

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

VonKaler Enterprises, LLC,
Petitioner,

v

MTT Docket No. 433087

City of Tecumseh,
Respondent.

Tribunal Judge Presiding
Preeti P. Gadola

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, VonKaler Enterprises, LLC, appeals ad valorem property tax assessments levied by Respondent, City of Tecumseh, against Parcel No. XTO-300-0800-00 for the 2012 tax year.

Roland VonKaler, represented Petitioner, and R. Scott Baker, Attorney, represented Respondent.

A hearing on this matter was held on November 18, 2013. Petitioner's sole witness was Roland VonKaler. Respondent's sole witness was Amanda Lacelle. Petitioner's contentions of true cash value ("TCV"), state equalized value ("SEV"), and taxable value ("TV"), for the 2012 tax year, are as follows:

Parcel Number: XT0-300-0800-00

Year	TCV	SEV	TV
2012	\$800,000	\$400,000	\$400,000

Respondent's contentions of value of the tax roll:

Parcel Number: XT0-300-0800-00

Year	TCV	SEV	TV
2012	\$1,338,200	\$669,100	\$578,126

Based on the evidence, testimony, and case file, the Tribunal finds that the TCV, SEV, and TV of the subject property for the years under appeal are as follows:

Parcel Number: XT0-300-0800-00

Year	TCV	SEV	TV
2012	\$907,200	\$453,600	\$453,600

PETITIONER'S CONTENTIONS

Petitioner contends that the subject property is a multi-unit apartment complex spread over three buildings having 12 units in two buildings and 11 units in the third. The subject was built in 1964 and has not been updated. The common areas include the hallways and two laundry rooms with coin-operated machines. Petitioner contends that the actual rental rates of the apartments are appropriate and reflect what the market is willing to pay.

Petitioner submitted two approaches to value, the income approach and the sales comparison approach. Under the income approach, Petitioner contends that actual income and expenses were used and that the vacancy rate was derived by comparing the actual income to the income that would be derived if the complex was fully rented. A capitalization rate of 12 percent was utilized by Petitioner. Petitioner's sales comparison approach included sales from the City of Adrian which is twelve miles from the subject property. Petitioner contends, however, that the Adrian sales are the most recent sales near the subject and that they indicate the subject property is over-assessed.

Petitioner contends that Respondent's cost approach does not accurately reflect the value of the subject property. Specifically, that the property record card improperly addresses the

condominiums, which are not part of the subject property, including acreage that Petitioner contends was split from the subject property. Petitioner indicates that Respondent's cost less depreciation approach has numerous errors including the number of units and the rental rates. Petitioner submitted a rent study reflecting rental rates of properties in Tecumseh and Adrian to document that the rates used by Respondent are inappropriate.

PETITIONER'S ADMITTED EXHIBITS

- P-1 2011 Expense Data
- P-2 2012 Expense Data
- P-3 2011 Rent Data
- P-4 2012 Rent Data
- P-5 Cap Rate Study 2011
- P-6 Cap Rate Study 2012
- P-7 Rent Study for Tecumseh
- P-8 Comparable sales
- P-8 Water Bill Study

PETITIONER'S WITNESS

Roland VonKaler

Roland VonKaler, Petitioner's witness, testified that the income approach to value presents a more reliable indication of the subject property's fair market value than Respondent's cost approach. Mr. VonKaler testified that the income and expenses he utilized are the subject property's actual income and expenses. The vacancy rate was determined by calculating the total

possible income and deducting the actual income resulting in a 7.8 percent vacancy rate.

Transcript at 14. Petitioner also testified that this method of calculating vacancy includes rental arrears, meaning the apartments which are not vacant but are not current in rental payments. Mr. VonKaler testified that he utilized a 12 percent capitalization rate and that the expenses used in his income approach do not include any expenses that are not associated with the subject property. Specifically, the expenses are not related to the neighboring condominium association.

Transcript at 21. Petitioner admits that the expenses, including the water bill, include the cost relating to the operation of the laundry rooms. However, Petitioner failed to include the income derived from the operation of the laundry room. Transcript at 23-24. Petitioner testified that the income from the coin operated machines ranges from \$550 to \$600 per month. Transcript at 25.

Mr. VonKaler testified that his actual income and expenses are more accurate than the income and expenses presented in Respondent's income approach, because the subject apartments are rented for the price that the market can support. Specifically, he stated that if he increased his rental rates to what Respondent suggests, he would have vacant apartments. Transcript at 15. Mr. VonKaler also testified that his belief is based upon his experience in the subject market since 1985; therefore, although he has not submitted a study with empirical data, the vacancy rate would be much higher if he had higher rental rates. Transcript at 37-38. He also testified that the subject property was built in 1964 and has not been updated. Mr. VonKaler testified that small apartments in the complex rent for \$400, one bedroom apartments rent for \$490 per month, and two bedroom apartments rent for \$580 per month. Mr. VonKaler provided a rental study examining the rental rates of other apartments in the area to demonstrate that his rental rates are

market based. He indicates that the most comparable apartment complex is Town and Country Apartments which rents two bedroom apartments for \$580 per month. Town and Country Apartments was built in 1965, which is a similar age to the subject apartments. Transcript at 17.

Mr. VonKaler also testified that his sales comparison approach contains two sales of apartment complexes in Adrian which is only 12 miles from the subject jurisdiction. Transcript at 18. Comparable No. 1, River Bend Apartments has 96 units and sold for \$2,300,000, which is \$23,958 per unit. Comparable No. 2, the Four Seasons Apartments contains 104 units and sold on May 8, 2012, for \$18,509 per unit. Both of these complexes are more valuable than the subject as they are fairly new, unlike the subject property, and have handicap accessible apartments. See Transcript at 18. Petitioner testified that he did not make adjustments for difference in location or any rental control restrictions. Transcript at 34-36. The subject property was sold on land contract for \$2.3 million. This sale included all five buildings and not just the subject property. Transcript at 31.

RESPONDENT'S CONTENTIONS

Respondent contends that the subject property's true cash value is supported by the cost less depreciation approach and Respondent's income approach to value. Respondent contends that its cost approach properly applies the costs from the Michigan Assessor's Manual and its income approach utilizes market rents and expenses. Respondent contends that the combination of these two approaches demonstrates that the subject is properly and fairly assessed.

RESPONDENT'S ADMITTED EXHIBITS

- R-A Subject's 2014 Property Record Card
- R-B Aerial Map of Subject Property
- R-C Public information on Petitioner's comparables located in City of Adrian
- R-D Photographs of the subject property
- R-E Respondent's Revised Income Analysis
- R-F Petitioner's data on Subject Property

RESPONDENT'S WITNESS

Amanda Lacelle

Amanda Lacelle, Respondent's Assessor, testified that she has been the Assessor in the City of Tecumseh since 2002. The subject property is a multi-family apartment complex containing 35 units. Ms. Lacelle testified that the true cash value of \$1,338,200 is an accurate reflection of the fair market value of the property for the 2012 tax year based upon the cost approach and the income approach utilizing market rents. Transcript at 43. She stated that she believes the subject's highest and best use is as a high-end apartment complex as it is "an all brick apartment complex, very centrally located within the city. Visible, yet off the road. Very private." *Id.*

Ms. Lacelle testified that the cost approach includes land value based upon land sales and that the property record card reflects the calculations based upon the square footage of the subject property and its depreciation. See Transcript at 43-44. She also stated that there were no sales of similar apartment complexes thus; the sales approach was not used. Ms. Lacelle testified that the

sales used by Petitioner are not similar to the subject because they are located in the City of Adrian, a completely different market which has suffered a greater economic decline than the City of Tecumseh. Transcript at 45.

Rather than the sales comparison approach, Ms. Lacelle prepared an income approach which also supports the assessment. She testified that she used rental rates of \$625 per month for two bedroom units and \$550 for one bedroom units. This was considered conservative because it is lower than Conklin Estates, an apartment complex in the subject jurisdiction, but “they’re probably . . . more fair with like properties on the west end of town.” Transcript at 48. She utilized a 10 percent loss or vacancy rate, expenses of taxes, insurance, and maintenance, and applied a 12 percent capitalization rate. She specifically stated that the 10 percent vacancy rate is typical for apartments similar to the subject and the 12 percent capitalization rate was derived from discussing typical capitalization rates with assessors and the equalization director. See Transcript at 48-49. “[I]t is a fair assessment of the capitalization rate from professional sources, expert sources.” Transcript at 50.

FINDINGS OF FACT

1. The subject property is identified as Parcel No. XT0-300-0800-00 and is located at 300, 400, and 500 Marlboro Court, Tecumseh, Michigan.
2. The subject property is classified as commercial real property.
3. The subject property is an income producing property which is currently used as a multi-family apartment complex with 35 units including 28 two bedroom units, 6 one bedroom units, 1 smaller unit, and two laundry facilities with coin operated machines.

4. Both parties presented the income approach to value the subject income-producing property.
5. Petitioner's income approach utilized actual income and actual expenses, including property taxes. Respondent's income approach utilized market rent and estimated expenses, including property taxes.
6. In addition to rental income, the subject contains two laundry facilities for tenant use which results in approximately \$575 in income per month.
7. Respondent utilized the vacancy rate of 10 percent which it alleges is typical for apartment complexes similar to the subject. Petitioner used a 7.8 percent vacancy rate.
8. Both parties used a capitalization rate of 12 percent. This rate does not include a tax factor.

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 “true cash value” is synonymous with “fair market value.” See *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

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

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

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

Cost Less Depreciation Approach

Respondent submitted the subject property record card in support of the assessment on the tax roll. Ms. Lacelle testified that this approach utilizes land sales to support the land value and the Assessor’s Manual to derive the cost calculation, however, the Tribunal has reviewed the property record card and finds that the calculations do not support the 2012 assessment. First, the

card submitted is the 2014 tentative card. The calculations contained therein might be the 2013 or even 2014 calculations. More importantly, there was no evidence of land sales submitted to support the land value of \$90,000 which appears on the property record card.

The testimony on record also calls into question the reliability of the property record card. Ms. Lacelle testified that the land value includes the condominium property because in her opinion, the land has not been successfully split off. Transcript at 53. Neither party provided sufficient documentation to determine whether the subject property's features, including acreage, are properly described on the record card. Moreover, the record card indicates that the subject has 36 units whereas the parties agree that the subject only has 35 units. Ms. Lacelle testified that this is irrelevant because the calculations are merely based upon square footage. However, the inaccuracy of units may also affect the accuracy of the square footage calculation. Overall, the Tribunal finds that the cost approach is not well supported on the record and is not, therefore, the most reliable evidence of value.

Sales Comparison Approach

Petitioner has submitted a sales comparison approach to value the subject property. In this approach, Petitioner uses the sale of two apartment complexes located in the City of Adrian. Ms. Lacelle testified that the Adrian market is substantially different from the City of Tecumseh and these sales are not the most reliable indicator of value. Respondent also submitted evidence indicating that one of Petitioner's sales comparables is subject to rent control restrictions and that the other sale was not market based. The Tribunal finds Ms. Lacelle's testimony to be probative

and therefore finds that these complexes are not similar to the subject. Further, the comparables have many more units than the subject property including some three bedroom units, yet, Petitioner did not make market based adjustments to the sales prices to consider the location or features of the properties.¹ Thus, the Tribunal also finds that without market based adjustments to make the characteristics of the comparable properties consistent with the characteristics of the subject property, these sale comparables are not reliable indicators of true cash value.

In addition, testimony regarding the sale of the subject property on land contract was presented at the hearing. The subject was sold on land contract for \$2.3 million. Petitioner testified that this was at “the top of the real estate bubble” when “[e]verything was expensive.” Transcript at 31. There is no documentation on record regarding the land contract including the terms of sale, date of sale, or anything that indicates that this sale was market based. The Tribunal finds that the testimony clearly indicates that it was a sale on land contract which, without additional support, is not considered to be subject to the normal market pressures given the unique nature of seller financing. As such, the testimony regarding the land contract is not considered reliable evidence of value for the 2012 tax year.

¹ The sales comparison approach is defined as:

[t]he 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 sale prices . . . of the comparable properties based on relevant, market-derived elements of comparison*. Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p 377. [Emphasis added.]

Income Approach

Both parties presented an income approach to value. Given that the subject property apartment complex is an income producing property, the income approach is the appropriate technique of valuation, however, neither of the income approaches on record are reliable indicators of value without modification.

The first error contained in both approaches is that real estate taxes are deducted as an expense. When presenting the income approach for ad valorem taxation appeals, property taxes must not be included as an expense. In such an appeal, the petitioner is contesting the value of the property which is then utilized to calculate the tax due through the use of millage rates. By contesting the value of the subject, the petitioner is also contesting the amount of tax due, thus, deducting the property taxes as an expense is inappropriate. Rather, the income approach should reflect “the net income of the property before the payment of real estate taxes and then add the real estate tax factor to the overall capitalization rate to arrive at the . . . value of the property” Appraisal Institute, *Real Estate Valuation in Litigation* (Chicago: Appraisal Institute, 2nd ed, 1995), p 521.

To calculate the tax factor the overall mileage rate is multiplied by the assessment factor. In this case, the millage rate for the 2012 tax year is 0.0475922 and the assessment factor is 50 percent which results in a real estate tax factor of 2.38 percent. Both parties used a capitalization rate of 12 percent which was not tax-adjusted. Ms. Lacelle reliably testified that the 12 percent “is a fair assessment of the capitalization rate from professional sources, expert sources.” Transcript at 50.

Thus, the 12 percent base rate is supported but, it must be adjusted for property taxes. When the tax factor is added to the 12 percent capitalization rate, the tax-adjusted capitalization rate is 14.38 percent. Therefore, the Tribunal finds that the expense of real estate taxes shall be removed and the value recalculated utilizing the overall capitalization rate of 14.38 percent.

Respondent contends that its income approach uses market based rents and expenses. The Tribunal finds, however, that Petitioner's income statement clearly indicates that the rates utilized by Respondent are significantly higher than the market rental rates. Petitioner submitted a rental rate study which lists the rental rates of other apartment complexes in the area. The study supports Ms. Lacelle's statement that she utilized a slightly lower rate than Conklin Estates, but not that the rates are comparable to the "like properties on the west end of town." Transcript at 48. Ms. Lacelle testified that she has not been inside the subject property since 2003,² but that she believes the subject "should render a higher market rent because that is the highest and best use . . . luxury, more upscale apartments." Transcript at 61. This contention is not supported on the record. Petitioner reliably testified to and documented the actual rent of the subject which matches market rental rates. See Transcript at 16 and P-3. The actual rent is supported by the rental rates for the Town and Country apartment complex which is more comparable to the subject. As such, the subject property's actual rental rates should be used in the revised income approach as they are market rent.

² Transcript at 59.

Respondent determined that the subject had 10 one bedroom units and 25 two bedroom units. However, Petitioner testified that there are maybe only 6 one bedroom units. Transcript at 79. The Tribunal finds that Petitioner's contention is supported by Petitioner's income statement. Specifically, Petitioner reliably testified that two bedroom units rent for \$580, one bedroom units for \$490, and "small ones" rent for \$400. Transcript at 16. The Tribunal finds, based on the rental income, that there are 28 two bedroom units, 6 one bedroom units, and 1 smaller unit. See Exhibit P-3. This finding is reflected below in the Tribunal's revised calculation of the income approach.

Another flaw in both approaches is that neither party added the income resulting from the operation of the coin operated laundry facilities located on the subject property. Petitioner testified that the income from the coin operated machines ranges from \$550 to \$600 per month. Transcript at 25. Thus, the Tribunal finds that an average of \$575 per month should be included in income. Respondent utilized a vacancy rate of 10 percent which Ms. Lacelle testified was "typical for most apartments" such as the subject. Transcript at 48. The Tribunal finds that the vacancy rate of 10 percent is reliable, is based and on market and not actual vacancy, and is adopted in the revised income approach.

With regard to expenses, Petitioner utilized the actual expenses for the subject property, including property taxes as discussed above. When removing the property taxes of \$33,830, Petitioner's revised actual expenses are \$87,225. See Exhibits P-1 and P-5. Petitioner reliably testified that he did not include any expenses associated with the neighboring condominiums.

Transcript at 21. Petitioner admits that the expenses, including the water bill, include the cost relating to the operation of the laundry rooms. Transcript at 23-24. Respondent utilized a much lower value for expenses. Ms. Lacelle testified that she utilized cost estimates from RealtyTrac and RESE. Transcript at 70. She believed that Petitioner’s expenses were “exaggerated” and unreliable due to the potential for combination of expenses between the Homestead Condominiums and the subject property, the Homestead Apartments. Transcript at 73-74. Her contention is, in part, based upon the higher water and utility bills which she admits may be explained by the laundry facilities. See Transcript at 72. Given that the laundry room income is included, as discussed above, the expenses associated with the laundry room shall also be included. The Tribunal finds that the actual expenses submitted by Petitioner are reliable and the best evidence presented of market expenses given the explanation of laundry water and utility usage and the exclusion of condominium expenses, and, excluding property taxes, are used in the revised income approach below.

Given the above revisions, the revised income approach is as follows:

	Yearly total:
28 2-bedroom units @ \$580/month	\$194,880
6 1-bedroom units @ \$490/month	\$35,280
1 small unit @ \$400/month	\$4,800
Laundry Facility @ \$575/month	\$6,900
Vacancy and other loss @ 10%	\$24,186
Total Income:	\$217,674
Actual expenses reduced by \$33,830 (property taxes)	
Total Expenses:	\$87,225
Net Income:	\$130,449
Income/Cap Rate (\$130,449/0.1438)	
Rounded True Cash Value:	\$907,200

Thus, the Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the most reliable approach to value is the revised income approach. The subject property's TCV, SEV, and TV for the tax year 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 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 as required by this Final Opinion and Judgment within 28 days of the entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest 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 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 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% for calendar year 2012, (iv) after June 30, 2012, through December 31, 2013, at the rate of 4.25%, and (v) after December 31, 2013, and through June 30, 2014, at the rate of 4.25%.

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

By: Preeti P. Gadola

Entered: