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

DRSN Real Estate GP, LLC,
Petitioner,

v

MTT Docket No. 14-002271-R

City of Grosse Pointe Woods,
Respondent.

Tribunal Judge Presiding
David B. Marmon

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, DRSN Real Estate GP, LLC, appeals ad valorem property tax assessments levied by Respondent, City of Grosse Pointe Woods, against Parcel No. 82-40-014-99-0004-001 for the 2014 and 2015 tax years. Jay A. Schwartz, Attorney, represented Petitioner, and Jerome P. Pesick and Jason C. Long, Attorneys, represented Respondent.

A hearing on this matter was held on September 20 and September 21, 2016. Petitioner's witnesses were Timothy Kamego, Richard Levin, and Daniel Tomlinson. Respondent's witnesses were Lester Jackson and Michael Ellis. Post hearing briefs were filed and exchanged by the parties on November 21, 2016.

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 2014 and 2015 tax years are as follows:

Year	TCV	SEV	TV
2014	$21,220,000	$10,610,000	$10,108,192
2015	$26,600,000	$13,300,000	$12,823,542

The Petitioner owns a facility upon which The Rivers, a continuing care retirement community ("CCRC") was being built on the valuation dates for the tax years at issue, and will be operated by related entities. The subject contains three living areas: independent living, assisted living and a skilled nursing facility.

PETITIONER'S CONTENTIONS

Petitioner contends that the subject's land is capped at settled amount in 2013.

(TV= $1,050,000 x 1.016 = $1,066,800). See P-7. 2014 Land value estimated to be $2,100,000, or $1,050,000 TV, as part of Total TCV.

Year	TCV	SEV	TV
2014	$12,200,000	$6,100,000	$6,100,000
2015	$17,000,000	$8,500,000	$8,500,000

The values above are taken from an appraisal prepared by their expert, Dan Tomlinson. At hearing, Petitioner also contended that the AIA applications for payment, relied upon by both appraisers, contained elements of personal property. Petitioner's contractor, and principal each gave their own opinion as to the percentage of completion as of the valuation dates. Petitioner did not state exactly how these contentions affected the values found in Tomlinson's appraisal.

PETITIONER'S ADMITTED EXHIBITS

P-1 Tomlinson Valuation Service Appraisal

P-2 Architecture Fee Invoice

P-3 Property Transfer Affidavit dated January 13, 2012

P-4 Blue prints and engineering plans

P-5 Grosse Pointe Woods Zoning Map and Ordinance

P-6 Contractor pay applications

P-7 Consent Judgment dated November 13, 2013 for Docket No. 438234

P-8 Assessment records

P-9 109 photographs of subject

P-10 78 additional photographs of subject

P-11 Construction Services Industry survey of gross and net profit margins

P-12 Land use Restriction Agreement

P-13 Declaration of Covenants Conditions and Restrictions

PETITIONER'S WITNESS(ES)

Timothy Kamego

Petitioner's first witness was Timothy Kamego, the General Contractor, and licensee for the Certificate of Need for the subject. He also runs operations for Riverview Jefferson in Detroit, and Riverview North in Warren, both skilled nursing facilities, in which Richard Levin also has an interest.[1]

Kamego testified as to how he came to work with Richard Levin:

> So I met Rich out there. We had become friends or friendly. I mean, he's still my boss, but friendly. He knew that I had built Windemere. He knew that I had run Windemere as the director of operations. So he said, "If anything ever comes up, let me know about it." So something did come up. We had a chance to buy some existing nursing home and a hospital from Saint John Hospital.[2]

Kamego went on to testify that he built Riverview Jefferson for Richard Levin in 2008, and described other related projects he has worked with Levin, including Riverview North.[3]

Kamego next testified as to the licensing requirements for a skilled nursing facility, ("SNF") and the limited number of beds available to be licensed by the State of Michigan. For 2013 and 2014, he stated that there were no licenses available because they were all issued. In order to get a SNF license, he opined that one would need to purchase an existing facility that has licensed beds in the same district.[4] Without a license, he pointed out, a facility's assisted living and SNF are ineligible to receive Medicaid.[5] He also testified that he is heavily involved in running a sister facility, The Rivers North "from the transferring of the C of N [certificate of need] to turning on … all your switches; Medicaid, Medicare Blue Cross, all your insurance; to I operate it. I'm the director of operations of that building to this day."[6]

Kamego testified that he was involved from the beginning in designing the subject after its acquisition from what used to The Children's Home of Detroit. He describe the concept as follows:

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[1] Tl p. 30-31
[2] Tl p. 22
[3] Tl p. 22-30
[4] Tl p. 32
[5] Tl p. 19
[6] Tl p. 31

> The concept of The Rivers was to do a true CCRC, continuing care retirement community, where your care levels from being healthy to needing more help in the HFA [home for aged] to when you get sick you go to the SNF and vice versa. So the concept was, is if you went and got your hip done, you came into the SNF, we rehabbed you and marketed you to move into the IL, [independent living] if you did well or if you needed more assistance, move you into our HFA. And that was the concept of The Rivers.[7]

Kamego testified that he was the general contractor for the development of the site.[8] He described the process for building a CCRC as first getting the certificates of need, and then, through proper timing, acquiring a place to bring them to in the district.[9] He described building the independent living first, the assisted living second, and the skilled nursing third, because of the increasing amount of inspections needed for each section. He then testified to the specifics in building the subject from acquisition, though demolition, regrading, and then building the subject.[10]

Kamego testified that he was employed by both the contractor, (CCLA Building) as well as the Petitioner.[11] He testified that the billing applications did not necessarily reflect work that was complete, and gave the example of $600,000 worth of HVAC units being purchased, but warehoused rather than installed, and the subcontractor was paid for the equipment.[12]

Kamego also testified that certain moneys paid were for personal property, rather than real property. Specifically, he testified that $162,967.53 went towards kitchen equipment, including ovens, mixers and refrigerators. He considered all of these items to be personal property because by law, each must be movable for cleanliness.[13] He also testified that a backup generator is required by law for the SNF and the HFA buildings. The generator itself cost $300,000; with all of the transfer switching equipment, and all of the equipment to run off of it, (such as elevators) had the total cost was $750,000.[14] As to the generator, he testified that it

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[7] T1 p. 34
[8] T1 p. 41
[9] T1 p. 35-36
[10] T1 p. 37-41
[11] T1 p. 43
[12] T1 p. 49
[13] T1 p. 51-52
[14] T1 p. 52-53

weighed 80,000 pounds, and was brought in by crane, but that he purchased it used.[15] Other items of personal property claimed by Kamego were washer, dryers, refrigerators and exhaust fans placed in the IL units.[16]

Kamego next testified regarding builder's profit. He testified that he would charge 5% on all construction costs, minus personal property. Out of that 5% he would take out his labor, secretarial phone, insurances and taxes, and be left with a 2-2.5 % profit. On this project, he testified that the profit was not paid to the contractor.[17]

Kamego also gave testimony regarding percent complete for each valuation date. He testified that the pay applications alone were insufficient in determining the percentage complete, because subcontractors were paid for items such as carpeting that were not yet installed.[18] He then described the order in which each section of the project was completed, and testified that the percent complete on December 31, 2013, the project was 50-55% complete.[19] As of December 31 2014, the project was 90-92% complete.[20]

Kamego was also asked about overbuild for the subject. He testified regarding the indoor swimming pool, hardie board siding, the building envelope featuring 28-29 outside corners instead of 4, the use of 480 volt electrical service throughout, a skylight, and extra elevators, rubber flooring, separate hot water systems for each building section, 9 foot ceilings, with extra tall glass, and a bar.[21]

On cross examination, Kamego testified that he had a hand in the design down to the color of the tile, and had a hand in creating the items he had identified as deficiencies. He admitted that it was built to attract residents from the Grosse Pointe market.[22]

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[15] T1 p. 80
[16] T1 p. 53
[17] T1 p. 54-56
[18] T1 p. 56
[19] T1 p. 64
[20] T1 p. 65
[21] T1 p. 66-74
[22] T1 p. 76

Richard Levin

Petitioner's second witness was Richard Levin, a lawyer, CPA and developer, who is the manager of Petitioner, and CEO of its holding company.[23] After testifying to his background and personal reasons for getting into senior care, Levin was asked about whether the development of the subject was a real estate play. Levin testified as follows:

> It's what all real estate developers do. I mean, you buy a building, you rent it out, you take your cash flow, and if you're lucky you'll sell it at the end and, lo and behold, if you're lucky the property went up in value. That's a real estate play. I mean, that's -- you're a landlord. You're a real estate guy. Riverview Health is not in the real estate business. We are not in the real estate business. We are in the business of providing services to seniors in our community to provide them health and dignity and a place to go when they need it most.
>
> Q And it may be readily apparent, but the subject property we're talking about, I'm going to ask, is that a real estate play the way you've defined it and the way you've explained it?
>
> A Of course not.[24]

Levin was then asked as about his interest in acquiring the subject property.

> So we were trying to build a market. And Grosse Pointe was this logical expansion as we're moving ourselves in this market. So that if people from the Grosse Pointes perhaps didn't want to go to downtown Detroit or people from the Grosse Pointes didn't necessarily want to go to East Warren, North, we could provide them with something that they didn't currently have in their marketplace.
>
> ***
>
> We knew the people. We thought we felt we knew what they needed. And what Grosse Pointe didn't have was where do the people in Grosse Pointe go when they have health needs and they need to change their lifestyle from going from their homes through the continuum of care, which is this independent living, assisted living, skilled nursing, hospice. Where do they go? And the answer is they were going far away from home. And we said, "Wow. Perhaps we could help the seniors that we know in this community. Let's give them a way to stay in the Grosse Pointes." And that's why we decided to operate there.[25]

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[23] T1 p. 83
[24] T1 p. 99-100
[25] T1 p. 100-102

Levin testified as follows for the reason the property was overbuilt:

> Our mission is to provide great care and a great place for our seniors, our residents to come and live. My mission in building The Rivers of Grosse Pointe was to make it look and feel like a high-end hotel so that people who were there got the sense that, "Wow. I'm not in the old folks home. I've actually come -- and I can have activities. And I can have friends. And I can go to the lounge, the pub. I can eat in outdoor dining areas. I have this salt water swimming pool that's half of my first floor. ["] I built it that way so that when people came in they said, "This is a place I would love to send my mom or my dad." That's why we did it that way. The other one is, you know, the decision making that people have when they're deciding whether to move into these things, as you know today, right now you have home healthcare that's competing. The biggest challenge for people to come into a CCRC -- we see it right now. We're not operating where we should be. What we see is that people are saying, "I'm not ready yet. I'm really not ready yet. I'm not old enough. I'm not sick enough. I'm just going to stay home. Why not stay home? I can hire people to come and help me." They think it's cheaper. Maybe it is; maybe it's not. So we're competing with this market. We're trying to convince them. First of all, it's not cheaper. Second of all, you don't have socialization. Third, come in on your own terms. Don't come in after you break your hip. So you want them to come in and feel like they're living a vibrant, independent life where they can have fun. And we have activities and things. That's why -- and so we overbuild it so they look at this and go, "Wow, this is unbelievable."
>
> Q Is that part of The Rivers brand?
>
> A It is part of The Rivers brand. What I can say -- I can't charge them any more for it. I can't charge not a dollar more. I can get not one dollar more from Medicare. I can get not one dollar more from Medicaid. My assisted living, I can't say, "Look at this building. Pay me more." They'll go, "Well, no, because down the street the other guy charges the same." So people are looking. So I build it because I want them to feel so good, but I can't charge them any more for it.[26]

Levin also testified that the zoning was changed to require the use to be that of a CCRC with independent living, assisted living and skilled nursing provided. No other uses are permitted and failure to provide this type of facility is out of compliance with the zoning.[27] Alongside the CCRC facility, and occupying roughly half of the 15 acres purchased to develop the CCRC, Petitioner established the Residence Club. The Residence Club is a condominium

[26] T1 p. 108-110
[27] T1 p. 118

association, which restricts residency to senior citizens and gives the residents the right to use the dining and recreation facilities found in the CCRC. Residents of the Residence Club also have priority on waiting lists to get into assisted living or skilled nursing at the subject.[28] Another restriction of use is that 20% of the independent living units are set aside for low income housing, which is a restriction that runs with the land for a minimum period of 15 years.[29]

Levin also testified regarding financing. He testified that Petitioner was unable to get traditional construction financing, because it was raw land development, and considered speculative. He testified that the bulk of construction came out of Petitioner's own pocket, and that bonds were also sold for long term fixed rate financing. Levin characterized the Wayne County EDC financing as no longer construction financing, but rather, to fund operations.[30] The three operating entities (one for independent living, one for assisted living and one for skilled nursing), plus Petitioner, which owns the land were all co-borrowers and jointly and severally liable.[31]

On cross examination, Levin testified that out of the total costs expended, $17.3 million was obtained through municipal bonding was only for the independent living component. Another $10 million was financed through private bonds, and $9.25 million was paid by Petitioner and its affiliates. The total for those figures is approximately 36 million dollars.[32] On redirect, Levin disputed that the cost of construction was $36 million dollars. Levin stated:

> Of the 30-some million dollars, if you went back and looked at sources and uses of funds, which every financial person would do, 20-some million was for the building of the building. The rest of it was to pay various costs associated with the issuance, setting up millions of dollars of reserves for the benefit of the lenders. So when he [opposing counsel] says, "You have a 36 million dollar investment," no, it's not true. The building cost 20 million dollars.[33]

On Day 2 of the hearing, Richard Levin was also called as a rebuttal witness. He testified that the internal rate of return relied upon by Respondent to determine entrepreneurial profit was

[28] T1 p. 119-120
[29] T1 p. 121-122
[30] T1 p. 122-123
[31] T1 p. 124
[32] T1 p. 148
[33] T1 p. 162

a measurement of cash flow, not profit.[34] He also went through Exhibit R-50, and pointed out that the costs listed on that exhibit were financing costs rather than construction costs.[35]

As part of Petitioner's case in chief, Levin gave his estimate of percentage of completion for the two valuation dates. For December 31, 2013, 50-55 percent, and for December 31, 2014, he stated that the subject was 90% complete. On cross examination, Levin was confronted with Petitioner's Answers to Interrogatories showing higher completion percentages on the dates of valuation. Levin pointed out that the percentages of completion given in discovery were "based solely on costs incurred and not taking into account the need for occupancy permits or required licenses to operate. . ."[36]

Levin's last question and answer on direct examination is as follows:

> Q Last questions I have for you. From your experience is this the type of real property that's developed to make a profit as a direct consequence of the real estate development?
>
> A You really can't make a profit. We don't go into this to develop these properties and somehow think that we're going to peel off the property and sell it for profit. The operators, independent living, assisted living, skilled nursing, can't afford to pay what some would call a market rent on the values that are being proposed. You just can't do it. So in answer to your question, no. The real property is literally ancillary to the fact that it's our operation. It's a necessary requirement to have a beautiful building, but at the end of the day you can't sell this building to anybody else because if you sold this building to anybody else, that person has to have skilled nursing beds. You can't get them. You can't get them. So you can try to sell the building, but if they can't get skilled nursing beds, they can't comply with zoning. So what do you do? You can't operate it. You've got to be us. So it's not a real estate transaction. We don't go into this in -- with the idea of build it and think we're going to scrape a big profit off the real estate. If we're going to make money, and that's a big if, it's only because we provide independent living, assisted living and skilled nursing for the seniors in the Grosse Pointe and outside communities in a good and efficient way and provide them quality service. You don't do that, there's nothing; it's zero. It's all about the operations.[37]

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[34] T2 p. 453
[35] T2 p. 454-459
[36] T1 p. 146-147
[37] T1 p. 136-137

Levin also testified as a rebuttal witness, and reiterated that he could not sell the building to a competitor for its cost of $21 million. His reasoning was that his competitors worked out of lower cost buildings, which are easier to make a profit. He pointed out that his competitors would not want to pay for the swimming pool or the skylight. Finally, his competitors would not want to be saddled with the 20% of independent living units must go to low income persons.[38]

On cross examination, Levin agreed that the architect Edmond London & Associates, who were hired to design the property were experienced designers of independent living facilities.[39]

Daniel Tomlinson

Petitioner's final witness was Daniel Tomlinson, MAI, who was accepted by the Tribunal as an expert in real estate valuation.[40] Tomlinson considered all three approaches to value. He testified that he did not develop an income approach because it "would actually estimate what I would call going concern or enterprise values and wouldn't necessarily report the value of the real property in this case."[41]

Tomlinson developed a sales comparison approach, but gave this approach secondary weight. He explained:

> Well, the difficulty in using the improved sales of these type of properties is what's real and what's real-plus.
>
> Q What does that mean?
>
> A Well, in the -- like the subject that has these businesses, you have tangible and intangible components. So the tangible are basically the real property and the personal property. The intangible components would be the license, if they need to get a license, and all the other business attributes; goodwill, a trained working force, working capital. So I recognized that even though I utilize these sales in my sales comparison approach to try to get an idea of what the real property is, it wasn't what I would call 100 percent certainty. So because of that I gave it a secondary weight.[42]

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[38] T2 p. 460-462
[39] T1 p. 140
[40] T1 p. 173
[41] T1 p. 183. Despite that testimony, his appraisal contains an income capitalization approach, on pages 88-92. However, Tomlinson did not use the value computed in his reconciliation of approaches.
[42] T1 p. 191-192

Tomlinson also testified that he did not locate any CCRC sales where only the real estate transferred.[43]

Tomlinson performed and relied upon a cost approach. In valuing the improvements, Tomlinson used two sources. He used Marshall Valuation Service (MVS), calculator method, and he used actual costs.[44] In using MVS, he chose to value the improvements based on low cost construction. He explained his rationale as follows:

> When I look at the average cost figure, it was such a high number compared to the actual cost, so I didn't really -- I don't think it reflected what -- the cost that was spent at the subject. The lost [sic] cost gave a better indication and a better reflection of the subject. I also felt that because I was going to look at each section, that the low cost would try to look at – or consider you're costing the entire building, not individual sections.
>
> Q What do you mean by that?
>
> A Well, as I talked about the assessment card, what the assessor did is he looked at each section in the building and then assigned a specific cost page on that section. And when I was looking at that, it appeared that when you're looking at sections, you may have one section to back up to another section. So there are sometimes you may have -- you're counting a wall twice.[45]

On cross examination, he testified that the quality of construction was average-plus.[46] He also admitted that he never attempted to calculate the square footage of redundant walls.[47]
He also added on direct examination, that every time he uses MVS it usually reflects a higher number than actual costs.[48] Tomlinson next explained the multipliers he used for climate, story height, time adjustments, and site improvements, and came up with a total hard costs of $26,149,863.[49]

Tomlinson testified regarding soft costs, including an entrepreneurial incentive, which he defined as "the anticipated profit from a developer."[50] He determined that the entrepreneurial incentive should be zero, because the building is built to suit, and is owner occupied.[51]

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[43] T1 p. 192
[44] T1 p. 197-198
[45] T1 p. 200-201
[46] T2 p. 237
[47] T2 p. 259
[48] T1 p. 202
[49] T1 p. 204
[50] T1 p. 205

He also testified that using the MVS method already includes builder's profit, interest, and financing. He then concluded that the value of the subject under the MVS method was $26,284,999. Using the developer's actual hard costs as of December 31, 2014, he came with a value of $21,719,729. From that figure, he subtracted demolition costs contained in that figure, as well as the cost for the back-up generator, which he considered personal property, and came up with $20,438,362.58 in total actual costs for the improvements.[52] He then added on architectural fees, and 1.5% for the construction loan, along with real estate taxes on the underlying land, and came up with $21,719,729. He then took the midpoint between actual costs and MVS to come up with a value of $24,000,000 for the improvements as completed.[53]

Tomlinson then had to determine depreciation and obsolescence. For physical depreciation, he took zero, as the subject was in the process of being built. He did, however, find external and functional obsolescence. He determined lack of storage and meeting rooms to be deficiencies, and the impressive atrium and pool, and 480 volt electrical to be super-adequacies, both contributing to functional obsolescence. As to external obsolescence, Tomlinson considered the 20% low income requirement, as well as the fact that the build was driven by operations as factors that contributed to economic obsolescence.[54] To quantify external and functional obsolescence, Tomlinson looked at five sales comparables, determined what their costs new would be, subtracted out land and physical obsolescence and compared this sum to the sales price. The difference between those numbers, in Tomlinson's opinion constituted external and functional obsolescence, which he determined to be 35%.[55] Deducting 35 percent, Tomlinson concluded the subject was worth $17,700,00 as if completed on both valuation dates.[56] Finally, Tomlinson multiplied that base by the percentage of completion on each valuation date, and determined that the subject's improvements were worth $12,200,000 for 2014 and $17,000,000 for 2015.[57]

Regarding Tomlinson's 35% external and functional obsolescence, he conceded that there was no breakdown between external and functional; that the term "superadequacy" does

[51] Tl p. 205-206
[52] Tl p. 207
[53] Tl p. 209
[54] Tl p. 211-215
[55] Tl p. 216-221
[56] Tl p. 223
[57] Tl p. 224

not appear in his report or in his work file, and that there is no quantification of obsolescence from any specific element he testified to on direct.[58] As to his obsolescence study, Tomlinson conceded that he had no hesitation using MVS numbers at the observed quality level, even though he testified that he found their numbers to be higher in his experience, and declined to use them at the observed quality level for the subject.[59] Tomlinson was also questioned about the dissimilarities of the comparables he used to determine functional and external obsolescence. For instance, obsolescence Sale #1 located at 18300 East Warren in Detroit was originally built as a high school in 1954, and the sale took place in 2011, and an additional $12.7 million was spent converting it to its present use. Tomlinson could not specify whether that sum was spent before or after the transfer. Tomlinson also valued it using a higher construction quality than he used for the subject.[60] His obsolescence sale #2 located on Hoover Rd. in Warren was an REO sale, he valued new through MVS as "good", two levels above his construction cost quality for the subject.[61] Tomlinson's Sale #4 in Howell was a bankruptcy sale.[62] While it was closer in age to the subject, and had similar walls to the subject, it had a low percentage of obsolescence. [63] Obsolescence Sale #5 in Southfield was closest in age to the subject and a much smaller building, had a high rate of obsolescence.[64] The rates of obsolescence varied from 9% to 60%. Tomlinson testified on redirect that he picked 35% as follows:

> [T]he bigger fact that I wrestled with was, okay, if the business goes away and there is no business here, how will the market discount that? And my conclusion, it would mark it to a discounted price significantly.[65]

In response to questions from the bench, Tomlinson testified that he put the most weight on comparable 5 because it was closest in age, and because it was vacant, and sold without a license.[66]

Regarding his land valuation, Tomlinson conceded that the subject could not be built on the vacant land comparables 1 through 3, due to size or zoning.[67] He also conceded that he

[58] T2 p. 262-266
[59] T2 p. 268
[60] T2 p. 271-278
[61] T2 p. 282-285
[62] T2 p. 287
[63] T2 p. 289-290
[64] T2 p. 290-291
[65] T2 p. 303
[66] T2 p. 311-312

looked at price per square foot, without considering the allowable density of the land.[68] He also conceded that he put the most weight on Comparable 1, which was the lowest price, and heavily adjusted rather than Comparable 4 which he determined required no adjustments.[69]

RESPONDENT'S CONTENTIONS

Respondent contends that the subject is brand new, with no obsolescence of any kind, and is best valued by the cost approach.

Year	TCV	SEV	TV
2014	$27,475,000	$13,737,500	$13,104,600
2015	$34,125,000	$17,062500	$17,062,500

Respondent contends that the AIA applications are the best indicator of value under the cost approach. To this sum, a general contractor's fee, various soft costs, including the cost of financing, and an entrepreneurial profit must be added to properly value the subject under the cost approach. Respondent also claimed that the subject was special purpose property.

RESPONDENT'S ADMITTED EXHIBITS

R-1 Appraisal of subject prepared by Michael Ellis of Value Trends.

R-2 Photographs of the subject proximate to December 31, 2013

R-3 Photographs of the subject proximate to December 31, 2014

R-4 Photographs of subject

R-5 Photographs of subject property's surroundings

R-10 (same as P-8) 2014 assessment record card of subject

R-11 2015 assessment record card of subject

R-16 Wayne County EDC First Mortgage Revenue Bonds (The Rivers of Grosse Pointe Project) Series 2013

R-20 Petitioner's Answers to Respondent's First Set of Interrogatories and Requests for Production of Documents

R-23 Aerial photograph of 1825 Parmenter Blvd, Royal Oak

R-24 Bloomfield Township zoning ordinance excerpt

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67 T2 p. 241-250
68 T2 p. 252
69 T2 p. 255

R-26 Aerial photograph of 32190 N. River Rd., Harrison Twp

R-50 Monthly Field Report No 21 dated July 31, 2015

RESPONDENT'S WITNESSES

Lester "Gerry" Jackson

Respondent's first witness was Lester Jackson, Respondent's Deputy Assessor. Jackson identified several exhibits, and testified that he determined through inspections the percentage of completion for the subject property for the years at issue.[70] Specifically, he testified as follows as to how he reached his conclusion:

> There were six building sections and I evaluated based on appraisal judgment and professional judgment the percent complete for each portion of the building.
> Q Was it based on your observations?
> A Yes.[71]

Michael Ellis

Respondent's second and final witness was Michael Ellis, MAI. Ellis has been a real estate appraiser since 1972 and has had the MAI designation from The Appraisal Institute since 1985.[72] He was accepted as an expert in real estate appraisal.

Ellis testified that the subject is in Grosse Pointe Woods, and that other improvements found in near proximity, other than residential include the University Liggett School, the Detroit Golf Club and the Grosse Pointe Hunt Club.[73] He also testified that the subject's highest and best use as improved is as a continuing care retirement community.[74] He considered all three approaches to value but decided upon the cost approach "[b]ecause the improvements are newly constructed, number one. And also, it's a special purpose or type property."[75] He explained that the subject was designed for a specific use and not easily convertible to another type of use.

Ellis testified that he did not utilize an income approach because "the information made available provided an incomplete picture of the subject's income and expense characteristics."[76]

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70 P2 p. 317-327
71 T2 p. 319
72 P2 p. 329
73 P2 p. 337-338
74 T2 p. 342
75 T2 p. 343
76 T2 p. 343

He went to explain that without information, he would be require "an abundance of significant assumptions likely to result in a misleading and unreliable result."[77]

Ellis also rejected a sales comparison approach. He explained this decision by quoting from his appraisal as follows:

> "Sales of property similar to the subject nearly always sell as a going concern and often involve sale leaseback situations. Because the income and expense characteristics of comparable properties are typically confidential and unavailable to appraisers, rendering an allocation to the real estate could potentially be misleading. Furthermore, this allocation would have to be applied to the subject and its complete income and expense characteristics were not made available in this instance."[78]

Ellis then testified how he went about preparing his cost approach. His first step was to determine the market value of the underlying land. In looking for land comparables, his criteria was to find land with the same highest and best use, and that the comparables be in other affluent communities with similar demographics to Grosse Pointe.[79] He chose five sales comparables, including the 15 acre parcel that the subject was cut out from; [80] a 6.14 acre site in Bloomfield Hills,[81] a 1.84 acre site in Birmingham,[82] a 12.35 acre site in Northville Twp.,[83] and a 22.23 acre site in Pittsfield Twp.[84] For all five comparables he charted the per acre price and the per unit price. Ellis noted that dividing the purchase price of the subject and dividing it by acreage would yield a much higher value than dividing it by living units.[85]He also commented that "market participants are looking at per-living-unit rates before acres because it simply reflects a more consistent methodology."[86] Ellis then testified regarding his adjustments, and concluded to a land value of $3,150,000 for 2014 and $3,200,000 for 2015.[87] Ellis also, for informational purposes, included two additional sales in Grosse Pointe where the old Cottage Hospital was to be converted into an assisted living facility for Alzheimer patients, and Liggett Middle School was

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[77] T2 p. 344
[78] T2 p. 344, quoting from R1, p. 13
[79] T2 p. 344-345
[80] T2 p. 347-348
[81] T2 p. 348-350
[82] T2 p. 350-351
[83] T2 p. 351-353
[84] T2 p. 353-354
[85] T2 p. 347
[86] T2 p. 351
[87] T2 p. 357

to be converted to a continuing care facility. He included these sales to show that there was demand in the community for senior housing.[88]

Ellis then looked at building costs for the improvements. He testified that he looked at Petitioner's AIA construction payment schedule, as well as Marshall Valuation Service.[89] He pointed out that AIA construction schedule details the total estimated cost of the *hard costs only* along with the amount that was disbursed.[90] Using actual costs required him to determine additional costs, which he described as having "three components: Contractor's profit, indirect and soft cost, and entrepreneurial profit."[91]

As to the hard costs, Ellis segregated out demolition costs because those same costs were attributed to the land value. For 2014, he concluded to completed hard costs less demolition as $15,871,501, and $20,639,470 for 2015.[92]

For contractor's profit, he estimated it to be 7.5%. For that figure, he relied upon Marshall Valuation Service, and CSImarket.com website, (construction services industry), which came up with a range of 4% to 11%.[93] Ellis explained the rationale for contractor's profit despite Kamego's testimony of not taking a profit as follows:

> [Y]ou have a contractor who his [sic] a developer, builds houses and is a -- say he subs 40 sites. He's got them all sold. He charges 39 people a contractor's profit for his efforts, so he makes his profit. And on his own he doesn't take a profit. But I'll guarantee you one thing, if he sells his property a month after, he's going to pass on the contractor's profit then.[94]

Ellis went on to testify about indirect costs, including insurance, permitting, and various other costs tied to the issuance of bonds. Much of this information was found as forecast assumptions available on line as a result of Petitioner's bond financing through Wayne County EDC. Ellis' total soft costs were $3,043,000.[95] Ellis was cross examined about elements making up soft costs. Of interest was the exchange regarding architecture fees, where Ellis opined to a

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[88] T2 p. 358
[89] T2 p. 360
[90] T2 p. 364
[91] T2 p. 364
[92] T2 p. 366
[93] T2 p. 367-368
[94] T2 p. 368
[95] T2 p. 369-371

fee of $780,000, and was confronted with an actual bill in Exhibit P-2 of only $423,700.[96] On redirect, however, Respondent introduced Exhibit R-50 Soft Cost Pay Application #21, which was found by Ellis on line. R-50 showed Petitioner's total facility budget for Architecture/Engineering/MEP to be $775,000, with $423,620 allocated to the independent living section of the subject. Ellis was able to match up his soft costs with this document.[97]

Ellis was queried about other soft costs on cross examination. Regarding the various charges incurred for issuing bonds, including a construction monitor fee of $65,000 and an underwriter's discount of $746,000. Ellis conceded that if the developer had no financing and paid cash, then the various charges involved for financing would not be added on.[98]

Next, Ellis calculated an entrepreneurial incentive. He explained the need to add an entrepreneurial incentive to the cost approach as follows:

> The subject property is a property that's designed to make a profit as a continuing care operation. I recognize that there's a going concern component in the total package, but the real estate -- anybody building it would want entrepreneurial profit in order to get involved in the venture. What we've done is we have gone to different sources to see what entrepreneurial profits have been earned in the past. Normally appraisers will use anywhere from 10 to 25 percent. We try to quantify it. I spoke with Mr. Damone and asked what type of internal rate of return were 3 they looking for. And he indicated for their projects they try to make 23 to 24 percent. But we didn't stop there. We took some actual other developments that were developed and sold and extracted entrepreneurial profit out of them.[99]

After explaining who Mr. Damone was, Ellis discussed entrepreneurial profits for Centerpointe Mall in Grand Rapids, and Crossroads Towne Center in Howell as sources for a range of such profits, which had a profit of 37.5% and 27.9% respectively. He determined that 20% would be reasonable for the subject.[100]

On cross examination, Ellis was asked what evidence he had that the property was developed to make a profit for the real estate holder. He answered:

> It's a going concern operation. And the real estate plays a part in being able to have a going concern. And the going concern is there for the profit. And

[96] T2 p. 399
[97] T2 p. 442-445
[98] T2 p. 409-411
[99] T2 p. 371-372
[100] T2 p. 373

> effectively the real estate is the tool that allows the going concern to exist. Without the real estate, there is no going concern.
>
> Q I'm not asking about the going concerns profit. You're talking then about the whole enterprise; all the different operating units; right? That's what you're talking about?
>
> A They're inseparable.[101]

Ellis then agreed that he was not able to give an opinion that the developer in this case was buying the real estate only to try to make a profit on the real estate. He agreed that typically, the real estate and operations are not separately sold. Ellis agreed that there was no market evidence that would substantiate that the real estate alone could be marked up for a profit and resold in the market.[102] Finally, as to this point, Ellis was asked by the bench if entrepreneurial incentives would be better allocated to the business operation rather than the real estate. Ellis testified as follows in explaining why he did not believe this to be so:

> The property -- I've looked at projections at where the -- what the cash flow or NOI is scheduled to be for years 2017, '18 and '19 that we happened to find online for it. And if you take a look at where those NOI's are and what value the going concern would have, it's certainly a part of both components. There's definitely has to be entrepreneurial profit built into the real estate.
>
> Q Well, I guess the question is would it be built into the real estate or built into the operating entities?
>
> A I think it goes to both.
>
> Q Is there any way to tease that out, like I'm going to have to do?
>
> A We did our best estimate at 20 percent because that seemed reasonable. In looking at -- this may help. In looking at the projections, this is a report prepared by Alexia Pozar Consulting, sent to Mr. Richard Levin. The letter's dated July 28th, 2015. And what they're showing is what the cash flow to the going concern will be, the NOI. And they show for -- projected for 2017 is an NOI of -- let's see -- $8,603,000. Projected for 2018 9,684,000. And for 2019 an NOI projection of 9 million 937. Now, I recognize these are projections. But if I was to use a capitalization rate to reflect the going concern, I'm going to come to a certain value. And you know all that value cannot be just the going concern. The real estate has driven that. The real estate is a tool that allows the going concern to

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[101] T2 p. 416
[102] T2 p. 416-417

> obtain the monies it does or the -- generate the income it does. And if you could separate the two, someone selling the real estate would expect that they would share in that. And it's a difficult -- the response, I hope it's responsive to your question. But it's difficult to come up with a percentage. Our best estimate was 20 percent and it just seemed to fit for us.[103]

Totaling up all costs, hard, soft, incentives and land, Ellis determined the actual costs upon completion for each year to be $33,915,156 for 2014 and $34,293,592 for 2015. The discrepancy between 2014 and 2015 was due to land value increasing, and other anticipated costs increasing.

Ellis' next step was to determine the percentage completed as of each valuation date. Based upon percentages of expenditures from the AIA construction pay applications, Ellis determined that the percent completed for 2014 was 77.78% and 99.5% for 2015. Based upon those percentages, he calculated a value of $27,481,823 for 2014 and $34,136,299 for 2015. Ellis testified that he did not rely upon the assessor's calculation because the assessor's office's "information came from their observation and they had not been able to quantify it. And what the AIA construction payment did was allowed me to quantify it by dollars spent already."[104]

Ellis also valued the subject using Marshall Valuation Service, using a per square foot number in between average quality and good quality.[105] Unlike the AIA sheets, MVS includes soft costs in their multipliers. Using MVS, Ellis concluded to total costs of $41,877,147 for 2014 and $41,776,358 for only the improvements. He then applied the same percentages of completion used earlier, and added back the land value, and came to a total value by this method of $35,700,547 for 2014 and $44,721,510 for 2015.[106] In reconciling the MVS number with the AIA actual cost number, he gave all of the weight to actual costs and none to MVS because he thought that the AIA payment schedule was more reliable to utilize hard costs. Ellis read the certification found on each AIA application, which states:

> "The undersigned contractor certifies that to do the best of the -- that to the best of the contractor's knowledge, information and belief the work covered by this application for payment has been completed in accordance with this contract

[103] T2 p. 450-451
[104] T2 p. 374-376
[105] T2 p. 377
[106] T2 p. 378

> document, that all amounts have been paid by the contractor for work which previously certifies for payment were issued"[107]

Rounding his totals, he opined that the value for tax year 2014 was $27,475,000 and $34,125,000.[108]

Ellis did not find super adequacy in the subject. He explained:

> It was designed for a Grosse Pointe market location and in order for the going concern to operate, they have to be able to attract people in that location and it's indicative of what you might expect.
>
> Q Did you consider doing any sort of obsolescence analysis for this property, functional or economic?
>
> A No, I did not consider it a reasonable thing to do.
>
> Q Why not?
>
> A I simply don't believe there's any. It's a brand-new facility, designed by an architect who specializes in senior facilities of this nature. I simply don't see obsolescence under the circumstance.[109]

Ellis was also asked about Tomlinson's methodology in his obsolescence study, and answered as follows:

> Why do I disagree? Number one, they're different type properties. We are a continuing care retirement community that offers independent, assisted and skilled nursing. His comparables are different type properties located in different markets. The ages of the buildings that he selected as comparables, none of them are new. None of them are in a community like that of Grosse Pointe or Bloomfield Hills or Birmingham. There's so many variables going on in that analysis you can't quantify anything with any reasonableness.[110]

FINDINGS OF FACT

1. The subject is located at 900 Cook Rd., Grosse Pointe Woods, Wayne County Michigan and is classified as commercial.

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[107] T2 p. 363
[108] T2 p. 379
[109] T2 p. 379-380
[110] T2 p. 380-381

2. The subject is built on 8.84 acres of land divided out of a 15 acre site that used to be the former site of the Children's Home of Detroit, an orphanage.
3. The median household income per ERSI Demographic and Income forecast[111] for Grosse Pointe Woods is $91,863.
4. The subject's neighbors include the University Liggett School, the Detroit Golf Club and the Grosse Pointe Hunt Club.
5. The subject was under construction on the valuation dates for the years at issue, and is being built to be a continuing care retirement community (CCRC), known as The Rivers, with 3 separate living areas; 77 independent units, 80 assisted living units and 90 skilled nursing units for a total of 237 units, and a total of 211,065 square feet.
6. The subject also serves the Residence Club Condominiums, a group of senior citizen condominiums developed on the rest of the original 15 acre parcel, the members which have privileges at the subject, and receive priority on waiting lists at the subject.
7. The subject's zoning only permits its designed use of a CCRC.
8. Both Dan Tomlinson and Mike Ellis found the subject's current use to be its highest and best use as developed.
9. Both Dan Tomlinson and Mike Ellis opined that CCRC building seldom if ever sell separately from the business operation.
10. Petitioner owns the real property and shares common ownership with the three separate entities that operate the independent living, assisted living and skilled nursing sections of the subject.
11. Tim Kamego owns the general contractor that build the subject, and also holds the licenses for the skilled nursing and assisted living sections of the subject.
12. Tim Kamego is affiliated with two additional senior living communities in the metropolitan Detroit area that are owned or otherwise affiliated with Richard Levin.
13. The subject was designed by Edmond London & Associates, which specializes in senior living facilities.
14. The subject has 9 foot ceilings, a large glass enclosed atrium, a salt water indoor swimming pool, extra elevators, a bar, and 480 volt electrical service throughout.

[111] Contained in P-1, p. 28

15. Both Tomlinson and Ellis relied upon the cost less depreciation approach to determine the value of the subject.
16. Tomlinson used Marshall Valuation Service ("MVS") to determine the value of the improvements, but used a lower quality of construction multipliers than what he believed the structure was built with.
17. Tomlinson also found 35% obsolescence, and no additional soft costs or entrepreneurial incentives.
18. Tomlinson relied upon the percentage of completion determined by Respondent's assessor.
19. Ellis also used MVS to determine the value of the improvements, which concluded to values of $35,700,547 for 2014 and $44,721,510 for 2015.
20. Ellis solely relied upon Petitioner's actual costs and came to lower value conclusions than he would have relying upon MVS.
21. Ellis found no obsolescence, and added to actual hard costs, certain soft costs, including financing costs, along with a builder's profit and an entrepreneurial profit.
22. Ellis relied upon the percentage of costs expended by Petitioner of its total budget on each valuation date to determine the percentage of completion on tax day for 2014 and 2015.
23. Relying upon the percentage of costs expended by Petitioner of its total costs on each valuation date, Ellis determined that the percentage of completion as of December 31, 2013 was 77.72% and on December 31, 2014, was 99.50%.
24. The subject's taxable value for the land only was set at $1,050,000 in 2013 per a consent judgment entered in MTT Docket No. 438234.[112]

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.[113]

> 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

[112] Exhibit P-7
[113] See MCL 211.27a.

> 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. . . .[114]

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.[115]

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."[116]

"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."[117] The Tribunal is not bound to accept either of the parties' theories of valuation.[118] "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."[119] 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."[120]

A proceeding before the Tax Tribunal is original, independent, and de novo.[121] The Tribunal's factual findings must be supported "by competent, material, and substantial evidence."[122] "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[123]

"The petitioner has the burden of proof in establishing the true cash value of the property."[124] "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

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[114] Const 1963, art 9, sec 3.
[115] MCL 211.27(1).
[116] *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).
[117] *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).
[118] *Teledyne Continental Motors v Muskegon Twp,* 145 Mich App 749, 754; 378 NW2d 590 (1985).
[119] *Meadowlanes Ltd Dividend Housing Ass'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991).
[120] *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).
[121] MCL 205.735a(2).
[122] *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).
[123] *Jones & Laughlin Steel Corp, supra* at 352-353.
[124] MCL 205.737(3).

the evidence, which may shift to the opposing party."[125] 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."[126]

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.[127] "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading."[128] 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.[129] Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.[130]

The subject property is a continuing care retirement community called The Rivers, which is being built on the land that used to contain the Detroit Children's Home. It is a commentary on changing demographics and the aging of the baby boomer generation that economics now favor the building of a high end senior living community on property once dedicated to serving poor orphans. The Rivers features 77 independent living units, 80 assisted living units and 80 skilled nursing units. While both parties' appraisers agreed on the subject's highest and best use, and agreed that the cost less depreciation approach is the best method in determining the subject's true cash value,[131] the differences in methods used, costs included, and differing opinions on obsolescence have led to large differences in conclusions of value.

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[125] *Jones & Laughlin Steel Corp, supra* at 354-355.
[126] MCL 205.737(3).
[127] *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).
[128] *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).
[129] *Antisdale, supra* at 277.
[130] See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).
[131] Tomlinson also performed a sales comparison approach but the value conclusion under this approach was not used in his reconciliation. The same comparables performed double duty in providing him with a basis for measuring obsolescence.

Land Value

Both appraisers began their valuation analysis with a determination of land value. Tomlinson relied upon four land sales which he valued by the foot, rather than by residential units allowed. He conceded that the subject with its total of 127 units could not be built on any of his comparables. While two of his comparables were in Bloomfield Twp., he relied most heavily on Land Sale 1 in Royal Oak, which sold for $6.19 a square foot. This sale also had the most adjustments; it was the oldest sale, having taken place in April of 2011, and is only 1/10th the size of the subject at .89 acres. Land Sale 2 sold for $3.86/sq ft., Land Sale 3 sold for $8.50 per sq ft., and Land Sale 4 sold for $16.54 per sq ft. The range in price per square foot is large, and was not significantly narrowed by Tomlinson's adjustments. Land Sale 4 on the other hand had no adjustments; was closest in size to the subject. It is in an affluent community, as is the subject. While a listing in 2013 at $4,250,000, it sold in November 2014 for $4,000,000.

Ellis on the other hand, found that the proper unit of comparison for his five comparables was price per living unit rather than price per square foot. His unadjusted price per units were $12,635, $19,007, $12,672, $12,222 and $14,652 for comparables 1 through 5. After adjustments, his range was even tighter. For 2014, the adjusted sales price per living unit was $13,141, $14540, $13,179, $13,713 and $14,505.[132] These sales were adjusted slightly higher for market conditions in 2015. Moreover, his criteria for choosing comparables of having the same use and being in similarly affluent communities resulted in more credible comparables. Interestingly, the adjusted price supported the price actually paid by Petitioner for the underlying land; a sale Ellis used as his first comparable. Accordingly, the Tribunal finds that Ellis's opinion of land value is much better supported, and adopts his conclusions as part of the subject's true cash value of $3,150,000 for 2014 and $3,200,000 for 2015.[133]

Hard costs

Both appraisers looked at costs using actual costs, as well as Marshall Valuation Service. Tomlinson used MVS in an "off label" way, using the MVS multipliers for "Class C Low Cost, Multiple Residences – Retirement Community Center,"[134] on construction with a quality rating

[132] Exhibit R-1 p. 123-124
[133] The Tribunal notes that the land value for the subject is capped, and hence the taxable value for the land portion of the subject will be valued accordingly.
[134] Exhibit P-1 p. 62

he judged to be "average plus . . . pretty close" to good.[135] Tomlinson's explanation for using an inferior quality multiplier was "we utilized Class C low cost to offset redundancy of the MVS and to reflect more closely actual costs."[136] Neither in his narrative, nor in his testimony did Tomlinson explain how lowering the rating would take care of redundancy. As to placing it more in line with actual costs, Tomlinson seemed to discount the fact that MVS cost multipliers also account for various soft costs. Moreover, choosing a lower quality rating by perhaps two levels over what is observed in order to bring about a specified result is to have the result driving the data, rather than the data driving the result. Preordained results render the entire exercise meaningless. A more honest approach was demonstrated by Mike Ellis, who costed out the improvements using the proper MVS multipliers, and then giving the result zero weight when the results flunked the reasonableness test. Tomlinson on the other hand, gave his watered down MVS approach weight, equally weighing this invalid result with actual costs to conclude to a value for the improvements.

Both appraisers also used and relied upon actual costs spent by Petitioner in constructing the subject. While Ellis relied exclusively on actual costs, which he supplemented with certain soft costs, Tomlinson found a number half way between MVS valuation numbers and actual costs. The only soft cost he added was property taxes on the land. The Tribunal finds that actual costs as prepared by Mike Ellis in his appraisal more accurately state the value of the subject than MVS.

Personal property inclusion

Petitioner argues that Ellis' use of actual costs wrongly includes certain items of personal property as part of the real property. Two major areas of property in dispute are the backup generator, (including special electrical equipment to accommodate the generator), and kitchen equipment. Petitioner argues that the generator which cost $300,000, and which was part of a $750,000 expenditure for backup electrical equipment is personal property as it is movable, it can be removed without damage to it, or to the structure, and it can be resold. In support, Kamego testified that the generator was bought used, and shipped from Chicago.[137]

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[135] T2 p. 237-238
[136] Exhibit P-1 p. 39
[137] T1 p. 52-53

The leading cases concerning whether or not property is real or personal are *Tuinier v Bedford Twp*,[138] and *Granger Land Dev v Dep't of Treasury.*[139] *Tuinier* echoed the test put forward by the Court of Appeals in *Michigan National*:

> This appears to be a question of first impression in this state. Whether property qualifies as personal or real for purposes of taxation is determined by application of the following three tests: (1) whether the property was actually or constructively annexed to the real estate; (2) whether the property was adapted or applied to the use or purpose of that part of the realty to which the property in question is connected or appropriated; and (3) whether the property owner intended to make the property a permanent accession to the realty. [*citations omitted*].With respect to the intention of the property owner, [t]he intention which controls is that manifested by the objective, visible facts. The permanence required is not equated with perpetuity. It is sufficient if the item is intended to remain where affixed until worn out, until the purpose to which the realty is devoted is accomplished or until the item is superseded by another item more suitable for the purpose.[140]

Tuinier involved polyethylene greenhouses, which were bolted into the ground, and connected up to gas and electric service.

Granger involved an exemption from Michigan's Use Tax[141] for personal property used or consumed during industrial processing. Nonetheless, the Court of Appeals applied the same three factors to determine whether cells installed into a landfill constituted real or personal property. The court of appeals stated:

> *Moreover, there is no evidence that Granger erects the cells in order to improve the land or make it more valuable in and of itself; rather, Granger erects the cells to facilitate the processing of waste material into gas that it can sell to third parties.* Given these unique facts, we conclude that Granger has neither actually nor constructively attached the landfill cells to its real property.
> For the same reasons, we conclude that the erection and maintenance of the cells does not amount to an adaptation of the land under the second test. Granger adapts the land to facilitate the erection of cells; it does not erect the cells to facilitate the use of the land.

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[138] *Tuinier v Bedford Twp*, 235 Mich App 663;599 NW2d 116 (1999).
[139] 286 Mich App 601; 780 NW2d 611 (2009).
[140] *Tuinier*, 235 Mich App at 667-68.
[141] MCL 205.91 et seq. While *Granger* involved a non-property tax, it reviewed the same three factors to determine the issue of whether or not property was real or personal. The Tribunal does not believe that the Court of Appeals in a published case affecting common law, upon which both property taxes and use taxes are dependent, intended a different interpretation of the same tests for use tax than for property tax.

> Finally, although there is evidence that the cells could remain in place indefinitely, it does not necessarily follow that Granger intended the erection of the cells to be an accession to the real estate. During their commercial lifespan, Granger intends the cells to generate gas and, for that reason, maintains the cells as separate processing units. Further, the fact that cells might conceivably remain in place indefinitely—even after the expiration of their commercial life—does not alter this conclusion. Rather, the abandonment of the cells on Granger's property at some future point in time would be akin to the onsite disposal of waste products by a traditional manufacturer.[142] [*Emphasis added*].

The analysis in *Granger* was recently scrutinized in *West Shore Service Inc. v Dep't of Treasury.*[143] In *West Shore*, a case involving whether or not civil defense sirens were real or personal property for use tax purposes, the Michigan Court of Appeals distinguished *Granger* as follows:

> The instant case is distinguishable from *Granger* and the facts of this case show that the poles were fixtures. Unlike in *Granger,* petitioner in the instant case took affirmative steps to attach the poles to the ground. Unlike the plaintiffs in *Granger,* petitioner did not simply pile garbage into layers in a particular area of land. Rather, petitioner dug holes into the ground, and, through the use of heavy equipment, set the poles in place and backfilled them to keep them there. This type of affirmative attachment was lacking in *Granger.* Additionally, where the plaintiffs in *Granger* took steps to prevent the cells from becoming integrated into the land, petitioner in this case directly integrated the poles into the land by digging holes and setting the poles into the aforementioned holes. Further, as noted above, the poles were adapted to and useful to the land. Finally, the intent in this case showed that the poles were to be part of the land, not maintained insulated from the land like the separate processing cells at issue in *Granger.*[FN1]
> In sum, we find that the poles and sirens at issue were fixtures. The MTT did not err in ordering that petitioner owed the use tax.
>
> [FN1] We also note that this case does not involve the "noteworthy" consideration that influenced the panel's decision in *Granger,* i.e., avoiding "pyramiding" or multiple layers of taxation.

It is noted that *West Shore* is an unpublished decision, and per MCR 7.215(C) is not precedential. It is also noted that the Court of Appeals denied Treasury's request for publication.

In trying to reconcile *Tunier* and *Granger*, to the extent that they can be reconciled, the Tribunal holds that whether or not the generator was added to improve the real property, or

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[142] *Granger* 286 Mich App at 612-613.

[143] *West Shore Service Inc. v Dep't of Treasury,* unpublished per curiam opinion of the Court of Appeals Docket No. 321085 (July 21, 2015).

merely for its function is dependent upon the subject's highest and best use. The generator may or may not be permanently affixed, (but at 80,000 pounds is likely to stay where it is) and apparently can be removed without damage to itself, or the building, suggesting it is personal property. However, both parties agree that the subject's highest and best use is as a CCRC, which includes assisted living units and a skilled nursing facility; both which must be licensed to operate. Per Tim Kamego's testimony, it is a requirement of licensure that these facilities have a backup generator. Accordingly, the subject could not function at its highest and best use without the backup generator. Therefore, the Tribunal finds that the generator improves the real estate by allowing it to function at its highest and best use, and finds that Ellis properly included the generator as realty. For more obvious reasons, the rest of the wiring and electrical equipment also qualifies as real property. The wiring and transfer switches also adapt the real estate to the generator.

In its Post Hearing Brief, Petitioner argues that the generator is classified as personal property by statute under MCL 211.34c(e)(i). Apparently, Petitioner is citing MCL 211.34c(3)(e)(i), which reads as follows:

> (e) Utility personal property includes the following:
>
> (i) Electric transmission and distribution systems, substation equipment, spare parts, gas distribution systems, and water transmission and distribution systems.

This subsection is a portion describing classifications of assessable personal property. Subsection (3)(e) also lists the following items to be classified as utility personal property:

> (ii) Oil wells and allied equipment such as tanks, gathering lines, field pump units, and buildings.
> (iii) Inventories not exempt by law.
> (iv) Gas wells with allied equipment and gathering lines.
> (v) Oil or gas field equipment stored in the open or in warehouses such as drilling rigs, motors, pipes, and parts.
> (vi) Gas storage equipment.
> (vii) Transmission lines of gas or oil transporting companies.

Clearly, from the context in which subsection (3)(e)(i) was written, it was meant to apply to utility companies, rather than to other commercial entities.

Moreover, the statute applies to the *classification of a parcel*, rather than to individual items. The fact that it was enacted for parcel classification purposes, rather than as a determinant of whether an item within a parcel is real or personal is supported by subsection (1), which instructs the assessor to classify every item of assessable property, and subsection (5), which reads:

> (5) If the total usage of a parcel includes more than 1 classification, the assessor shall determine the classification that most significantly influences the total valuation of the parcel.

Classifications under MCL 211.34c are used to determine appeal deadlines under the General Property Tax Act, and the Tax Tribunal Act. Interestingly, classifications themselves are not appealable to the Tribunal. Rather, per subsection (7), they are strictly appealable to the State Tax Commission.

The next categories of expenditures Petitioner argues is personal property is the $162,967 expenditure for kitchen equipment, which includes refrigerators, ovens, and mixers which are movable, not annexed to the real estate. Petitioner argues that all of the equipment, including the ovens and refrigerators must be movable by law to allow for a set standard of cleanliness. While perhaps movable, the Tribunal finds that Petitioner has failed to meet its burden of breaking out the amount of expenditures on this category for mixers, and how much is for ovens and refrigerators. Nor was there any showing as to whether or not the space in which these items were installed was custom designed. These items were presumably *installed by the contractor* in order to be included in the AIA sheets. If the expenditures were for pots, pans, plates and silverware, presumably that would not be included in the AIA application sheets. Further, as with the backup generator, ovens and refrigerators, and other large appliances are necessary for a kitchen to be a kitchen. Without a kitchen, the subject could not function as a CCRC.

Finally, it is interesting that Petitioner's own appraiser included the items complained of as real property in his appraisal. There was no evidence provided that these items, which Petitioner now claims are personal property, were listed on personal property assessment sheets to be taxed as such. Accordingly, the Tribunal finds that these items were properly included as real property.

General contractor profit

Mike Ellis included a contractor's profit margin at 7.5%. This amounts to $1,564,160 in 2014 and $1,581,919 in 2015. Ellis' appraisal states that he relied upon several sources, "including Marshall Valuation Service and CSIMarket.com. The data observed tended to support contractor's profit (net profit margin) of 4.0% to 11.0%."[144] Ellis picked 7.5% which falls in the middle of that range.

At hearing, Tim Kamego testified that he would charge 5%, but out of that 5%, he would pay "labor, my secretarial labor, my cell phones, my insurances for the building company, my laborers' payment and all my workman comp insurances, all my payroll taxes."[145] He further testified that if he was very efficient, he would be left with 2 to 2.5 % profit. He further testified that no profit was paid to the general contractor.[146] Accordingly, Petitioner argues that there should not be a general contractor's percentage added under the cost approach.

The Tribunal disagrees. Mr. Kamego testified that he has built several senior housing/CCRC type buildings for Richard Levin, and has acquired the needed licenses for these facilities in his own name. Further, Kamego testified that he helps operate these facilities. While the full extent of the relationship between Kamego and Richard Levin, Petitioner's principal (Kamego referred to him at hearing as "Rich"), was not placed into evidence, it is clear that Kamego and the contract entity he owns or runs has an ongoing professional relationship that likely profits Kamego in other ways. Accordingly, the Tribunal holds that the general contractor's relationship with the Petitioner is not completely arm's length, and, therefore, not representative of what is typical for a general contractor to charge. As to waiver of any fee on this project, because the bond documents so require, the Tribunal notes that Petitioner claims that the Wayne County municipal bonds sold to finance this project only went to build the independent living portion of the facility, and the rest went to fund operations. Accordingly, the Tribunal is not convinced that the General Contractor received no fee for its entire work.

Given that the General Contractor for the subject was not independent from the Petitioner, the Tribunal holds that the contractor fee in this case is not indicative of the market for general contractors for this type of facility in general. As the best evidence of a reasonable

144 Exhibit R-1 p. 138
145 T1 p. 55
146 T1 p. 56

contactor's fee was given by Mike Ellis, the Tribunal accepts his general contractor's profit as a reliable part of his coast approach to value.

Indirect Costs

Ellis added a total of $3,043,000 to the hard costs, land costs and general contractor's profit. Testimony at hearing, and Exhibit R-50 show that these costs were found online and provided to Wayne County EDC as part of its issuance of municipal bonds. Petitioner argued that its architectural fees were only $462,230,[147] rather than $778,000 Ellis lists as design costs. However, Exhibit R-50 shows that the total amount budgeted was $775,000 for architectural/Engineering/MEP fees. Of that total, $423,620 was budgeted to the independent living section of the subject. The Tribunal finds that Ellis' estimate of costs for design fees is sufficiently close as to be accepted as a cost.

Other fees accepted by the Tribunal include insurance and other fees, $141,000, municipal and state permitting $260,000. The balance of indirect costs however are labelled Third-party reports -- $453,000, Miscellaneous -- $75,000, Letter of Credit Fee -- $120,000, Construction Monitor -- $65,000, Underwriter's Discount -- $746,000, Cost of Issuance-- $705,000. All of these aforementioned costs go to financing either the construction, or the operations. Levin testified that the bond issuance was for long term financing to help operate the project, rather than for building it. The Tribunal finds that because the bonds only raised $17.3 million,[148] the proceeds were in addition to other funds to build the subject and to operate the subject. While including financing costs may be an appropriate appraisal principle in developing a cost approach, it brings up a uniformity issue. Specifically, if two identical properties are built, one property should not be valued higher simply because its financing was more expensive. In fact, our Supreme Court has so held. In *Meadowlanes Ltd Dividend Housing Ass'n v Holland*[149] the Court held that valuing the property by taking into account the financing for a property "has the potential for creating irrational disparities in the true cash value of real property and thus violates the constitutional mandate of uniformity in the assessment of ad valorem taxes."[150] While the method of valuation in *Meadowlanes* was different from the cost

[147] Per Exhibit P-2, Edmund London invoice
[148] T1 p. 146
[149] *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473; 473 NW2d 636 (1991).
[150] *Id.*, p. 494

approach applied here, the danger remains the same. Accordingly, the Tribunal rejects the soft costs itemized above as being part of a cost approach for determining true cash value.

Entrepreneurial profit

Mike Ellis added a 20% entrepreneur's incentive to the hard costs. This concept is recognized in The Appraisal of Real Estate.[151] That incentive added $5,652,526 to Ellis' cost approach in 2014 and $5,715,599 to his cost approach for 2015. However, the Michigan Court of Appeals has weighed in on the appropriateness of adding such an incentive. In *Meijer v City of Midland,*[152] Judge (now Justice) Zahra set forth the following rule concerning the use of entrepreneurial profit in valuing property under the cost approach:

> Our holding should not be taken to mean that entrepreneurial profit is not an appropriate factor to be considered when utilizing the cost approach to property valuation. To the contrary, entrepreneurial profit can and should be considered under the cost approach. However, entrepreneurial profit should not be a mechanical calculation and should be added to the valuation only where: (1) the property in question is of a type that is developed to make a profit as a direct consequence of the development, and (2) there is some evidence that the market price will bear the inclusion of such a profit.

In answer to the first part of this test, Ellis had the following exchange on cross examination:

> Q You are not able to give an opinion in this case that the purchaser of this real estate developed this real estate only to make a profit on the real estate; true?
>
> A I would agree with that.[153]

In answer to the second portion of this test, Ellis had the following exchange:

> Q What evidence do you have that in a CCRC, if the owner wanted to sell only the real estate they could sell that real estate for a profit? Do you have any such market evidence?
>
> A They're typically not sold separate.
>
> Q So you don't have any such –
>
> A There is no evidence because you don't find separate sales of the real estate. They sell -- the real estate is transferred as part of the going concern.

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[151] The Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p. 573-576. 308.

[152] *Meijer v City of Midland,* 240 Mich App 1, 12-13;610 NW2d 242 (2000).

[153] T2 p. 416

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> Q… Would you agree with me that you do not have any market evidence that would substantiate that the sale of this real estate alone could be marked up for a profit and resold in this market?
>
> A No, there's no evidence of that.[154]

While adding entrepreneurial incentives to a cost approach may be proper under appraisal theory, there was no evidence brought forth that the real estate is of a type that is developed to make a profit as a direct consequence of the development. Nor was there any evidence that the real estate can be sold at a price that will bear the inclusion of such a profit. *Meijer* involved build to suit retail space. The Court of Appeals found evidence that,

> the property was developed for profit – a retail outlet. However, there was absolutely no evidence that would support the conclusion that the market would withstand the inclusion of entrepreneurial profit to develop a 180,000 square foot building for use by a single retailer.[155]

Similarly in this appeal, it is likely that individuals as successful and accomplished as the principals behind Petitioner fully intend to receive large profits from the operation of the subject. There is, however, no evidence that the real estate would sell on the market for a price that would include a portion of that profit. Accordingly, the Tribunal does not accept that portion of Ellis's cost approach that provides for an entrepreneurial incentive as being proper under Michigan law.

<u>Obsolescence</u>

Neither appraiser found any physical obsolescence on the subject, as it was unfinished new construction as of the dates of valuation. Tomlinson, however, found economic and functional obsolescence of 35%, while Ellis found none.

Tomlinson's method for finding obsolescence was to find comparable sales, determine the land value and subtract it, determine the cost new of each comparable, and subtract physical depreciation. The difference between the sales price, and the remaining sum after these subtractions represents the combined economic and functional obsolescence.

Tomlinson did not list any items of obsolescence in his appraisal. Rather, at hearing, he testified to agreeing with Tim Kamego that the design of the building with walls requiring extra

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[154] T2 p. 417
[155] *Meijer* 240 Mich App *at* 13.

footings, the indoor salt water swimming pool, the bar/restaurant, the 480 volt electrical system, the extra elevators and shafts, and the large impressive glass ceiling in the building's atrium qualify as super adequacies, a subset of functional obsolescence. Items of inadequacies mentioned at hearing included lack of storage for the independent living units, lack of covered parking, and lack of administrative space were seen as inadequacies, another subset of functional obsolescence. As to economic obsolescence, Petitioner points to a requirement that 20% of the independent units must be reserved for low income tenants. Petitioner also points to a covenant that residents of The Residence senior condominiums have privileges at the subject property and can "jump the line" concerning waiting lists. Finally, Tomlinson testified that because the facility can only sell with the operations and requisite licenses, that is also something described as economic obsolescence

Ellis found that the super adequacies mentioned by Petitioner's witnesses were in fact necessary for a high end facility catering to the senior set in Grosse Pointe, along with their children charged with caring for them. The Tribunal agrees with Ellis. Petitioner built a high end facility to cater to high end seniors. Levin testified that it was built this way to compete with home health care.

While it might be argued that there are some amenities that the market may not recognize, Tomlinson failed to prove this with his methodology. The spread between obsolescence in his comparables ranged from 9.04% to 61.42 %. This vast range suggests a high degree of arbitrariness in picking a value. Moreover, he placed the most weight on Improved Sale 1, a comparable that was heavily adjusted, and not at all similar to the subject. Sale 1, located at 18300 E. Warren was originally built in 1954 as a high school. Tomlinson also relied upon the sales allocation which attributed some of its value to licenses and F.F. and E. Two of Tomlinson's other comparables include two sales that were either bank sales or sold out of bankruptcy. Further, the two newest built comparables, which arguably are most similar to the subject, (Improved Sale 4 in Howell and Improved Sale 5 in Southfield), had a very wide differential in obsolescence, of 9.66% and 41.41%.

Ellis was asked if he agreed with Tomlinson's methodology in determining obsolescence, and offered the following critique:

> Why do I disagree? [With Tomlinson's obsolescence study]. Number one, they're different type properties. We are a continuing care retirement community that offers independent, assisted and skilled nursing. His comparables are different type properties located in different markets. The ages of the buildings that he selected as comparables, none of them are new. None of them are in a community like that of Grosse Pointe or Bloomfield Hills or Birmingham. There's so many variables going on in that analysis you can't quantify anything with any reasonableness.[156]

Tomlinson used the same comparables for a sales approach, which per his appraisal, he gave "secondary weight."[157] However, his concluded values in his reconciliation matched his cost approach values. Tomlinson testified that it was difficult to separate intangible components in his sales, such as licenses, good will and a trained work force, from the real property.[158] It thus appears that the only weight he gave this approach was perhaps, as a check on reasonableness. Because Tomlinson apparently put no weight on the sales comparables in determining value via the sales comparison approach, it is equally flawed to rely on these same comparables, which are very dissimilar from the subject, to determine obsolescence.

Finally, as pointed out by Respondent, Tomlinson's study is not tied to any of the items pointed out at hearing that Petitioner considered super adequacies or inadequacies. Nor does Tomlinson's study attempt to isolate economic obsolescence from functional obsolescence. Only physical obsolescence, which is difficult to determine for older improvements, and land value, which was somehow determined by the local assessor for each sale, were somehow removed. The vast difference in the comparables from the subject, with substantial adjustments, combined with the use of MVS to value the improvements, (at a higher level of quality than the subject), a land value of unknown accuracy from an assessor, a physical depreciation value of unknown accuracy, and then subtracted from a sales price with allocations of unknown accuracy to suggest a huge range of possible obsolescence has too many assumptions and not enough data to be reliable.

The Tribunal therefore finds that neither economic, nor functional obsolescence was quantified, and that it would give an inaccurate and completely subjective result to subtract obsolescence from the cost to build the subject.

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[156] T2 p. 380-381
[157] Exhibit P-1 p. 94
[158] T1 p. 191-192

Percentage of Completion

The subject property was under construction as of both valuation dates. Both appraisers concluded to a value via the cost approach, and then reduced that total figure for each year by the percent deemed completed as of tax date. Dan Tomlinson relied upon Respondent's assessor's determination.[159] Lester "Gerry" Jackson, Respondent's Deputy Assessor, reached his conclusions as to percent completed, based upon "appraisal judgment and professional judgment."[160] The percentage completed used by Tomlinson was 64.87% for 2014 and 94.92% for 2015.[161]

Ellis, despite being engaged by Respondent, reached a determination of completion based upon the percentage spent as of tax date from the AIA payment applications.[162] Ellis subtracted out demolition costs which he attributed to the land value to determine costs of the improvements, and to determine the percent completed. He determined the percent completed for 2014 was approximately 77.7%, and 99.5% for 2015.

Tim Kamego testified that sometimes, subcontractors are paid large sums for acquiring certain materials which have not yet been installed. The example he gave was HVAC units, sitting in a warehouse in New Baltimore.[163] However, Kamego gave no testimony as to whether or not the HVAC units were paid for and not installed as of tax day. Even assuming that these units were paid for and not on the premises, the difference is a mere 2.8%, and not enough to account for an approximately 25% differential between his estimate and Ellis'. Kamego testified that his best estimate of completion was 50 to 55 percent for 2014,[164] and 90-92% for 2015. Richard Levin also testified to percentages completed. He gave the same estimate for 2014, and estimated 90% as of 2015. Levin explained that he based that percentage on the time it would take to receive a certificate of occupancy.[165]

The Tribunal finds that basing the percentage complete based upon a sworn statement from the contractor applying for payment is more objective and more precise than an assessor eyeballing the project, or the owners giving a chronological count-down to the issuance of a

[159] T2 p. 297-298
[160] T2 p. 319
[161] Exhibit P-1 p. 94-95
[162] T2 p. 360
[163] T1 p. 49
[164] T1 p. 64
[165] T1 p. 129

certificate of occupancy. There can be hold-ups to completion, or for issuance of a certificate due to unforeseen factors, such as labor problems, supply shortages, or problems arranging the various necessary inspections. Finally, it is interesting that Richard Levin chose different percentages of completion in answering Petitioner's First Set of Interrogatories, listing greater percentages of completion than what he testified to.[166] Although his discovery answers were qualified as being "based on costs." The Tribunal finds that the percentage of money spent as of tax date from the total amount budgeted is a preferable method to determine the percent complete. Accordingly, the Tribunal accepts Mike Ellis' analysis in determining the percentages for each year.

True Cash Value Calculation

The following table shows the values and items used to calculate true cash value:

	2014	2015
item	**cost**	**cost**
total development costs	$20,855,471	$21,092,252
cost of improvements	$20,505,470	$20,753,074
contractor's profit 7.5%	$1,564,160	$1,581,919
insurance & fees	$141,000	$141,000
design	$778,000	$778,000
mun. & state permitting	$260,000	$260,000
Total as complete	$23,248,630	$23,513,993
percent complete	77.72%	99.50%
total x % complete	$18,068,835	$23,396,423
land	$3,150,000	$3,200,000
Total	$21,218,835	$26,596,423
TCV rounded	**$21,220,000**	**$26,600,000**

With the exception of entrepreneurial profit, and soft costs related to financing, the Tribunal accepts Ellis' analysis and calculations, which are reflected above, as revised. The contractor's profit was 7.5% of total development costs. The cost of improvements reflects total development costs, minus costs for demolition.

[166] See Exhibit R-20, p. 6

Taxable value

The subject was acquired on January 13, 2012.[167] The land value, which was subdivided in 2012 was determined by consent judgment for tax year 2013 was $1,050,000.[168] Per MCL 211.27a(2), that value is capped, and can only increase by the consumer price index factor, plus additions for each year. For 2014, the CPI factor was 1.016. Multiplying the land value by this factor increases it to $1,066,800. Adding this sum to one half the value of the improvements for 2014 ($18,082,785 divided by 2) of $9,041,392 equals a taxable value for 2014 of $10,108,192.

For 2015, the task is further complicated by the value of the new incomplete construction in 2014 being capped for 2015. The capped value of the land plus additions in 2015 is the 2014 TV of $10,108,192 multiplied by the 2015 CPI of 1.016, which equals $10,269,923. The next step is to add 50% of the value of the addition. In calculating the addition, the Tribunal is guided by the decision of *Kok v Cascade Twp.*[169]In *Kok*, the Michigan Court of Appeals affirmed the Tribunal's use of percentage needed to complete and adding that to the previous year's assessment. In the present case, the Tribunal held that the subject was 77.72% complete in 2014. For 2015, the Tribunal held that the percent complete was 99.50%. Therefore, the difference in completion percentage is 21.72%. The value of the additions is calculated by taking 21.72 % of $23,513,993 (the total cost to complete as calculated in 2015), or $5,107,239. Fifty percent of this total equals $2,553,619. Adding this amount to the 2014 capped value renders a taxable value of $12,823,542 for 2015.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject property's TCV, SEV, and TV for the tax year(s) at issue are as stated in the Introduction section above.

JUDGMENT

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

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

[167] Exhibit P-3
[168] MTT Docket No. 438234; Exhibit P-7
[169] *Kok v Cascade Twp*, 265 Mich App 413; 695 NW2d 545 (2005).

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, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, and (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%.

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

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[170] Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and

[170] See TTR 261 and 257.

$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.[171] A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.[172] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[173]

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[174] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[175] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[176]

By ____________________

Entered: DEC 16 2016

[171] See TTR 217 and 267.
[172] See TTR 261 and 225.
[173] See TTR 261 and 257.
[174] See MCL 205.753 and MCR 7.204.
[175] See TTR 213.
[176] See TTR 217 and 267.