

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

Covington Terrace, LLC,
Petitioner,

v

MTT Docket No. 452721

City of Detroit,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Covington Terrace, LLC, appeals ad valorem property tax assessments levied by Respondent, City of Detroit, against Parcel No. 02002674-8 for the 2013 tax year. Harold Hoyt represented Petitioner, and Perry L. Yun, Attorney, represented Respondent. A hearing on this matter was held on November 25, 2014. Petitioner's witnesses were Joseph Brophy, property owner, and William Johnson, Appraiser. Respondent's witnesses were Russell Raftary, Appraiser, and Charles Erickson, Assessor.

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 2013 tax year are as follows:

Parcel No.	Year	TCV	SEV	TV
02002674-8	2013	\$458,730	\$229,365	\$229,365

PETITIONER'S CONTENTIONS

Petitioner contends that the subject property is over assessed for the 2013 tax year. More specifically, Petitioner contends that its appraisal using the sales comparison and income approaches to value, indicate that the TCV of the subject is \$182,000, adjusted by \$96,000 deferred maintenance, yielding an adjusted TCV value of \$86,000. Petitioner further contends that imperfections in the appraisal, identified by Respondent's counsel, are not detrimental to the value conclusions determined by Petitioner's appraiser and Petitioner's appraisal accurately portrays the value of the subject property for the 2013 tax year. Finally Petitioner contends that Respondent submitted no true evidence of value in its valuation disclosure and Petitioner has met its burden of proof.

PETITIONER'S ADMITTED EXHIBITS

P-1 Summary Appraisal prepared by Northstar Appraisal, LLC

PETITIONER'S WITNESSES

Joseph Brophy

Joseph Brophy, managing member of Covington Terrace, LLC, testified that: (i) he is a managing member of Petitioner, which has owned the subject property since 2007, (ii) traditional financing was not available for the subject property, (iii) the property was originally acquired with the intent to convert the property into condominiums, (iv) given the market and the lack of financing available, Petitioner decided to retain the subject as a rental property, (v) the subject property was constructed in the 1940's and needs many capital improvements including new roofs, windows, and doors, and the replacement of furnaces, and plumbing, (vi) physical occupancy of the subject can be high but actual collection of rent is low, (vii) approximately 15 to 20 percent of residents are taken to court every month for failure to pay rent, and (viii)

monthly rents range from \$550 to \$675, with the lowest rents for longtime residents. Transcript at 8-41.

William Johnson

William Johnson, Petitioner's expert in the appraisal of real estate, testified that: (i) he concluded to a value of \$182,000 for the subject property as of December 31, 2012, (ii) the subject property is a townhouse in fair to average condition with original gravity furnace units, (iii) the highest and best use of the subject property is to continue as an apartment complex, (iv) the cost approach to value was not used because it is difficult to accurately calculate depreciation on older buildings and it is difficult to find land sales in the City of Detroit, (v) applying the income approach to value he concluded to a value of \$183,000 by (a) using comparable apartment complexes to develop a monthly market rent ranging from \$675 to \$900, (b) developing a capitalization rate of 35.19% by using the vacancy rate of 15 percent, considering the lack of financing for this type of project, and loading the capitalization rate by the effective tax rate, (c) he found that this capitalization rate was consistent with capitalization rates in Detroit and data from LoopNet and CoStar, (vi) for the sales comparison approach to value, he concluded to a value of \$180,000 by using (a) sales of similar apartment buildings ranging from \$4,000 to \$12,000 per unit, and (b) finding that LoopNet data indicated that the asking price ranged from \$7,000 to \$10,000 per unit, (vii) concluded to a reconciled value of \$182,000 providing equal weight to the income and sales comparison approaches, and (viii) concluded that the subject property has an estimated \$96,000 in deferred maintenance which reduces the indicated TCV. Transcript at 42-142.

RESPONDENT'S CONTENTIONS

Respondent contends that the property record card and its assessor's opinion of value demonstrate that the TCV for the subject property should be \$500,000 for the 2013 tax year. More specifically, Respondent contends that the value has not changed since the 2012 settlement between the parties at that value, and therefore, the assessment is proper. The property record card reflects an override of the calculated value using the mass appraisal cost approach because their system does not properly account for depreciation and economic conditions. Further, Respondent contends that Petitioner's appraisal should not be admitted into evidence as it contains numerous typographical and other errors. As such, Respondent contends it does not comply with the Uniform Standards of Professional Appraisal Practice ("USPAP"). Respondent also contends that its rebuttal witness's recalculation of Petitioner's income approach supports a higher value than the assessment, and as such, the assessment should be affirmed

RESPONDENT'S ADMITTED EXHIBITS

- R-1 Respondent's Valuation Disclosure
- R-2 Photographs of subject property
- R-3 Russell Raftary's Rebuttal Income Analysis

RESPONDENT'S WITNESSES

Russell Raftary

Russell Raftary, a licenced appraiser, was qualified as an expert in the appraisal of real estate. Mr. Raftary testified that: (i) the subject exterior looked to be in average to above average condition, (ii) the subject does not have only gravity furnaces, but also forced air furnaces, and Petitioner's appraiser improperly assumed that all 24 of the units had gravity furnaces, (iii) a sale comparable at 10421 Cadieux sold on October 24, 2012, with a sales price of \$29,167 per unit,

which was not used as a comparable by Petitioner's appraiser, although it is comparable to the other comparables used, (iv) Petitioner's Comparable No. 1 listed the wrong sale date and only has 98 units, Comparable No. 3 is listed as a land contract sale when it was actually a bank sale, Comparable No. 4 lists the wrong sales price, and Comparable No. 6 has the wrong sale date, (v) Petitioner's appraisal improperly fails to adjust for apartment type, (vi) he recalculated the income approach, using the income and expenses provided by the owner in the appraisal, and found the cap rate used by Petitioner's appraiser to be excessive because he improperly calculated the effective tax rate, and (vii) the appropriate cap rate should be from 12 to 17 percent. Transcript at 145-179.

Charles Erickson

Charles Erickson is a Michigan Advanced Assessing Officer, and was qualified as an expert in assessment of real property. Mr. Erickson testified that: (i) the property record card for the subject property reflects a cost less depreciation approach with a value of \$1,181,023, which he contends is irrelevant to this appeal because the system is in override, (ii) the TCV for the subject property, on its property record card, reflects a settlement entered between the parties for the 2012 tax year, (iii) he believes that the TCV of the subject property did not change from 2012 to 2013, and as such, the assessment should remain the same (\$500,000), and (iv) the non-homesteaded millage rate for the 2013 tax year was 85.76185. Transcript at 179-192.

FINDINGS OF FACT

1. The subject property is located at 17500 Second Avenue, Detroit, Michigan in the county of Wayne.
2. The subject property's highest and best use, as improved, is as an apartment complex.

3. The subject is improved with five, two-story buildings containing 24, two-bedroom townhouse style apartment units.
4. The subject property is on approximately 0.8 acres.
5. The TCV for the subject property for the 2013 tax year was \$500,000 and its AV and TV for 2013 was \$250,000.
6. In determining the TCV of the subject property for the 2013 tax year, Petitioner's appraiser gave equal weight to the sales comparison and income approaches to value.
7. Petitioner's appraisal contains numerous typographical and other errors.
8. In his sales comparison approach, Petitioner's appraiser failed to verify the sales used as comparables.
9. Petitioner's appraisal failed to properly identify the City of Detroit millage rate in determining the TCV of the subject property using the income approach to value.
10. Respondent determined the TCV of the subject property for 2013 based on the parties' stipulated value for 2012.
11. The subject property has a combination of gravity furnaces and forced air furnaces.

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 v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) 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, supra* at 277.

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell. See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

Both parties provided valuation evidence in support of their contentions of value.

Petitioner submitted an appraisal that gave equal weight to the sales comparison and income approaches to value. Respondent contends that Petitioner's appraisal should not be considered because it does not comport with the Uniform Standards of Professional Appraisal Practice (USPAP). More specifically, Respondent contends that Petitioner's "Summary Appraisal" is not compliant with the 2014-15 USPAP because summary appraisals are no longer used. In addition, the appraisal contains countless typographical and other errors. The Tribunal finds that the numerous errors prevalent throughout Petitioner's appraisal, ultimately resulted in a sloppy appraisal, which calls into question the reliability of the appraisal as a whole.¹ However, these errors do not justify the exclusion of the entirety of the appraisal report. While Respondent may be correct that the appraisal does not comport with USPAP, the Tribunal will not examine this issue as it is irrelevant to the appraisal's admission in this case. As indicated above, the Tribunal may consider the three traditional approaches to value and is under a duty to make an independent determination of value. There is, however, no requirement that the valuation evidence presented complies with USPAP. As such, the appraisal was properly admitted and is fully evaluated below. The Tribunal notes that Respondent's valuation disclosure may also fail to meet the standards of USPAP, but is, nevertheless, admitted as well.

Respondent's Valuation Disclosure consists of Mr. Erickson's opinion of value and the subject's property record card. Mr. Erickson's opinion of value indicates that the subject's true cash value is \$500,000. However, he provided no data or analysis to support this opinion. He testified that this value reflects a settlement in the 2012 tax year, whereby the parties agreed that

¹ The appraisal's numerous errors include, but are not limited to: (i) the appraiser's certification number; (ii) the definition of true cash value; (iii) reference to HB 5439; (iv) missing footnotes; (v) references to the subject as a co-op; and (vi) citations to outdated references.

the true cash value of the subject was \$500,000, and that, in his opinion, the value of the subject did not change from 2012 to 2013. Transcript at 188. The Tribunal finds that this is not evidence of value as there is no data or information to support this value. Mr. Erickson's mere opinion of value, even as an expert in assessing, is insufficient to support the value of the subject as assessed.

Respondent also provided rebuttal evidence in the form of expert testimony and exhibit R-3, a rebuttal income approach. The rebuttal income approach is a recalculation of Petitioner's income approach that was prepared relying on Mr. Raftary's expertise in the field, as well as his examination of Petitioner's actual income and expenses provided by the owner in the appraisal report. Transcript at 158. Although the rebuttal evidence is not affirmative evidence of value, it will be used by the Tribunal to evaluate Petitioner's income approach and assist in the Tribunal's rendering of an independent determination of value. The evidence relating to each of the three approaches to value, as submitted by the parties, is addressed individually below.

Cost Less Depreciation Approach

Petitioner's appraiser testified that he did not calculate the value of the subject using the cost approach given its location and age. See Transcript at 60. Respondent provided the cost less depreciation approach on the subject's property record card.

The cost calculations contained on the property record card conclude to a value of \$1,181,023. See Transcript at 186-87. However, Respondent does not contend that this value accurately reflects the market value of the subject property as of December 31, 2012, and rather contends that the value should be much lower. Given Respondent's own contentions, the Tribunal finds that Respondent's cost approach does not accurately adjust for market conditions. Further, "[w]hen improvements are considerably older . . . the physical deterioration, functional

obsolescence, and external obsolescence may be more difficult to estimate. . . . These conditions may make the cost approach less reliable.” Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p 567-68. Here, the subject was constructed in the 1940’s and, given the difficulties in calculating depreciation and obsolescence, the Tribunal finds that the cost approach is not the most reliable approach to value on record.

Sales Comparison Approach

The Tribunal finds that Petitioner’s appraisal included a sales comparison approach which, like its appraisal in its entirety, contains numerous errors. First, the sales used are purportedly comparable apartment complexes. However, these complexes were not townhome style complexes like the subject; yet, no adjustment was made for this difference. There are also inconsistencies and errors in important features between Petitioner’s summary of comparables and sales grid. P-1 at 74-75. See also Transcript at 131-33. More specifically, errors include the number of units, sales dates, and sales prices. Each of these factors can substantially impact the value conclusion. Such errors call into question the reliability of Petitioner’s appraiser’s analysis.

More importantly, the Tribunal finds that the sales information was not properly verified. Petitioner’s appraiser testified that each of the sales was verified with public records, but not with the seller or broker, in all cases. Transcript at 136. The Appraisal of Real Estate indicates that:

Appraisers should verify information with a party to the transaction to ensure its accuracy and to gain insight into the motivation behind each transaction. The buyer’s and seller’s views of precisely what was being purchased at the time of sale are important. Sales that are not arm’s-length market transactions . . . should be identified and rarely, if ever, used. To verify sales data, the appraiser confirms statements of fact with the principals to the transaction, if possible, or with the brokers, closing agents, or lenders involved. Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p 385.

The verification of the sales data is essential to each sale's reliability as an indicator of value. Absent verification, the sales price may not reflect the market value of the real estate as it could include personal property or exclude other forms of collateral. The appraiser's acknowledgement that the sales were not verified, other than by viewing public records, further supports a finding that Petitioner's sales comparison approach is not reliable.

In addition, Respondent presented rebuttal testimony regarding a sale of an apartment complex, comparable to those comparables used by Petitioner's appraiser. This sale has a similar location, similar features, and similar sales date. See Transcript at 155-56. However, this comparable had a much higher sales price per unit. Respondent's expert testified that he verified this sale. *Id.* at 155. Although not conclusive, as the sale was not submitted as substantive evidence of value, this testimony further calls into question the reliability of Petitioner's sales comparison approach as it appears this sale may have been excluded because it supports the assessment of the subject property.

Given the above, the Tribunal finds that Petitioner's sales comparison approach is not a reliable indicator of value. Moreover, the subject is an income-producing property and, generally, the income approach to value is a more reliable indicator of value for this type of property. See Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p 645.

Income Approach

Income

Petitioner's appraiser also prepared an income approach to value to which Respondent submitted its expert's rebuttal evidence. Petitioner's appraiser utilized a market rent of \$675, which he properly derived from the use of rent comparables, to conclude to annual rental income

of \$194,400. The same was also used by Respondent's expert; however, Respondent's expert omitted the additional estimated \$3,000 for "laundry income" added by Petitioner's appraisal, which the Tribunal finds is appropriate as the \$3,000 in additional income is not supported on the record.

Vacancy

Petitioner's appraiser also utilized a 15 percent vacancy rate, while Respondent's expert utilized 5 percent. Petitioner's appraiser testified that the current rate in 2014 should not be utilized and the more appropriate rate for 2012 was 15 percent. Respondent's expert testified that he based this rate on his knowledge of the market and the owner's actual vacancy, around 9 percent. Transcript at 159. The Tribunal finds that the subject had an actual vacancy rate of 8.3 percent and had additional losses from the nonpayment of rent. See Transcript at 21. Given the testimony and evidence, the Tribunal finds that a more appropriate vacancy rate is 10 percent.

Expenses

Petitioner's appraiser used a 13 percent management fee, while Respondent utilized a 10 percent fee. Petitioner's appraisal indicated that the 13 percent is in line with the market. However, Respondent's expert testified that 10 percent is more reasonable and is still in excess of the actual expense. Transcript at 159. The Tribunal finds Respondent's 10 percent is more reasonable and more closely aligned with the actual expense indicated by Petitioner's income and expense statements. For insurance, administrative fees, and utilities, the parties' expense estimates are very similar as they are line item expenses. The Tribunal finds that Respondent more appropriately rounds the costs and Respondent's expenses for insurance, administrative fees, and utilities are adopted as supported by Petitioner's income and expense data. The Tribunal also finds that the reserve amount of \$8,400 is reasonable, is utilized by both parties,

and is also adopted. Petitioner's appraisal lumps many other expenses into an "other" deduction of \$8,500. The Tribunal finds that these expenses are more appropriately accounted for by Respondent's expert by referencing the actual expenses for lawn maintenance and snow removal, legal and accounting, and other professional fees as line item expenses. Thus, the Tribunal adopts these expenses as, again, supported by Petitioner's income and expense information.

The major discrepancy in the parties' expenses is for maintenance and repairs. Petitioner utilized an expense of \$33,000, or \$1,375 per unit, even though the appraisal indicates that expenses typically range from \$1,000 to \$1,200 per unit in the subject's market. P-1 at 66. Respondent's expert used \$15,000 and testified that this is more in line with Petitioner's actual expenses. The Tribunal finds that Petitioner's maintenance and repairs conclusion is excessive and is in excess of the typical market expense of \$1,000 to \$1,200, per its own appraisal report. As such, the Tribunal finds Respondent's expense of \$15,000, which is in excess of the actual expense, is supported by Petitioner's income and expense data and is more reliable and reasonable than Petitioner's expense.

Capitalization Rate

Petitioner's appraiser applied a capitalization rate of 35.19 percent, which he testified is supported by the testimony provided regarding the lack of financing available to projects such as the subject located in the City of Detroit. Although one method of determining the capitalization rate is the band of investment methodology,² "[d]eriving capitalization rates from comparable sales is the preferred technique when sufficient information about sales of similar, comparable properties is available." See Appraisal Institute, *The Appraisal of Real Estate* (Chicago:

² "A technique in which the capitalization rates attributable to components of a capital investment "debt and equity" are weighted and combined to derive a weighted-average rate attributable to the total investment." See Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p 495.

Appraisal Institute, 14th ed, 2013), p 493. The Tribunal finds that while the testimony may indicate that the financing circumstances in Detroit are unique for this type of investment, Petitioner's interest rates and figures used to calculate the capitalization rate are not supported by data on the record. Further, Petitioner's appraiser improperly calculated the tax loaded capitalization rate by utilizing the taxable value, which is a creation of Michigan statute and should not be utilized. See MCL 211.27a. The Tribunal finds that Petitioner's appraisal provides a chart listing various capitalization rates from comparable Detroit apartment sales. These rates range from 7.01 to 30.62 percent. P-1 at 71. In addition, Respondent's expert witness testified that Petitioner's rate is extremely excessive and, in his experience in Detroit, capitalization rates are ranging from 12 to 17 percent. The Tribunal finds that Petitioner's data regarding comparable capitalization rates, with an average of 16.76 percent, supports Respondent's expert testimony that a 15 percent capitalization rate would be appropriate for the subject property. Further, the proper addition to tax load this capitalization rate is 4.29 percent.³ As such, the Tribunal finds that a tax loaded capitalization rate of 19.29 percent is supported by the evidence and testimony on record.

Value Conclusion

Although Respondent's recalculation of Petitioner's income approach is not considered as affirmative evidence of value, the Tribunal finds that it provided invaluable information identifying the inaccuracies and inconsistencies in Petitioner's appraisal. All values utilized in Respondent's recalculation are supported by Petitioner's appraisal, including Petitioner's actual income and expenses. Given the above, the Tribunal finds that the income approach supports a

³ Millage rate / 2 (0.8576185 / 2 = 0.4288075).

true cash value of \$458,730. The calculations by Petitioner, Respondent, and the Tribunal are as follows:

	Petitioner		Respondent		Tribunal	
Rental income	\$194,400 \$3,000		\$194,400		\$194,400	
Vacancy	15%	(\$29,610)	5%	(\$9,720)	10%	(\$19,440)
Expenses						
Management	(\$22,059)		(\$18,768)		(\$17,496) ⁵	
Insurance	(\$12,700)		(\$12,800)		(\$12,800)	
Administrative	(\$3,000)		(\$3,000)		(\$3,000)	
Utilities	(\$17,500)		(\$17,300)		(\$17,300)	
M&R ⁴	(\$33,000)		(\$15,000)		(\$15,000)	
Other	(\$8,500)					
Reserves	(\$8,400)		(\$8,400)		(\$8,400)	
Lawn/Snow			(\$2,000)		(\$2,000)	
Legal/Accounting			(\$4,100)		(\$4,100)	
Other Professional			(\$6,375)		(\$6,375)	
NOI	\$62,631		\$99,937		\$88,489	
Capitalization Rate	35.19		15		19.29	
Indicated Value	\$177,979		\$666,247		\$458,730	

Deferred Maintenance

Petitioner contends that the TCV of the subject property indicated by the income approach should be reduced for deferred maintenance. The Tribunal finds that Petitioner's value of \$96,000 in deferred maintenance is not supported by evidence on record.⁶ Petitioner's appraisal merely indicates that it will cost \$40,000 to replace the galvanized water supply piping and \$56,000 to replace the 24 original furnaces. With respect to the furnaces, Petitioner's appraiser testified that each unit had an original gravitational furnace. Transcript at 52, 123. However, Petitioner's appraiser also indicated that he only inspected about 10 to 15 percent of

⁴ Maintenance and repairs.

⁵ 10 percent calculated after income reduced by vacancy ($\$194,400 - \$19,440 = \$174,960 \times .10 = \$17,496$).

⁶ Mr. Johnson refers to P-2 in his testimony; however, this exhibit was not offered into evidence by Petitioner and, therefore, was not admitted. The testimony regarding the contents is insufficient to establish that the \$96,000 figure is supported.

the interior and that the inspection only took about two hours. Transcript at 46, 99. As such, it is not clear upon what basis Petitioner's appraiser concluded that every furnace was a gravitational furnace, as each furnace was not examined. Thus, his conclusion that every furnace must be replaced is not supported. Additionally, Respondent's expert testified that the photograph on page 37 of Petitioner's appraisal depicts a forced air furnace, contrary to Petitioner's appraiser's testimony. Transcript at 152. The Tribunal finds Respondent's expert's testimony reliable and finds that Petitioner's appraiser improperly concluded that all furnaces were gravitational. As of the effective date, the majority of the apartments were rented and the furnaces and plumbing were in working condition, permitting the habitability of the units. There was no additional evidence provided by Petitioner supporting its contention that all furnaces *must* be replaced or that the water supply piping *must* be replaced. As such, a deduction for these items is not supported.

More importantly, the Tribunal finds that both maintenance and repair and reserves were considered in the calculation of the income approach. The reserve, or replacement allowance, is defined as "[a]n allowance that provides for the periodic replacement of building components that wear out more rapidly than the building itself and must be replaced during the building's economic life." Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p 485. As such, the Tribunal finds that expenses for items such as upgrading and replacing the furnaces, and plumbing are included in the value as indicated by the income approach and a subsequent deduction for deferred maintenance is unnecessary and duplicative.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the income approach is the most reliable indicator of value in this case. The subject

property's TCV, SEV, and TV for the tax year(s) at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax year(s) at issue are MODIFIED as set forth in the Introduction section of this Final Opinion and Judgment.

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

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

December 31, 2009, at the rate of 1.23% for calendar year 2010; (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011; (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09%; and (iv) after June 30, 2012, through June 30, 2015, at the rate of 4.25%.

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

By: Steven H. Lasher

Entered: Jan 27, 2015
krb