	$835,300	$417,650	$368,094
3206-0136-027-50	2013[1]	N/A	N/A	$376,928

PETITIONER'S CONTENTIONS

Petitioner contends that the property is worth $630,000. The property is a mobile home park with 71 sites and has few amenities. He has been trying to sell the park for two years, and has had a couple of offers that coincide with the numbers found in appraiser Dan Brown's

[1] Petitioner's appeal for tax year 2013 was for Taxable Value only.

report.[2] He contends that Mark MacDermaid failed to visit the subject property; used inappropriate sales comparables, which are much bigger and nicer than his park, and are owned by large conglomerates, while Petitioner is "a one man band." He further contends that Mr. MacDermaid is employed by Landmark Appraisal, which is owned by the township assessor, and therefore, Mr. MacDermaid has a conflict of interest. Petitioner has been in the mobile home park business since 1988 and ". . . has a pretty good handle on the business."[3]

PETITIONER'S EXHIBITS[4]

Exhibit A	Appraisal Report of Summerwood Estates prepared by Dan Brown.
Exhibit A+	Second copy of Appraisal Report of Summerwood Estates prepared by Dan Brown, (properly paginated).
Exhibit 100	Property Record Card. (submitted, but not offered into evidence).
Exhibit 200	Pages from an appraisal prepared by Williams & Associates, Inc. (submitted but not offered into evidence). While Respondent's counsel offered to stipulate to the admission of all of Petitioner's exhibits, the Tribunal declines to admit Exhibit 200 as it does not comport with TTR 255(2); it was submitted after the prehearing and is extremely untimely, it was prepared for another assignment; it is hearsay, and there was no witness present to authenticate, describe or explain its content or methodology.

PETITIONER'S WITNESS

Petitioner presented the testimony of Dan J. Brown. While Petitioner failed to *voir dire* Mr. Brown on his credentials, nor move to qualify him as an expert, his report lists him as a state certified appraiser in the state of Michigan, and also contains a copy of a Michigan appraiser license, which was current at the time of trial.[5] Mr. Brown used two approaches to value the subject property. Via the Direct Income Capitalization Approach, he concluded the subject property was worth $730,000. He also employed a Sales Comparison Approach, and concluded to a value of $460,000. In his reconciliation of value, he determined that the subject property

[2] No documentary evidence of offers was ever submitted. Declarations made in opening statements and closing arguments are not considered evidence.
[3] Tr. p. 8:1
[4] Petitioner failed to follow the Tribunal's procedures and protocols regarding the marking and submission of exhibits found in the prehearing order dated May 28, 2014. As Petitioner was without counsel, the Tribunal has afforded him some leeway in accepting his exhibits. Per MCL 24.275 an agency may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons.
[5] Exhibit A+, p. 68.

was worth $630,000. The first draft of his report,[6] lists the date of value as December 31, 2012, on the opening page, and December 31, 2011, on the second page of his letter of value. In the second draft of his report,[7] the date of valuation listed throughout is December 31, 2012. Mr. Brown's final answer at hearing as to the date of valuation found in his report was December 31, 2012, and that the 2011 date was a typographical error. He further testified that his analysis did not apply for tax year 2012, since he was not retained for that purpose.[8] While stating that his conclusions would likely not be exactly the same for both years, Mr. Brown did testify that his value for December 31, 2011 would be ". . . very close."[9]

RESPONDENT'S CONTENTIONS

Respondent contends that the subject property was worth $835,300 for tax year 2012 and $869,700 for tax year 2013. Its valuation witness contended that the Income Capitalization approach was the only proper approach to value for an income producing property such as the subject. Its counsel contended that Petitioner's appraisal violated USPAP,[10] offered conclusions for a year not at issue, and was fatally flawed in both its income approach and sales comparison approach. Various exhibits were offered to discredit the sales comparables used by Mr. Brown, and to cast doubt Brown's income approach.

RESPONDENT'S ADMITTED EXHIBITS

R-1	Valuation Disclosure of 71 Unit Mobile Home Park prepared by Mark R. MacDermaid.
R-2	Petitioner's response to Respondent's Interrogatories
R-3	Genesee County Treasurer webpage re 1518 N. Averill
R-4	Sheriff's deed re 1518 N Averill dated 7 October 2009
R-5	Quit claim deed re 1518 N Averill dated 29 October 2009
R-6	Covenant deed re 1518 N Averill dated 17 March 2011
R-7	Livingston County real estate summary sheet re 10305 Bennett Lake Rd.
R-8	Livingston County GIS showing 10305 Bennett Lake Rd.
R-9	Livingston County register of deeds history of 10305 Bennett Lake Rd.
R-10	Warranty deed re 10305 Bennett Lake Rd. dated August 14, 2006
R-11	Photos of 1518 N Averill
R-12	City of Burton internet services sheet re PID 59-12-400-007

[6] Exhibit A.
[7] Exhibit A+
[8] Tr. p. 85:16-86:19
[9] Tr. p. 86:24-87:14
[10] Uniform Standards of Professional Appraisal Practice.

R-13 Sheriff's deed dated 5 May 2010 re PID 59-12-400-007
R-14 Covenant deed dated 15 March 2011 re PID 59-12-400-007
R-15 Page 40 of appraisal of Pleasant Beach Mobile Home Resort prepared by Dan Brown for MTT 441253
R-16 Page 42 of appraisal of Pleasant Beach Mobile Home Resort prepared by Dan Brown for MTT 441253
R-17 St. Joseph circuit court order appointing receiver and sale agreement for 31 Jane Street.

RESPONDENT'S WITNESS

Respondent called Mark MacDermaid as its only witness. Mr. MacDermaid is not an appraiser, but is a MAAO assessor, and has had that certification, (formerly referred to as Level III) since 1974. He has been and is a part owner, along with the Township assessor and one other individual in Landmark Appraisal Company, since 1984 or '85. He has performed thousands of valuations, and has testified in excess of 200 times before the Tribunal. He has testified in circuit court and Federal District Court as to value.[11] Mr. MacDermaid was qualified as an expert in assessing. MacDermaid's valuation report was for 2012 and 2013.

Mr. MacDermaid relied on the income approach, and looked at sales comparables as a check on the range of value. He did not prepare a sales adjustment grid and did not conclude to a value using the cost approach. When questioned regarding whether the sales comparables he used which were much larger parks with more amenities, would sell for a higher price per pad, he testified that larger parks with more amenities often meant larger expenses. On cross, the Petitioner had the following exchange with MacDermaid:

> Q. Okay. If you got a park that you're getting 305 out of, and the water and sewer is paid by the residents, that makes that park -- those sites in that park worth more money than a park that's getting 270, where the owner pays the water and sewer. From an appraiser's perspective, would there be a mathematical computation you could use to arrive at a number that would reflect the percentage of difference in those two values?
>
> A. Certainly.
>
> Q. Can you explain to me how you would approach that and how would you come up with that number?

[11] Tr. 95:6-96:19

A. If we were going to do a total comparison, as I think you're trying to establish, the gross rent would have very little to do with it. It all reflects down to the net rent. And as I explained before how it's best to use the range and use an income approach for a property such as this, it's not uncommon for these big mobile home parks that have large labor forces, which these parks all do, full-time office, full-time maintenance, the requirements that go into those for those parks to exceed 60 and I've seen as high as 70 percent expense ratios. So in fact, this park is $50 or $60 more a month than yours, could actually be making less per site than you do. And it's not uncommon.

Q. Uh-huh.

A. The big parks tend to have problems because they are so labor intensive.

Q. I would agree with that.[12]

FINDINGS OF FACT

1. The subject property is a mobile home park with 71 home sites, located at 162 Charlotte Street.
2. The park is situated on approximately 27.43 acres.
3. Neither valuation witness found any value in the excess land in the park that backed up to the storm drain.
4. Neither valuation witness relied upon the cost less depreciation approach to value.
5. Dan Brown, Petitioner's valuation witness, valued the park relying on both the Direct Income Capitalization Approach and the Sales Comparison Approach.
6. Mark MacDermaid, Respondent's valuation witness relied exclusively upon the Direct Income Approach in determining the subject property's value, and used several sales as a check on range of values.
7. Dan Brown failed to conclude to a value for tax year 2012.
8. Mark MacDermaid determined a value for tax years 2012 and 2013.
9. Both valuation witnesses used similar gross income numbers in their respective Direct Income Capitalization Approach analyses.
10. Both valuation witnesses used similar capitalization rates in their respective Direct Income Capitalization Approach analyses.
11. For 2012, the assessed and taxable values, as determined by the Board of Review, were $414,300 and $368,094 respectively.
12. For 2013, the taxable value, as determined by the Board of Review, was $376,928.

[12] Tr. , Pages 114:12 to 115:14

CONCLUSIONS OF LAW

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

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50 percent. . . . Const 1963, art 9, sec 3.

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

> 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 "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous." *CAF Investment Co v Michigan State Tax Comm,* 392 Mich 442, 450; 221 NW2d 588 (1974).

"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." *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. *Teledyne Continental Motors v Muskegon Twp,* 145 Mich App 749, 754; 378 NW2d 590 (1985). "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." *Meadowlanes Ltd Dividend Housing Ass'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991). In that regard, 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." *Jones & Laughlin Steel Corp v City of Warren,* 193 Mich App 348, 356; 483 NW2d 416 (1992).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735a(2). The Tribunal's factual findings must be supported "by competent, material, and substantial evidence." *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, supra at* 352-353.

"The petitioner has the burden of proof in establishing the true cash value of the property." MCL 205.737(3). "This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party." *Jones & Laughlin Steel Corp, supra* at 354-355. However, "[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question." MCL 205.737(3).

The three most common approaches to valuation are the capitalization of income approach, the sales comparison, or market, approach, and the cost-less-depreciation approach. *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). "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading." *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale, supra at 276 n 1).* The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984).

The Tribunal is charged with finding the true cash and taxable values for 2012 and the taxable value for 2013 of a mobile home park in Colfax Township, located near Bad Axe, in Michigan's thumb region.

Respondent's Motion for Dismissal

At the close of Petitioner's proofs, Respondent moved for dismissal, which the Tribunal took under advisement.[13] The Petitioner presented an appraisal that was ambiguous as to its valuation date. After much questioning of its author, it was determined that the appraisal was for

[13] Tr. p. 92:6-93:19.

tax year 2013, and not 2012.[14] Unfortunately for Petitioner, Mr. Brown's conclusions for value of tax year 2013 were inapposite for 2012. Mr. Brown testified as follows:

> JUDGE MARMON: That is a problem. I'm going to give him one more chance to fix it and I'm going to ask would your valuation be different for –
>
> THE WITNESS: The prior year?
>
> JUDGE MARMON: For the prior year.
>
> THE WITNESS: I don't -- I can't answer that yes or no. I believe -- I believe it would be very close and similar. But for me to sit here and say, yes, it would be exactly the same if I performed an appraisal for December 31st, 2011, I can't say that credibly, that, you know, there might have been a sale that I would have used a year later or some of the expenses might have changed. So I can't -- I would say that according to the market it would be very close, I would assume, but I would not say yes or no just because I don't know how I would support that without . . . .[15]

As Petitioner appealed only the taxable value only for 2013, Mr. Brown's determination of true cash value for 2013 cannot be considered by the Tribunal.[16] This raises questions regarding the burden of going forward.

As stated above, the petitioner's burden "encompasses two separate concepts": (1) the burden of persuasion; and (2) the burden of going forward with the evidence. *Jones & Laughlin, supra* at 355. Although the Tribunal may not "automatically accept a respondent's assessment" (*Jones & Laughlin*, *supra* at 355-356), the Tribunal can, upon motion or its own initiative, enter a "directed verdict" or, more appropriately, an involuntary dismissal if the petitioner fails to meet the burden of going forward. See MCR 2.504(B)(2). See also *Jones & Laughlin*, *supra* at 354-355 and *Great Lakes*, *supra* at 408-410.

In determining whether a petitioner meets the burden of going forward, the Tribunal "must consider the evidence in the light most favorable to the non-moving party [i.e., the petitioner], making all reasonable inferences in favor of the non-moving party." *Meagher v*

[14] Tr. , 85:16-23, 86:1-19.
[15] Tr. , 86:24 to 87:14
[16] MCL 205.737(4).

Wayne State University, 222 Mich App 700, 708; 565 NW2d 401 (1997). Thus, the general rule in a valuation case is that, to meet the burden of going forward with the evidence, the petitioner must present evidence that, when viewed in a light most favorable to the petitioner, would permit the Tribunal to determine the property's true cash value. Simply, before determining that petitioner has failed to meet the burden of going forward, the Tribunal must be satisfied after Petitioner has presented the evidence that, "on the facts and the law plaintiff has shown no right to relief." *Samuel D Begola Services, Inc v Wild Bro*, 210 Mich App 636, 639; 534 NW 2d 217 (1995). Further, involuntary dismissals[17] "are appropriate **only** when **no** factual question exists upon which reasonable minds may differ." *Meagher*, *supra* at 708. Finally, "the weight given to the evidence is a matter within the . . . Tribunal's **discretion**" and "the weighing process **involves a considerable amount of judgment and reasonable approximation**." [Emphasis added.] *Comstock Village Ltd Dividend Housing Ass'n v Comstock Twp*, 168 Mich App 755, 760; 425 NW2d 702(1988).

The Tribunal holds that while it is a close question, Petitioner submitted enough evidence to meet his burden of going forward. The data, (rather than Brown's conclusion of value)[18] set forth by Petitioner in Brown's appraisal has some applicability to 2012 and therefore meets the burden of going forward. The data in Brown's report raise enough of a question of fact, requiring discretion and judgment by the Tribunal to determine the property's true cash value for 2012.

Weight and Analysis of Evidence

As stated above, meeting the burden of going forward does not necessarily mean that the burden of persuasion has been met. Even if Dan Brown had written a report for the proper year, there are a host of additional problems which require the Tribunal to minimize the weight this report can be given. First, there were a myriad of smaller problems with the report, including references to the 10th Edition of the Appraisal of Real Estate, (20 years out of date), and the 3rd edition of the Dictionary of Real Estate Appraisal, (30 years out of date). Mr. Brown was unable

[17] Although *Meagher* involved a jury trial and an actual motion for directed verdict, a motion for directed verdict is "analogous" to a motion for involuntary dismissal in a bench trial. See *Armoudlian v Zadeh*, 116 Mich App 659, 671; 323 NW2d 502 (1982), and MCR 2.504(B)(2).

[18] There is an additional problem in accepting Dan Brown's opinion as evidence, in that Petitioner, a non-lawyer, handling this matter *in propria persona* failed to qualify him as an expert. (See MRE 701, 702). It is telling that when informed at the end of his case-in-chief that Petitioner had failed to qualify Brown as an expert, he quipped, "Okay. I'm not sure that I want to do that, to be honest." Tr. p. 93:7-19.

to explain in what way the 14th Edition of Real Estate Appraisal differed from the 10th, or how the 5th edition of the Dictionary differed from the 1984 tome he cited. Brown also failed to include the definition of true cash value found in MCL 211.27 in his report, although he admitted that he should have.[19] Of much greater significance were the problems in Brown's report concerning comparable sales.

Sales Comparison Approach

Mr. Brown used 6 comparable sales. Sale No. 1 and 3 were purported to be sales of 10305 Bennett Lake Rd. in Fenton, Michigan. On cross, it was established that this address belonged to a personal residence, rather than a mobile home park.[20] This blunder was compounded by Brown's inability to testify on cross as to where these two comparables were located.[21] Nor was he able to clarify their location when questioned by the bench:

> JUDGE MARMON: And you're not able to tell me where exactly comps one and three are, are you?
>
> THE WITNESS: I can't right now, because like I said, it's -- obviously I'm the one that bears fault to it because it came out of my office that comps do exist. I do have the data in my work file, however, my assumption is there was a mistake made there, so for me to say yes, I can't say that to you. So, you know, two, four, five, six, obviously, but one and three, they're actual sales. But my assumption is somewhere along the line in our research in my office we got the address probably and ran with it, so it was an error by my office, which ultimately is an error by me.[22]

In fact, Mr. Brown failed to visit most of the comparables he chose.[23] Brown's report did not list, and he could not name the buyers and sellers for any comparable. Further, Brown's Comparable No. 2 (1065 Peach Blossom Circle in Fenton) had been foreclosed upon 11 months earlier. Mr. Brown admitted that failing to disclose that the property was foreclosed is a violation of USPAP.[24] Comparable Sale No. 5, (31 Jane Street, Centerville Michigan) was also a foreclosure sale without disclosure.[25] Not only was there no disclosure of the circumstances surrounding these sales, but Mr. Brown's adjustment grid listed each sale's Sale Conditions as

[19] Tr. p. 37:7-10
[20] Exhibit R-7, R-8 Tr. p. 53:8-54:5.
[21] Tr. p. 54:6-8.
[22] Tr. p.87:24- 88:12
[23] Tr. p. 42:9-43:5. Brown testified that he only visited one comparable out of the 6 chosen.
[24] Tr. p. 59:4-11.
[25] R-17, Order Appointing Receiver, and Order Confirming Sale; Tr. p. 60:3-13.

"Typical, $0.00" adjustment.[26] Comparable Sale No. 4 was located in Flint (1518 N. Averill) yet there was no adjustment for location, considering Flint is urban; has a millage rate that is 20 points higher, and has many well publicized urban problems. Further, Comp 4 was delinquent in its payment of property taxes,[27] indicating other problems with the park. Comp 4 has also been transferred via a bank sale.[28] Finally, Brown's report erroneously lists "occupancy at Sale 100" for 5 out of 6 sales comparables.[29] Mr. Brown testified that this occupancy was ". . . part of the original typo."[30] He did not provide the actual occupancy rates at the time of sale, nor did he have an adjustment for occupancy on his sales grid.[31] Because of all of these problems with Mr. Brown's report and testimony, the Tribunal finds the sales comparison approach contained in Brown's report to be completely unreliable and gives it no weight.

Mark MacDermaid's valuation submitted by Respondent contained three sales comparables, but no adjustment was made, nor was a value concluded to using this approach. Mr. MacDermaid testified that he used the income approach to value the property, and the sales approach was used to give a range to support the value via the income approach.[32] From the report, it was clear that Mr. MacDermaid's comparables contained two to three times as many mobile home pads, along with other amenities such as offices, recreation buildings, swimming pools, etc.[33] As no sales comparable analysis was performed, and the sales comparables used lack comparability without major adjustments, the Tribunal cannot give the sales used in Mr. MacDermaid's report any weight.

Direct Income Capitalization Approach

While a fully developed sales approach might have been helpful in valuing mobile home parks, the Tribunal is left with only the Direct Income Capitalization Approach to determine the subject property's true cash value.[34] While his appraisal is for 2013 rather than 2012, the Tribunal considered Petitioner's appraiser's income approach, and compared it with the one

[26] Petitioner's Exhibit A+, p. 45.
[27] R-3.
[28] R-5 and R-6.
[29] Petitioner's Exhibit A, p, 48-52.
[30] Tr. 43:6-44:13.
[31] Tr. 45:18-22.
[32] Tr. 102:5-17
[33] R-1, p. 11, 17, and 23.
[34] Simply stated, the Direct Income Capitalization Approach takes income minus expenses to determine net operating income, (NOI) and divides that figure by an income capitalization rate.

prepared by Mr. MacDermaid for Respondent. Both Brown and MacDermaid had very similar gross income numbers. Brown's estimated gross income number after vacancy and collection was $191,700;[35] MacDermaid's was lower, at $184,645.[36] Both witnesses used a very similar capitalization rate. Brown used 11.5% unloaded,[37] and MacDermaid used a slightly higher 11.54% cap rate, before loading one half the millage rate.[38]

Similarly, many of the expenses used in each report were close. Brown had an entry of $24,000 for "Utilities/Sewer/Lagoon Maint. Water Test."[39] MacDermaid separated out utilities, water testing, trash and sewer, which totaled $23,098.[40] Brown had $6,450 for "Pro.fees, Clerical, advertisement."[41] MacDermaid had separate items for Advertising, Legal & Professional, Clerical, and Office Expense that totaled $8,335. MacDermaid also had added expenses for "Specific Tax,"[42] and "Auto and Travel" which were not present in Brown's report.

The big difference between the reports leading to different conclusions of value using this approach is in certain expenses to determine net operating income. For insurance expense, Brown's report purported to use "actual", which he reported as being $4,000. However, reported insurance expense was never greater than $1,854 per year according to Petitioner's Income and Expense reports.[43] Mr. MacDermaid, on the other hand, used actual insurance expenses for 2011 of $1,500. While Brown said "actual," he apparently meant ". . . according to market. . . ."[44] MacDermaid listed actual expenses provided by Petitioner, and in many instances, used them, for 2010, 2011 and 2012, and stabilized some expenses by comparing each with other parks on a per site basis.

Another large difference between the pro forma income statements is Brown's entry of Common Area Maintenance at 12%, totaling $23,004. As the subject property is a mobile home

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[35] Exhibit A+, p. 40.
[36] R-1, p. 5. Potential gross rent × 1- vacancy rate, ($214,704 × (1-0.14)).
[37] "Loading" means to take 50% of the millage rate, and add it to the income capitalization rate. This accounts for property taxes, and is used when the appraisal assignment's goal is to determine value for property tax assessment purposes. Brown failed to load the millage rate into the capitalization rate, and took property taxes as an expense. He admitted that his inclusion in expenses, rather than loading the capitalization rate was improper. Tr. p. 74:13-75:18.
[38] R-1, p. 8.
[39] Exhibit A+ p. 40
[40] R-1 p. 7.
[41] Exhibit A+ p. 40.
[42] The tax paid on mobile homes, as opposed to the realty.
[43] Actual expenses were attached to Petitioner's Answers to Interrogatories, Exhibit R-2.
[44] Tr. p. 78:18-25

park, and not an office building, it would seem that all maintenance would be "common area." The explanation in Brown's report appears to be verbiage lifted out of a report on an office or apartment building, and was not explained by Brown at hearing as to what building maintenance might occur at a mobile home park lacking occupied building structures, or how he arrived at 12% of gross income.[45] MacDermaid on the other hand, had an entry for $17,000 for maintenance, which was higher than the actual 2011 expense reported by Petitioner of $20,687.

Another area of contention on the pro forma is the management fee taken as an expense. No management fee was reported by Petitioner. Brown took 7%; the maximum end of the range Brown reported as typical.[46] MacDermaid took 5%. Brown's explanation for taking 7% was because there was no on-site manager. MacDermaid testified he reviewed income statements of 30-40 trailer parks in the last five years and that 5% was customary and normal.[47] The Tribunal finds MacDermaid's explanation to be more credible and accepts 5% as the appropriate expense for managerial fee in valuing the property via the income approach.

Reserves and replacements were another item of contention. Brown took 10% for reserves and replacements, while MacDermaid took 2%. As there are no buildings to replace, it is hard to imagine why a 10% reserve should have been used. Accordingly, the Tribunal finds MacDermaid's figure for Reserves and Replacements to be more credible than Brown's, and accepts this figure.[48]

For the reasons stated above, the Tribunal finds that Mark MacDermaid's income analysis is the most credible evidence put before the Tribunal. Many of his assumptions in his income approach were similar to Brown's. In the areas of difference in the income approach, MacDermaid's figures and explanations were more credible than Brown's. Based upon the evidence presented, the Tribunal therefore adopts the income approach used by MacDermaid, and accepts his conclusion of value for tax year 2012. As to 2012's taxable value, that number is capped, and is unaffected in this case by the determination of true cash value. As for 2013,

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[45] Brown used similar inapposite verbiage in discussing total expenses, which he wrote ,"…which is typical for *buildings* of this type." (p. 40). [*Emphasis added*].
[46] R-14 and R-5 show Brown using 5% for managerial fees in another appraisal performed on a different property for Petitioner.
[47] Tr. p. 125:6-126:1.
[48] Petitioner in his closing argument expressed doubts about Dan Brown as an expert: "So if I want to sell my park, it's worth between eight and $9,000, and as inept as Dan Brown was here, I think he did hit on about the right number, but I think that was just probably a lucky throw." Tr. p. 135:25-136:3

because Petitioner failed to appeal the true cash value on the roll for that year, the value on the roll remains in effect. While Petitioner did appeal the taxable value for 2013, no evidence was provided that this calculation failed to comport with MCL 211.27a. As Petitioner failed to convince the Tribunal that 2012's taxable value should have been lowered, the taxable value on the roll for 2013 is determined to be correct by virtue of MCL 211.27a(2).

Accordingly, the Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject property's TCV, SEV, and TV for the tax years at issue are as stated in the Introduction section above.

Costs

At the end of his closing argument, Respondent asked the Tribunal to consider awarding costs.[49] MCL 205.752 provides that costs may be awarded in the discretion of the Tribunal. Even though Petitioner was completely unsuccessful in this appeal, the Tribunal declines to order costs in this matter. The Petitioner was credible in his belief that his property was overvalued. He continued this appeal himself, even after his legal counsel left the case. Mr. Clarkson went to the expense of hiring an appraiser, and submitted an appraisal that concluded to a lower value than what was on the roll. While Petitioner was proven unwise in attempting to litigate this matter himself, it appears from Mr. Brown's testimony that Petitioner's former representatives picked the appraiser and reviewed the report. While Respondent was forced to incur expenses in defending its assessment, that is the price of due process, giving persons with legitimate disputes their day in court.

JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax years at issue are 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

[49] Tr. p. 136:13-14.

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, and prior to July 1, 2012, at the rate of 1.09%, and (iv) after June 30, 2012, through December 31, 2014, at the rate of 4.25%.

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

By: David B. Marmon

Entered: August 28, 2014