

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

Chand Professional Properties, Inc.,
Petitioner,

v

MTT Docket No. 439143

City of Southfield,
Respondent.

Tribunal Judge Presiding
Marcus L. Abood

FINAL OPINION AND JUDGMENT

Petitioner, Chand Professional Properties, Inc., appeals the ad valorem property tax assessment levied by Respondent, City of Southfield, against the real property owned by Petitioner for the 2012 tax year.

A hearing was held on May 5, 2014, to resolve the real property tax dispute. Mark P. Bucchi, attorney, and William R. Connolly, attorney at William R. Connolly & Associates, P.C., appeared on behalf of Petitioner. Sean M. Mulchay, attorney at Hallahan & Associates, P.C., appeared on behalf of Respondent. Naresh Chand and Michael Rende were Petitioner's witnesses, and Joey Lentine-Tomaszewski was Respondent's witness.

SUMMARY OF JUDGMENT

The subject property's 2012 True Cash Value ("TCV"), State Equalized Value ("SEV"), and Taxable Value ("TV"), as determined by Respondent, are:

Parcel Number	Year	TCV	SEV	TV
76-24-26-151-005	2012	\$1,727,360	\$863,680	\$863,680

Petitioner's contentions of the property's TCV, SEV, and TV are:

Parcel Number	Year	TCV	SEV	TV
76-24-26-151-005	2012	\$650,000	\$325,000	\$325,000

The Tribunal's conclusions are:

Parcel Number	Year	TCV	SEV	TV
76-24-26-151-005	2012	\$1,472,500	\$736,250	\$736,250

GENERAL PROPERTY DESCRIPTION

The subject property is located at 24450 Evergreen Road, in the City of Southfield, and within the County of Oakland, Michigan. The subject property is classified as commercial real property.

SUMMARY OF PETITIONER'S CASE

Petitioner contends that the subject property was assessed in excess of 50% of its fair market value for the tax year at issue and presented testimony from Naresh Chand, a 50% shareholder of Petitioner, and Michael Rende, MAI, Certified General Appraiser, to support its contentions. Additionally, Petitioner requests costs¹ and offered the following exhibits, which were admitted into evidence:

P-3: Petitioner's Valuation Disclosure

Mr. Chand testified as to the acquisition of the subject property, including the impetus for the same, along with the subject property's characteristics. In that regard, Mr. Chand stated that he is a physical therapist and owns Oakland Physical Therapy, and Petitioner, formed to purchase properties for Oakland Physical Therapy, acquired the subject property on June 28 2012, via land contract, for \$1,472,500. Mr. Chand further stated that Petitioner's primary motivation for purchasing the subject property was based on its location between Providence Hospital and Botsford Hospital, which employ doctors who refer patients to Oakland Physical Therapy, and the fact that he "was paying lot higher rent where [he] was before" (TR, p 14) Mr. Chand stated that he did not have any professional assistance in consummating the acquisition of the subject property, and approximately two to three months after purchasing the subject property, he refinanced the loan with Comerica Bank because of low interest rates. Mr. Chand indicated, however, that the loan with Comerica Bank was only "around \$700,000," because the bank's appraisal valued the subject property at approximately \$900,000, and "Comerica [would] not give [him] more than [a] certain percentage of the appraised value." (TR, p 13)

¹ In its closing statement, Petitioner, through its authorized representative, stated that "for several months [it] has been led to understand that what it had to contend with was a valuation disclosure issued by Mr. Tijerina, who for no explained reason, chose not to be here today," arguing that it "has been given something of a runaround in the process of this case and ought to recover its costs for being put to this expense." (TR, p 187)

With regard to the characteristics of the subject property, Mr. Chand testified that the subject's building is approximately 33,000 square feet, and Oakland Physical Therapy occupies approximately a tenth of that. Mr. Chand further stated that he "had several surprises" after purchasing the subject property. (TR, p 14) Specifically, Mr. Chand stated that he was under the assumption that the electric bill for the subject's building was only going to be approximately \$5,000 per month, but the average monthly electric bill was \$15,000 during the winter because the subject's building only has electric heat, and "electric heat surprisingly was very high" (TR, p 15) Mr. Chand further stated that there are several other tenants that lease a portion of the subject's building; however, the entire building is not occupied, as it is currently 20-25% vacant and was 35-40% vacant when Petitioner purchased it. Additionally, Mr. Chand testified that he and his wife, also a 50% shareholder of Petitioner, viewed the interior of the subject's building prior to the acquisition; space within the subject's building is leased at "[a]pproximately \$10 per square foot gross;" he did not know the seller (i.e., Platinum Enterprises) when purchasing the subject property; and 30-40% of the tenants in the subject's building have month-to-month leases. (TR, p 22) Mr. Chand also stated that he owns three other, smaller, commercial properties, which he purchased "close to Millenium 2000" based on their proximity to hospitals because his other businesses also occupy space there which similarly receive business through referrals from doctors at hospitals. (TR, p 32)

Mr. Rende, qualified as an expert witness, testified as to the valuation disclosure he prepared in this case. Mr. Rende stated that he opined that the true cash value of the subject property was \$650,000 for the 2012 tax year based on a physical inspection of the subject property on December 3, 2013, wherein he inspected "the suite occupied by Mr. Chand . . . [a]nd then two of the vacant suites" (TR, p 100) He testified that access to the subject property is "well located" as "it is certainly close to the Lodge" and "within a reasonable distance of Southfield and 696" (TR, pp 110-111) With regard to the improvements on the subject property, Mr. Rende testified that the subject's building is 44 years old, and that "when this building was constructed[,] it was probably perceived by the market that its economic life or typical life would be about 45 years because that's what was typical of offices in that time frame." (TR, p 50) Mr. Rende further testified that he determined the useable square footage of the subject's building based on the rent roll that he received from Mr. Chand, and he would grade this building as a "very low class B or a class C building" based on "[t]he age of the

building, its lack of significant renovation, its location, general inefficiencies of the building; et cetera.” (TR, p 51) As to the heating system for the subject’s building, Mr. Rende testified that he “was shocked,” stating that “[i]n the 30 years [he’s] been doing this, [he doesn’t] recall running across another . . . office building that was electrically heated . . . because it is highly inefficient and not cost effective and it’s for that very reason that the vast majority of office buildings utilize gas heat.” (TR, p 52) Mr. Rende, therefore, contends that this characteristic “reduce[s] the value of the building.” *Id.* Mr. Rende further stated the subject property was on the market for at least two years and was originally listed for \$2.7 million. While Mr. Rende admitted that he did not have a rent roll for the subject property as of December 31, 2011, he opined that “the majority of the information [on the rent roll that he was given as of June 29, 2012] is accurate;” “some of [the leases on the rent roll] are what [he] perceive[s] to be market, some are below;” and the vacancy rate for the subject property, “[s]adly,” paralleled the market vacancy rate in Respondent’s jurisdiction during the tax year at issue. (TR, pp 54, 55, 102) Mr. Rende further stated that higher rates of vacancy affect true cash value, and the revenue from tenants on a month-to-month lease “is far less secure than if you had a building that was leased to credit tenants for 5-, 10-, 15-year terms.” (TR, p 56) Mr. Rende testified that the subject property’s highest and best use is its current use as a multi-tenant rental property, and the subject property is zoned O-S (Office Service District), essentially rectangular in lot shape, and in fair to average condition. Mr. Rende further testified as to the proximity of Respondent’s jurisdiction with respect to other jurisdictions, acknowledging that if the subject property were located nine miles from its current location, it “certainly” would have an effect on its true cash value; that the subject property “is located south of 10 Mile in an area of the community that is generally regarded as older and less desirable;” and that the true cash value of the subject property was significantly impacted by the economic downturn in 2008. (TR, p 62)

With respect to the approaches he employed in developing a true cash value for the subject property, Mr. Rende testified that he did not develop the cost approach because “quantifying the various . . . losses from the various forms of obsolescence is difficult . . . [and] even if [he] had used a cost approach[, he] would have completely ignored whatever indications may have resulted.” (TR, p 66) His indication of value from the income approach is \$525,000 and a value indication of \$675,000 for the sales comparison approach. In the reconciliation of the two approaches to value, Mr. Rende testified that the subject is an income producing property

but “given the economic conditions that prevailed as of the valuation date, December 2011, investors were pretty much out of the market” (TR, pp 80-81) As such, he placed most weight and consideration on the upper range of the sales comparison approach.

In the development of the income approach, Mr. Rende applied the direct capitalization method to derive a true cash value by comparing “properties that [he] thought would compete with the subject in attracting tenants” and taking into consideration, among other factors, a “25-percent reduction for vacancy and credit loss,” the latter of which Mr. Rende admits is lower than the actual vacancy rate. (TR, pp 67, 69) When questioned as to why he cited statistics in his appraisal report from 2012 even though the applicable valuation date is December 31, 2011, Mr. Rende stated that “[f]or whatever reason [he] didn’t have access to the 2011,” but that “using information from before and/or after [the applicable valuation date] . . . is [not] inappropriate.” (TR, p 111) Mr. Rende further testified that he often utilizes information from other reports, and the City of Southfield being a “two-tiered market” is his own theory, “but it seems relatively clear if you look at the market activity and the difference in the properties south of 10 Mile versus those north of 10 Mile.” (TR, p 113) Mr. Rende stated that rentals 1, 5, and 6 are located south of 10 Mile Road, and rentals 2, 3, and 4 are located north of 10 Mile Road. According to Mr. Rende rental 1 was considered either a C or low-class B building, and he was not aware of any lease transactions for this comparable that were solidified in 2011. For rental 2, Mr. Rende stated that this is a multi-tenant office building, which he considered to be class B. As to rental 5, Mr. Rende testified that he previously appraised this property and stated that this building was a class A building when it was originally built, but “[g]iven the vicissitudes of time, wear[,] and tear on the building and the decline in the neighborhood[, he] think[s] that the market would consider it to be a class B building.” (TR, p 141) Mr. Rende stated that he applied a 10% adjustment for market conditions to rental 4 because it “was a current offering, not a ‘done deal,’ . . . [to] reflect the fact that there typically are negotiations between landlord and tenant.” (TR, p 142) In determining effective gross income, Mr. Rende testified that the income is pro forma, and the unit rates were “applied to the usable building area.” *Id.* Mr. Rende further testified that the subject property’s expenses, excluding property tax, amounts to a price of \$6.28 per square foot, which he concedes “probably favors the lower end of the range [of his expense comparables located in his appraisal].” (TR, 143) Mr. Rende, however, in rationalizing the prior statement, stated that while “some of these buildings have expenses that are approaching \$10 a foot or

higher[,] . . . they are generally much better buildings . . . [, a]nd you also have to consider the fact that the 628 concluded for the subject is excluding property taxes while the summary on page 100 includes taxes and all other expenses.” *Id.* Mr. Rende stated that he “concluded that the subject should be capable of generating a stabilized rent of \$12 a square foot on a totally gross basis.” (TR, p 147) Mr. Rende then testified that the stabilized \$12 rent was multiplied by the 27,366 usable building square feet and then applied a 25% vacancy and credit loss, then subtracted expenses (excluding property taxes) to establish his stabilized net operating income estimate of \$74,435. The net operating income was applied to a loaded capitalization rate of 14.1164%, to arrive at a true cash value of \$525,000. (TR, 160) Mr. Rende further testified that “it is a normal procedure” to load the capitalization rate when property taxes are not included as an expense, the market was substantially similar in 2011 and 2012. As to why he did not use any sales after 2009 to establish a capitalization rate for the relevant tax date at issue (i.e., December 31, 2011), Mr. Rende stated that he “couldn’t identify any [sales] that [he] was comfortable in using [because t]hey were tainted for any number of reasons.” (TR, p 160)

In the development of the sales comparison approach, Mr. Rende testified that he “depict[ed] what has happened to the office market over [a] three-year period,” and then “narrowed [his] focus to . . . seven of [his 14 2011 sales] because [he] thought that they were most indicative of the market and competitive with the subject.” (TR, p 71) Mr. Rende reasoned the use of sales that contained more than 10,000 square feet. He testified that properties with less than 10,000 square feet “attract primarily owner/occupants; people who are looking for . . . a facility out of which they can [run] a profitable business,” whereas properties with more than 10,000 square feet are more likely to attract a buyer that is “[m]ore likely . . .” to be a landlord. (TR, p 72) Further, he testified that all of his sales comparables have gas heat; of “buildings 10,000 feet to 250,000 feet[,] . . . in 2011 [the percentage of REO sales in Southfield, Troy, and Farmington Hills] was about 35 percent;” and if sheriff sales are included, this percentage increases to over 40%. (TR, p 77) Mr. Rende testified that “[he doesn’t] think it’s appropriate to ignore [these types of sales] because they’re such a huge part of the market,” and they “make[] it more difficult for non-bank properties to sell or at least it has the potential of making it more difficult.” (TR, p 78) Mr. Rende, however, despite the foregoing, stated that he “didn’t rely on [REO sales],” since he only “relied on three [sales],” those being sales 1, 10, and 12. (TR, pp 78, 119) Upon further inquiry as to the comparable sales that he relied on, Mr. Rende testified that

sale 1 was a land contract sale, and he considered this sale to be an arms-length transaction because “[he] assumed that the terms of the contract were similar to typical market parameters but [he] also acknowledge[d] that the terms were undisclosed.” (TR, p 119) He believes sale 1’s quality of construction was “generally similar” to the subject property. (TR, p 120) This sale is located north of 10 Mile Road. (TR, pp 119-120) Next, sale 10 was also assumed to be an arm’s-length transaction of a single-tenant building. Mr. Rende further testified that although he indicated that this comparable has extensive deferred maintenance, which he opined can affect the sale price, he could not recall the source of that information. Finally, sale 12 is a multi-tenant building which was an arm’s-length transaction. This sale conveyed a leased fee interest, meaning “that there were lease encumbrances or tenants in the building,” and he performed an exterior inspection of the property. (TR, p 130) With regards to adjustments for all of his comparable sales, Mr. Rende testified that he only made “[s]pecific adjustments . . .” for market and financing conditions; “[b]eyond that point[, he] just rated them.” (TR, p 132) Petitioner’s indication of value for the sales comparison approach is based on an adjusted \$20 per square foot applied to the subject’s gross building area of 33,600 to arrive at \$675,000 (rounded).

SUMMARY OF RESPONDENT’S CASE

Respondent contends that the property was properly assessed for the tax year at issue and presented testimony from Joey Lentine-Tomaszewski, Respondent’s commercial appraiser, to support its contentions. Additionally, Respondent offered the following exhibits, which were admitted into evidence:

R-2: Property Transfer Affidavit

R-4: Seller’s Statement

Ms. Lentine-Tomaszewski testified as to how Respondent assessed the subject property for the tax year at issue. She testified that Respondent utilized the cost approach in concluding that the state equalized and taxable values of the subject property were \$863,680 for the 2012 tax year. Respondent contends this is supported by a land value of \$549,822 (based on market data of \$7.00 per square foot) and an improvement value of \$588,770. Ms. Lentine-Tomaszewski stated that a cost approach takes into consideration “[t]he class of the building, the quality, the square footage, the building height, type of heating and cooling and the land value and any improvements to the land.” (TR, p 171) Ms. Lentine-Tomaszewski further testified that she

inspected the property “early in 2000 . . . ,” but she was not sure whether the heat at the subject property was gas or electric. (TR, p 176) Ms. Lentine-Tomascewski also testified that, in preparing the assessment using BS&A software, she determined the economic condition factor to be 0.580 for the subject’s building for the tax year at issue, and the building was automatically depreciated 2% for each year of age. Lastly, she stated that the subject’s building, based on a prior judgment call, is designated “medical office building,” which “can be 50 percent medical, 50 percent regular office,” and the subject’s building is a class C structure. (TR, p 182)

FINDINGS OF FACT

1. The subject property, located at 24450 Evergreen Road in the city of Southfield, county of Oakland, is classified as commercial real property.
2. The subject property consists of a two-story multi-tenant office building, built in 1970, with a gross building area of 33,600 square feet on a site of 78,546 square feet.
3. The subject’s building is heated by an electric-powered furnace.
4. The subject property is zoned OS, Office Service.
5. The subject property is located south of 10 Mile Road.
6. The subject property was initially listed for sale in 2010 for \$2,400,000.
7. Petitioner purchased the subject property on June 28, 2012, via land contract, for \$1,472,500. (TR, pp 9, 29)
8. Petitioner purchased the subject property based on hospital proximity and physician referrals. (TR, pp 10, 32) Petitioner also took into consideration the amount of rent it paid at its prior location in Southfield, Michigan.
9. Petitioner looked at the subject building before the purchase transaction. Petitioner also looked at several buildings in the area but was more familiar with the subject over other buildings. (TR, p 20)
10. Petitioner received the rent roll for the subject building before the purchase transaction. (TR, p 23)
11. Petitioner owns three other buildings located in Madison Heights, Sterling Heights and Wyandotte. (TR, p 24)

12. Petitioner purchased the vacant lot next to the subject property for \$97,500. This vacant lot is currently on the market for \$350,000 but Petitioner is planning on reducing the asking price. (TR, pp 34-35)
13. Petitioner purchased the subject property on land contract terms then approximately two to three months later refinanced the property with Comerica Bank. (TR, p 11)
14. Comerica Bank's appraisal concluded that the subject property's true cash value was approximately \$900,000.
15. Petitioner occupies approximately 3,500 square feet of the subject building's total square footage. (TR, p 10)
16. Petitioner engaged Mr. Michael Rende to develop and communicate a valuation disclosure in the form of a narrative, summary appraisal report.
17. Petitioner's appraiser, Michael Rende, is a Certified General Real Estate Appraiser in the state of Michigan. In accordance with Article 26 of the Occupational Code, licensed real estate appraisers in the state of Michigan are required to adhere to the *Uniform Standards of Professional Appraisal Practice* ("USPAP").
18. The effective date of valuation for this appeal is December 31, 2011.
19. Petitioner's appraiser physically inspected the subject property on December 3, 2013.
20. Petitioner's appraiser signified an "underlying assumption that the . . . physical characteristics of the subject property are . . . unchanged as of December 31, 2011, from the . . . onsite inspection performed [on] December 3, 2013." (Petitioner's Exhibit P-3, p 73)
21. Petitioner's appraiser did not include any extraordinary assumptions² within his appraisal report.
22. Petitioner's appraiser did not develop or communicate a cost approach to value because "quantifying the various . . . losses from the various forms of obsolescence is difficult . . . [and] even if [he] had used a cost approach[, he] would have completely ignored whatever indications may have resulted." (TR, p 66)

² The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice*, (Chicago: 2012-2013 Edition), pp U-3, U-18, U-85 and 86.

23. Petitioner's appraiser developed and communicated the income and sales comparison approaches to conclude to a reconciled true cash value of \$650,000 for the subject property for the 2012 tax year.
24. Petitioner's appraiser relied on the rent roll received from Mr. Chand for the determination of net rentable area for the subject building. (TR, p 51)
25. Petitioner's appraiser relied on information from the Edwards bank appraisal. However, Mr. Rende had concerns over the Edwards bank appraisal. (TR, p 84)
26. Petitioner's appraiser copied the Edwards bank appraisal rent roll (labeled page 16) directly into his appraisal report. (Petitioner's Exhibit P-3, Addendum, p 141)
27. Petitioner's appraiser did not have a rent roll for December 31, 2011, but utilized a rent roll (as of June, 2012) taken from the bank appraisal report. (TR, pp 53-54)
28. Petitioner's appraiser did not recall the actual number of suites he inspected in the subject building. (TR, p 100)
29. Petitioner's appraiser analyzed the subject's heat system within the income approach. (TR, p 69)
30. Petitioner's appraiser was unaware of the Bassay Home Center lease in October, 2011 within the Crescent Center (rental 1). (TR, p 137)
31. Petitioner's appraiser had only minimal historical income and expense information which he received from Mr. Chand. (TR, p 143)
32. Petitioner's appraiser utilized actual occupancy information as of June 29, 2012, in developing an income approach.
33. As of June 29, 2012, the subject's building was 68% tenant-occupied and 32% vacant.
34. Petitioner's appraiser disclosed 16 capitalization comparable sales. None of the sales occurred after 2009. Mr. Rende did not disclose the source for these capitalization comparable sales. (TR, pp 107-108)
35. Petitioner's appraiser utilized six rental comparables in his income approach.
36. Petitioner's rental comparables are all located in Southfield, Michigan, and evidence rental rates of \$9.60 to \$16.16 per square foot on a gross basis between April 2009 and June 2012.
37. Petitioner's appraiser's rental 2 is an office building and does not have medical offices.
38. Petitioner's appraiser's rental 4 is a current lease offering.

39. Petitioner's appraiser's rental 6 is incorrectly identified as an industrial property in the appraisal report. Mr. Rende testified that the correct property type is as office.
40. Petitioner's appraiser previously appraised rental 5 but this fact was not disclosed in his appraisal report.
41. Petitioner's appraiser concluded to a price of \$12.00 per square foot on a totally gross basis reasoning that "it is anticipated that a final stabilized rent for the subject should fall below the low end of the range of those comparables rated superior and within the range of those comparables rated similar," along with taking into consideration "unquantifiable market variables" (Petitioner's Exhibit, P-3, p 96)
42. Petitioner's appraiser utilized seven sales within his market comparative analysis.
43. Petitioner's comparable sales data has an unadjusted price per square foot range of \$9.12 to \$93.09. The adjusted price per square foot range is \$8.12 to \$93.09.
44. Petitioner's appraiser believed the subject has a good location in terms of accessibility and proximity to freeways. (TR, p 111)
45. Petitioner's appraiser was unclear about the level of information he received from CoStar relative to his membership from this data service. (TR, p 112)
46. Petitioner's appraiser relies on information from past reports to develop and communicate current appraisal reports. (TR, p 113)
47. In general, Petitioner's appraiser did not place any reliance on listing information in preparing appraisal reports. (TR, p 119)
48. Petitioner's appraiser inspected and appraised sale 2 but did not disclose this in his appraisal of the subject property. (TR, p 124)
49. Petitioner's appraiser opined that sale 10 had extensive deferred maintenance, but could not recall the source of this information, and if the grantor had a property tax exemption and if that exemption was transferable, Petitioner's appraiser opined that the sales price could be affected. (TR, p 129)
50. Petitioner's appraiser assumed sales 1, 8 and 10 were arm's-length transactions.
51. Petitioner's sale 1 was sold via land contract, and the terms were undisclosed.
52. Petitioner's sales 2, 5, 8 and 14 were REO bank sales.
53. Petitioner's sale 12 was an arm's-length transaction.
54. Petitioner's sales 1 and 12 sold with leases in place.

55. Petitioner's sales 8 and 10 are single-tenant occupied properties.
56. Petitioner's appraiser did not review the leases in place for sale 12.
57. Petitioner's appraiser admitted to a typographical error in the price per square foot for sale 14. The correct price per square foot is \$93.09 and not \$84.63. (TR, p 79)
58. Petitioner's appraiser testified that he only made "[s]pecific adjustments . . ." for market and financing conditions to his sales comparables; "[b]eyond that point[, he] just rated them." (TR, p 132)
59. Petitioner's appraiser cited seven additional office sales including the sale of the subject property. (Petitioner's Exhibit, P-3, p 135)
60. Petitioner's appraiser's testimonial and documentary evidence did not include any change in market conditions between the December 31, 2011 tax day and the purchase date of June 28, 2012, for the subject property.
61. Respondent utilized the cost approach in developing its annual assessment of the subject property for the 2012 tax year and concluded to a true cash value of \$1,727,360.
62. Respondent did not offer its valuation disclosure for admission at the hearing.

APPLICABLE 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).

CONCLUSIONS OF LAW

Petitioner considered all three approaches to value, but only developed the sales and income approaches to value. Respondent did not submit a valuation disclosure. Petitioner's appraiser was charged with determining the market value of the subject property for the 2012 year under appeal. Respondent was charged with defending the assessments for the subject property for the 2012 tax year.

As noted in the extensive findings of fact, Petitioner's appraisal has inconsistencies and misconceptions. Petitioner's appraisal report lacks certain elements of analysis, narration, and verification in the valuation of the subject property. Petitioner's appraiser's choice to invoke professional ethics and standards does not coincide with his efforts to demonstrate credible appraisal results. For example, Mr. Rende's scope of work is less than sufficient in laying the groundwork for the rest of his report. Acknowledging an underlying assumption for the condition of the subject property, from the retrospective tax day to the date of Mr. Rende's property inspection, is vague and broad. "Unlike general assumptions, which often apply to many typical appraisal assignments (and unfortunately are sometimes treated as boilerplate), extraordinary assumptions are specific to the assignment at hand."³ In the present case, the tax

³ Appraisal Institute, *The Appraisal of Real Estate*, (Chicago, 14th ed, 2013), p 53.

appeal is premised upon a tax date set in the past. Specifically, extraordinary assumptions for retrospective dates of valuation are not only noteworthy but commonplace in appraisal practice and theory. This technical assumption would surely be applicable to Mr. Rende's assumption of arm's length transactions for his comparable sales 1, 8, and 10. No support or rationale was given as to why these particular sales were considered to be arm's length in nature. Next, the vague reference to and reliance on various rent rolls after the relevant tax date do not bolster the analysis of rents for the subject building as of December 31, 2011. On one hand, Mr. Rende relied on a copy of a rent roll from a bank appraisal in the addendum of his report. On the other hand, Mr. Rende had concerns about the bank appraisal that he took information from. Lastly, Mr. Rende could not even recall the number of suites that he observed on the day of his inspection. These initial examples point to a deficient scope of work. As will be discussed further, Petitioner's appraiser's income and sales comparison approaches give rise to issues of credibility.

Within Petitioner's income approach, Mr. Rende was unaware and unable to account for a 2011 lease for one of his rental comparables. Likewise, his lack of acknowledged updates and verification for the utilization of sales and rental data does not bolster his credibility. An appraiser's office files and data are not static; periodic updates, reviews and verifications are necessary to keep up with market changes. Again, this is a well-known responsibility within the appraisal industry. Closely related are Mr. Rende's attainment, verification and reliance on rent rolls for the subject property from Mr. Chand and the Edwards bank appraisal. The lack of due diligence for rent rolls other than one as of December 31, 2011, is peculiar in light of Mr. Rende's doubts over the Edwards bank appraisal. Next, the source for the capitalization comparable sales was not identified or disclosed. Moreover, none of these capitalization sales

occurred after 2009 and do not lend support to the appraiser's band of investment methodology. For these reasons as well as the appraiser's limited reliance of this approach in his reconciliation of true cash value, the income approach is given no weight or consideration in this independent determination of value for the subject property.

Petitioner's developed and communicated sales comparison approach provides a customary and conventional presentation of a comparative analysis. However, Mr. Rende's own testimony and lack of disclosure within his report paint a different picture. The disclosure of previously appraised rental and sale comparables is a valuable tool that any appraiser should use to support their opinions, analyses and conclusions. Mr. Rende testified that he appraised a rental property and sale property that were utilized in his approaches, but this fact was not disclosed or analyzed within his report. Regarding the subject's heating system, Mr. Rende acknowledged that electric heat impacts the value of the subject but he did not articulate where this item was applied in his comparative analysis grid. Next, the unadjusted and adjusted range of prices per square foot in the sales comparison approach is extremely wide, as admitted by Mr. Rende. "The inconsistencies in this analysis are acknowledged" (Petitioner's Exhibit P-3, p 134) This admission reflects the appraiser's unreliable analysis as well as unreliable comparative data. Petitioner's sales 2, 5, 8 and 14 were REO bank-owned sales and were given no weight as testified to by Mr. Rende. Sale 10 had significant deferred maintenance that Mr. Rende did not account for in the comparative analysis. Sale 1's adjusted unit of comparison of \$8.21 per square foot is an extreme outlier to the dataset. Therefore, Petitioner's remaining sale 12 is the only reasonable arm's length sale for comparison to the subject property. But for sale 12, Petitioner's appraisal is not meaningful and is misleading.

The remaining item of consideration is the subject's purchase price of \$1,472,500 which is supported by Petitioner's adjusted sale price of \$1,430,000 to sale 12. Petitioner's motivation to purchase the subject for hospital proximity and physician referrals is reasonable in a business context. In other words, Petitioner has not proven that the purchase of the subject property was not commensurate with market value.⁴ The Tribunal is not persuaded that Petitioner was unaware of the electric heating system in light of Petitioner's inspection of the subject building. Further, Petitioner's noted purchase of other office buildings indicates a level of market knowledge and sophistication. The subject property was properly exposed to the market, and Petitioner purchased the subject substantially below the initial price offering. Testimonial and documentary evidence does not indicate that Petitioner's actions were based on anything other than typical market motivations. Petitioner was not under personal or professional duress when he elected to purchase the subject on land contract terms and only months later go through a bank refinance situation. Petitioner testified that the Comerica Bank valuation of the subject property was approximately \$900,000 just a couple of months after Petitioner purchased the subject property. However, the Tribunal is unable to determine the credibility of that valuation since the bank appraisal was not offered for admission nor was the Tribunal able to question that appraiser to determine if the assignment type (i.e. scope of work) affected his or her opinion of value.

The Tribunal finds that the income and sales data from Petitioner shows that the subject property was over-assessed for the tax year under appeal. As such, and in light of the above, the Tribunal finds that Petitioner has succeeded in meeting its burden under MCL 205.737(3). The purchase price of the subject property, as well as Petitioner's sale 12, are germane to render a

⁴ Appraisal Institute, *The Dictionary of Real Estate Appraisal*, (Chicago: 5th ed, 2010), pp 122-123.

reconciled value conclusion for the 2012 tax year, and, as such, the Tribunal finds Petitioner's purchase price of the subject property is supported by Petitioner's sale 12 in this independent determination of true cash value, indicated herein.

Petitioner also requests costs in this case for a claimed "runaround in the process of this case" (TR, p 187) In that regard, MCL 205.752 states that "[c]osts may be awarded in the discretion of the tribunal," which the Tribunal adopted in its procedural rules. See TTR 209. TTR 209(1) states that "[t]he tribunal may, upon motion or its own initiative, award costs in a proceeding, as provided by section 52 of the act, MCL 205.752." While the decision to award costs is solely within the discretion of the Tribunal, the Tribunal is not convinced that Respondent's trial strategy, of not offering an exhibit for admission or calling a witness on its witness list, warrants granting costs to Petitioner in this case. Further, although Mr. Tijerina was listed as a witness on both parties' witness lists, Mr. Tijerina was not *required* to appear at the hearing absent a subpoena, and Petitioner did not use its subpoena power under TTR 253 to compel Mr. Tijerina to appear at the hearing.

JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax year at issue are MODIFIED as set forth in the Summary of Judgment 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 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: Marcus L. Abood

Entered: July 31, 2014