

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

Musallam LLC,
Petitioner,

v

MTT Docket No. 14-002413

City of Warren,
Respondent.

Tribunal Judge Presiding
David B. Marmon

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Musallam LLC, appeals ad valorem property tax assessments levied by Respondent, City of Warren, against Parcel No. 13-25-176-027 for the 2014 tax year. Harold Hoyt, Representative and Gary Segatti, Attorney, represented Petitioner, and Laura Hallahan, Attorney, represented Respondent.

A hearing on this matter was held on July 20, 2016. Petitioner's sole witness was Michael Collins, Jr. Respondent's sole witness was Jennifer Czeiszperger. 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 tax year are as follows:

Parcel No.	Year	TCV	SEV	TV
13-25-176-027	2014	\$850,000	\$425,000	\$425,000

PETITIONER'S CONTENTIONS

Petitioner contends the following values:

Parcel No.	Year	TCV	SEV	TV
13-25-176-027	2014	\$700,000	\$350,000	\$350,000

PETITIONER'S ADMITTED EXHIBITS

P-1 Appraisal prepared by Michael Collins, Jr.

P-7 IRS Form 8825 for tax year 2013, attached to Petitioner's Answers to Interrogatories/Production of Documents, served on December 10, 2015.

PETITIONER'S WITNESS

Petitioner's sole witness was Michael Collins Jr. Collins is a certified general appraiser who has been appraising since 1999, and was qualified as an expert in valuation without objection.¹ Collins testified that he inspected common areas, along with several representative units of the 32 unit complex which the owner verified was representative of units throughout the complex.² Collins gave the following description of the subject property:

The property is on Stephens Road. It's located east of Groesbeck, south of Ten Mile Road so you're in, like, the southeast quadrant of Warren. The area is characterized by residential and industrial improvements. We have a site of 1.78 acres, fairly typical, fairly level, typical utilities, zoned multiple family. And on that site is a 32-unit building, slightly weighted more heavily towards two-bedroom units than one-bedroom units. The building was built in '72, 1972. It's been periodically renovated, average to good condition of the property. Has an unfinished basement. Class D construction, meaning wood frame, walls, flat roof. The units have electric -- individual electric radiant heat and wall air conditioners in the units, so they're not the more typical gas-fired forced air furnaces that most complexes you would find. From my understanding it's slightly more expensive, maybe slightly to substantially more expensive to operate an electric unit than a gas. Maybe slightly less desirable to some tenants, which may have accounted for the contract rents of the subject being a little lower than you may have thought otherwise. Perhaps those types of units are a little less desirable to the market participants, the renters in this case.

Q. A little less desirable because of the heat bill will be more?

A. Yeah, because the heat bill would be more, therefore, they'd justify a little less rent would be my understanding of what's occurring with that property, yes, for the subject property. So, yeah, fairly typical one-bedroom, two-bedroom units for what they are in terms of their layout and finish. I can kind of note for you vinyl tile floor, drywall wall to ceiling, incandescent lights, bathrooms have ceramic tile flooring, toilet, lights, sink bathtubs. Fairly typical.³

As to highest and best use, Collins concluded that as vacant, the highest and best use would be to hold for future development. He explained his reasoning as follows:

Highest and best use as though vacant would be to hold for future development. In other words, it wouldn't be financially feasible or profitable to build a new

¹ T. p. 10, 13

² T. p. 15

³ T. p. 20-22

apartment complex as of 12/31/13 because cost would exceed value. In other words, there's external economic obsolescence in the market.

* * *

So if the building costs you -- just rule of thumb, these numbers aren't accurate, I'm making up a scenario. If it cost you \$100 a square foot to build [a] building and it only sold for \$70 a square foot, it wouldn't be feasible to build it at that time, so that's essentially what I'm saying.⁴

As improved, Collins opined that the highest and best use is for continued multi-family apartment use.⁵

Regarding the three major approaches, Collins testified that he did not use the cost approach because the building is over 40 years old, and estimating depreciation and obsolescence would require speculation. He further stated that the no buyer or seller would consider the cost approach in valuing the building.⁶

Income approach

Collins prepared an income approach and a sales approach. As to his income approach, he took market data from other apartment complexes as well as actual rent charged by Petitioner. When asked if he put more emphasis on market rent or contract rent in performing the income approach, Collins testified:

In my experience I've appraised, I would say, over a hundred apartment complexes in my career, and most market participants; i.e., most buyers and sellers of these properties are going to place more weight on contract rent. If an owner could substantially increase rents, they would have every motivation to do so. They're seeking a profit. It's an income-producing property, so most buyers and sellers are going to place the majority of their weight on contract rent. They're going to give credence and consideration to what market rents are. And they may see that maybe there could be a slight increase if rents were lower or a regression if rents were too high. But contract rent would be the most important factor of the two you asked about.⁷

As to the amount of contract rent, Collins testified that Petitioner reported rents of \$530 per month for one bedroom units, and \$625 per month for two bedroom units, which were at the bottom of the range, perhaps attributable to each tenant having to pay for electric heat. On the

⁴ T. p. 24

⁵ T. p. 24-25

⁶ T. p. 23

⁷ T. p. 17

assumption that rents could be slightly raised, Collins used \$535 per month and \$630 per month for one bedroom and two bedroom units, respectively to determine potential gross income.⁸ Regarding corroboration of the income and expenses reported to him by the owner, he testified that he reconciled that information by comparing it to the market data. He also testified that subsequent to writing his appraisal, he reviewed Petitioner's Schedule E on his 2013 tax return and stated "it well supports my reasoning and my numbers when I look at . . . the Schedule E for year 2013, yes."⁹ On cross examination, Collins admitted that he did not receive tangible documents such as a rent roll, or income and expense records from Petitioner, "just verbal information."¹⁰

Regarding occupancy rate, Collins testified that the property was 84% occupied as of the valuation date,¹¹ but conceded that the property was 100% occupied on the date of inspection.¹² As to income capitalization rate, Collins discussed the band of investment method, as well as extracted cap rates from sales. He explained as follows what was used to extract the rate:

An investor and most market participants would prefer the market extraction technique, which is essentially what was the cap rate, what other complexes sold. So on page 65 [of Exhibit P-1] I have five extracted cap rates for you from the years of 2011 through 2013. Those rates are 15 percent and 11.5 percent, 14.68 percent, 12.83 percent, 15 percent. The sales were in the communities of Warren, Warren, Mt. Clemens, Eastpointe and Clinton Township. The midrange of those cap rates is 14.5 percent. So we have a band of investment indicating 13.25 and a midrange of the market extracted is 14.5. I put most of the weight on the 14.5 because I think it's most relevant.¹³

He further elaborated that because the cap rate is a function of risk, the most similar properties to the subject are going to be the best indicator. Collins then loaded the cap rate with 50% of the millage rate, resulting in a total capitalization rate of 17.95%¹⁴

⁸ T. p. 35-36

⁹ T. p. 17-18

¹⁰ T. p. 48

¹¹ T. p. 35

¹² T. p. 49-50

¹³ T. p. 38-39

¹⁴ T. p. 39-40

Sales approach

Collins used 6 sales comparables, four in Warren, one in Mt. Clemens and one in East Pointe. He concluded to a sales price of \$23,000 per unit, or \$735,000 for the subject.¹⁵ On cross examination, when confronted with a covenant deed for his sales Comparable 5 showing it to be sold from a receiver,¹⁶ he stated “Based on this information I would not use this sale.”¹⁷ In concluding to a value by the sales approach, he gave the comparables, with an adjusted range between \$18,734 and \$25,177 fairly equal weight, but concluded above the midrange at \$23,000 per unit because the subject had a large number of two bedroom apartments.¹⁸

Regarding his income approach, he acknowledged that he did not review actual leases, nor a rent roll, nor was he provided an income and expense statement. Rather, Petitioner verbally communicated information to him regarding rents and expenses.¹⁹ On cross examination, the following exchange illuminated Collins position regarding verbal data:

A. I have no trouble with the way I prepared the report. I can only obtain what he's provided to me, and I have no reason to assume that he's dishonest. I'm objective and honest. I can only presume this man is objective and honest. I don't know -- I mean, your analogy is valid. Maybe he is deceitful or has bias, but I have no reason to assume so.

Q. Do you typically ask for operating data on property you're appraising?

A. I would like to get it, but it's not uncommon for me not to get it. If I waited to have two years and a pro forma, I really wouldn't do many appraisals. It's really not uncommon.²⁰

Regarding the income and expenses which Petitioner communicated to him, Collins compared the items to the range of expenses in his experience. He stated:

Q. Okay. We're just going -- so the expense information you used was based upon what the property owner – the subject property owner told you?

¹⁵ T. p. 36

¹⁶ Exhibit R-6

¹⁷ T. p. 87

¹⁸ T. p. 89

¹⁹ T. p. 90-91

²⁰ T. p. 107

A. I took that and compared it to what I've seen for the hundred other complexes that I've appraised before. I don't have the specific graph or grid in here to refer you to the owner's actual expenses. I kind of consider that information to be confidential. I would not have a graph with an address and the specific property owner, but I have that body of knowledge from all the properties which I've appraised before.²¹

With one exception, his sales comparables were also utilized as his rental comparables.²² This included 8050 Francine, a distressed sale, which he testified he would no longer consider a valid sales comparable. However, Collins testified that it was a valid rental comparable “because the sale conditions have nothing to do with the rental conditions.”²³ The midpoint of rent for his adjusted comparables was \$590 per month, and \$680 per month for two bedrooms. He concluded however, to \$535 per month and \$630 per month in potential gross income for one and two bedroom units respectively. In concluding to these figures, \$5.00 above contract rent, Collins had the following exchange with opposing counsel:

Q. Now, you take -- your monthly rent conclusion was to take the subject's rent and you increased it by \$5; is that correct?

A. Yes, I gave most weight to the contract rent, while giving some consideration to market rent. That's what I have found most buyers and sellers would do in a similar circumstance.

Q. Okay. And that was based upon what the taxpayer verbally communicated to you --

A. That's correct.

Q. -- without you seeing any documentation?

A. That's correct, verbal communication.

Q. Well, would you agree that by calculating the market rent and ignoring the market and using the subject, you're really calculating -- you're using -- you're really valuing the subject property under the income approach by only using his data?

A. No, I wouldn't agree with that. I still consider what market rents are in the area, and I still see where we would fall relative to those. And I've appraised over a hundred complexes. I've ran into similar scenarios and a potential buyer is not going to pay based upon rents that he may or may not be able to receive. They're going to weigh what current rents are very, very, very heavily, because there's no guarantees they're ever going to get here. The factor may be with the electric heat

²¹ T. p. 91-92

²² T. p. 99

²³ T. p. 103

source. That's maybe what's keeping these rents down. It's my best educated guess as to what it could be. I didn't find the property owner to not be competent and I didn't find him to be a poor manager. I met many people over the years. He seemed like a fairly responsive competent individual.²⁴

Regarding contract rent, he observed “[i]n my experience, most buyers and sellers are not going to try to get a whole lot more...”²⁵

As to vacancy rate, he determined that 85% occupancy was typical for the valuation date and used a 15% vacancy rate, rather than a 16% rate occurring at the subject.²⁶ As to expenses, he also used actual as reported by Petitioner, and compared them with his own experience appraising other complexes.²⁷

Collins determined the unloaded capitalization rate to be 14.5%. To derive that rate, Collins looked at the band of investment method, but put most of his weight on capitalization extracted rates.²⁸ Those rates were extracted from the same five sales comparables which took place in 2011, 2012 and 2013.²⁹ He conceded that rates today are much lower than when he wrote the report.³⁰ As to specific extractions, he conceded on cross examination that the sale at 23750 Lansdowne, Clinton Twp. with a 15% extracted cap rate should not have been relied upon because it had extremely low occupancy, was in receivership, and the buyer must undertake significant renovations.³¹

Collins reconciled the income approach at \$695,000 and the sales approach at \$735,000. Giving more weight to the income approach, which he testified is more reliable, he concluded to a value for the subject property at \$700,000.³²

RESPONDENT’S CONTENTIONS

The assessment on the tax roll is as follows:

Parcel No.	Year	TCV	SEV	TV
13-25-176-027	2014	\$935,120	\$467,560	\$467,560

²⁴ T. p. 105-107

²⁵ T. p. 109

²⁶ T. p. 110-111

²⁷ T. p. 92-93

²⁸ T. p. 122-123

²⁹ P-1 p. 65

³⁰ T. p. 127

³¹ T. p. 133-134; Exhibit R-7.

³² T. p. 37, 41

Respondent contends that the subject's values are as follows:

Parcel No.	Year	TCV	SEV	TV
13-25-176-027	2014	\$960,000	\$480,000	\$467,560

RESPONDENT'S ADMITTED EXHIBITS

- R-1 Respondent's Valuation Disclosure
- R-2 Marcus & Millichap Apt. Research Report, 3rd quarter 2015
- R-3 Marcus & Millichap Apt. Research Report, 1st quarter 2016
- R-4 MLS Sheet for 825 Clinton River Dr.
- R-5 MLS Sheet for 11500 Warren Blvd on 10/23/15.
- R-6 Covenant Deed for 8050 Francine St.
- R-7 MLS Sheet for 23750-23770 Lansdowne St on 8/23/11
- R-8 MLS Sheet for 21314-21440 MacArthur Blvd
- R-9 MLS Sheet for 29101 Lund

RESPONDENT'S WITNESS

Respondent's sole witness was Jennifer Czeiszperger, MAAO. Ms. Czeiszperger testified that she was Warren's chief appraiser, with a limited appraisal license. As she does not hold a license that would allow her to independently appraise the subject, the Tribunal found her to be an expert only in assessing.³³

Regarding the subject's location within the City, Czeiszperger stated, (before being cut off by Respondent's counsel):

Well, the location is south of 696, which seems to be a very large value divider in the city. Anything south of 696 is definitely lower than what you find north of 696. So that would be the biggest compromise on that subject, would be the --³⁴

Regarding Czeiszperger's use of approaches, she testified as follows:

³³ As an assessor, she is legally able to give an opinion of value for property assessed in her jurisdiction.

³⁴ T. p. 157-158

Q. And what did you determine regarding the applicability of the cost approach?

A. The cost approach is used in assessing on an everyday basis and that is the majority of the reason why it is in this report. Because when we do assessing we do a modified cost and market approach.

Q. Okay.

A. So the cost approach in here does include the modification for the market adjustment on the final outcome of that value. I used it in this report to support my other two values.

Q. Okay. And did you -- what did you determine regarding the applicability of the income approach to value?

A. The income approach -- I felt my income approach was compromised because I was not given the opportunity to view the rent roll and to view the expenses to determine if it was definitely run under sound management and typical expenses are included in there. So my income approach, again, I used to support my sales comparison approach.

Q. And did you rely primarily upon the sales comparison approach?

A. Yes.³⁵

Czeiszperger did not spend much time testifying regarding her cost approach. She did testify that there were no vacant land sales in which to base the cost approach upon. She stated:

Vacant land sales are obscure. The ones we do have, they're not necessarily -- they're not for apartments. What we've done is extraction and allocation for land values, and we've also verified them in other markets that do have active vacant land sales for multifamily.³⁶

While not weighted in her final reconciliation, Czeiszperger also performed an income approach. To determine potential gross income, she used the subject and four rental comparables. The rental rates she took from current advertisements or from rent rolls, if she had the roll in her possession. Only Comparable 2's rental rates came through a rent roll.³⁷ Comparable 1, which is also the subject, was also based upon advertised rent.³⁸ Regarding her use of current rents and adjusting them back, Czeiszperger testified on cross examination as follows:

Q. Well, you did a time adjustment of \$20. How did you get to that?

³⁵ T. p. 153-154

³⁶ T. p. 223

³⁷ T. p. 210

³⁸ It is noted that the rent for the subject shown in Respondent's grid is higher than what Collins declaration of the subject's rent for 2013.

A. Based on the fact that my -- my historical knowledge of rents raise about 5 to \$10 per year depending on the complex.³⁹

Czeiszperger noted that the subject's rent was in line with the market, but on the low side.⁴⁰ She also opined regarding market rent and vacancy as follows:

Since the crash apartment complexes fared phenomenally through them. As a matter of fact, it was the only market that had minor adjustments or minor declines. And as a matter of fact, when everyone was losing their houses they needed a place to live, therefore, they went to apartments, so apartments saw much lower vacancies. And they were also able to raise rents during that time, which was unheard of in any other market.⁴¹

As to vacancy, Czeiszperger used five percent, although she claims that the subject and the market is only 3%.⁴² As to expenses, she gleaned them on a per unit basis from anonymous comparables she used.⁴³ As to cap rate, she determined that an investor would want a 10% return on equity, and concluded to an unloaded cap rate of 9 percent. She concluded that through the income approach she concluded to a value of \$1,416,500, or \$44,265 per unit.⁴⁴

Regarding her sales approach, Czeiszperger testified that she looked at all of the apartment sales in Oakland and Macomb County, and narrowed them down by number of units, most similar, and closest to the subject in terms of neighborhood.⁴⁵ She stated:

I actually looked at every sale in Macomb County to determine vacancy and to find any reported information I could on vacancy. I determined that there was about 96 sales in Macomb County in the two-year sales study time. Most of those being prior to 2014 or after 2014. 2014 was an odd year in sales for apartments. It slowed to virtually nothing and has increased tremendously during 2015.⁴⁶

She also adjusted each of her comparables for time based upon 5% per year for her four comparables. As to the 5% adjustment, Czeiszperger testified that she had four separate paired sales of Apartments in Warren, which she did not present, upon which this rate was

³⁹ T. p. 211

⁴⁰ T. p. 174

⁴¹ T. p. 175

⁴² T. p. 177

⁴³ T. p. 178-182; R1, p. 62

⁴⁴ Exhibit R-1 p. 71

⁴⁵ T. p. 162

⁴⁶ T. p. 176-177

determined.⁴⁷ She also adjusted the unit price for size of the unit, because “the size of the unit would be what the tenant determines as desirable.”⁴⁸ She also adjusted for location, use and zoning, quality, land size, age, condition and utilities.⁴⁹ She then described the adjustments on all of her comparables, which had adjusted sales per unit prices of \$35,095.50 for Comp 1, \$30,488.5 for Comp 2, \$27,843.70 for Comp 3, and \$32,435.34 for Comp 4. She testified that she gave the most weight on comps 2 and 3,⁵⁰ and concluded to \$30,000 a unit, or \$960,000, which was also her reconciled value.

FINDINGS OF FACT

1. The subject is a 32 unit apartment building located at 14071 Stephens.
2. The subject is classified as commercial.
3. The subject is located in the southeast quadrant of the city of Warren, 1.5 miles from the City of Detroit border.
4. The subject has 12 one bedroom units and 20 two bedroom units.
5. None of the rental units have central heat or central air.
6. The rental units each have a portable air conditioner unit mounted in the wall, and electric heat.
7. Each unit is separately metered for electricity, and the tenant is responsible for heating and air conditioning.
8. The subject does not have car ports, a pool, clubhouse, or balconies.
9. Both parties agreed that the subject’s highest and best use as built is as an apartment complex.
10. Petitioner submitted an appraisal by Michael Collins Jr. which valued the subject via the sales and income approaches, but relied heavily upon the income capitalization approach.
11. Respondent submitted a valuation by Jennifer Czeiszperger which used all three approaches, but concluded to a value based strictly on the sales comparison approach.

⁴⁷ T. p. 222

⁴⁸ T. p. 169

⁴⁹ T. p. 163

⁵⁰ T. p. 167

12. In his sales comparison approach, Collins used 6 comparables with sales prices ranging from \$17,031 to \$24,444 per unit, with adjusted prices ranging from \$18,734 to \$25,177 per unit.
13. Per Exhibit R-6, Collins' Comparable 5 at 8050 Francine was sold by a receiver.
14. Collins' Comparable 3 at 625 Clinton River per Exhibit R-4, was poorly managed and in need of updating at time of sale.
15. Czeiszperger's sales approach used four comparables, ranging in price from \$25,000 to \$34,429 per unit, with adjusted prices of \$27,843.70 to \$35,095.50 per unit.
16. Czeiszperger's Comparable 1 located at 32400 Mound, with an adjusted price of \$35,095 is located north of I-696, which Czeiszperger stated was "a very large value divider in the city."
17. Czeiszperger's Comparable 2 located at 23005 Kelly Rd. in Eastpointe sold 17 months after the valuation date.
18. Collins' income capitalization approach relied upon reported rents, vacancy and expenses of the subject property, which were compared to market rents and expenses.
19. In her income capitalization approach, Czeiszperger relied solely upon the market for rents, vacancy and expenses.
20. Both valuation experts relied upon extracted capitalization rates.
21. Collins's unloaded rate of 14.5% was based upon extractions from five sales comparables, which mostly overlap his sales comparables.
22. Collins' Comparable C, located at 15550 E. Ten Mile sold in October of 2012, with an extracted cap rate of 14.68% sold prior to 2013, and has only 7 units.
23. Collins' Comparable E located at 23750 Lansdowne in Clinton Twp. sold in 2011 with an extracted 15% cap rate.
24. Collins' Comparable A at 825 Clinton River which sold with an extracted 15% cap rate was a distressed sale, per Exhibit R-4.
25. Collins' Comparable B located at 29101 Lund, a mile north of I-696, had an extracted 11.50% cap rate and Comparable D at 21314 Macarthur, located 6 blocks from 8 Mile Rd. had an extracted 12.83% cap rate.

26. Czeiszperger's two lowest extracted cap rates were from Comp 2 at 25119 Curie with a cap rate of 8.23%, and her Comp 3 at 23005 Kelley in Eastpointe had a cap rate of 8.40%, both which sold in 2015.
27. Czeiszperger's Respondent's Comp 1 at 32400 Mound is in a superior neighborhood, and Comp 4 at 26301 Jefferson in St. Clair Shores is in a different community.

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.⁵¹

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50 percent. . . .⁵²

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.⁵³

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."⁵⁴

"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."⁵⁵ The Tribunal is not bound to accept either of the parties' theories of valuation.⁵⁶ "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."⁵⁷ In that regard, the

⁵¹ See MCL 211.27a.

⁵² Const 1963, art 9, sec 3.

⁵³ MCL 211.27(1).

⁵⁴ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

⁵⁵ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

⁵⁶ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

⁵⁷ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

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.”⁵⁸

A proceeding before the Tax Tribunal is original, independent, and de novo.⁵⁹ The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”⁶⁰ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”⁶¹

“The petitioner has the burden of proof in establishing the true cash value of the property.”⁶² “This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party.”⁶³ 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.”⁶⁴

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.⁶⁵ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”⁶⁶ 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.⁶⁷ Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁶⁸

⁵⁸ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

⁵⁹ MCL 205.735a(2).

⁶⁰ *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

⁶¹ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

⁶² MCL 205.737(3).

⁶³ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

⁶⁴ MCL 205.737(3).

⁶⁵ *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).

⁶⁶ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

⁶⁷ *Antisdale*, *supra* at 277.

⁶⁸ See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

The subject is a 32 unit apartment building, built in 1972, located in the southeast quadrant of the City of Warren; an inner ring suburb of Detroit, with a declining population.⁶⁹ As testified to by Respondent's witness, property values are definitely lower south of I-696.⁷⁰ As noted by Petitioner's witness, proximity to Eight Mile Rd. which is Warren's border with Detroit is going to be "less desirable."⁷¹ The subject is located on Stephens, (9 1/2 Mile Rd), which is a mere 1.5 miles from Detroit. It is also in the East Detroit School District, which is not the most desirable school district in Warren.⁷²

The apartment itself provides no frills. There is no pool, clubhouse, gym, court yard, balcony, porch or covered parking available to any tenant. The building itself was built in 1972, over 41 years prior to the valuation date. The units lack a dishwasher.⁷³ The apartment building apparently has no laundry facility.⁷⁴ No unit has central air. Per Collins, who inspected the subject, (as opposed to Czeiszperger who did not), the units each have separate radiant electric heat units, rather than gas, or central building heat and the tenant must pay for heat out of their individually metered apartments. While electric heat is cheaper to install, gas is generally considered a cheaper fuel than electricity.⁷⁵ All of these factors suggest that the subject provides adequate, but bare bones shelter for its tenants, and accordingly, will command lower than average rents, and attract relatively low-incomed tenants.

Highest and best use

The four tests of highest and best use, to be applied to the property as vacant, and then again, as built are physically possible, legally permissible, economically feasible and maximally

⁶⁹ Exhibit P-1, p. 33.

⁷⁰ T. p. 157

⁷¹ T. p. 62

⁷² Czeiszperger adjusted +5% for school district when compared to Warren Consolidated schools. R-1, p. 47, T.p. 165

⁷³ T. p. 171

⁷⁴ Testimony regarding the existence of laundry was ambiguous at best. The facility has an unfinished basement, and the photo contained in P-1 p. 25 shows what appears to be a solitary dryer next to the hot water heaters. It is noted that per Collins' appraisal, the inspection was on August 13, 2014 and presumably the photograph was taken that same date. The photo shows wet spots on a cement floor. August 13, 2014 is significant, in that the City of Warren suffered from a destructive flood from rains that took place on August 11. If there were in fact multiple laundry machines adequate to serve a 32 unit apartment, it is doubtful that they would have been removed so soon after the flood.

⁷⁵ It is noted from the photos of the basement contained in P-1, p. 25 that the subject has gas water heaters, which indicate that the builder of this building was aware of the cost savings to the owner of gas over electric.

productive.⁷⁶ As vacant, it is unlikely that the current apartments would be built on the valuation date. Collins for Petitioner opines that it would cost more to build them than they are worth.⁷⁷ Accordingly, as vacant, the current use would neither be economically feasible, nor maximally productive. Czeiszperger for Respondent testified that due to a change of zoning, if the subject burnt down to the ground, only 18 units could be built.⁷⁸ Accordingly, the current use would not be legally permissible as vacant. Both parties agree that the highest and best use as built is as an apartment building, which meets the four tests.

Cost Depreciation Approach

Collins did not value the subject via the cost approach. While Czeiszperger did perform a cost approach, she placed no weight on it, and did not elaborate at hearing on its details. As the improvements are over 40 years old, the Tribunal finds that the cost approach is a very blunt tool to use to determine the subject's true cash value because of the difficulty in estimating the various forms of obsolescence. Adding to this difficulty is the lack of sales of vacant land in Warren. As Czeiszperger testified, land values under this approach are extracted. Accordingly, the Tribunal places no weight on this approach.

Sales Comparison Approach

Both valuation experts analyzed the subject via the cost approach. Collins gave this approach some weight, while Czeiszperger completely relied upon it. As she explained, she was not given a rent roll, nor did she receive an income and expense statement, thus undermining any income approach she might perform. The Tribunal finds that overwhelmingly, the potential buyers for a 32 unit apartment complex in Warren would purchase it for its potential income stream, and would use the sales approach as an alternative valuation for what he or she would be willing to pay. Accordingly, the sales approach is worth considering.

Both appraisers using this approach determined that the proper methodology is to value the comparables on a per rental unit basis. Collins used 6 comparables with sales prices ranging from \$17,031 to \$24,444 per unit, with adjusted prices ranging from \$18,734 to \$25,177 per unit. Collins conceded during cross examination that his comparable 5 at 8050 Francine should not

⁷⁶ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p. 335.

⁷⁷ Exhibit P-1, p. 37

⁷⁸ T. p. 209.

have been used because it was sold by a receiver.⁷⁹ The Tribunal agrees that as a sales comparable, 8050 Francine should be given little if any weight. Besides being sold out of receivership, it was a 2012 sale. The Tribunal is not convinced that the market for this type of property was the same in 2012 as it was on the valuation date of December 31, 2013. The Tribunal also finds that Petitioner's sales comparable 3 at 625 Clinton River should be given minimal weight because it is in Mt. Clemens, and per Exhibit R-4, was poorly managed and in need of updates. This narrows the range of adjusted prices to Comp 1, 21314 MacArthur at \$24,076, Comp 2 at 29101 Lund at \$19,475, Comp 4 at 11500 Warren Blvd at \$25,177 and Comp 6 at \$23,177. The Tribunal accepts Petitioner's adjustments as reasonable and therefore will use its adjusted prices.

Czeiszperger's sales approach used four comparables, ranging in price from \$25,000 to \$34,429 per unit, with adjusted prices of \$27,843.70 to \$35,095.50 per unit. Respondent's Comparable 1 located at 32400 Mound, with an adjusted price of \$35,095 is located well north of I-696, which Czeiszperger stated was "a very large value divider in the city."⁸⁰ It is also on the west side of Warren. While she made an adjustment for location, no evidence was provided as to how that figure was quantified. As this property is clearly in a different neighborhood, the Tribunal finds that Respondent's Comp 1 is not a reliable indicator of value for the subject. Respondent's Comparable 2 located at 23005 Kelly Rd. in Eastpointe sold for \$32,813 per unit in May of 2015, 17 months after the valuation date. While she adjusted for time, no specifics were given by Czeiszperger regarding the paired sales she used to develop her 5% per annum time adjustment. The Tribunal also finds that Respondent's Comparable 2 is not a reliable indicator of the subject's value. The Tribunal does find that Respondent's Comp 3 located at 15321-15341 E 9 Mile, which sold in 2013 for \$25,000 a unit, and Comp 4 at 16840 E 11 Mile Rd for \$28,421 per unit are reliable indicators of value. However, the Tribunal is skeptical that Respondent's adjustments are appropriate. Along with a time adjustment, Respondent positively adjusts all of her comparables for land area when it is not clear that the market would make any such adjustment. Respondent also adjusts her comparables based upon year built, rather than on effective age. Again, it is unclear that the market would recognize these adjustments, especially

⁷⁹ T. p. 87

⁸⁰ T. p. 157

when no conclusion of effective age was opined to by Respondent. Finally, Czeiszperger adjusts each unit negatively for not having a basement, without any evidence that having a basement is a detriment, nor evidence as to how this amenity quantitatively affects a purchase price. Accordingly, the Tribunal will consider only Respondent's unadjusted sales prices.

The following array of prices per unit which the Tribunal deems to be the best determinant of true cash value of the subject under the sales approach are as follows:

Designation	address	Price per unit
P's Sale Comp 2	29101 Lund	\$19,475
P's Sale Comp 6	15550 E. Ten Mile	\$23,177
P's Sale Comp 1	21314 Macarthur	\$24,076
R's Sale Comp 3	15321-41 E 9 Mile	\$25,000
P's Sale Comp 4	11500 Warren Blvd	\$25,177
R's Sales Comp 4	16840 E 11 Mile Rd	\$28,421

Looking at the median of this array, the Tribunal finds that the sales approach yields a value of \$25,000 per unit, or \$800,000 under the sales comparison approach.

Income Capitalization Approach

Both parties valued the subject via the income capitalization approach, which was heavily relied upon by Collins and used as a check on value by Czeiszperger. While Collins' two approaches narrowed the value, Czeiszperger's income approach was much greater than her sales approach, thus calling its usefulness into question. The first issue with the income approach is the reliability of the data concerning the subject. Collins testified that he relied upon verbal information from Petitioner, which he verified by checking that information against what he found either in the market, (in the case of rent), or experience, in the case of expenses. Czeiszperger relied upon the market only. Of relevance to the Tribunal's determination is subsection 5 of the definition of true cash value.⁸¹ The subsection reads in relevant part:

(5) As used in subsection (1), "present economic income" means for leased or rented property the ordinary, general, and usual economic return realized from the lease or rental of property negotiated under current, contemporary conditions between parties equally knowledgeable and familiar with real estate values. The

⁸¹ MCL 211.27(5)

actual income generated by the lease or rental of property is not the controlling indicator of its true cash value in all cases.

This subsection recognizes the importance of present economic income, and also recognizes its limitation. Actual income may be artificially low due to long term leases, or bad management, resulting in high vacancy rates. On the other hand, an investor is not buying and the Tribunal is not charged with valuing the market in general. Instead, a buyer, the Tribunal, and the market must value a specific piece of real estate with its own specific characteristics. If rents are lower than average for a particular complex, there may be valid reasons. Similarly, if expenses are abnormally high there may also be reasons.

In the present case, the expenses determined by both parties are fairly close, with Collins using \$68,851 and Czeiszperger using \$62,304. Czeiszperger took the mid-range of expenses she found from comparables, and did not use actual expenses, while Collins used some actual expenses, which he tempered with market data and experience. The Tribunal accepts Collins' methodology over Czeiszperger's, because we find it to be more in line with what actual buyers would look at in making a decision regarding purchase.

More sizeable is the difference in potential gross income. Collins determined potential gross income to be \$228,240, while Czeiszperger determined potential gross income to be \$246,720.⁸² Collins relied upon actual rents, which he modestly boosted, which he found to be within the range of rents of other comparables. Czeiszperger did not have the subject's actual rents, nor did she have the actual 2013 rents for most of her rent comparables. Rather, she relied upon advertised rents at the time of her report, which she discounted back to the valuation date. As she used the subject as her comparable, the adjusted rent did not align with the actual rents reported by Petitioner.⁸³ Further, she negatively adjusted all of her comparables for amenities present. Her grid shows no positive adjustments for any amenity in any comparable, confirming that the subject had fewer amenities than any of her comparables. Accordingly, it is not

⁸² Respondent also added \$4,800 in miscellaneous income, presumably from laundry machines. Aside from the issue of whether that income should be assigned to personal property rather than real property, the only evidence of any laundry was the lone dryer in a large empty basement, found in Collins' photograph on p. 25.

⁸³ It is also curious that Respondent could find current advertised rents for the subject, considering that Czeiszperger testified that the subject is currently 100% occupied.

surprising that the subject's actual rents are at the lower end of the market, and the Tribunal accepts Collins' determination as to potential gross income over Czeiszperger's.

The next area of difference in the two income approaches is each party's determination of vacancy rate. Petitioner determined that the vacancy rate was 15%, based on actual as well as market, while Respondent, arguing that vacancy was really only 3%, used 5%. At hearing, Petitioner presented its Form 8825 for 2013.⁸⁴ Line 2 of this form shows gross rents of \$199,798.⁸⁵ Accepting this figure to be true and accurate, it indicates an actual vacancy rate of roughly 12.5%, which the Tribunal finds to be the proper vacancy rate for the subject on December 31, 2013. While the housing crisis may have sent former home owners to apartments, it sent many manufacturing jobs upon which Warren is dependent upon, out of state.⁸⁶ As Warren's decline in population indicates, many of its residents left town, rather than move down to a no-frills apartment in Warren's south end. Using a 12.5% vacancy rate, the Tribunal finds that the effective gross income, rounded is \$200,000. Subtracting Collins' expenses of \$62,500 (rounded), the subject has a net operating income ("NOI") of \$137,500.

The final step in determining a value via the income capitalization approach is to determine a capitalization rate. Both parties used extracted sales to determine the rate. Two of Respondent's sales took place in 2015, and had the lowest percentage. Czeiszperger's Comp 2 at 25119 Curie had a rate of 8.23%, while her Comp 3 at 23005 Kelley in Eastpointe had a rate of 8.40%. As no sales took place in 2014, the Tribunal finds that it is likely that sales after 2014 were subject to much lower cap rates. Accordingly, Respondent's Comp 2 and 3 will not be considered. Equally problematic are Respondent's Comp 1 at 32400 Mound, and Comp 4 at 26301 Jefferson in St. Clair Shores. As capitalization rates measure risk, sales of apartments in superior areas are likely to be less risky. As noted above, 32400 Mound Rd. is significantly north of Warren's great economic dividing line, I-696. The sale of Comp 4 is not only in a different neighborhood; it is in a different community, located a few thousand feet from Lake St. Clair. Accordingly, the Tribunal finds Respondent's extracted sales to be an unreliable indicator of the cap rate for the subject on tax day, December 31, 2013.

⁸⁴ Petitioner's Exhibit P-7

⁸⁵ Assuming Petitioner is on a cash basis, which is likely for a small operation, gross rent would mean actual collected rent.

⁸⁶ See Exhibit P-1, p. 32-34

Petitioner's unloaded rate of 14.5% was based upon extractions from five sales comparables, which mostly overlap Petitioner's sales comparables. The Tribunal does not find all of Petitioner's extracted sales to be reliable. Comparable C, located at 15550 E. Ten Mile sold in October of 2012, with a cap rate of 14.68%. The Tribunal finds that not only did it sell prior to 2013, it has only 7 units, compared to 32. The vacancy of a single unit can cause a much larger swing in income than in a 32 unit complex. Accordingly, it has a dissimilar and greater amount of risk associated with it compared to the subject. Comparable E located at 23750 Lansdowne in Clinton Twp. sold earlier still in 2011 with a 15% cap rate. Along with its age, the Tribunal also notes that this comparable is in a different community. Comparable A at 825 Clinton River, per the discussion above in the sales comparison section of this opinion was a distressed sale, per the MLS write-up.⁸⁷ Obviously, such a purchase is riskier than that of a stable complex without issues of deferred maintenance. Accordingly, Comparable A, with its 15% cap rate will not be given any weight. That leaves Comparable B located at 29101 Lund, a mile north of I-696, with an 11.50% cap rate and Comparable D at 21314 Macarthur, located 6 blocks from 8 Mile Rd. at 12.83% cap rate. The Tribunal finds that a cap rate between these two comparables of 12% is the best indicator of the cap rate for the subject. Loading that cap rate with 50% of the millage adds another 347 basis points, for a loaded rate of 15.47%. Dividing the NOI of \$137,500 by .1547 results in a value of \$888,817 or \$889,000.

Reconciliation

Collins opined that an investor would put primary weight on the income approach, and the Tribunal agrees. Placing primary weight on the conclusion from the income approach of \$889,000, but tempered by the sales approach value of \$800,000 results in a true cash value of \$850,000, which the Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, to be the subject's 2014 true cash value. The subject property's TCV, SEV, and TV for the tax year at issue are as stated in the Introduction section above.

JUDGMENT

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

⁸⁷ Exhibit R-4

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, 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%, and (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%.

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.⁸⁸ 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

⁸⁸ See TTR 261 and 257.

or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$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.⁸⁹ 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.⁹⁰ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.⁹¹

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.”⁹² A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.⁹³ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.⁹⁴

By David B. Marmon

Entered: August 18, 2016

⁸⁹ See TTR 217 and 267.

⁹⁰ See TTR 261 and 225.

⁹¹ See TTR 261 and 257.

⁹² See MCL 205.753 and MCR 7.204.

⁹³ See TTR 213.

⁹⁴ See TTR 217 and 267.