

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

SEC Accommodator – Burwick Farms, LLC,

Petitioner,

v.

MTT Docket No. 361344

City of Howell,

Tribunal Judge Presiding
Paul V. McCord

Respondent.

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FINAL OPINION AND JUDGMENT

Tammie J. Tischler (P59516), for Petitioner.
Dennis L. Perkins (P28568), for Respondent.

I. INTRODUCTION

This commercial tax assessment appeal comes before the Tribunal for decision after hearing in the Entire Tribunal Division on November 14, 2011, in Lansing, Michigan. Petitioner, SEC Accommodator – Burwick Farms, LLC, timely appeal the ad valorem property tax assessments levied by Respondent, City of Howell, against its 264-unit garden apartment complex. Petitioner’s property (the “Subject”) spreads over three real property parcels. Petitioner contends that the true cash value of its property is, in the aggregate, \$13,000,000, \$11,540,000 and \$9,474,002 for tax years 2009, 2010, and 2011, respectively. Respondent requests that the value on the roll be upheld and argues that the property has been fairly and uniformly assessed; the TCV of the property for 2009, 2010 and 2011 is, in the aggregate \$18,713,400, \$20,334,200, and \$13,423,400, respectively. The only issue we must decide is the true cash value of Petitioner’s property for each tax year at issue.

II. JUDGMENT

We hold that the Subject Property's true cash value (TCV), state equalized value (SEV), and taxable value (TV) for the tax years at issue are as follows:

Tax Year	Parcel Number	TCV	SEV	TV
2009	4717-26-400-057	\$5,231,100	\$2,615,550	\$2,615,550
2010	4717-26-400-057	\$4,426,030	\$2,213,015	\$2,213,015
2011	4717-26-400-057	\$3,754,520	\$1,877,260	\$1,877,260

Tax Year	Parcel Number	TCV	SEV	TV
2009	4717-26-400-062	\$6,034,800	\$3,017,400	\$3,017,400
2010	4717-26-400-062	\$5,106,040	\$2,553,020	\$2,553,020
2011	4717-26-400-062	\$4,331,360	\$2,165,680	\$2,165,680

Tax Year	Parcel Number	TCV	SEV	TV
2009	4717-26-400-073	\$2,834,100	\$1,417,050	\$1,417,050
2010	4717-26-400-073	\$2,397,930	\$1,198,965	\$1,198,965
2011	4717-26-400-073	\$2,034,120	\$1,017,060	\$1,017,060

III. FINDINGS OF FACT

This section is a "concise, separate, statement of facts" within the meaning of MCL 205.751, and, unless stated otherwise, the matters stated or summarized are "findings of fact" within the meaning of MCL 24.285. Based on the testimony and exhibits admitted in this matter, the Tribunal finds the following facts.

1. Assessment

The Subject is comprised of three real property parcels identified on Respondent's assessment rolls by Parcel I.D. Nos. 4717-26-400-057 (individually referred to as "Parcel 1"), 4717-26-400-062 ("Parcel 2"), and 4717-26-400-073 ("Parcel 3;" collectively, Parcel 1, Parcel 2, and Parcel 3 are referred as the "Subject"). All three parcels are adjacent and classified as

commercial real property. For the tax years at issue, Respondent assessed Parcels 1, 2 and 3 as follows:

Parcel No. 4717-26-400-057 (“Parcel 1”)

Year	TCV	SEV	TV
2009	\$6,942,600	\$3,471,300	\$3,273,566
2010	\$5,858,600	\$2,929,300	\$2,929,300
2011	\$4,978,400	\$2,489,200	\$2,489,200

Parcel No. 4717-26-400-062 (“Parcel 2”)

Year	TCV	SEV	TV
2009	\$8,005,000	\$4,002,500	\$3,764,977
2010	\$6,717,800	\$3,358,900	\$3,358,900
2011	\$5,743,800	\$2,871,900	\$3,871,900

Parcel No. 4717-26-400-073 (“Parcel 3”)

Year	TCV	SEV	TV
2009	\$3,765,800	\$1,882,900	\$1,801,526
2010	\$3,250,600	\$1,625,300	\$1,625,300
2011	\$2,701,200	\$1,350,600	\$1,350,600

2. *The Subject*

Petitioner acquired the Subject on October 17, 2006 for \$17,100,000 which included appliances and other personal property. The Subject is a 264-unit garden apartment complex located in the City of Howell. Located on 29.8259 acres of land, the Subject spreads over three tax parcels and is addressed as 525 W Highland Road.

The Subject apartment complex contains twelve separate 2 ½ story rental apartment buildings, a one-story club house, and various site improvements. The rental buildings and the clubhouse are architecturally similar in design and typical construction with a common hall entrance. The structures are of Class D commercial construction and are of average quality. The apartment complex was completed in 1989 with two additional buildings containing 48-units

were finished in 1990. The apartment buildings are clad in siding with trim boards capped by a gable roof covered with asphalt shingles. Chimney structures bookend the main gable section of each building. Covered patio alcoves are located on the ground floor units while covered porch alcoves with railings grace the second and third floors. The Subject has been reasonably well maintained.

The rental apartment buildings include a mix of 12-unit and 24-unit structures. There are two 12-unit buildings on Subject, each with 15,384 square feet of floor area. Two styles of 24-unit buildings are located on the Subject; (1) the so-called Type II design of which there are 4 buildings with a total of 27,636 square feet each, and (2) Type III design that contain 29,202 square feet. There are 6 Type III rental buildings in the Subject complex. A total of 264 individual rental units are distributed as follows:

No. of Units	Type of Unit	Square feet per Unit	Monthly Rent per Unit
56	1 bedroom, 1 bath	860	\$795
28	1 bedroom, 1 bath	960	\$825
120	2 bedroom, 2 bath	1,075	\$885
60	2 bedroom, 2 bath	1,175	\$955

The clubhouse includes a community room, fitness center, and management offices with 3,545 square feet of ground floor area and 421 square feet of loft area. A total of 274,540 of gross rental area are located at the Subject. The site features irregular, curving street paths lined with mature trees, nature trees and landscaping. Site improvements include in ground swimming pool, garage structures and paved parking and drive areas.

Larger apartment complexes, such as the Subject, typically have one or more units set aside rent free for the manager, staff, on-site maintenance or as a model. The Subject had one

non-income producing unit during the tax years at issue. Rent concessions were typical in the Subject's market during the relevant time periods. For the 2009 tax year, apartment complexes were typically giving rent concessions of \$100 off the first month's rent for some of the first and second floor units to increase occupancy. For the 2009 tax year, the Subject was 12.88% vacant. Vacancy rates at the Subject decreases to 8.71% for 2010 and 1.89% for 2011. Asking rents at the Subject remained constant through this period. Market values of apartment complexes within the market area of the Subject declined throughout this period.

3. Experts

a. Petitioner's appraiser

Petitioner's expert, L. Richard Parker, MAI, opined in his appraisal that the market value of the Subject Property was \$13,000,000 as of December 31, 2008. Mr. Parker is a certified general licensed real estate appraiser and a member of the Appraisal Institute. The majority of his work is concentrated in Michigan. He appraises commercial properties, including apartment buildings, office buildings, shopping centers and industrial buildings. His primary emphasis is the appraisal of apartment buildings.

Mr. Parker testified to the steps he took in appraising the subject property. He stated that he obtained information on the property, leases, operating expenses, costs, and sales data. He inspected the property and interviewed the property owners. Mr. Parker considered the cost approach; however, this approach was not developed because: (1) the market in the metropolitan Detroit area did not indicate that cost was a relevant indicator of value in an investment property transaction, (2) the inherent difficulties in estimating market supported accrued depreciation for a 15-year old property, and (3) the lack of recent multi-family residential land sales not only in

Howell, but the entire metropolitan area on which to base land value on the age of the buildings. Mr. Parker offered that the cost approach would not provide credible determination of value for the property. The Sales Comparison and Income Approaches to value are developed in his appraisal report. A typical investor is looking at the cash flow that is generated by an apartment property, according to Mr. Parker. Petitioner's expert opined that the income capitalization approach was the most credible valuation method to be applied in this case because it parallels the thinking of buyers and sellers who actively seek investment properties.

In his sales comparison approach, Mr. Parker analyzed twelve sales; however five were selected as relevant to the market value of the Subject. The primary adjustment in Petitioner's sales comparison approach is an adjustment for economic characteristics. This one adjustment accounted for percentage adjustments of 46.26%, 0.53%, 63.26%, -17.87%, and 137.56% to each of his five comparables.

In developing his income approach as his primary valuation method, Petitioner's expert, used market information to reconstruct the income and expense statement that would be typical for the Subject. Mr. Parker used eight apartment properties, three of which are located in the City of Howell, and four in Genoa Township, and one in Osceola Township. The rents were not adjusted for differences in amenities. Petitioner's expert concluded that the Subject's actual rents were at market. Mr. Parker used a vacancy rate of 15%. This rate was more than the actual vacancy experienced by the Subject and was higher than the average. Petitioner's expert calculated the total operating expenses at 36.28% of the net operating income ("NOI"). Petitioner's expert did not include the comparable rent calculations for expenses in his report. Mr. Parker's reserves for replacements were deducted from the net operating income. After

concluding an overall capitalization rate of 9.0%, Petitioner's expert then loaded the effective tax rate of 2.74% for an overall capitalization rate of 11.75%. The net annual income was divided by the overall capitalization rate with rent concessions being subtracted therefrom for Petitioner's indicated value.

b. Respondent's Assessor

Respondent offered its assessment records and the testimony of its assessor, Gladys Niemi, CMAE3, in support of its theory of value. Respondent's assessment records were developed from a cost-less-depreciation method prescribed by the State Tax Commission. The Subject was purchased in October 2006 and was uncapped in 2007 based on other apartment complexes that sold. For the 2007 tax year, Respondent determined a value for the Subject which was less than the purchase price. Respondent's assessor testified that the apartment values within Respondent's jurisdiction increased during the 2009 tax year as a result of a sales-market study that Livingston County prepared for the ratio studies in the area. The 2010 and 2011 values decreased for the Subject property based on the cost approach and factors received from the Livingston County Equalization Department.

IV. CONCLUSIONS OF LAW

1. Admissibility of Petitioner's October 21, 2011 Appraisal Reports

At the outset we must address an evidentiary issue. On November 7, 2011, 7-days before the hearing in this matter, Respondent moved to strike Petitioner's proposed Exhibit P-2. Proposed Exhibit P-2 contains two appraisal reports, both prepared by Petitioner's expert approximately 3 weeks before the scheduled hearing. One report involves the 2010 tax year and the other involves the 2011 tax year. Petitioner filed a response to Respondent's Motion on

November 9, 2011 asserting, among other things, that: (1) its Proposed Exhibit P-2 is offered in accordance with the Tribunal Prehearing Conference Summary and Scheduling Order of October 7, 2011, and (2) Respondent could not be prejudiced by this Exhibit as it had the opportunity to review the appraisal prior to hearing and cross examine the witness at hearing. We disagree.

While we are generally permissive in the admission of relevant evidence that is probative of the fair market value of the property at issue, even if that evidence is not of itself determinative, see *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353-354, 483 NW2d 416 (1992) (instructing that evidence of the selling price of property is relevant in determining the taxable value of property). See also *Professional Plaza, LLC v City of Detroit*, 250 Mich App 473; 647 NW2d 529 (2002). It is within our discretion to admit or exclude evidence. *Elezovic v Ford Motor Co*, 472 Mich 408, 419; 697 NW2d 851 (2005). Here, we excluded Petitioner's untimely reports.

The fair market or true cash value of property is a fact intensive inquiry. Given the highly fact specific, and technical nature of valuation cases, we often look to the opinions of expert witnesses. Recognizing this aspect of the cases that frequently come before the Tribunal, our rules of Practice and Procedure are designed as much as practicable to prevent so-called "trials by ambush." Under TTR 252(1), a party's valuation disclosure in a property tax appeal is required to be filed with the Tribunal and exchanged with the opposing party as provided by order of the Tribunal. The logic underlying the rule is to avoid unfair surprise by providing both parties an opportunity to review and prepare a response to the other party's evidence as is reasonably possible before hearing.

In this case, our General Call Order required the filing and exchange of such reports on or before June 17, 2011. Petitioner timely filed its expert's report, however, that report only addressed the market value of the Subject as of the first tax day at issue. Our General Call Order was issued almost 9 months in advance of the valuation disclosure exchange due date. Petitioner had ample time to plan, prepare, and file an appraisal or valuation disclosure covering all tax years at issue. Petitioner did not raise this issue nor seek our leave to augment its valuation disclosure as allowed by the Tax Tribunal rules at the September 28, 2011 prehearing conference. Petitioner argues that the reference in our Prehearing Summary and Scheduling Order to the filing and exchange of final hearing exhibits, including valuation disclosures, authorizes the inclusion of its 2010 and 2011 appraisal reports. It does not. Instead it refers to the party's valuation disclosure that was previously furnished to the opposing party and the Tribunal under TTR 252(1) must now be marked and offered as a proposed exhibit. It does not mean that a party can have free rein to look the other way, prepare its case, and then throw all its evidentiary eggs into the Tribunal's basket at the time of hearing.

2. *Valuation - Overview*

With that evidentiary issue aside, we are once again asked to delve into the value of residential rental property, sifting through the testimony and the reports provided by the parties and applying our judgment. The value of property is ultimately a question of fact. See *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 638; 462 NW2d 325 (1990). A property's "true cash value" is defined as the property's "usual selling price" or "fair market value" under MCL 211.27(1). See also *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450; 221 NW2d 588, 592 (1974). Petitioner has the burden of proving the assessment of the Subject is excessive by establishing the true cash value of the Subject. MCL 205.737(3); *President Inn*

Props LLC v Grand Rapids, 291 Mich App 625, 806 NW2d 342, 347 (2011). Petitioner may meet this burden by introducing credible evidence as to the Subject's market value. See *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 409-410; 576 NW2d 667 (1998). In determining the market value of property, the Tribunal considers the three traditional approaches to valuation (income, sales, and cost). *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353; 483 NW2d 416 (1992). All three methods were developed by one or the other party and applied in the present case. While we prefer to use at least two valuation approaches, we may place greater or lesser emphasis on a particular method or methods of valuation. See *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 485-486; 473 NW2d 636 (1991). The Tribunal is under no obligation to accept the valuation figures or the approach to valuation advanced by either party. *President Inn, supra* at 351, citing *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985). After considering all the evidence, the Tribunal makes an independent determination based on the preponderance of the evidence. See MCL 205.735a(2); see also *President Inn Props LLC*, 806 NW2d at 352; *Great Lakes Div of Nat'l Steel, supra* at 389, 410. Regardless of the valuation approach we employ, the final value determination must represent the usual price for which the subject property would sell. *Meadowlanes, supra* at 485-486. The largest disagreement in this case appears to be which of the three methods of valuation yields the most accurate indicator of the Subject's "usual selling price." Petitioner applied both the sales comparison approach and the income approach in support of its final value estimates. Respondent applied a cost new less depreciation to set the assessments.

3. *Highest and Best Use*

A concept fundamental to the determination of true cash value is the highest and best use of the property. *Edward Rose Bldg Co, supra* at 633. This concept recognizes that “the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay.” *Id.* It is a use that is “legally permissible, financially feasible, maximally productive, and physically possible.” *Detroit v Detroit Plaza Ltd Partnership*, 273 Mich App 260, 285; 730 NW2d 523 (2006); see also The Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 13th ed, 2008), 277-278. The parties agree and we find the highest and best use for the Subject is as multi-family residential apartment complex.

4. *Sales Comparison*

Petitioner offers a sales comparison or market approach to value in support of its contention of true cash value. The sales comparison approach is the most common technique for valuing sites, and it is the preferred method when comparable sales are available. The Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 13th ed, 2008), 363. This method of valuation has been defined as “the process of deriving a value indication for the subject property by comparing similar properties that have recently sold with the property being appraised, identifying appropriate units of comparison, and making adjustments to the sales price (or unit prices, as appropriate) of the comparable properties based on relevant, market-derived elements of comparison.” *The Appraisal of Real Estate, supra*, at 297; see also *Meadowlanes Ltd Dividend Housing Ass’n*, 437 Mich 473, 485 n 19; 473 NW2d 636 (1991). The sales comparison approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353; 483 NW2d 416 (1992).

In deciding valuation cases, we often look to the opinions of expert witnesses. We have wide discretion when it comes to accepting valuation testimony and appraisal evidence. See *President Inn Props LLC v Grand Rapids*, 291 Mich App 625, 806 NW2d 342, 348 (2011). Sometimes, it will help us decide a case; other times, it will not. We weigh the parties' testimony in light of his or her qualifications, knowledge of the Subject and relevant market, and with proper regard to all other credible evidence in the record. See *Id.* at 352. We may accept or reject a party's valuation theory in total, or we may pick and choose the portions which we choose to adopt. *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 485-486; 473 NW2d 636 (1991). The probative value of an expert's opinion depends upon the facts and reasoning which form the basis of that opinion. Without explanation as to the basis, the opinion of the expert is entitled to little weight in this regard. Thus an expert's opinion is only as good as the data upon which the expert relied. As a result, if the analysis of a comparable sale is flawed, the valuation for the subject property is also flawed. *Antisdale v City of Galesburg*, 420 Mich 265, 278-279; 362 NW2d 632 (1984).

Since the probative value of an expert's opinion must stand or fall upon the facts and reasoning offered in support of that opinion, the undersigned is not convinced by the appropriate standard of proof that the adjustments in Petitioner's sales comparison approach were appropriately devised and adequately supported due to its heavy reliance on a this adjustment for so-called "Economic Characteristics."

Petitioner’s five comparable sales are as follows:

Comp No.	Location	No. Units	Sale Price	SP/Unit	NOI/ Unit	OAR	Econ Adj	Adjusted \$ per unit
1	Novi	204	\$7,200,000	\$35,294	\$3,053	8.65%	46.26%	\$51,620
3	Auburn Hills	188	\$9,400,000	\$50,000	\$4,441	8.88%	0.53%	\$50,266
7	Novi	209	\$6,500,000	\$31,100	\$2,735	8.79%	63.26%	\$50,774
9	Ann Arbor	134	\$8,275,000	\$61,754	\$5,436	8.80%	-17.87%	\$50,721
11	Howell	207	\$5,075,000	\$24,517	\$1,879	7.67%	137.56%	\$50,961
Subject	Howell	264			\$4,465			\$50,869

After adjusting these five sales for differences in the date of the sale, Petitioner’s expert then lumps all of the adjustments for differences in amenities into one singular economic adjustment. The premise of this adjustment, as explained by Petitioner’s expert, is that a comparison between the comparable sales and the Subject can be measured by a property’s economic productivity, which implicitly takes into account differences for location, quality, condition, aesthetic appeal, size, unit mix, amenities and similar physical traits and attributes. Petitioner’s expert explained that his Economic Characteristics’ adjustment is a ratio expressed by dividing the net operating income of the Subject by each of the net operating income of the sale comparables minus one $[(\text{Subject NOI}/\text{Comparable NOI}) - 1]$. As the above table illustrates, this Economic Adjustment was the primary adjustment criteria for each of the comparables.¹

To be sure, economic characteristics do affect a property’s ability to produce income.

However, paired data analysis would provide the only persuasive support for adjustments that

¹ The term Net Income Productivity Adjustment (“NIPA”) is used in lieu of net operating income because, as Petitioner’s expert explained, the adjustments to the net operating income produced by the comparable sale property reflects the location, condition, and size any feature/amenity that influences the income generated by the property. Mr. Parker explained this as “[y]ou take the subject’s NOI and you divide it by the comparables’ NOI and then you deduct one.” [Tr 50:16, see also P-1 at Table 7 n 2.] The resulting percentage is the economic adjustment for the comparable properties.

attempt to measure differences in the attributes of a property that affect its income. Some of the characteristics include operating expenses, management quality, tenant mix, and rent concessions, to name a few. Further, this method is not widely accepted in the appraisal industry. The Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 13th ed, 2008), 341 states:

Critics of net income multiplier analysis point out that the algebraic manipulation of sales and income data ultimately repeats the calculations used in direct capitalization. So when net income multiplier analysis is used in the sales comparison approach and direct capitalization is used in the income capitalization approach, potential errors are duplicated in two of the three approaches to value and these errors will be hard to identify in the final reconciliation of the value indications.

Given the problems associated with net income multiplier analysis and the possibility of double-counting for value influences reflected in other elements of comparison, appraisers must take great care in estimating and supporting adjustments for economic characteristics.

Mr. Parker defended this method based on his experience that an income producing property should be compared using the net operating income of other properties because the technique adequately captures and measures the primary motivation of buyer and sellers for such properties. Mr. Parker fails to provide, however, the basis for this technique or where the net operating income used in calculating this adjustment came from. When questioned on cross-examination, Mr. Parker admitted he did not know and could not explain what income or expenses were included in the calculation of the net operating income for each of the comparable properties (unless he appraised them); he just accepted the information that he gleaned from different sources without verification.

The Tribunal finds that use of economic characteristics as the primary adjustment in a sales comparison approach lacks credibility and accountability. Moreover, the adjustment

appears excessive and is suspect. Although Mr. Parker did not duplicate adjustments, the high percentage of the adjustments of 46.26%, 63.26% and 137.56% leaves the Tribunal to question the actual comparability of the sales. This novel approach is not accepted as a valid independent methodology upon which to determine the market value of the Subject and we give Petitioner's sales approach no weight.

5. Respondent's Cost Approach

Respondent offered its assessment records which utilize a modified cost approach. For some of the same reasoning-lack of credibility and accountability, that we rejected Petitioner's sales comparison approach, the Tribunal rejects Respondent's cost approach. The theory underlying the cost approach is that an informed buyer would pay no more for the property than the replacement cost of property with the same utility. The Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 13th ed, 2008), pp 142, 382. We recognize that Respondent was required to consult the State Tax Commissions assessor's manual as a guide in preparing the assessments at issue. MCL 211.10e; *Danse Corp v Madison Hts*, 466 Mich 175, 179; 644 NW2d 721 (2002). Nevertheless, given the decline in market value of existing properties during the relevant time frame, it is unlikely that a prospective buyer would consider building new as a suitable alternative. The cost approach has little bearing on the market if buyers and sellers would not consider the cost to build as an alternative to buying an existing facility on property. *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App 402. This particular approach also suffers from the fact that the computation of true cash value by reference to mass appraisal guidelines is based upon information not specific to any particular piece of property. In other words, by offering its assessment records, Respondent asks the Tribunal to use non-specific information to establish the value of the Subject. In the context of this case, we decline to place principal reliance on

Respondent's valuation evidence because the process that yielded its indication of true cash value lacks the requisite degree of sensitivity to current market factors and specific property characteristics, and presents an unacceptable risk of imprecision.

Notwithstanding the foregoing, the Tribunal finds Respondent's assessment evidence probative inasmuch as it gives a reflection of year-over-year trend in market conditions occurring in the relevant market and provides support for purposes of apportioning our value conclusion among the three parcels at issue.

6. Income Approach

Here there is no doubt that the Subject was developed as residential rental property and Petitioner uses the property for the production of income. Petitioner's expert considered the income capitalization approach-to-value to be the most credible valuation method in this instance because it parallels the thinking of buyers and sellers who actively seek investment properties like the subject. We agree. The income approach is generally considered the most accurate method for valuing income-producing property. See *CAF Investment Co v Saginaw Twp*, 410 Mich 428, 476; 302 NW2d 164 (1981) (LEVIN, J., concurring). Under these circumstances, an income approach would likely yield the most accurate valuation of the Subject. See *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984).

As of the first tax day at issue, the Subject had been in operation for approximately 19 years. Petitioner's expert surveyed eight competitive apartment complexes and determined that based on the rental rates, lease structures, specific amenities and features in relation to Subject he concluded that the asking rents for the Subject were within the range of similar properties and thus considered market. Direct capitalization is widely used when properties are already

operating on a stabilized basis and there is an ample supply of comparable sales with similar risk levels, incomes, expenses, physical and locational characteristics, and future expectations.

Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p 499. These factors make use of the income approach to value the subject compelling.

Petitioner's expert concluded, based on his survey of eight rent comparables that the asking rents at the Subject fell within the range of his data and, therefore, was considered to be market rent. We agree. For the 2009 tax year, the vacancy rate at the Subject was 12.88%. The average vacancy experience of Petitioner's rent comparables was 12.37%. We find that the vacancy at the Subject was consistent with the vacancy experienced in the market. Petitioner's expert then opined that the stabilized vacancy for the Subject was 15%. He does not, however, provide the source or the data that would support either the average vacancy rate coupled with the unspecified reserve for collection loss results in a stabilized vacancy rate of 15%. As a result, we conclude that the vacancy experience of the Subject is reflective of market and will adjust Petitioner's income analysis accordingly.

Petitioner's expert explained the methods that he considered when determining the direct capitalization rate. The first method extracts the overall capitalization rate from seven apartment properties that have sold; this resulted in an 8.96% capitalization rate. The second is the built up method. In this method the appraiser blends the return necessary to cover debt service and a return for the equity portion. Mr. Parker stated that he relied on Marcus & Millichap Capital Corporation's *Capital Alert* report on Multi-Family Loan Programs for December 2008. Using this method, Mr. Parker arrived at an overall capitalization rate of 8.9682. Parker concluded that the overall rate to be used for the Subject is 9.00%. The property taxes were excluded from the

expenses used to derive NOI because the Subject is being valued for purposes of a tax appeal. Consequently the property taxes have to be “loaded” into the overall capitalization rate to reflect a tax neutral position. This is done by dividing the tax rate (expressed as mills) by the level of assessment (50%) for a tax load of 2.74%. This is then added to the 9.00% to equal the overall rate to capitalize to be divided into the net operating income, the quotient of which give an indication of market value via the income approach. Our 2009 tax year income calculations are as follows:

POTENTIAL GROSS INCOME:

56 1-BR	\$795	\$534,240
28 1-BR	\$825	\$277,200
120 2-BR	\$885	\$1,274,400
60 2-BR	\$955	<u>\$687,600</u>
Potential Base Income		\$2,773,440
3 rd floor Premium		<u>\$31,690</u>
Potential Gross Rental Income		\$2,805,130
Less (3) Non-Income Units		(\$30,780)
Garage Income		\$79,200
Other Income		\$187,920
Potential Gross Income		\$3,041,470
Less Vacancy/Credit Loss (12.88%)		<u>(\$381,423)</u>
EFFECTIVE GROSS INCOME		<u>\$2,649,729</u>

EXPENSES:

Insurance	\$56,750	
Utilities	\$126,725	
Maint/Repair	\$62,050	
Decorating/Turnover	\$62,400	
Grounds	\$104,400	
Advertising	\$34,800	
Professional Fees	\$7,925	
Office Expense	\$106,375	
Payroll/Benefits	\$241,800	
Management Fee	<u>\$113,272</u>	
TOTAL OPERATING EXPENSES		<u>\$916,497</u>

NET OPERATING INCOME		\$1,733,232
Less Reserves/Replacement		<u>(\$66,000)</u>
NET ANNUAL INCOME		\$1,667,232
Net Operating Income divided by Overall Rate		
\$1,667,232 divided by	.1175 =	\$14,189,206
Less Rental Concessions		<u>\$92,400</u>
TRUE CASH VALUE		\$14,096,806

Under the circumstances of this case, Petitioner's income approach is accepted with some modification as the appropriate method to determine the market value of the 264-unit apartment complex. Petitioner's income approach was the only method that contained sufficient information for the Tribunal to base an opinion of value. After our modifications, the indicated value of the Subject for 2009 via the income approach is \$14,100,000 (rounded).

7. *2010 and 2011 True Cash Value*

Arriving at a true cash value conclusion for the Subject for tax years 2010 and 2011 is complicated somewhat as a result of excluding Petitioner's untimely appraisals covering those two years. We did, however, admit Petitioner's rent rolls for 2010 and 2011 which provide us with rental and vacancy information. Petitioner's asking rents remained constant through those years while its vacancy rate fell. However, we do not have evidence from which to obtain or derive a capitalization rate for each of those years, nor can we assume that capitalization rates remained constant from 2009 through 2011 as Respondent's evidence demonstrates that market was in decline during that period.

As a result, while Petitioner's evidence fails to carry its burden of establishing the true cash value of the Subject for 2010 and 2011, see MCL 205.737(3); *President Inn Props LLC v Grand Rapids*, 291 Mich App 625, 806 NW2d 342, 347 (2011), Respondent's evidence

demonstrates that market values for apartment complexes in the area of the Subject were in decline from 2009 levels, through 2010 and 2011. The level of decline as measured in Respondent's assessment records shows that values fell by 15.4% from 2009 to 2010. Adjusting our value conclusion for 2009 to reflect the market conditions as of the 2010 tax day, yields an indication of true cash value in the aggregate for all three parcels of \$11,930,000 (rounded). This same analysis shows that the market for the Subject property declined by 15.2% from 2010 to 2011, producing an estimated of true cash value, again, in the aggregate, for 2011 of \$10,120,000 (rounded).

V. CONCLUSION

The Tribunal has painstakingly reviewed the evidence and applicable law and concludes that based on the foregoing, a reduction in the assessment is warranted by the evidence in the record as a whole. Petitioner's income approach yields the most accurate valuation of the Subject and we have independently applied this approach. In arriving at our conclusion of value for tax years 2010 and 2011, we have extrapolated our value conclusion for tax year 2009 to each of the subsequent tax years at issue based on the percentage decrease in the market value for apartment complexes in the local area as indicated in Respondent's evidence. Respondent's evidence demonstrates that Parcel 1 represents 37.1% of the aggregate assessed value of the three parcels at issue. Parcels 2 and 3 comprise of 42.8% and 20.1%, respectively. Our final value conclusion for each tax year at issue is apportioned to each of the three parcels at issue accordingly. Therefore,

IT IS ORDERED that the officer charged with maintaining the assessment rolls for the tax year at issue shall correct or cause the assessment rolls to be corrected to reflect the

property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment, the subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Order within 28 days of the entry of this Order. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of the Tribunal's order. As provided in 1994 PA 254, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest rate of the 94-day discount treasury bill rate for the first Monday in each month plus 1%. As provided in 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after January 1, 1996 at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 1995 at the rate of 6.55% for calendar year 1996, (ii) after December 31, 1996 at the rate of 6.11% for calendar year 1997, (iii) after December 31, 1997 at the rate of 6.04% for calendar year 1998, (iv) after December 31, 1998 at the rate of 6.01% for calendar year 1999, (v)

after December 31, 1999 at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000 at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001 at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003 at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004 at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005 at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006 at the rate of 5.42% for calendar year 2007, and (xiii) after December 31, 2007 at the rate of 5.81% for calendar year 2008, (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (xvi) after December 31, 2010, at the rate of 1.12% for calendar year 2011, and (xvii) after December 31, 2011, at the rate of 1.09% for calendar year 2012.

This Opinion resolves all pending claims and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: March 19, 2012

By: Paul V. McCord