

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

David Clarkson,
Petitioner,

v

MTT Docket No. 455484

City of Bad Axe,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

FINAL OPINION AND JUDGMENT
ORDER DENYING RESPONDENT’S MOTION TO DISMISS

INTRODUCTION

Petitioner, David Clarkson, appeals ad valorem property tax assessments levied by Respondent, City of Bad Axe. Petitioner was in pro per, and Shawn G. Jappaya, Attorney, represented Respondent.

A hearing on this matter was held on July 16, 2015. Petitioner’s witnesses were Fred Manuilow, fact witness and Robert Bogner, MAI appraiser. Respondent’s sole witness was Robert J. Lentz, MAI appraiser.

The subject property is described as Clarkson Pines Mobile Home Village. It is a 27-unit, 50-year-old Manufactured Home Park located on approximately 8.57 acres, with 166 feet of frontage on South Van Dyke Road, addressed as 856 South Van Dyke Road, Bad Axe, Huron County. The property is zoned Multiple Family Residential District. Adjacent uses include a variety of commercial uses on parcels zoned for General Business located in the bordering Colfax Township.

The parties’ contentions (based on the assessment roll and pleadings) of true cash value (“TCV”), state equalized value (“SEV”), and taxable value (“TV”) are as follows:

Parcel No. 3251-822-001-00

	Petitioner			Respondent		
Year	TCV	SEV	TV	TCV	SEV	TV
2013	\$245,000	\$122,500	\$122,500	\$378,600	\$189,300	\$189,300
2014	\$260,000	\$130,000	\$130,000	\$401,400	\$200,700	\$192,328
2015	\$260,000	\$130,000	\$130,000	\$475,800	\$237,900	\$195,405

Respondent requests an adjustment in the true cash value for the 2013 and 2014 tax years, based on the appraisal, as follows:

Parcel No. 3251-822-001-00

	Petitioner			Respondent		
Year	TCV	SEV	TV	TCV	SEV	TV
2013	\$245,000	\$122,500	\$122,500	\$335,000	\$167,500	\$167,500
2014	\$260,000	\$130,000	\$130,000	\$340,000	\$170,000	\$170,000

Petitioner’s Motion to Amend to add 2015 was for taxable value only.

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

Parcel No. 3251-822-001-00

Year	TCV	SEV	TV
2013	\$342,000	\$171,000	\$171,000
2014	\$336,000	\$168,000	\$168,000
2015	NA	NA	\$170,688 ¹

PETITIONER’S CONTENTIONS

Petitioner believes that the acquisition of the subject property with no down payment would affect its market value. The difference in the parties’ appraisals is two-fold, the highest and best use of the land that fronts Van Dyke and the vacancy rate used by the two appraisers.

PETITIONER’S ADMITTED EXHIBITS

P-1 Appraisal report prepared by Robert W. Bogner, MAI.

PETITIONER’S WITNESSES

Fred Manuilow was a loan officer in the commercial loan department at Signature Bank in 2012. Manuilow’s supervisor, Margaret Jensen, requested that he contact Petitioner to see if he would be interested in purchasing the subject property for the amount owed on the existing loan. The prior owner was in a negative cash flow situation from running the mobile home park and the bank was in jeopardy of taking the property back. The bank was aware that Mr. Clarkson had an offer on the table to acquire the subject property.

¹ Petitioner’s 2015 Motion to Amend was for taxable value only.

Manuilow estimated that Petitioner's expenses involved in the \$445,000 acquisition of the subject property were less than \$3,000. He agreed that the sale of the subject was considered distressed, and generally banks would sell distressed properties at a discount.

Robert W. Bogner, MAI prepared an appraisal of the subject property as of December 31, 2012, and December 31, 2013. He was admitted as an expert and prepared an appraisal designated as P-1. The true cash value is synonymous with market value, which indicates an unencumbered fee simple interest. The subject is an income-producing property; therefore, market rent, reduced by market vacancy, reduced again by market expenses at the market capitalization rate was the premise for the true cash value of the subject property.

Bogner testified that the subject property has 27 sites for the tax years at issue. It is licensed for more, but some have been "de-energized," or are not leasable for lack of demand. Vacancy rates were analyzed from various sources and utilized including an additional study in Bogner's work file.² The population census and household income indicated a decline with potential growth estimated to stabilize.

Bogner did not consider that the "de-energized" lots, located closer to Van Dyke Road, were vacated for potential rezoning.³ He agreed that the traffic and surrounding uses allowed by the adjacent Colfax Township were not conducive to separating the frontage on Van Dyke Road. The subject is zoned R-2. The zoning would not allow a positive return on either new construction or to the land. The area discussed is approximately 166 by 462 feet on M-53, Van Dyke Road. Bogner did not suggest that a split from the subject parcel would be feasible, but that an old two-story building would have to be razed. There was a doublewide that he did not place additional value on, located at the front portion of the subject lot.

Bogner did not know why the front lots were de-energized. He testified that some trees were taken down. He did not consider an alternative use to the front portion of the subject. Colfax Township properties surround the subject on Van Dyke Road and include a warehouse, a car lot, equipment storage yard and woods. The subject property is not currently zoned for

² Tr at 24.

³ The discussion was in response to Respondent's suggestion that the subject property might be rezoned with a split of the land.

commercial use. The highest and best use did not consider splitting the subject parcel as he testified that it would not be economically feasible.

Bogner prepared an income approach using market data to estimate rent, and expenses came from comparing the subject property to a study by the American Property Analyst, and comparable mobile home income and expenses. The capitalization rate was extracted from current listings that were published. Potential gross income of \$81,000 was \$250 a month for 27 units for twelve months. Bogner erred in reflecting that expenses were based on 29 units, instead of 27 units. The remainder of the calculation process was completed with the subtraction of expenses for a net operating income (“NOI”). The NOI is divided by the overall rate of 16%. The only change for the 2014 tax year is that the market rent increased to \$260 per unit. The result via the income approach is \$245,000, and \$260,000 respectively.

The sales comparison approach was also considered; however, the sales all have different amenities which were difficult to adjust. Bogner stated:

In searching for sales, the one factor that became obvious was that most all listings include an indication of the overall capitalization rate or some description of the income of the property. It became clear in this search that the income of the property was the one common factor in the sales and to a large extent its importance was even greater than physical features. In a recent meeting with a potential buyer mobile home parks that included the subject, that buyer indicated above all else they had an interest in a specific rate of return (for reference; it was 20%).⁴

Bogner continued with the relationship between income and the sale price. The purchasers base the price on occupied units. Therefore, the Gross Income Multiplier (“GIM”) was considered. The following sales were relied upon:

⁴ P-1 at 28.

	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5
City	Burton	Beaverton	South Haven	Genesee	Brookhaven
Price	\$1,900,000	\$1,130,000	\$525,000	\$600,000	\$1,300,000
Date	Apr-11	Jul-11	Oct-13	Aug-14	Jan-12
Units	389	110	61	251	178
Occupied	152	96	50	94	101
Sale Price ("SP") / Unit	\$4,884	\$10,273	\$8,607	\$2,390	\$7,303
SP/Occupancy	\$12,500	\$11,771	\$10,500	\$6,383	\$12,871
EGIM ⁵ Potential Rent	\$685,824	\$301,200	\$150,000	\$348,552	\$385,416
Multiplier	2.77	3.75	3.50	1.72	3.37

Adjustments to the sales were considered by Bogner; however, the economic conditions as manifested in rental rates reflected little change in rents or occupancies for the past two to three years. Sale 2 had favorable conditions to the buyer, but an adjustment would be minimal. The other consideration is Sale 4 which is physically inferior due to its size, location and low occupancy, therefore, making a positive adjustment to make the comparable consistent with the characteristics of the subject property increases its sale price per unit to \$5,500. Sale 3 also is adjusted for its inferior condition for an indicated value of \$11,883. This results in a range from \$10,500 to \$12,871 per occupied unit. Bogner concluded to \$12,000 per unit for a value of 264,000 for the 22 occupied units.

The effective gross income is divided by the sale price to result in the effective gross income multiplier ranging from 1.72 to 3.7. Bogner states that the trend is 3.0 to 3.75 with the best support for 3.5. The effective gross income (\$66,000 and \$68,640) is multiplied by 3.5 for concluded values of \$235,000, and \$245,000 respectively.

RESPONDENT'S CONTENTIONS

Respondent did not believe that Petitioner met his burden of proof and requested the case be dismissed.⁶

Respondent contends that the two appraisers are close, but five issues remain to be resolved: 1) The number of occupied units, 2) the proper vacancy rate, 3) should the vacancy rate be based on 33 or 27 units, 4) "excess" land value, and 5) what additional value a double wide, that neither party included in the appraisals, would add to the value of the subject property.

⁵ Effective Gross Income Multiplier.

⁶ Tr at 109.

RESPONDENT'S ADMITTED EXHIBITS

R-1 Appraisal report prepared by Robert J. Lentz, MAI.

R-3 2013 Property record and valuation report.

R-4 2014 Property record and valuation report.

RESPONDENT'S WITNESS

Robert J. Lentz, MAI, prepared an appraisal of the subject property as of December 31, 2012 and December 31, 2013. He was admitted as an expert and prepared an appraisal designated as R-1. He is familiar with mobile home parks, mainly for lending institutions and loan collateralization purposes. He has appraised the subject property on two occasions; the initial one was for a lending institution and the current appeal.

Lentz relied upon the property record card for some information, as well as financials from Petitioner, an inspection, and market data. Lentz appraised the subject property for the lending institution prior to the March 2012 purchase for \$445,000. He believes Petitioner to be knowledgeable and an expert in managing mobile home parks.

Lentz determined that the highest and best use of the subject as vacant was for future development. The "as improved" highest and best use, however, was a dual purpose. The front portion of the property (166 by 350 feet)⁷ could have a commercial development, with the rear portion a continued use of the current mobile home park. In analyzing the front portion on Van Dyke Road a zoning change was considered. The township supervisor was consulted and thought a commercial use would be homogenous with the surrounding uses. In order to consider a rezoning request, the land would have to be cleared of trees, the mobile home lots were already "de-energized," and some residents that were in the front, as well as the double wide, would have to be vacated. Therefore, Lentz opined that a commercial use is possible, with rezoning, and appears to be financially feasible and makes good use of the 166 by 350 feet on M-53, Van Dyke Road. The remaining 7.10 acre portion of the land would remain as mobile home lots.

The subject property was licensed for 40 units, 33 units were available at the March 2012 sale. Some lots were "de-energized" leaving the existing 27 current lots. Lentz opined that unless the front lots were being prepped for a split, they do not increase the value of the subject

⁷ R-1 at 59.

property to “de-energize.” It could have the opposite effect of decreasing the value to a potential investor considering income.

Lentz considered the income of the subject property and compared it with market rent, vacancies, and expenses, as well as a market capitalization rate, to conclude to market value. A market survey was conducted which includes other mobile home parks in the area. The market rent was determined and multiplied by 27 units for the potential income. The occupancy of the subject was utilized as it was close to the market. Respondent found that 24 units were occupied as of the December 31, 2012 tax day for a vacancy rate of 11.1%. 23 units were occupied as of December 31, 2013, with a resulting vacancy rate of 15%.

Lentz utilized 29 mobile home parks for his rent survey. Three properties that were in close proximity to the subject were relied upon for income and expenses. They include Summerwood Estates in Bad Axe, Port Austin Estates approximately 15 miles north of the subject, and Pleasant Beach in Beaverton, approximately 90 miles from the subject. The average vacancy rate of the properties was 22%, and the subject property’s vacancy rate falls within the range. Actual expenses were compared with the market and other similar mobile home parks, which resulted in a reconstructed income statement. The expenses were deducted from the gross income for a net operating income, the capitalization rate was then developed using survey data, listings and sales with reported capitalization rates and the effective tax rate was added for a property tax neutral rate. The following information was used for the income approach:

	2013	2014
Potential Gross Income (“PGI”)	\$81,000	\$84,240
Market Rent	\$250	\$260
Occupied Units	24	23
Effective Gross Income (“EGI”)	\$72,000	\$71,604
\$900/\$845 Expenses/Unit	\$24,300	\$25,151
Net Operating Income (“NOI”)	\$47,700	\$46,453
Overall Capitalization Rate	16%	16%
True Cash Value	\$298,125	\$290,331
Rounded	\$300,000	\$295,000

The resulting true cash value as of December 31, 2012 is \$300,000; December 31, 2013 is \$295,000 based on the income approach.

Lentz also prepared a Sales Comparison Approach. The value of excess land (for the 166 by 350 feet that is on Van Dyke Road) was determined first utilizing five sales. Sales 4 and 5 were considered dated, leaving the remaining three sales that ranged from \$0.80 to \$1.48 per square foot. The resulting indication is \$1.00 per square foot at \$58,100. Lentz deducted \$33,500, already spent by Petitioner, for the de-energizing and some tree removal. Lentz calculated that an \$18,500 remains to clear the excess land, which results in a value of \$39,500 as of December 31, 2013.

Lentz utilized nine sales from March 2010 to April 2013. The sales were narrowed to four properties as follows:

	Subject	Sale 1	Sale 2	Sale 3	Sale 4
City	Bad Axe	Gladwin	Port Huron	Port Austin	Beaverton
Price		\$402,500	\$835,000	\$418,500	\$1,130,000
Date		Jun-12	Mar- 10	Apr- 13	Jul- 11
Units	27	114	146	36	108
SP/Unit		\$3,531	\$5,719	\$11,625	\$10,463
Occupied	23	56	82	31	95
SP/Occupancy		\$7,188	\$10,183	\$13,500	\$11,895
Occupancy Rate	85.2%	49.1%	56.2%	86.1%	88.0%
PGI		\$340,912	\$560,640	\$101,952	\$333,175
EGI		\$167,388	\$314,880	\$86,659	\$279,867
Year Built	1970	1973	1992	1970	1970
Acres	7.00	20.67	30.00	4.90	12.93
Egi mult		2.40	2.65	2.07	2.48

Lentz testified to each sale’s amenities and the discussions that took place when the sales were confirmed. Sales 1 and 2 were below 60% occupancy and were at risk for insolvency. Lentz considered their marketing consistent with a foreclosure when compared to Sales 3 and 4. Sale 3 had favorable financing, but it was an arms-length transaction. Sale 4 was located on a lake and included 9 small cabins and one for the owner.

Lentz then correlated the sales to determine that Sale 3 is the most similar to the subject at \$13,500 per unit and is closest in location, size, and amenities. Sale 4 is close in age and functional utility, but has a rural waterfront location, but is supportive of Sale 3. Sales 1 and 2 were least similar in occupancy and Lentz gave them no weight. The sales resulted in a true cash value of \$324,000 as of December 31, 2012, and \$310,500 as of December 31, 2013.

The excess land was discussed as the highest and best use requires alternative uses to be considered. Lentz explained there are indications of some development going on in the thumb area. The market is rural and somewhat lagging in development. However, a block from the subject, there is a ten acre parcel being developed and a property around the corner is in the process of redevelopment. The initial cost of razing the existing trees and de-energizing the front part of the lot on Van Dyke Road was utilized to determine the cost of preparing the land for development. The land north of the pump house was financially feasible to prepare for an alternative use, the cost to conclude the preparation was \$18,500.⁸ The last part of the analysis is the cost of vacant land after the alternative use is considered. The vacant land sales indicated \$1.00 per square foot, or \$58,100 from which the costs to raze are deducted. The break-even point was determined to be \$0.32 per square foot; the total conversion cost is deducted for both years at issue. Respondent used Petitioner's cost of lot clearing (\$15,000) which was deducted for 2013. Respondent's \$18,500 is deducted from the 2014 land value for \$39,500.

Lentz did not attribute any additional value to the deteriorated two-story apartment building. It is located on the South Van Dyke Road portion of the property and is currently being used for storage. Lentz opined that it was a detriment due to the cost to raze it.⁹

The final reconciliation relied on the income approach weighting it 60% and the sales comparison approach, while not preferred, is relevant and weighted 40%. The excess land value was added and the concluded true cash values are \$335,000 as of December 31, 2012, and \$340,000 as of December 31, 2013.

Respondent brought out the fact that a double-wide trailer was not included in either party's valuation. Lentz testified that the double-wide was used as an office in the past and was rented to an insurance company. Currently, it is used for storage and when Petitioner is managing the property, he stays there; however, it was considered more of a storage building. The actual value of the building was not included in the appraisal as Lentz believed it was personal property, other than it was included in the pad rent. Lentz has changed his opinion of the double-wide as it is not used primarily as a dwelling.¹⁰

⁸ Tr at 142.

⁹ Tr at 185.

¹⁰ Tr at 147.

Lentz considered the value on the property record card for the double-wide to indicate a value of \$30,000 to be added to the December 31, 2012 value, for a final value of \$365,000, and adding \$33,000 to the December 31, 2013 value, for a final value of \$373,000.

FINDINGS OF FACT

1. The subject property is addressed as 865 South Van Dyke Road, Bad Axe, Huron County, Michigan.
2. The subject property is located on the south side of Van Dyke Road, M-53 and abuts the east side of Barrie Road.
3. The subject property has 166 front feet on South Van Dyke Road, and 512 front feet on Barrie Road.
4. The subject property is located on approximately 8.57 acres.
5. The current zoning is R-2 multiple family which serves as a transition between non-residential uses, and R-1, residential uses.
6. The property consists of a mobile home park approximately 50 years old and includes no additional amenities.
7. The mobile home park was designed for older (single-wide) mobile homes.
8. Petitioner purchased the subject property March 1, 2012, for \$445,000 in an atypical offer from Signature Bank, with no down payment, and \$45,000 of personal property.
9. The mobile home park was licensed for 33 units at the time of the sale.
10. As of both tax dates at issue, 27 units exist.
11. Six units on the north portion of the lot, closest to South Van Dyke Road, were “de-energized.”¹¹ The lots were functionally inadequate for larger mobile homes and located adjacent on three sides to commercial properties.
12. The northern portion of the lot on South Van Dyke (166 by 350 feet) could be split, and utilized for a commercial development with rezoning.
13. Both appraisers utilized the sales comparison and income approach.
14. The appeal for the 2015 tax year is for taxable value only.
15. The double-wide mobile home is assessed to the owner as real property.

CONCLUSIONS OF LAW

¹¹ R-1 at 55.

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.

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. . . .

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.

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”

“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.” The Tribunal is not bound to accept either of the parties' theories of valuation. “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.” 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.”

A proceeding before the Tax Tribunal is original, independent, and de novo. The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.” “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”

“The petitioner has the burden of proof in establishing the true cash value of the property.” “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.” 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.”

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. “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.” 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.

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.

WEIGHT AND ANALYSIS OF THE EVIDENCE

In this matter, the Tribunal must determine the following: 1) should the vacancy rate be based on 33 (per license) or 27 (actual) units, 2) the number of occupied units, 3) does “excess” land exist, 4) does a double wide used by Petitioner add to the value of the subject property, 5) the proper vacancy rate, and 6) recognize that the 2015 appeal is taxable value only. The Tribunal must determine the true cash value of the property for 2013 and 2014 and apply the appropriate multiplier to calculate the 2015 taxable value appeal.

1) Respondent argues that the subject property contained 33 units which is the number that should be considered for maximum occupancy. However, Petitioner argues that the park was licensed for 40 units, some of the lots were de-energized, and the maximum units are currently 27. The Tribunal finds that both appraisers utilized the maximum units as 27, as some units were de-energized that were located near the South Van Dyke Road frontage as they were too small to accommodate the larger mobile homes. The area adjacent to the South Van Dyke Road frontage is located in the adjacent Colfax Township and the surrounding use on three sides is commercial. The likelihood that the de-energized lots would be re-energized is nil, based on the economy, highest and best use¹² (future commercial development), and location of the lots adjacent to the townships commercial property. The Tribunal finds 27 lots is proper to utilize in determining the true cash value for the 2013, 2014 and 2015 tax years at issue.

¹² R-1 at 58.

2) Petitioner argues that income for lot 17 is from a tenant that owed him some back rent and should not be included as an occupied lot. The Tribunal finds that both appraisers included lot 17 within the reports, as reflected in the 2013 rent roll, but did not treat lot 17 any differently than the other lots. The Tribunal finds that lot 17 should be treated the same as the other lots for income analysis.

Petitioner's appraiser utilized 22 occupied units for both years of the report. Petitioner's appraiser had 2013 actual income and expenses. Although Petitioner's appraiser states that a rent roll for 2013 and 2014 has been provided and reproduced, the 2013 rent roll was all that was contained in the report.¹³ Petitioner's appraisal contained seven months of total income for 2012, which he annualized.¹⁴ Respondent's appraiser included the rent roll for both 2012 and 2013, and found 23 and 24 occupied. Respondent's appraiser utilized the 2013 roll, used January 2013 as the closest to December 31, 2012, and allocated the same occupied units. Petitioner's appraiser's method of determining the occupied units was not documented. Respondent's appraisal contained the rent roll for both tax years at issue. The Tribunal is persuaded by Respondent's rent rolls which document the occupied units at 23 and 24.

3) Respondent indicated in its highest and best use that there was some demand for the vacant land, due to some development, as a result of the "de-energized" lots. Respondent's appraiser also determined that in the future, the subject could split a 166 by 350 foot area with frontage on South Van Road and request a rezoning to a commercial use which is more homogeneous with the surrounding properties. Respondent's appraiser determined the value of the proposed parcel split with five sales. The cost to raze the remaining trees and prepare the lot for redevelopment was deducted, with the resulting value of excess land at \$24,500, and \$39,500 respectively.

Petitioner argues that the economy would not support the cost of developing the parcel as described by Respondent's appraiser. Petitioner's appraiser opined that the frontage on South Van Dyke Road is surrounded by Colfax Township property, is part of the current lot, and no additional value was included for a possible split. Petitioner's appraiser noted that the current zoning would not allow a positive return on new construction or a positive return to the land. Neither party attributed any value to a dilapidated building located on the South Van Dyke Road

¹³ R-1 at 19.

¹⁴ R-1 at 21.

frontage. It was used for apartments and is currently utilized as storage, as well as the double-wide that the owner utilizes.

Excess land is defined as: “Land that is not need to serve or support the existing use. The highest and best use of the excess land may or may not be the same as the highest and best use of the improved parcel. Excess land has the potential to be sold separately and must be valued separately.” Surplus land is defined as: “Land that is not currently need to support the existing use but cannot be separated from the property and sold off for another use. Surplus land does not have an independent highest and best use and may or may not contribute value to the improved parcel.”¹⁵

The Tribunal agrees that some development is occurring in the general area of the subject property. However, insufficient sales have taken place that makes it economically feasible for Petitioner to finish leveling the trees and going to the city to have the zoning changed and develop any excess land. The Tribunal finds that the current economic conditions are not viable for Petitioner to prepare the land and develop as of the tax dates at issue. Therefore, the Tribunal concludes that no additional value is added for the possibility of a future development at this time for excess land.

Both appraisals included the sales comparison approach. Petitioner’s appraisal contained five sales and each of the sales had issues that would reflect on the sale price. Sale 1 was in below-average condition and included clubhouse, pool, two playgrounds and RV storage. Due to lack of performance, this property resulted in a foreclosure and was located approximately 80 miles from the subject, near Flint. Sale 2 was a Land Contract to Petitioner; it contained 100 sites and 10 seasonal cabins and was Lake Front, but the lots were similar to the subject. This sale was located in excess of 90 miles from the subject, on a lake. Sale 3 contained 61 units, with 50 occupied; the resulting GRM was 3.5. Sale 3 is located in excess of 250 miles from the subject property in South Haven. Sale 4, located at the north end of Flint, contained 251 units with 94 occupied for a 37% occupancy. Petitioner gave Sale 4 the least weight because it was physically inferior due to its size and location; resulting in low occupancy. Sale 5 has 178 units, with 57% occupancy and is newer construction (1996), and includes clubhouse, pool, basketball courts and a recreational pond. Petitioner stated that it was an investment grade park. Sale 5, located in

¹⁵Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 14th ed. 2013) at 200.

Newyago, is on the west side of the state approximately 160 miles from the subject. It had a GRM of 3.37.

Petitioner described the minimal adjustments to the sales and minimal explanation found the range of sales and the resulting GRM.¹⁶ Petitioner explained that the rents remained stable. Therefore, no adjustment for economic conditions was made. Sale 2 was sold on a land contract which may be considered favorable financing; however, Petitioner opined that any adjustment would be small and not affect the unit price. Sale 4 was physically inferior in size and occupancy. Petitioner estimated an upward adjustment of \$5,500 to Sales 4 and 3. Petitioner's conclusion indicates the following:

After adjusting Sale #4, the sales form a range between \$10,500 and \$12,871 per occupied unit. While no adjustment was made to either sale #1 or sale #5, newer parks than the subject, sale #1 was reported as being in lower than average condition for its age while sale #5 has a unit price that is only 3% higher than sale #1 despite being in good condition.

The majority of the sales data suggests that the appropriate unit value lies in a narrower range from a low of \$11,771 per unit to a high of \$12,837 with four of the five sales in this range.¹⁷

Petitioner concluded to \$12,000 per unit for both tax years, which resulted in a conclusion of \$240,000, and \$250,000 respectively.

Respondent's appraisal included nine sales that were initially considered; however, after analysis, the sales were narrowed to four that were the most reflective of the subject property. The relevant unit of comparison was the occupied lots at closing, and the sale price per occupied unit was considered to reflect the market participants. The sales were unadjusted for differences in marketing conditions. Respondent's next consideration was occupancy. The risk of insolvency was discussed, and it was concluded that when occupancy falls below 60%, it is akin to a foreclosure/Reo activity which in turn is reflected in the lower sale price per occupied unit.¹⁸ Respondent compared Sales 1 and 2 (occupancy rates of 49.1% and 56.2%) with Sales 3 and 4 (occupancy rates of 86.1% and 88%). In Respondent's final analysis, no weight was placed on Sales 1 and 2. The most weight was given to Sale 4 which was between unrelated parties, and

¹⁶ P-1 at 38 indicates EGIM, both EGIM and PGIM were used in describing the sales.

¹⁷ P-1 at 37.

¹⁸ R-1 at 84.

Sale 3 which had favorable financing but negotiations were arm's length. The 2013 tax year had 24 occupied units for a market value of \$324,000. The 2014 tax year had 23 units occupied for a market value of \$310,500.

The Tribunal notes that the parties both utilized the same Pleasant Beach Sale in Beaverton (P-2 and R-4). The Tribunal finds that Respondent's Sales Comparison Approach contained more detailed data, with comparables that were located in closer proximity to the subject's market area, and finds the approach persuasive.

Respondent's appraisal contained a write-up for the four sales that contained the income information and calculations for Potential Gross Income and Effective Gross Income Multipliers. The result falls within \$5,000 of Respondent's income approach results.

4) The subject property contains a double-wide mobile home that is on the assessor's property record card, with value attributed to it via the mass cost approach. Petitioner objects and believes that it causes the subject property to be overvalued by the amount on the assessment roll, \$29,668¹⁹. The lot was included in the subject's gross rent by both appraisers; however, neither appraisal attributed any additional value to the double-wide trailer that Petitioner stays in when he is in Bad Axe. However, neither appraiser relied upon the mass cost approach (property record) as the basis for determining the true cash value of the subject double-wide mobile home.

Respondent's appraiser did testify that the cost approach, based on the property records, adds \$29,668 and \$33,359 to the property value. Respondent's appraiser did not initially attribute any additional value to the double-wide, other than include it as part of the lot rent; however, at the hearing, Respondent's appraiser determined that because the double-wide was occupied, that it should have been assessed based on the specific tax law.²⁰ The double-wide is owned by Petitioner, is used for storage, and he occasionally stays there while managing the property. Therefore, it is assessable real property under MCL 211.1 and 211.2, as it is not expressly exempted from taxation. Neither appraiser assigned any specific value to this double-wide, as the focus of both appraisal reports was on the sales and income approach values of the available pads for rent. The subject's property record cards for 2013 and 2014 were admitted as evidence (R-3 and R-4) and Respondent's appraiser testified that he reviewed the value on the card and

¹⁹ The assessment record does include \$29,668 in true cash value for the 1,144 square foot "office building". R-3 at 3.

²⁰ Tr at 148.

indicated an additional \$30,000 and \$33,359 should be added to the final value. The Tribunal finds that value of the double-wide determined under the cost approach, as reflected on the property record card is reasonable, and should be added as supported by the testimony of Respondent's appraiser. Further, Petitioner failed to produce any evidence that would reflect a lower value.

5) The occupancy as determined by Petitioner's appraiser was 22 units²¹ which equates to 19% for both tax years at issue. Respondent's appraiser determined the occupancy was 11.1% and 15% for the two tax years at issue.²² Respondent's appraisal report states that the vacancy rate, based on the comparables, was estimated at 22%.²³ Both appraisers indicated that the subject property is operating at a better occupancy rate than the market. Both appraisers estimated the market vacancy and compared the subject's actual vacancy. However, Respondent's appraiser explained the difference in actual income and expenses for the two years at issue and documented it with the actual rent roll for both years. The basic lot rent increased for 2013, but an additional lot was vacant. Respondent's appraiser also increased the expenses per lot for 2013. The net result is a slight decrease over the previous year's income. The Tribunal accepts Respondent's appraiser's income and expenses and occupancy as more reflective of the market. The individual components of the income approach were well explained and documented in the appraisal. Both parties found that the tax neutral overall capitalization rate for both years at issue is 16%. The resulting final true cash values are \$365,000 for the 2013 tax year and \$373,000 for the 2014 tax year.²⁴ Petitioner filed a Motion to Amend to include taxable value only for the 2015 tax year, which was granted by the Tribunal.

The Income Approach is reflective of the changing mobile home market as utilized and documented by Respondent. Respondent's Sales Comparison Approach is also reflective of the prices that comparative mobile home parks are selling at per unit. The Tribunal finds that the true cash value conclusion is weighted evenly between Respondent's income and sales approaches and further shall be increased to account for the value of the double-wide (which increase is \$30,000 for 2013 and \$33,400 for 2014). The taxable value for 2015 is based on the Consumer Price Index (1.016) multiplied by the resulting 2014 taxable value.

²¹ P-1 at 25.

²² R-1 at 66.

²³ R-1 at 63.

²⁴ The Tribunal adds value for the double-wide.

RESPONDENT'S MOTION TO DISMISS

At the close of Petitioner's proofs, Respondent moved for dismissal, which the Tribunal took under advisement. Respondent requested that the Tribunal dismiss the appeal, indicating that Petitioner did not meet the burden of proof, and requests costs as Petitioner's self-representation caused Respondent extra preparation time. Petitioner's burden "encompasses two separate concepts:" (1) the burden of persuasion; and (2) the burden of going forward with the evidence.²⁵ Although the Tribunal may not "automatically accept a respondent's assessment," the Tribunal can, upon motion or its own initiative, enter a "directed verdict" or, more appropriately, an involuntary dismissal if the petitioner fails to meet the burden of going forward.²⁶ In determining whether a petitioner meets the burden of going forward, the Tribunal "must consider the evidence in the light most favorable to the non-moving party [i.e., the petitioner], making all reasonable inferences in favor of the non-moving party."²⁷ Thus, the general rule in a valuation case is that, to meet the burden of going forward with the evidence, the petitioner must present evidence that, when viewed in a light most favorable to the petitioner, would permit the Tribunal to determine the property's true cash value. Simply, before determining that petitioner has failed to meet the burden of going forward, the Tribunal must be satisfied after Petitioner has presented the evidence that, "on the facts and the law plaintiff has shown no right to relief."²⁸ Further, involuntary dismissals "are appropriate only when no factual question exists upon which reasonable minds may differ."²⁹ Finally, "the weight given to the evidence is a matter within the . . . Tribunal's discretion" and "the weighing process involves a considerable amount of judgment and reasonable approximation."³⁰ Petitioner submitted enough evidence to meet his burden of going forward, as the data set forth by Petitioner's appraisal, meets the burden. Meeting the burden of going forward does not necessarily mean that the burden of persuasion has been met; therefore, a hearing took place. Respondent's oral motion to dismiss was considered and this Tribunal finds that Petitioner's appeal was not frivolous.

²⁵ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

²⁶ See MCR 2.504(B)(2). See also *Jones & Laughlin*, supra at 354-355 and *Great Lakes*, supra at 408-410.

²⁷ *Meagher v Wayne State University*, 222 Mich App 700, 708; 565 NW2d 401 (1997).

²⁸ *Samuel D Begola Services, Inc v Wild Bro*, 210 Mich App 636, 639; 534 NW 2d 217 (1995).

²⁹ *Meagher*, supra at 708.

³⁰ *Comstock Village Ltd Dividend Housing Ass'n v Comstock Twp*, 168 Mich App 755, 760; 425 NW2d 702(1988).

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that as an income-producing property, Respondent's income approach is given the greatest weight in determining the true cash value of the subject property. The Tribunal includes Respondent's modification for Petitioner's double-wide mobile home that is not rented. The subject property's TCV, SEV, and TV for the tax year(s) at issue are as stated in the Introduction section above.

JUDGMENT

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

IT IS FURTHER ORDERED that Respondent's Oral Motion to Dismiss is DENIED.

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, 2015, at the rate of 4.25%.

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

APPEAL RIGHTS

If you disagree with the Tribunal's final decision in this case, you may either file a motion for reconsideration with the Tribunal or a claim of appeal directly to the Michigan Court of Appeals ("MCOA").

A motion for reconsideration with the Tribunal must be filed, by mail or personal service, with the \$50.00 filing fee, within 21 days from the date of entry of this final decision.³¹ A copy of a party's motion for reconsideration must be sent by mail or electronic service, if agreed upon by the parties, to the opposing party and proof must be submitted to the Tribunal that the motion for reconsideration was served on the opposing party.³² However, unless otherwise provided by the Tribunal, no response to the motion may be filed, and there is no oral argument.³³

A claim of appeal to the MCOA must be filed, with the appropriate entry fee, unless waived, within 21 days from the date of entry of this final decision.³⁴ If a claim of appeal is filed with the MCOA, the party filing such claim must also file a copy of that claim, or application for leave to appeal, with the Tribunal, along with the \$100.00 fee for the certification of the record on appeal.³⁵

By: Victoria L. Enyart

Entered: October 2, 2015

³¹ See TTR 257 and TTR 217.

³² See TTR 225.

³³ See TTR 257.

³⁴ See MCR 7.204.

³⁵ See TTR 213 and TTR 217.