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

2521 LLC,
Petitioner,

v

MTT Docket No. 14-001194

Clayton Township,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, 2521 LLC, appeals ad valorem property tax assessments levied by Respondent, Clayton Township, against Parcel No. 04-01-200-010 for the 2014 and 2015 tax years. Thomas S. Fredericks and Norm Shinkle, Attorneys, represented Petitioner, and Peter Goodstein, Attorney, represented Respondent.

A hearing on this matter was held on December 7, 2015. Petitioner's witness was Mark Patrick Bollinger, MAI, appraiser. Respondent's witness was David K. Rexroth, MAI, appraiser.

The subject property, zoned "GC", General Commercial District, is a four unit commercial office building with 7,259 square feet,[1] on 2.78 acres of land, and was built in 1988. The property is addresses as at 2521 North Elms Road, Flushing (Clayton Township),[2], Genesee County.

The parties' contentions are as follows:[3]

Parcel No.04-01-200-010

	Petitioner			Respondent		
Year	TCV	SEV	TV	TCV	SEV	TV
2014	$113,000	$56,500	$56,500	$301,600	$150,800	$150,800
2015	$130,000	$65,000	$65,000	$314,000	$157,000	$153,212

[1] R-1 at 1 measured by Respondent.
[2] The subject is located in Clayton Township, but has a mailing address of Flushing.
[3] TCV true cash value, SEV state equalized value, TV taxable value based on Board of Review final values.

Respondent's revised contentions are:

Parcel No.04-01-200-010

	Petitioner			Respondent		
Year	TCV	SEV	TV	TCV	SEV	TV
2014	$113,000	$56,500	$56,500	$405,000	$202,500	$152,400
2015	$130,000	$65,000	$65,000	$420,000	$210,000	$154,838

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")[4] of the subject properties for the 2014 and 2015 tax years are as follows:

Parcel No. 04-01-200-010

Year	TCV	SEV	TV
2014	$405,000	$202,500	$152,400
2015	$420,000	$210,000	$154,838

PETITIONER'S CONTENTIONS

Petitioner contends that the subject property is over assessed. The subject property was purchased in December of 2009 for $235,000. Since that time the economy of the greater Flint area has suffered a severe economic downturn. The appraisal indicates a substantially lower value of no more than $130,000.

PETITIONER'S ADMITTED EXHIBITS

P-1 Appraisal by Mark Bollinger, MAI as of December 31, 2013.[5]
P-2 Appraisal by Mark Bollinger, MAI as of December 31, 2014.

PETITIONER'S WITNESS

Mark Patrick Bollinger, MAI, purported to be a general certified appraiser,[6] was called as Petitioner's only witness, and was allowed to testify to the two appraisals that he prepared. Bollinger testified that the roof of the subject needs to be replaced at an estimated $25,000. The parking lot needs to be recapped; Asphalt Management quoted $36,500 for the repair.

Bollinger testified that subsequent to the purchase of the subject property, the real estate market had declined 40 to 50% and foreclosures forced the banks to not lend money. Further,

[4] The taxable value is increased above the Consumer Price Index for the tax years at issue due to omitted property.
[5] Respondent objected to the admission of P-1 and P-2.
[6] See Tribunal Finding of Facts.

General Motors work force is down 2 to 3% from what it was, and the overall office market created a higher vacancy rate due to no demand.

Bollinger discussed a previously appraised property located across the street from the subject property. This property was built for McLaren, with an addition, ten to twelve years old. However, the addition has never been occupied. Bollinger believes the unoccupied addition is approximately 12,000 to 15,000 square feet.

Next, Bollinger testified that Mercy Plus leases 1,060 square feet of the subject's building. It is an absolute gross lease in which Petitioner pays all of the expenses including utilities.

Regarding Bollinger's Sales: Sales 1 and 8 are located eight to 10 miles from the subject, Sale 4 is five to eight miles, Sale 6 is within one mile from the subject. The subject location is at the extreme west portion of Genesee County, close to agricultural property, and has low traffic counts. On the other hand, Grand Blanc is an affluent office district with 50% higher rents and sales. The following sales were utilized:

	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6	Sale 7	Sale 8
	Flushing	Flint	Flint	Flint	Flint	Flint	Flushing	Flint	Grand Blanc
Sale Price		$100,000	$95,000	$32,500	$80,000	$350,000	$117,000	$335,000	$300,000
Sale Date		3/13	7/14	10/13	5/13	7/14	3/13	1/14	12/14
Sq Feet	7,558	5,191	12,000	3,353	3,150	12,000	4,784	10,430	10,354
Condition	Good	Good	Average	Fair	Good	Very Good	Good	Very Good	Very Good
Year Built	1988	1900	1987	1980	1990	1979	1977	1991	2008
SP/ SF.		$19.26	$7.92	$9.69	$25.40	$29.17	$24.46	$32.12	$28.97

From the above sale, the following comparables were utilized for the 2014 tax year:

	Subject	Sale 1	Sale 4	Sale 6	Sale 8
	Flushing	Flint	Flint	Flushing	Grand Blanc
Sale Price		$100,000	$80,000	$117,000	$300,000
Sale Date		3/13	5/13	3/13	12/14
Sq Feet	7,558	5,191	3,150	4,784	10,354
Condition	Good	Good	Good	Good	Very Good
Year Built	1988	1900	1990	1977	2008
SP/ SF.		$19.26	$25.40	$24.46	$28.97

Bollinger testified that Sales 1, 4, 6, and 8 were utilized for his final analysis. The subject is located in a residential area approximately two miles south of Flushing, and three miles northwest of the office corridor in Flint. He opined that there is little demand for office space in the subject area. All four sales were adjusted downward for their superior location. Sales 4 and 6 are smaller and adjusted downward $5.00 per square foot, Sale 8 is larger and adjusted upward $2.00 per square foot. The final adjusted range is $14.26 to $16.49 per square foot. Bollinger selected a midrange, $15.00, which reflects a value of $114,000 as of December 31, 2013.

For tax year 2015, Bollinger utilized Sales 1, 3, 4, and 6 for analysis:

	Subject	Sale 1	Sale 3	Sale 4	Sale 6
	Flushing	Flint	Flint	Flint	Flushing
Sale Price		$100,000	$32,500	$80,000	$117,000
Sale Date		3/13	10/13	5/13	3/13
Sq Feet	7,558	5,191	3,353	3,150	4,784
Condition	Good	Good	Fair	Good	Good
Year Built	1988	1900	1980	1990	1977
SP/ SF.		$19.26	$9.69	$25.40	$24.46

Bollinger made various adjustments to the sales utilized for 2015. Sale 1 was adjusted downward $2.00, (2014 adjustment was -$5.00), Sale 6 was adjusted -$3.00, (2014 adjustment was -$5.00) with an added -$2.00 for condition and -$2.00 for size, (2014 adjustment was +$2.00). The resulting true cash value as of December 31, 2014 is $129,000.

The income approach was discussed next, and eight office building leases were considered; seven were in Flint and one lease was located in Flushing. The unadjusted rents are $7.00 to $14.50 per square foot. Bollinger states that under the triple net rents, as compared to gross rents, approximately $4.50 per square foot is added for expenses. All eight leases were listings, with an estimated 15% to 20% below asking rent; thus indicating an adjusted range of $9.60 to $12.20 per square foot gross. "Because the subject is an inferior location to the rent comparable, the actual rents will be used."[7]

Bollinger then used the actual income and expenses that Petitioner provided. For 2013, he applies a rent of $7.13 per square foot based, on occupancy of 85%. For 2014, he uses rent of $7.30 per square foot, with an 80% occupancy rate. The appraiser's pro-forma for both tax years is outlined below:

[7] P-1 at 48.

Pro-Forma 2013

Gross Income		$54,120
Vacancy Credit		$ 8,118
Eff Gross		$46,002
Insurance		$1,500
Maint/Repairs		$7,000
Utilities		$8,300
Snow/Lawn		$4,000
Garbage		$700
5% Mgt		$2,300
Reserves		$1,000
BO Vacant		$4,132
Comm/ Vacant		$2,583
65% Expenses		$31,315
NOI		$14,487
OAR	12.85%	
TCV		$113,000

2014

Gross Income		$55,601
Vacancy Credit		$ 11,120
Eff Gross		$44,481
Insurance		$1,500
Maint/Repairs		$8,000
Utilities		$8,000
Snow/Lawn		$5,000
Garbage		$1,000
5% Mgt		$2,224
Reserves		$2,000
63% Expenses		$27,724
NOI		$16,757
OAR	12.85%	
TCV		$130,000

A 12.85% capitalization rate was utilized for both tax years. The 2014 final value is $113,000 as of December 31, 2013. The 2015 tax year resulted in a final value of $130,000 as of December 31, 2014.

RESPONDENT'S CONTENTIONS

Respondent contends that the subject property is under assessed. Respondent argues that Petitioner's appraisal lacked credibility and reliability, and should not be accepted as market value.

RESPONDENT'S ADMITTED EXHIBITS

R-1 2014 and 2015 appraisal by David K. Rexroth, MAI.
R-2 LARA license information Mark Bollinger.
R-3 LARA formal complaint Mark Bollinger.
R-4 LARA Final Order Mark Bollinger.
R-5 Dynamic Realty International Inc., 2012 LARA update.
R-6 Warranty Deed for 5154 Miller Road.
R-7 Condo documents re: 5154 Miller Road.
R-8 Quit Claim Deed for 5045 Miller Road.
R-9 Warranty Deed for 1434 Flushing Road.
R-10 Property statement re: 3453 Pierson Place.
R-11 Deeds re: 9475 N. Holly.

R-12 Listing for 2500 N. Elms.
R-13 Responses to Interrogatories.
R-14 Aerial photograph 1111 Church Street.
R-16 2300 Austin Parkway Deed and Mortgage.
R-20 Listing for 2335 South Linden Road.

RESPONDENT'S WITNESS

David K. Rexroth, MAI, was called as Respondent's witness and was admitted as an expert appraiser. He testified that the subject property was appraised as a "fee simple" estate.

Rexroth testified that he did not use comparables in the City of Flint as it has been decimated economically, and that subject is in a suburban setting. When questioned on familiarity with Petitioner's comparables, he explained that his firm appraised 1111 Church Street, Flint (P-1). This property is two blocks from Rexroth's office, and in his opinion, it is not comparable because it is a 100 year old, two-story building with no elevator. The building has been maintained, but has functional and external obsolescence that is not found at the subject property. Petitioner's sale at 929 Stevens (P-8) is the former Social Security building located in downtown Flint. It is larger and older than the subject, and was purchased for an alternative use. Rexroth testified that he did not consider P-8 a comparable. Petitioner's sale at 940 South Grand Traverse (P-4) is also located a couple blocks from Rexroth's office in downtown Flint. It is a one-story building that does not have on-site parking. It is not comparable to the subject without a large adjustment.

Rexroth considered the use of a cost approach for the 25-year old subject property that has suffered physical deterioration, but deemed the approach to be irrelevant. Therefore, the sales comparison approach and income approach were both developed.

Regarding a comparative sales analysis, Rexroth's data consideration was based on one-story office buildings located within Genesee County, between 2,500 to 15,000 square feet, built from 1975 to 2010. Foreclosure sales were not considered as comparable as the definition of market value is predicated on a willing buyer and a willing seller. Generally, a foreclosed seller is not willing; thus resulting in a sale below market expectations. Sales within the City of Flint were not considered as it is a different economic area.

The following sales were considered for tax year 2014:

	Subject	Sale 4	Sale 5	Sale 6	Sale 7	Sale 8
Location	2521 N Elms	1044 N Irish	8293 Office Park	8195 S Saginaw	3469 Pierson Pl	3444 Lennon

Sale Price		$435,000	$244,500	$500,000	$750,000	$260,000
Sale Date		12/13	10/13	11/12	12/11	1/11
Sq Ft	7,259	4,817	3,790	7,760	12,225	4,498
SP/SF		$90.31	$64.51	$64.43	$61.35	$57.80
Land	2.77	0.27	0.72	1.96	0.26	0.37
Year Blt	1988	1991	1976	1996	1986	1999
Condition	Above Avg	Above Avg	Avg	Above Avg	Above Avg	Below Avg
Amenities		Pt Basement				

The 2015 tax year sales are:

	Subject	Sale 1	Sale2	Sale 3	Sale 4	Sale 5
Location	2521 N Elms	8143-45 S Saginaw	1100 Torrey	3060 S Dye	1044 N Irish	8293 Office Pk
Sale Price		$440,000	$880,000	$200,000	$435,000	$244,500
Sale Date		09/14	08/14	02/14	12/13	10/13
Sq Ft	7,259	6,950	10,994	2,800	4,817	3,790
SP/SF		$63.31	$80.04	$71.43	$90.31	$64.51
Land	2.77	0.87	0.73	0.49	0.86	0.72
Year Blt	1988	1978	2001	2007	1991	1976
Condition	Above Avg	Average	Above Avg	Average	Above Avg	Average
Amenities					Pt Basement	

Rexroth opined that the market conditions have stabilized and did not show any appreciation. The older sales reflect a lower sale price per square foot, but also indicate a slight overall market improvement; therefore, no market condition adjustments were quantified for either tax year at issue.

The location adjustment accounts for the subject's suburban setting which is considered inferior to Grand Blanc and Fenton. Rexroth applied a 10% downward adjustment to Sales 3, 7, and 8. No adjustments were made for land to building ratio and all of the sales had adequate parking.

Rexroth's age, condition and quality adjustments took into account the effective age of the subject and the comparable sales. Sales 1 and 5 are older buildings and were adjusted upward. Sales 2, 3, 4, and 6 were newer buildings, in superior condition, which required downward adjustments. The subject, as a general office building, is inferior to Sales 4, 5, 6, and 7 which were partial medical or dental offices. These sales are superior and were adjusted downward.

Rexroth claims as building size increases, the sale price generally decreases. His building sales have square feet that ranged from 2,800 to 12,225, which brackets the subject's 7,259 square feet. Upward size adjustments were made to Sales 2 and 7, downward size adjustments were made to Sale 3, 4, 5, and 8. The remaining adjustment was made to Sale 4, for the partial basement, downward 5%.

From the adjusted sales range from $49.94 to $62.88 per square foot, Rexroth gave the most weight to Sales 7 and 8, which required the least adjustments. His final value is $58.00 per square foot, or $421,000 as of December 31, 2013. The adjusted range for the 2015 tax year is $57.14 to $63.31 per square foot. Rexroth gave the most weight to Sales 1, 2, and 3 to conclude to $60.00 per square foot, or $435,500 as of December 31, 2014.

Rexroth's income analysis began with the review of the subject leases. The owner occupies a portion of the building and has tenants under three separate gross leases (whereby landlord paying taxes, insurance, maintenance and repairs, lawn care, trash and utilities). Rexroth considered the following six rental properties:

	Subject	Lease 1	Lease 2	Lease 3	Lease 4	Lease 5	Lease 6
Location	2521 N Elms	1429 Flushing	4438 Oakbridge	4458 Oakbridge	3469 Pierson	3280 N Elms	2029 S Elms
Sq Ft Lease	7,259	8,000	5,082	6,728	2,100	8,330	17,530
Rent/SF		$12.75	$17.59	$18.40	$8.50	$9.00	$7.50
		$14.80	$15.59			Modified Gross	$11.50
		$12.50					

Lease 1 is a Multi-tenant property with triple net leases, with CAM reimbursements estimated at $4.50 per square foot. Lease 2 is partially owner-occupied, the CAM reimbursement is $3.59 per square foot. Lease 3 is a newly renovated space with CAM charges of $4.45 per square foot. Lease 4, (is also Petitioner's Sale 7), is a triple net lease. Lease 5 is a modified gross lease. Lease 6 is a range of asking rent for a multi-tenant space with no indication of the type of lease. Leases 2, 3, 5, and 6 are located in Flint.

Rexroth states, "Based on my analysis of these comparable rentals, I determined a market rent for the subject on page 71, of $9.50 per square foot." [8] The rent reflects a gross potential rental income before tenant reimbursements. The subject property is 100% occupied, but the

[8] Tr. At 116.

market is approximately 80% occupied; therefore, a 20% vacancy and credit was deducted from the gross income.

Rexroth testified that he used three years of Petitioner's income tax returns for the actual income to reconstruct the income and expenses. He also utilized other offices that he has appraised, to determine a percentage of typical expenses. The gross potential income less vacancy and credit, and expenses results in the net operating income. The net operating income is then capitalized with a rate that includes the effective tax rate.

Rexroth described the analysis for selecting the capitalization rate included RealtyRates.com, extracted from investor's surveys, and a mortgage equity technique looking at typical mortgage terms, as well as, the return on the equity position. The overall capitalization rate of 12.755 is a result of a loan to value ratio of 75%, interest rate of 5.5% for the mortgage over a 15-year term, and equity of 25%, (equity dividend rate of 12% over a 10 year holding period), plus the effective tax rate. The 2014 overall capitalization rate resulted in 12.40%. The income approach for both years is:

Gross Income		$68,960
Tenant Reimburse		$9,600
Vacancy Credit		-$15,712
Eff Gross		$62,848
Insurance		$1,200
Maint/Repairs		$3,000
Utilities		$1,200
Snow/Lawn		$3,000
Garbage		$1,200
Legal/Acct		$1,000
4% Mgt		$2,514
19% Expenses		$13,114
NOI		$49,734
OAR	12.75%	
TCV		$390,000

Gross Income		$68,960
Tenant Reimburse		$9,600
Vacancy Credit		-$15,712
Eff Gross		$62,848
Insurance		$1,200
Maint/Repairs		$3,000
Utilities		$1,200
Snow/Lawn		$3,000
Garbage		$1,200
Legal/Acct		$1,000
4% Mgt		$2,514
19% Expenses		$13,114
NOI		$49,734
OAR	12.40%	
TCV		$401,000

Rexroth's value, via the income approach, is $390,000 as of December 31, 2013, and $401,000 as of December 31, 2014.

Rexroth's final value consideration for December 31, 2013, is closer to the sales comparison approach, but he also considered the income approach at $405,000. His final value conclusion as of December 31, 2014, is based on a similar reconciliation at $420,000.

FINDINGS OF FACT

1. The subject property is located at 2521 South Elms Road, Clayton Township, Flushing, Genesee County, Michigan.
2. The subject property is identified as Parcel Number 04-01-200-010.
3. The subject property is owned by 2521 LLC c/o Paul Bontrager.
4. The subject property is zoned GC, General Commercial District.
5. The subject property contains one multi-office building with 7,259 square feet on 2.78 acres of land.
6. Petitioner's appraiser developed the sales comparison approach and the income approach in his determination of value.
7. Petitioner's appraiser signed a certification in compliance with the Uniform Standards of Professional Appraisal Practice ("USPAP").
8. Petitioner's appraisal for the 2014 tax year, (P-1) states fee simple interest appraised; however, in testimony stated that it was a leased fee interest.[9]
9. Petitioner's first appraisal report (Exhibit P-1) has a date of appraisal, December 31, 2013, which was one of the tax dates at issue. Petitioner's 2nd appraisal (Exhibit P-2) has an effective date of May 20, 2015, and is based on a leased fee market value. The document does not denote when the subject was inspected.
10. Petitioner's appraiser testified that he was not actively licensed at the time of the signature of the appraisal.[10]
11. Petitioner's sales comparison approach included a total of 16 sales, of which 13 were located in the City of Flint.
12. Petitioner's Sale 1 was not an arms-length sale.[11]
13. Neither of Petitioner's appraisals contain descriptions of Sales 2, 5, 7, and 8.
14. Neither of Petitioner's appraisals contain any explanatory narration that supports the sales that were utilized.
15. Neither of Petitioner's appraisals contain the data source relied upon for Sales 1, 3, 4, 5, 7, or 8.
16. Petitioner's description for Sale 1 (both appraisals) does not disclose that the improvement is a 100 year old, 2-story building located in the City of Flint.
17. Petitioner's Exhibit P-2, Sale 2, located at 5154 Miller Road, contains two condominiums, with 1,107.67 and 1,112 square feet, respectively. This sale does not contain 12,000 square feet, as denoted in the appraisal report.[12]
18. Petitioner's Exhibit P-2, Sale 2, includes a unit that was a tax forfeiture.[13]

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[9] Tr. at 98.
[10] Tr. at 12.
[11] Tr. at 52.
[12] Tr. at 59, R-7.
[13] Tr. at 60, 61, R-6 at 4.

19. Petitioner's appraiser considered Sale 6 to be in good condition, however, Exhibit R-10 states "the buyer reported that it had extensive water damage caused by a leaking roof. Severe water damage, needs new roof."[14]
20. Petitioner's sales comparison total adjustments are miscalculated. The 2014 appraisal includes different adjustments for the same sales adjusted in the 2013 appraisal.
21. Petitioner's Sale 2 at 2300 Austin Parkway, was deemed to be in average condition. It had a construction mortgage for $1,000,000.[15]
22. Petitioner's Sale 5 at 5097-5105 Miller Road sold for $415,000; however, it also had a mortgage modification for $1,000,000, signed by the agent for Green Apple Management LLC. Subsequently, the agent was arrested for healthcare fraud. In testimony, the sale appears to be to shelter money, and not a market sale.[16]
23. Petitioner's income approach utilizes a lease at 2500 North Elms Road in Clayton Township. For 2014, the lease was offered at $14.50 on a triple net and for 2015 offered at $4.50 gross. Petitioner indicates that the market was improving for the 2015 tax year.[17]
24. The property located at 25p0 North Elms Road is located in Flint Township, not Clayton Township, as reported in Petitioner's appraisals.
25. Petitioner's appraisals use the same leases for both tax years. Exhibit P-1 indicates that the leases are triple net. However, Exhibit P-2 uses the same rents as gross leases.
26. Petitioner's appraisal report states that $4.50 is added to the triple net leases, but the range indicates $7.50 to $14.50. The correctly calculated adjusted range is $11.50 to $19.00 per square foot.[18]
27. Petitioner utilized actual income and expenses in the income approach for both years at issue.
28. Petitioner did not cite any data sources in its appraisal report.[19]
29. When questioned as to the source for his expenses. "I was told this information…I did not see this information."[20]
30. P-1 and P-2, Sale 1, at 1111 Church appears to be a finance transaction.[21] The seller, Thomas J. Strittmatter owns Dynamic Realty International, Inc., the purchaser.
31. P-1, Sale 2, in average condition, has a Covenant Deed for $1,000,000 in construction.[22]
32. P-1 and P-2 Sale 3, 3560 Flushing Road, sold October 2013, was not included in the adjustment grid for the subsequent year. It was not considered relevant for the December 31, 2014 tax date.
33. P-1, Sale 5 at 5097-5105 Miller Road, has multiple documents recorded. They are: a Warranty Deed for $415,000, a $1,110,000 Construction Mortgage, a Mortgage Modification, and a Federal Foreclosure.[23]
34. P-1 and P-2, Sale 7 at 1434 Flushing Road sold January 2014, was included for both years, but only adjusted in P-2.

[14] R-10.
[15] R-16.
[16] R-17.
[17] P-1 at 47 and P-2 at 44.
[18] Tr. at 81, 82.
[19] Tr. at 84.
[20] Tr. at 87.
[21] R-5.
[22] R-16.
[23] R-15. Tr. at 72.

35. P-2, Sale 2 at 5154 Miller Road, sold July 2014, and indicates 12,000 square feet. When Bollinger was questioned if the 12,000 is false, he responded, "I do not know."[24] The rebuttal document indicates that this was a sale of two condominium units, with actual square footage of 1,107.67 for the first floor, and 1,112 for the basement. Additionally, one of the units was forfeited for being delinquent on the property taxes.[25]
36. P-1 and P-2, Sale 4 at 940 South Grand Traverse, is located in downtown Flint. Bollinger testified that it is comparable to the subject's location.
37. P-2, Sale 5 at 5045 Miller Road is a foreclosure. Although Bollinger testified that he did not use this sale, it was part of the range of sale prices that were considered.[26]
38. P-1 and P-2, Sale 6 at 3453 West Pierson Place, Bollinger testified that he is unclear if it has frontage on both Pierson Place and Pierson Road. The appraisal indicated that it was in very good condition. However, the buyer reported that it had extensive water damage caused by a leaking roof.[27]
39. P-1 and P-2, Sale 7 at 1434 Flushing states that it is in very good condition also. However, it was sold by an estate; Bollinger did not know if it was under duress.[28]
40. P-2, Sale 8 at 9475 North Holly sold December 2014. Bollinger was aware that it was a sale of a foreclosed property, but did not disclose it "because it wasn't relevant."[29]
41. Respondent's appraiser developed the income and the sales comparison approaches in the appraisal report.
42. Respondent selected a total of eight sales for the comparative analysis.
43. The comparable sale write-ups are located in the addendum of Respondent's appraisal report. The sale write-ups did not include any verification sources.
44. Respondent's analysis included copies of Petitioner's lease agreements, as well as, tax information for the years under appeal.
45. Respondent provided some details for the six leases that were utilized for both tax years.
46. Respondent market income and expenses from similar properties, as well as the subject's historical information based on leases and tax information.
47. Respondent's appraiser consulted RealtyRates and arrived at a capitalization rate for the real property. The overall tax-loaded capitalization rate applied was 12.75% and 12.40%, respectively for the tax years under appeal.

CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value. See MCL 211.27a.

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of

[24] TR. at 60.
[25] R-5 and R-6.
[26] Tr. at 63.
[27] Tr. at 64
[28] Tr. at 64.
[29] Tr. at 65.

> true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50 percent. . . . Const 1963, art 9, sec 3.

The Michigan Legislature has defined "true cash value" to mean:

> The usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. MCL 211.27(1).

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value'. . . are synonymous." *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

"By provisions of [MCL] 205.737(1) . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment." *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp,* 145 Mich App 749, 754; 378 NW2d 590 (1985). "It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case." *Meadowlanes Ltd Dividend Housing Ass'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991). In that regard, the Tribunal "may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination." *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735a(2). The Tribunal's factual findings must be supported "by competent, material, and substantial evidence." *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990). "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence." *Jones & Laughlin Steel Corp* at 352-353.

"The petitioner has the burden of proof in establishing the true cash value of the property." MCL 205.737(3). "This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party." *Jones & Laughlin Steel Corp* at 354-355. However, "[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question." MCL 205.737(3).

The three most common approaches to valuation are the capitalization of income approach, the sales comparison, or market, approach, and the cost-less-depreciation approach. *Meadowlanes* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968). "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading." *Jones & Laughlin Steel Corp* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1). The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale* at 277.

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell. See *Meadowlanes* at 485.

True Cash Value

Sales Comparison Approach

Based on the extensive findings of fact, Petitioner's appraisals lack consistency, logic and descriptive analysis to lead any reader to the stated conclusions of value. Petitioner's appraiser and appraisal reports are void of a basic measure of credence and credibility.

The sales comparison approach is defined as:

> The process of deriving a value indication for the subject property by comparing similar properties that have recently been sold with the property being appraised, identifying appropriate units of comparison, and making adjustments to the sale prices (or unit prices, as appropriate) of the comparable properties based on relevant, market-derived elements of comparison. The sales comparison approach may be used to value improved properties, vacant land, or land being considered as though vacant when an adequate supply of comparable sales is available.[30]

[30] Appraisal Institute, The Appraisal of Real Estate (Chicago: Appraisal Institute, 14th ed, 2013) at 377.

The sales comparison approach is one of the three commonly recognized methods of valuation, and can be an accurate indicator of a property's value "when there are sufficient recent, reliable transactions to indicate value patterns or trends in the market."[31]

The majority of the sales were in the City of Flint which is different than the subject's suburban location. The total adjustments do not add up for either appraisal. Petitioner's true cash value as of December 31, 2013, "as is" fee simple market value is $114,000 and as of December 31, 2014, "as is" leased fee market value is $129,000. Petitioner's testimony and appraisals are not consistent.

In this case, however, the comparables selected by Petitioner's appraiser *were not* sufficiently selected to be reflective of the market value for the subject. Petitioner's sales were challenged as being arms-length transactions. Further, this issue that was not covered in the appraisal reports shall not be passed off as "typographical errors."

Again, Petitioner's appraisals lacked any information that allows a reader to grasp why the eight sales were considered and then resulted in four sales that were adjusted for the final value. Expected comparable sale write-ups were absent from Petitioner's reports. The omission of details and analysis is not acceptable in appraisal practice and theory. Merely stating "the most similar sales will be further compared to the subject property on an adjustment grid in the following pages"[32] does not convince this Tribunal that credibility and public trust was Petitioner's priority.

Petitioner's adjustment grids for both tax years have mathematical errors. For example, the location and size adjustments do not add up to the total adjustment. The adjustments for Exhibit P-1, for Sales 1, 4, 6 were also used for Exhibit P-2, but have different condition and location adjustments.

Therefore, the errors, omissions, and inconsistencies diminish and discredit Petitioner's sales comparison approach for the final analysis. Petitioner's sales are given no weight in the final analysis.

Respondent selected sales, based on location within Genesee County, arms-length sales from January 2011 through December 31, 2014, size of buildings from 2,500 to 15,000 square

[31] Appraisal Institute, The Appraisal of Real Estate (Chicago: Appraisal Institute, 14th ed, 2013) at 380.
[32] P-1 and P-2 at 32.

feet, one-story and used for offices.[33] Respondent utilized a total of eight sales with Sales 4 and 5 used for both years. The adjustments were explained for each sale. Respondent gave the most weight to Sales 1, 2, and 3, as most representative of the market for December 31, 2013 and resulted in a true cash value of $435,500. Sales 7 and 8 were relied upon as of December 31, 2014, and resulted in a true cash value of $421,000. Respondent did outline how comparable sales were selected.

Income Approach

The income approach is defined as:

> The present value of the future benefits of property ownership is measured. A property's income and resale value upon reversion may be capitalized into a current, lump-sum value.[34]

Petitioner's appraiser did prepare an income approach, utilizing the same eight leases for both tax years. The unadjusted range was the same, $7.00 to $14.50, indicating both Triple Net for the tax year 2014 report and Gross Leases for the 2015 report.

Petitioner's appraiser at Exhibit P-1, page 47, states that Lease 1 is $14.50 per square foot triple net. Triple net charges typically range from $4.00 to $5.00 per sq. ft. Therefore, when analyzing triple net rents, as compared to gross rents, we must add approximately $4.50 to rents quoted as triple net for expenses. This closely relates to the gross rents as offered by the subject property. Therefore, the adjusted range of rents, as gross, is $7.50 to $14.50 per sq. ft.[35]

Petitioner did not actually add $4.50 to any of the rents or the range would have been $$11.50 to $19.00 per square foot. The rents listed are asking and were further reduced 15% to 20%, indicating an adjusted range of $9.60 to $12.20 per square foot. "Because the subject is in an inferior location to the rent comparable, the actual rents will be used."[36] The subject is rented for $7.13 per square foot, and a market vacancy is 15% due to its lower rents.

Petitioner's Lease 1 at 2500 N Elms Road is $14.50 per square foot triple net in P-1, and $4.50 for P-2 gross rent. The same rent comparables on a gross basis range from $4.50 to $10 per square foot for the December 31, 2014 appraisal, with actual rent again utilized. The actual rent was $47.30 per square foot, with 20% vacancy for the second year.

[33] R-1 at 55.
[34] Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 14th ed, 2013) at 46.
[35] P-1 at 47.
[36] P1 at 48, P-2 at 45.

The Pro-Forma for 2014 indicates a vacancy and credit loss of 30%, but 15% is deducted. The expenses, which were not discussed in the appraisal, included deductions for built-out vacant space of $4,132 and Commission, 1,033 square feet annualized of $2,583. The total expenses were 65%. The overall capitalization rate with an effective tax rate is 12.85%. This resulted in an indicated value for the fee simple of $113,000 as of December 31, 2013.

The Pro-Forma for 2015 indicates an increased $1,000 for maintenance/repairs and a $300 increase for garbage, $1,000 for snow and lawn, and $1,000 increase for reserves. The total expenses, without the build-out space or commission, is 63%. The capitalization rate is 12.85%. The result is an indicated value for the leased fee of $130,000.[37]

Petitioner's appraiser used actual income and expenses provided by Petitioner. He was told this information.[38] He did not see any of the actual expenses or provide documentation that the information was accurate.

Overall, the income approach is fraught with errors, in which Petitioner's appraiser testified that were simply typographical errors. The two reports used the same income comparables, which in 2014 were triple net leases, but were gross leases for 2015. The leases denoted the same lease rates for both years, but triple net leases were adjusted at the same amount; in the first appraisal the leases reported as triple net required an addition of $4.50 relative to gross rents. Further, Petitioner's appraiser did not verify the subject's actual income and expenses, but relied on verbal information from Petitioner. Equally puzzling is the appraiser's lack of explanation for the mismatch between vacancy percentages and pro-forma percentages. It is unclear how Petitioner's appraiser reached a conclusion in both years at issue based on the subject's actual rents of $7.13 and $7.30, when market rents for 2014 are $11.50 to $19.00 per square foot triple net, and market rents for 2015 are $7.00 to $15,00 per square foot gross rent.

The net operating income was capitalized, with an overall rate that included the effective tax rate, instead of including actual property taxes as an expense. The overall capitalization rate, with the addition of the effective tax rate, is tax neutral. The issue appealed is true cash value which affects the property taxes. Petitioner's overall capitalization rate was 12.75% for both tax

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[37] P-2 at 47 states fee simple, Petitioner testified that it was leased fee.
[38] Tr. at 87.

years and concluded to a true cash value of $113,000 as of December 31, 2013, and $130,000 as of December 31, 2014.

Again, Respondent's appraisal relied on copies of the subject's three Lease Agreements, and copies of Petitioner's income tax information for the prior three years. Respondent then found six office rentals that were adjusted on a net basis. This resulted in market rent of $9.50 per square foot, plus tenant reimbursements, with typical vacancy and credit estimated at 20%. The triple net rent covers typical expenses after being reimbursed by the tenant. Respondent considered actual expenses, as compared with expenses of market on office buildings. The support for Respondent's information is contained in the addendum portion of the report. Respondent's total expenses of 21% appears reasonable for the subject office. The overall rate selection was similar for both parties; the overall capitalization rate included the effective tax rate of 12.75% for the 2014 year and 12.40% for the 2015 year. The fee simple true cash value as of December 31, 2013 is $390,000 and $401,000 as of December 31, 2014 for Respondent.

The Tribunal finds that the income approach is an acceptable method, when income and expenses were tested in the market. Petitioner's use of actual income and expenses is baseless without application to the market. The income and expenses must be tied into the market *when looking at fee simple interest.* Using the actual data without market rent support is a significant flaw. While Petitioner noted some market rent, it was not developed or analyzed. Market rent is defined as:

> The most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the lease agreement, including permitted uses, use restrictions, expense obligations, term, concessions, renewal and purchase options, and tenant improvements.[39]

The income approach, as calculated by Petitioner's appraiser, is based on actual income as verbally conveyed to him from Petitioner. The Appraisal Institute states:

> To develop an opinion of market value with the income capitalization approach, the appraiser *must be certain that all the data and forecasts used are market-oriented and reflect the motivations of a typical investor* who would be willing to purchase the property as of the effective date of the appraisal. A particular investor may be willing to pay a price different from market value, if necessary, to acquire a property that satisfies other investment objectives unique to that investor.[40]

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[39] Appraisal Institute, The Dictionary of Real Estate Appraisal (Chicago: 6th ed, 2015) at 140.

[40] Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 14th ed, 2013) at 444. Emphasis added.

The Tribunal finds that Petitioner's income approach lacks a market based foundation and is not accepted as a valid indication of the market value of the subject property. No weight is given to Petitioner's income approach.

Neither party found that the cost approach is applicable to determine the true cash value of the subject property. Further, the Tribunal finds the cost approach is generally not the preferred method of determining true cash value for an income-producing property.

> In the cost approach, the value of a property is derived by adding the estimated value of the land to the current cost of constructing a reproduction or replacement for the improvements and then subtracting the amount of depreciation (i.e., deterioration and obsolescence) in the structure from all causes. Entrepreneurial incentive (the amount to developer expects to receive) or entrepreneurial proofing (the amount actually received) may be included in the value indication. This approach is particularly useful in valuing new or nearly new improvements and properties that are not frequently exchanged in the market. Cost approach techniques can also be employed to derive information needed in the sale comparison and income capitalization approaches to value, such as the cost to cure items of deferred maintenance.[41]

This Tribunal, although housed in the Department of Licensing and Regulatory Affairs, is not the regulatory agency that disciplines appraisers. It is not the Tribunal's responsibility to report to the agency appraisals that are not acceptable.

In addition, the Tribunal notes that Petitioner pleads that the 2009 purchase price of the subject property for $235,000 should be the very most that it would be worth.[42] The Tribunal finds that the 2009 acquisition price for the subject property was not considered by either expert witness to be worthy of consideration for the December 31, 2013, or December 31, 2014, tax dates at issue. The sale is too far removed from the tax dates at issue to be of assistance in determining the true cash value four and five years after the fact.

The Tribunal finds that Respondent's appraisal is the best evidence of the true cash value of the subject property. The report contained sufficient information to lead the reader to the same conclusion as the appraiser. Respondent considered the results of the income approach and the

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[41] Appraisal Institute, The Appraisal of Real Estate (Chicago: 14th ed, 2013) at 47.
[42] Tr. at 131.

sales comparison approach and relied on both approaches. The Tribunal finds that the sales comparison approach and the income approach both resulted in similar conclusions.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner fails to prove that the subject property is over assessed. The 2015 taxable value increased based on the Consumer Price Index ("CPI") as applied to the 2014 taxable value. The subject property's TCV, SEV, and TV for the tax years 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 years at issue are MODIFIED as set forth in the Introduction section of this Final Opinion and Judgment.

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

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010; (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011; (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09%; and (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%.

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

APPEAL RIGHTS

If you disagree with the 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.[43] 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 $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.[44] 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.[45] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[46]

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."[47] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[48] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[49]

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Entered: MAR 31 2016

[43] See TTR 261 and 257.
[44] See TTR 217 and 267.
[45] See TTR 261 and 225.
[46] See TTR 261 and 257.
[47] See MCL 205.753 and MCR 7.204.
[48] See TTR 213.
[49] See TTR 217 and 267.